

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

Sean Swain,	)	Case No. 4:14-cv-2074
)	
)	
Plaintiff,	)	Hon. Benita Y. Pearson
)	
v.	)	<u>PLAINTIFF’S INITIAL</u>
	)	<u>DISCLOSURES</u>
)	
Gary C. Mohr, et al.,)	
	)	Richard M. Kerger (0015864)
	)	KERGER & HARTMAN, LLC
Defendants.	)	33 S. Michigan St., Suite 100
	)	Toledo, OH 43604
	)	Telephone: (419) 255-5990
	)	FAX: (419) 255-5997
	)	rkерger@kergerlaw.com
)	
	)	<i>Counsel for Plaintiff</i>
)	
)	

Pursuant to Federal Rules of Civil Procedure Rule 26, now comes plaintiff, by and through counsel, and serves his Initial Disclosures:

1. Sean Swain, the plaintiff.
2. All of the individuals identified by defendants in their Initial Disclosures.
3. Representatives of JPay, the prison-run computer system who are aware of the difficulties in plaintiff’s attempting to communicate.

Moreover, it is believed there has been communication between defendants and JPay representatives which have led to the difficulties experienced by plaintiff.

4. Ben Turk, a former resident of Columbus, Ohio now living in Colorado. He is aware of the restrictions on plaintiff's ability to communicate by telephone, computer and mail. He further has knowledge of the suffering experienced by the plaintiff as a result of the conduct of the defendants.

5. Numerous people who review the website operated by friends of plaintiff and who attempted to communicate with him during the times his ability to communicate was circumscribed. They will testify as to their knowledge of those circumstances.

6. Attached to the Complaint were most of the documents in the possession of plaintiff which are relevant to the case. Additionally certain others are attached hereto. They may be duplicative of those attached to the Complaint but in an effort to be complete, that information is provided.

7. At this stage damages and attorney fees are not sought.

Should this change, a disclosure will be made.

Respectfully submitted,

KERGER & HARTMAN, LLC
33 S. Michigan St., Suite 100
Toledo, OH 43604
Telephone: (419) 255-5990

/s/ Richard M. Kerger
RICHARD M. KERGER (0015864)
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed electronically with the Court's ECF system this 19th day of January, 2015. Parties will receive notice by email notification through the Court's ECF notification system.

/s/ Richard M. Kerger

December 11, 2014

Legal Department
JPay
12864 Biscayne Blvd.
Suite 243
Miami, FL 31181

Re: Sean Swain, Inmate #A243-205

Dear Sir or Madam:

Please be advised that I serve as counsel for an inmate in the Ohio Department of Rehabilitation and Correction, Sean Swain. He is having difficulty communicating through your system. For significant periods of time he has not been able to send or receive messages and then only on an intermittent basis. Some messages appear to be stopped while others are let through. I would like to speak with someone knowledgeable about his situation as to whether these actions are carried out at the request of the State or simply a problem inherent in the design of the system or caused by some other circumstance.

I look forward to your prompt reply.

Sincerely yours,

Richard M. Kerger

RMK:bam

c: Mr. Sean Swain

April 14, 2014

Mr. Gary Croft
Chief Inspector
Ohio Department of Rehabilitation and Corrections
770 W. Broad Street
Columbus, OH 43222

Re: Sean Swain, A243205

Dear Mr. Croft:

I am advised that you have obstructed his communication with the outside world including me. It is my understanding that he no longer has access to the JPay mail system or phone privileges. I am unaware of the basis under which you could take that action. Please advise promptly or legal proceedings will be instituted to protect his interests.

Very truly yours,

Richard M. Kerger

RMK:bam

c: Mr. Gary C. Mohr
Mr. Sean Swain

Ohio | Department of
Rehabilitation & Correction

John R. Kasich, Governor
Gary C. Mohr, Director

May 9, 2014

Richard M. Kerger, Esq.
KERGER & HARTMAN, LLC
33 South Michigan Street, Suite 100
Toledo, Ohio 43604
rkerger@kergerlaw.com

VIA EMAIL AND U.S. MAIL

Re: Swain, Sean - A243-205

Dear Mr. Kerger:

I am in receipt of your correspondence to Gary Croft dated April 11, 2014 regarding the above referenced inmate. Please be advised that Mr. Croft is no longer the Chief Inspector for the Ohio Department of Rehabilitation and Correction (ODRC). Director Mohr has appointed me Acting Chief Inspector until a replacement can be named.

Inmate Swain was investigated by the Office of the Chief Inspector and the Ohio State Highway Patrol for attempted harassment and intimidation of Staff Counsel Clark. The investigation is now complete. Since July of 2013, Inmate Swain has:

1. Filed a false disciplinary complaint with the Ohio Supreme Court against Staff Counsel Clark which was found to have no merit;
2. Made a false claim of sexual abuse against Staff Counsel Clark which prompted a federally mandated Prison Rape Elimination Act investigation into the claim; and,
3. Utilized his JPay communication privileges to attempt to obtain the home address of Staff Counsel Clark.

Contrary to Inmate Swain's beliefs that his communications were interrupted to prevent his access to free speech, the above identified attempted harassment and intimidation is what prompted ODRC to temporarily suspend Inmate Swain's JPay and Global Tel Link communications. Attempts to intimidate and harass staff members by making false claims and by attempting to locate home addresses will not be tolerated. After consultation with the Ohio State Highway Patrol, Inmate Swain will be issued a cease and desist order. Following the issuance of the cease and desist order, his JPay and Global Tel Link communications will be restored. In the event he chooses not to comply with that order, his JPay and Global Tel Link communications will be suspended indefinitely. Non-compliance will also be reported to the Ohio State Highway Patrol for further investigation and criminal charges.

Ohio | Department of
Rehabilitation & Correction

John R. Kasich, Governor
Gary C. Mohr, Director

Inmate Swain should receive his cease and desist order and have his communications restored by early next week. We are aware that Inmate Swain disagrees with his most recent administrative conviction and placement and that he intends to bring legal proceedings against ODRC; however, his attempts to harass and intimidate staff members are not appropriate. This type of misconduct will be met with swift and significant consequences which may include criminal charges, administrative charges, security and privilege level adjustments, and/or out-of-state placement.

If you have any questions regarding this correspondence, you may contact me at (614) 752-1765.

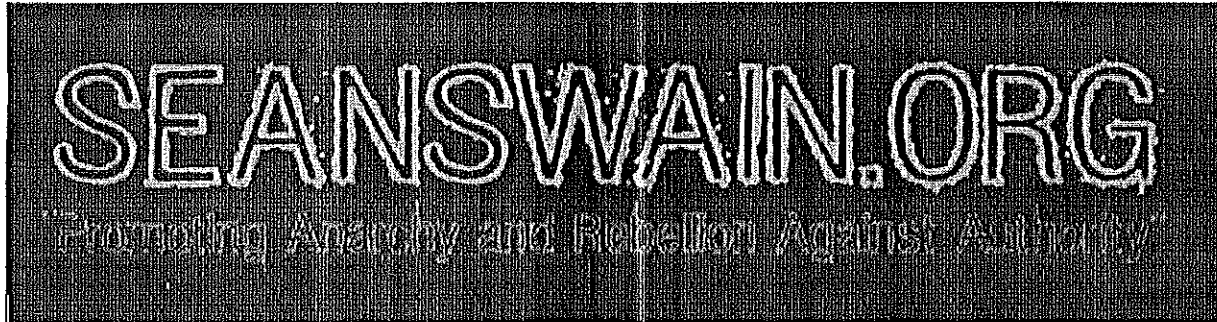
Sincerely,



Stephen Gray
Chief Counsel and Managing Director - Risk Management
Acting Chief Inspector

Cc: Gary C. Mohr, Director
Ed Voorhies, Managing Director - Operations
Todd Ishee, Northeast Regional Director
Jay Forshey, Warden, Ohio State Penitentiary
Brian Wittrup, Chief, Bureau of Classification and Reception

• [Log In](#)



- [About Sean Swain](#)
- [Write to Sean](#)
- [Zines](#)
- [Donate](#)
- [A 12M Frame Up](#)
- [Swain for Governor 2014!](#)
- [Write-In Campaign Posters](#)
- [Comics](#)

Correspondance with Authorities

August 1, 2013

This is a series of letters Sean wrote to legal "experts" in Ohio regarding the accusation that his proposal to create a BLAST! Blog constituted a threat.

32 July 2013

Dear Chief Counsel:

I write to you to relate grave concerns regarding the conduct of the ODRC Counsel Trevor Matthew Clark, Esquire. I send copies of this correspondence to Mr. Rob Jeffreys, Chief, Bureau of Classification; to Joanna Saul, Director, C.I.I.C and to my legal counsel, Robert Fittrakis. I also retain copies for forwarding to the Ohio Disciplinary Counsel and the Bar Association.

Some background: In September 201 here at MANCI I was ideologically targeted and profiled, absent any accusation of misconduct, by investigator Angela M. Hunsinger, for my beliefs and protected speech. Admittedly so. When I retained activist attorney, Robert Fittrakis, the director reversed the entire case (MANCI-12-007219).

However, prior to that reversal on 24 April 2013, I was interviewed by Mr. Clark on 27 March. In that interview, Mr. Clark gave me the home addresses of Ohio lawmakers, some of which I memorized, including the address of Robert F. Hagar (562 Madera, Youngstown). I questioned then as I do now the propriety of Mr. Clark giving legislators' private information to convicted felons. His conduct was highly irregular and conceivably criminal. I have since reported it to the Ohio Disciplinary Counsel and the Bar Association, as Mr. Clark may pose a serious danger to the lives of Ohio law makers.

Also on that date, Mr. Clark sought to coerce Les Dillon, ad admitted member of the Army of the 12 Monkeys, to retract his sworn statement that he had voluntarily written on my behalf and to falsely implicate me in that group. While Mr. Dillon resisted Mr. Clark's coercion, this event reveals that Mr. Clark's intentions were not to un-do the unconstitutional actions taken against me, but to find a pretext for justifying what had been done.

This is further supported by kite communications from Lt. Barlow here at MANCI. On 23 April 2013, the day before Director Mohr reversed MANCI-12-002907, referenced my guilty finding in that case, and my referral for security level increase – ALL 16 DAYS BEFORE THAT R.I.B. CASE WOULD BE HEARD. How did he know, 16 days in advance, that I would be found guilty, and referred for security increase? He claims he was informed by Mr. Trevor Clark. That means Mr. Clark had orchestrated my guilty finding more than 2 weeks before my R.I.B. Hearing.

Further, on 30 April 2013, Mr. Clark sent a fax to my counsel, Robert Fittrakis. In it, he wrote: "Inmate Swain's disciplinary and classification hearings will be completed forth with:" Please note that a classification hearing would only be required in the event that (1) I was found guilty and (2) I was recommended for a security level increase.

So, now, the question naturally arises: How did Lt. Barlow, the R.I.B. Chair, and Mr. Trevor Clark, ODRC Counsel, both know in advance of my R.I.B. hearing that I would be found guilty of charged rule violations and recommended for a security level increase? Absent a paranormal explanation it would appear quite clear that Mr. Clark had engineered a "fix", a predetermined outcome for my disciplinary process, contrary to all statutory requirements and constitutional safeguards.

Lt. Barlow's 12 April Local Control Review is available on DOTS and Mr. Clark can provide you a copy of his fax to my counsel. My counsel can also provide you a copy of both.

To make matters worse, Lt. Barlow has admitted in a kite communication that he did not find me guilty in MANCI-13-002907 based upon the evidence presented at the hearing (as no evidence was presented at the hearing), but instead based on the "evidence" presented by Mr. Clark in my absence at a secret tribunal conducted prior to my hearing. By R.I.B. Chair Lt. Barlow's own admission, he and Mr. Clark conspired off the record, ex parte, in my absence, and determined my guilt based on "evidence" I was never permitted to review nor challenge.

Does the Ohio Administrative Code, Ohio Constitution, or U.S. Constitution allow for "secret tribunals"?

Then, during the R.I.B. Hearing, Mr. Clark, on the record, confiscated all of my defense paperwork, alleging that "the FBI" wanted it.

I believe this long and documented pattern calls into question Mr. Clark's judgment and propriety, if not his integrity. I ask that you intervene in this matter, investigate, and take appropriate action to correct this situation before Mr. Clark's bizarre behavior must be addressed in a more formal and more public forum.

Please feel free to contact my legal counsel, Mr. Robert Fitrakis, at (614) 307-9783.

Thank you for your time and kind consideration of this matter.

Sincerely

Sean Swain

c: Rob Jeffreys, Chief, Bureau of Classification
Robert Fitrakis, Legal Counsel
Joanna Saul, Director, CIJC
A. Alysha Clous, Assistant Bar Counsel, Columbus Ohio Disciplinary Counsel

Here is The Columbus Bar Association's response: [Letter about Clark](#)

And Swain's response to that letter.

23 July 13

Dear Assistant Bar Counsel Clous:

I received today your letter of 18 July 2013, in which you indicate that you cannot determine whether Mr. Trevor Clark acted in an unprofessional or unethical manner when he gave home addresses and phone number of Ohio legislators to a convicted felon accused of creating his own terrorist networks. Thank you. Your correspondence will soon be posted at seanswain.org.

As I am sure you yourself are legal counsel, your assessment must be correct. If Mr. Clark handing out lawmakers' home addresses to convicted felons and accused terrorists violates no ethical standards, then certainly it violates no law. If Mr. Clark was violating the law, he would be violating ethical standards. So, you done me the invaluable service of confirming that giving Ohio lawmakers' home addresses to strangers without their consent is perfectly okay And if it poses no public danger to give Ohio lawmakers' addresses to strangers, then certainly it should be okay to give out addresses of, say, corrections officials. And if it s okay to give out home addresses of corrections officials, there is no conceivable threat in someone proposing a web features where corrections officials addresses might get posted on a message board.

Again, Thank you.

Freedom,

Sean Swain

c: seanswain.org

23 July 2013

Dear Governor:

I'm very confused and I hope you can help me. Because I'm a prisoner and a simple guy, I'm going to write this in plain, simple language. I hope you don't mind.

To give you an idea of what I'm facing, I have 3 cases in point to present to you:

FIRST CASE IN POINT. In August 2012, ODRC Director Gary Mohr outsourced prisoner financial transaction to the Jpay Corporation, and in the process he gave the personal information – Ohioans' home addresses, phone numbers, and photos – of upwards of 700,000 prisoner visitors to Jpay without the consent of those 700,000 citizens. When I challenged this, every Ohio agency I contacted claimed that Gary Mohr's conduct is okay.

Now, there's a proposition of law in this, I think. A general principle. Director Mohr can bundle my elderly parents' personal information and give it away to whomever he chooses without consent. And if "all men are created equal" under the law, that means anyone else can do what Director Mohr did. It's okay for anyone to give away personal information of anyone else without asking consent.

The legislature said it's okay. Your administration said it's okay. Law enforcement said it's okay.

SECOND CASE IN POINT. The ODRC has a website that posts my photo, name, and a description of my criminal convictions. The ODRC posts the same information on 50,000 Ohio prisoners. This is done without our consent.

Again, we have a general principle here. It's okay to post public information on-line without someone's permission. The law is the law. If the ODRC can do it, so can you, and so can I.

Your administration says it's okay. The legislature says it's okay. Law enforcement says it's okay.

THIRD CASE IN POINT. On 27 March, ODRC Counsel Trevor Matthew Clark interviewed me and during questioning he handed me an address list that included home addresses and phone numbers, including yours, of Ohio officials. I held the list long enough to memorize some of the addresses. Senator Teresa Fedor, for example, lives on Belvedere in Toledo. Representative Hagar lives on Madera Avenue in Youngstown. Speaker of the House Louis Blessing lives on McGill Lane.

I found ODRC Counsel Trevor Clark's conduct absolutely bewildering. Imagine if I was actually guilty of murder, and if I had actually formed the international terror network that Mr. Clark falsely alleges I formed. It would seem completely irrational to hand your personal, home address to a convicted murderer accused of terrorism.

It really makes you wonder about this bozo's motives, doesn't it?

Well, as it turns out, he did nothing wrong. That's what the ODRC Director Gary Mohr says. That's what the legislature says. And that's what the Ohio State Highway Patrol says.

There's nothing wrong with giving your home address to anybody without your consent. ODRC Counsel Trevor Clark did it and admits it in recorded testimony at my disciplinary hearing (MANCI-13-002907).

So now, having presented those 3 cases in point, I'm confused. I hope you can help me. The situation is this: I was falsely accused and provably framed for prison rule violations, facing supermax for no valid reason, and I proposed to friends in the free world that they created an on-line feature to expose the corrupt officials who maliciously framed me. I proposed posting their names, faces, and descriptions of their misconduct.

Sound familiar? I got the idea from the ODRC. I know it's okay to do it. You said so. Director Mohr said so. The legislature said so. Law enforcement said so.

But now, with the original frame-up exposed, even Director Mohr said I did nothing wrong, and still I am going to maximum security because I proposed a web feature to expose prison staff crimes to the tax paying, voting public. And this is very confusing if you consider the 3 cases-in-point I've presented.

Remember, it's okay for Director Mohr to bundle and give away my elderly parents' personal information to anyone... And it's okay for the ODRC to post my photo and name and offense description on-line without my consent... And it's even okay for Trevor Clark to give your home address and phone number to a (falsely) accused terrorist in prison. So, my confusion lies in this: why is Trevor Clark, who gave me your home address, having me sent to maximum security simply because I proposed a web feature (that does not exist) that would post the same information about him and about Director Mohr that the ODRC posts about me?

It's either okay to post someone's name photo and conduct descriptions without their permission, or it isn't.

You say it's okay. The legislature says it's okay. The courts say it's okay. Law enforcement says it's okay. Director Mohr doesn't just say it's okay – he does it... But ODRC Counsel Trevor Clark (who hands out your home address to accused terrorists without your consent) says it's not okay.

Trevor Clark says if I post names, photos and conduct descriptions of ODRC bad apples, or even by simply proposing that someone else should do it, I am promoting "violence," "property damage," and "harassment of persons." But if this is the case as he says, my questions is, why has the ODRC for decades promoted "violence" and "property damage" and "harassment of person, against me and against 50,000 other prisoners whose information is posted at the ODRC website? Also, why is Director Mohr promoting "violence" and "property damage" and "harassment of persons" against my elderly parents and the 700,000 prisoner visitors whose information he bundled and gave away without their consent? And why is the ODRC Counsel Trevor Clark promoting "violence" and "property damage" and "harassment of persons" against you when handing your address out to convicted felons accused of terrorist activities?

I hope you understand my confusion. As a model prisoner trying to earn a parole and go home, I seek nothing more than a means to hold corrupt prison officials accountable and I've done nothing more than propose a web feature to expose the crimes of my captors to tax payers and voters, and I am subject to a regiment of torture and terror by prison officials

whose own conduct, which may in fact be criminal, reveals their knowledge that my lesser conduct is no violation of their rules.

Prison officials present that my proposal for publicly exposing staff crimes "threatens" the "security" of the prisons. I would suggest to you, Sir, that the crimes of my captors threatens prison security. I would suggest that Gary Mohr's pirating of 7000,000 identities of Ohio citizens to an out-of-state profiteer threatens "security". I would suggest that an unstable attorney for the ODRC handing out your home address to convicted criminals violates "security".

Exposing bad apples to public scrutiny so systems can be reformed and the corrupt can be weeded out is not a threat to security. It is good policy. It is a public service. And the very fact that the ODRC feels so threatened shows just how far down the rabbit hole we really are.

I am a whistle-blower victimized by corrupt bureaucrats circling the wagons and defending the status quo, punishing me for what amounts to good citizenship. We're through the looking glass. I am being subject to a terror campaign by an unstable bureaucrat who hands your home address out to prisoners and then tells those under his mismanagement, "Don't do as I say, and don't do as I do."

Please investigate this matter and take appropriate action so that I do not die in prison for being a model prisoner. My legal counsel, activist attorney Robert Fitrakis, may be reached at (614) 307-9783.

Thank you for your time and kind consideration.

Sincerely,

Sean Swain

c: Counsel Robert Fitrakis
Mr. Rob Jeffreys, Chief, Bureau of Classification
Ms. Joanna Saul, Director, CJIC


Share 

Legal Defense Fund

Donate

This button opens a new window. If you have trouble making it work, right click and select "open in a new window".

You Are the Resistance Radio

- 1 | youaretheresis 
- 2 | youaretheresis

Swain For Governor 2014

- [Swain for Governor 2014!](#)
- [Write-In Campaign Posters](#)
- [Comics](#)

Recent Posts

- [A Vision of the Future: Where All](#)

- [the Roberto Adinolfis Walk With a Limp](#)
March 11, 2014
- [On Mumia March 10, 2014](#)
- [Idiot Factories](#)
March 10, 2014
- [Distinguishing Freedom From Recognized Rights](#)
March 10, 2014
- [What Is An Anarchist Engagement?](#)
February 13, 2014
- [Swain for Governor Campaign Announcement](#)
February 13, 2014
- [Radio Essay #1 transcript](#)
February 12, 2014
- [You are the Resistance](#)
February 7, 2014
- [Improvised Explosive Devices...and Inaccurate Euphemistic Deceptions](#)
February 1, 2014
- [Shawn Marshall Reading Materials Request](#)
January 30, 2014
- [Sean Swain Radio](#)
January 22, 2014
- [Voices from Solitary: "This Massive Mind-Fuck Machine"](#)
January 18, 2014
- [Pacifists Suck. How Arresting Revolution Maintains a Violent World](#)
January 14, 2014
- [Security Review](#)
January 13, 2014
- [On Fascism. Take Two: Response to Crimethinc Podcast #15's Listener Feedback](#)
January 13, 2014
- [Books Overload!](#)
January 5, 2014
- [On the Liberatory Poverty of Socialism: One Anarchist's View](#)
December 20, 2013
- [An Open Letter to Ohio Adult Parole Authority Member Jose Torres on the Mythology of Political Prisoner](#)

- [Status December 20, 2013](#)
- [The Post-Mortem Assassination of Freedom Fighter and Revolutionary Prisoner Nelson Mandela](#)
December 16, 2013
- [On Morality](#)
December 16, 2013
- [Against Helping \(Bombing\) Syria](#)
December 1, 2013
- [On Patriotism... Again](#)
December 1, 2013
- [Dear Heroes of France Formerly Known as Students](#)
December 1, 2013
- [On Fascism: One Anarchist's Response to Crimethinc's Podcast #11](#)
November 26, 2013
- [The Final Straw Radio Interview with Sean and Blackjack](#)
November 26, 2013

Blogroll

- [California Prison Hunger Strike Solidarity](#)
- [Crimethinc Ex-Worker's Collective](#)
- [Denver ABC](#)
- [Gender Anarchy](#)
- [Internationalist Prison Books Collective](#)
- [Jerry Resists](#)
- [Not Yr Cister Press](#)
- [Occupy 4 Prisoners](#)
- [Ohio Prison Watch](#)
- [Red Bird Prison Abolition](#)

Meta

- [Log in](#)
- [Entries RSS](#)
- [Comments RSS](#)
- [WordPress.org](#)

Copyright © 2014 SEANSWAIN.ORG. All Rights Reserved.
Magazine Basic theme designed by [Themes by bavotasan.com](#).
Powered by [WordPress](#).

Warning: mysql_fetch_row() expects parameter 1 to be resource, boolean given in /var/www/seanswain/wp-content/plugins/vsf-simple-stats/vsf_simple_stats_shutdown.php on line 47