

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Sean Swain)
#A243-205)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505,)

Plaintiff,)

v.)

Gary C. Mohr, Individually and)
in his Official Capacity as Director)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)

Warden Terry A. Tibbals,)
Individually and in his Official)
Capacity as Warden)
Mansfield Correctional Institution)
1150 North Main Street)
P.O. Box 788)
Mansfield, OH 43302)

Rob L. Jeffreys, Individually)
and in his Capacity as Chief)
Bureau of Classification)
and Reception)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)

Case No. _____

Judge: _____

COMPLAINT AND JURY

DEMAND

Richard M. Kerger (0015864)
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Counsel for Plaintiff

Angela Hunsinger, Individually)
and in her Capacity as Investigator)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)

Trevor Clark, Individually)
and in his Capacity as Legal)
Counsel)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)

Inspector Uriah Melton, Individually)
and as an Employee)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)

Lt. K. Dalby, Individually)
and as an Employee)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)

Penny Gossler, Individually)
and as an Employee)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)

Lieutenant Barlow, Individually)
and as an Employee)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)

Thomas King, Individually)
and as an Employee)
Ohio Department of Rehabilitation)
and Corrections)
770 W. Broad Street)
Columbus, OH 43222)
)
Jay Forshey, Individually)
And in his Capacity as Warden)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505)
)
John Doe Maintenance Officer)
and)
John Doe Training Officer,)
)
)
Defendants.)
)

Now comes plaintiff, by and through counsel, and as his Complaint seeking relief pursuant to the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and 42 USC §1983, states as follows:

1. Plaintiff is an inmate in the Ohio prison system. He was committed to the custody of the Ohio Department of Rehabilitation and Correction ("ODRC") in 1991 when he was convicted of aggravated murder after a jury trial. This first conviction was reversed and the matter re-tried, and he was convicted once more. He has remained in prison since then.

2. Defendants are employees of the ODRC and engaged in conduct individually and collectively which denied plaintiff his rights under the United States Constitution.

3. In 2008, while confined at Toledo Correctional Institution, he embraced Neolithic Indigenism as his religion. His deeply held religious beliefs were approved by the ODRC. Attached as Exhibit A is plaintiff's Affidavit and exhibits supporting his claims.

4. In 2009, representatives of the Security Threat Group (STG) began investigating plaintiff. He had not been a part of any gang activity nor had he been accused of being a part of any such activity and accordingly did not meet the preconditions set by the Ohio Administrative Code for monitoring by the STG.

5. He explained his beliefs and he was told by Officer Garcia that he was not allowed to hold these beliefs and that he should "get a new religion." It was further explained that because of a website seanswain.org and its contents, that his investigation had begun. Officer Garcia took photos of all of plaintiff's tattoos.

6. In 2011, plaintiff wrote to Director Mohr. He said he would send for screening all materials of his writings which he thought might be published by the people operating seanswain.org. His case manager would review them and forward everything to Director Mohr for

approval. This would avoid plaintiff's violation of any rules. There was no response to that request.

7. In August of 2012, the plaintiff wrote an article entitled "JPay Sock Puppets and Our Reduction to Salary." This article dealt with a newly adopted policy whereby JPay became involved in the process of inmates receiving funds from friends and family members. This service was provided for a fee paid to JPay. Moreover it allowed JPay to monitor all of the 750,000 visitors to Ohio's inmates. It allowed JPay to develop a database of private information concerning these visitors. The article was intended to convince people to take actions to try to have JPay removed from the Ohio prison system. The article was also critical of prison officials involved in the process of establishing the relationship with JPay.

8. On September 12, 2012, plaintiff was given security status to review by a case manager and based on his conduct, he was recommended for a security level decrease. This was important to him because of the parole board decision in 2011 indicating he needed to complete programs which could only be reached at a lower security level in order to be considered favorably for parole.

9. Then on September 19, 2012, his cell was subject to a surprise search by STG officers. It was a search that lasted two hours. The STG officers confiscated his typewriter and rough draft of "JPay, Sock Puppets and Our Reduction to Slavery." Two other inmate cell searches

occurred simultaneous to his, something he learned later. The materials seized from the other cells dealt with the "Army of the 12 Monkeys." Plaintiff had no materials in any way related to the 12 Monkeys.

10. Following the search, he was taken to a row of cells behind the medical clinic known as "torture cell row." He was held in freezing temperatures without a bed, toothbrush and only a small amount of clothing and bedding. He received half portions of food and was not allowed a shower or any recreation. He had to pace 24 hours a day to stay warm. He was removed from that cell after 48 hours because someone had tried to visit him and inquired into his status.

11. While still at Mansfield Prison, after being moved from the torture cell, he was transferred to the Special Management Unit and housed there from the 21st of September, 2012 until August 29, 2013. The cell he was taken to had dirty toilet water rained down from the ceiling for hours a day. He was housed next to a large steel door that slammed open and closed every 30 minutes. He had his food shoved under a rusty dirty steel door rather than through the food slot. He was being fed reduced rations and was housed in freezing conditions. As a result, when he left the Special Management Unit, he had lost 55 pounds. Additionally John Doe Training Officer and defendant Hunsinger posted his picture in a training program which labelled him as an inmate terrorist which encouraged the continued retaliation against plaintiff.

12. On January 16, 2013, he and another inmate accused of being one of the 12 Monkeys were moved from SMU3 to SMU1, a cell in which the outer window was not affixed to the frame. The window was not repaired until after they left. This causes the cell to be unusually cold. They were provided only t-shirts, socks, underwear, two blankets, two sheets, shower shoes and a pair of orange pajamas.

13. Further, while in these conditions, plaintiff's laundry was routinely lost. This was because the laundry was handled in bags containing the plaintiff's name and cell location. The laundry problem began occurring at the same time he received smaller bars of soap, so he did not have any way to wash his own laundry. He generally remained dirty for the better part of the year.

14. Plaintiff was only offered recreation at 6:30 a.m., making it impossible for him to get recreation and receive direct sunlight.

15. Plaintiff was also subjected to selective mail screening. At one point the book Walden by Henry David Thoreau was withheld because it was deemed "a threat to security." This despite the fact that several copies of the book were available in the prison system's library.

16. Thirty days after the investigation had started, plaintiff was furnished with a report written by defendant Hunsinger. It was nine pages long and is replete with errors. Indeed virtually everything the investigator complained about dealt with public speech in a public forum

and all of it was provably untrue. In the report it was alleged that plaintiff's tattoos were "identical" to the logo used by the 12 Monkeys. That is not true and it should be noted that none of the admitted members of the 12 Monkeys have similar tattoos. The report further distorted what plaintiff wrote.

17. On October 24, 2012 a Rules Infraction Board hearing was held and he was found guilty. Defendant Dalby found him guilty. No inculpatory evidence was presented. There was no mention of the report. It was ignored. Efforts to obtain copies of this hearing have been denied. Defendant Tibbals and defendant Mohr affirmed the findings.

18. Shortly before plaintiff was to be transferred to a SuperMax prison, plaintiff obtained counsel who wrote to defendant Mohr. On March 27, 2013, defendant Clark and another individual met with plaintiff. Clark suggested that his review indicated that plaintiff had a tendency to violence and property damage.

19. On April 30, 2013, defendant Clark sent a letter to then-counsel for plaintiff indicating that plaintiff's previous disciplinary classification hearings were being reversed and the charges overturned. Clark said that a "new ticket" has been written and "new disciplinary procedure will be commenced to address behavior as opposed to beliefs and ideals."

20. Subsequently officials who would be involved in the “new” hearing made comments indicating that the outcome of the hearing was known before it began.

21. The report used to find guilt at this hearing was fraught with errors and misstatements. Nonetheless the new “hearing” was set for May 9, 2013. Plaintiff learned later that several hours before his hearing occurred, a hearing that was digitally recorded, there had been a “secret hearing” involving defendant Clark and defendant Hunsinger. Evidence in that secret hearing was presented which plaintiff was never allowed to see.

22. The disposition of the Rules Infraction Board hearing in May of 2013 shows that the evidence supposedly relied upon was not ever admitted according to the digital hearing. Defendant Barlow served as the hearing officer and John Doe Maintenance Man served as secretary. Both defendant Tibbals and defendant Mohr affirmed the violation.

23. On May 13, 2013, a hearing was held to answer a misconduct report. Sgt. Van Biber had conducted a hearing on April 30, 2013 and dismissed it. The hearing that was held on May 13, 2013 was on a conduct report written by defendant Melton. This was the misconduct report that had been previously dismissed by Sgt. Van Biber. The hearing officer of May 13, 2013 was defendant Dalby and defendant Penny Gossler. He appeared to be intoxicated and conducted the hearing in a way that was clearly inappropriate. Defendant Dalby found plaintiff guilty of the charge

of misconduct. Again the findings were affirmed by defendant Tibbals and defendant Mohr.

24. Without the requisite recommendation of the Rule Infraction Board, defendant Thomas King initiated a review and overruled the instrument. Subsequently defendant Tibbals submitted a Level 4 custody recommendation, basing it upon the article concerning "JPay, Sock Puppets and Our Reduction to Slavery." Defendant Tibbals said that this proved that plaintiff was one of the creators of the 12 Monkeys and that was the basis for his change in security level. The same day that plaintiff's transfer to Level 4 was approved, he received correspondence indicating that he would remain at Level 3, this being generated by defendant Jeffreys. When plaintiff arrived at the Ohio State Penitentiary, he was informed that his security level was a 4-B, meaning that he would be in isolation.

25. Plaintiff's regular mail was delayed as long as two weeks and friends began using the JPay email system to communicate with him. There is a charge paid to JPay for the use of this system. Shortly after this occurred, the prison officials suspended all JPay service to SMU prisoners, which specifically included plaintiff.

26. Plaintiff was maintained in isolation for a year at the Ohio State Penitentiary until legal counsel for plaintiff appeared and conditions improved. He is now in general population, although at a security level higher than he should be which will continue for at least a year. This

increased security level restricts his privileges and affects his ability to achieve appropriate parole consideration.

COUNT ONE

27. Plaintiff alleges as though fully rewritten herein the allegations contained in paragraphs 1 through 26 above.

28. The conduct of defendants described above was carried out in an attempt to punish plaintiff for expressing his reasonable and appropriate personal views on prison policy in an effort to comment to others to change the policies. As such the conduct constitutes an unconstitutional restriction on First Amendment rights. There was no legitimate penological interest served by the conduct directed at plaintiff. Instead he was punished for what he thought and said.

COUNT TWO

29. Plaintiff alleges as though fully rewritten herein the allegations contained in paragraphs 1 through 28 above.

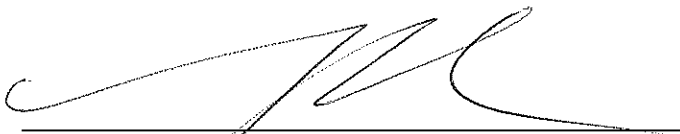
30. The conduct of defendants was carried out pursuant to a civil and criminal conspiracy intended to punish plaintiff for his religious beliefs and his expression of his protected views of policies enacted by the prison. The conduct of the defendants was expressly intended to punish plaintiff and to chill plaintiff and others in their expression of constitutionally protected views on prison policies.

WHEREFORE, Plaintiff prays judgment against the defendants, jointly and severally, as follows:

- A. Injunctive relief removing from plaintiff's permanent record all references to any improper conduct from 2012 through and including August 2014.
- B. An injunction against defendants prohibiting them and others acting in concert with them from engaging in conduct which deprives plaintiff of his constitutional rights.
- C. An injunction requiring the reduction of plaintiff's security level to Level 2 so as to make him eligible for programs which would enable him to appear before the parole board and obtain his release.
- D. An award of reasonable attorney fees and such other relief as the Court deems just and equitable.

Respectfully submitted,

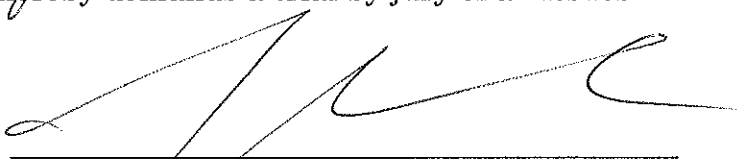
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Counsel for Plaintiff

JURY DEMAND

Now comes Plaintiff and hereby demands a trial by jury of all issues herein properly raised.



Counsel for Plaintiff