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Time, Pen and Paper, and Now the Ear of the Supreme Court

By ADAM LIPTAK

WASHINGTON — Kim Millbrook, an inmate at a federal prison in Pennsylvania, has 31 years of hard time on his hands. He has been using it to sue people.

The courts have considered his lawsuits with patience and even solicitude, and last month he overcame long odds by persuading the [Supreme Court](#) to [grant his handwritten petition](#) seeking review of a decision in one of his many cases.

Mr. Millbrook is the kind of litigious prisoner that judges call a frequent filer. He has been inside four prisons and jails, and he has sued over asserted mistreatment in all of them.

He sued corrections officers at the Rock Island County Jail in Illinois for, he said, using excessive force in connection with a search of his cell. Then he sued law enforcement and medical personnel at the Henry County Jail, also in Illinois, for what he said were inhumane conditions and inadequate care.

He went on to sue the federal government for failing to protect him from an assault by a fellow inmate, Davon Golden, when the two men were in a federal prison in Terre Haute, Ind.

Judges have uniformly rejected Mr. Millbrook's lawsuits, which [one of them said](#) can be "somewhat difficult to decipher." They have done so in careful and detailed decisions that only occasionally betray a hint of impatience.

In the Indiana case, for instance, Judge William T. Lawrence of Federal District Court in Terre Haute [wrote](#) in March that "the proximate cause of Millbrook's injuries was Millbrook's ill-advised decision to attack inmate Golden, who turned out to be armed and disposed to protect himself."

Similarly, Judge Harold A. Baker of Federal District Court in Urbana, Ill., [wrote in 2009](#) that Mr. Millbrook had a tendency to make trouble and then complain about it.

"The plaintiff repeatedly had problems getting along with other detainees and repeatedly got into physical altercations with other detainees," Judge Baker wrote.

Mr. Millbrook finds himself in prison because of [a 2007 conviction](#) for various drug and gun crimes, along with witness tampering and witness intimidation. His legal arguments in the criminal case against him were sometimes unconventional.

“I am a sovereign,” he said in one filing, “and cannot be the subject of any law.”

Sovereign immunity in the usual sense, meaning that the government cannot be sued without its consent, is, as it happens, the issue before the Supreme Court in Mr. Millbrook’s latest case.

This fourth lawsuit is based on the assertion that Mr. Millbrook was sexually assaulted in 2010 in the basement of a prison in Lewisburg, Pa. He said a prison guard forced him to perform a sex act while a second guard held him down and a third one stood watch. The prison’s internal investigation found the claim to be unsubstantiated.

Judge William J. Nealon of Federal District Court in Scranton, Pa., acknowledged that “the purported conduct in the present case is troubling.” But [he dismissed the case](#) on the basis of sovereign immunity without deciding whether Mr. Millbrook’s account was true.

[The federal appeals court in Philadelphia affirmed](#) that ruling, and Mr. Millbrook appealed to the Supreme Court, where he was lucky to have the United States solicitor general’s office as his adversary.

The office, which is noted for its probity and candor, [urged the justices not to hear Mr. Millbrook’s case](#) because the specific ruling to which he objected was correct.

The brief then went on to alert the justices to a separate issue in the case, about the scope of an exception to the government’s sovereign immunity. The lower courts were divided over how broad that exception was, the brief said, “and that division of authority may eventually warrant this court’s review in a future case.”

The Supreme Court decided not to wait. Its order accepting Mr. Millbrook’s case recast the question it presented to the one suggested by the government. The court followed up last week by [appointing Christopher J. Paoella](#), a former law clerk to Justice Samuel A. Alito Jr., to represent Mr. Millbrook.

Exactly 50 years ago, in 1962, the Supreme Court agreed to hear another handwritten petition, this one from Clarence Gideon. The court appointed Abe Fortas, a prominent lawyer and future Supreme Court justice, to represent him. The next year, the court decided [Gideon v. Wainwright](#), the landmark decision that said the government must provide lawyers to poor people accused of serious crimes.

Mr. Millbrook may be a less attractive petitioner than Mr. Gideon, who was acquitted at a retrial of charges that he had broken into a pool hall.

It is hard to know what to make of Mr. Millbrook’s lawsuits. He may be a magnet for mistreatment, or he may have a flexible relationship with the truth. Or he may have cried wolf several times before actually encountering one.

In any event, he seems to have stumbled onto a substantial legal question, with the help of the lawyers on the other side. His case is as good as any for deciding that question. If the Supreme Court rules in his favor, the lower courts can sort out whether his version of the facts is true.

In the meantime, the justices will have vindicated, perhaps to a fault, a [promise made on the front of their courthouse](#): “Equal Justice Under Law.”