

EXHIBIT A

News articles quoting Stephen Pevar:

ACLU Lawsuit Charges Idaho Prison Officials Promote Rampant Violence

www.aclu.org

3/11/2010

In my 39 years of suing prisons and jails, I have never confronted a more disgraceful, revolting and inexcusable case of mass abuse and federal rights violations than this one," said Stephen Pevar, a senior staff attorney for the ACLU. "The level of unnecessary human suffering is appalling. Prison officials have utterly failed to uphold their constitutional obligation to protect prisoners from being violently harmed and we must seek court intervention."

ACLU sues over Idaho prison so violent it's called 'gladiator school' by inmates

OregonLive.com

3/11/2010

Stephen Pevar, senior attorney for the ACLU, said he has sued at least 100 jails and prisons, but none came close to the level of violence at Idaho Correctional Center, in Kuna. "Our country should be ashamed to send human beings to that facility," he said.

ACLU Private Prison Lawsuit: Idaho Correctional Center, 'Gladiator School'

law.rightpundits.com

3/14/10

Senior attorney for the ACLU Stephen Pevar says that no other prison facility that has been sued by the ACLU has come close to the level of violence that is common practice at the Idaho Correctional Center. The ACLU is asking for class-action status and \$155 million in punitive damages. That amount is the entire net profit reported by Corrections Corporation of America in 2009.

ACLU Battles Prison Assaults

www.boiseweekly.com

3/17/10

The American Civil Liberties Union has sued Idaho's largest prison--the privately run Idaho Correctional Center--alleging a culture of violence that is accepted and even encouraged by guards, forcing inmates to live in fear.

"Prison isn't supposed to be a violent place," said lead ACLU attorney Stephen Pevar. "There are many prisons that aren't nearly as violent as this one ... If ICC cannot very quickly improve things, those prisoners have to be taken out of there."

Prison as Punishment, Not for Punishment

www.aclu.org/blog

3/26/10

Stephen Pevar, the lead attorney in the case, said: "I consider this case to be one of the most important cases I've litigated in my 39 years of practice, if not *the* most important. No other case of mine remotely approaches the level of profound human suffering that has occurred at ICC — nearly all of which could have *easily* been prevented by staff."

Assaults at ICC Accelerate – Idaho prison chief warns private prison to lock doors

www.boiseweekly.com

6/2/10

The Prison Litigation Reform Act, which became law in 1996, requires inmates to exhaust their prison's specific grievance procedure before filing a lawsuit. Stephen Pevar, the lead ACLU attorney in the ICC lawsuit, said that prisons have benefitted immensely from the PLRA by having the vast majority of lawsuits dropped for failure to exhaust the grievance process first.

"They've literally profited by the PLRA, and they've had very little financial incentive to do the right thing," Pevar said, naming a half-dozen Idaho inmates whose lawsuits were recently dropped for failure to exhaust.

Pevar said they believe all named plaintiffs did follow administrative procedures prior to signing on with the class action lawsuit.

Trouble-plagued ICC souring Idaho on private prisons

magicvalley.com

6/2/10

Stephen Pevar, senior attorney for the ACLU, said he has sued at least 100 jails and prisons, but none came close to the level of violence at Idaho Correctional Center.

"Our country should be ashamed to send human beings to that facility," he said.

The ACLU asked for class-action status and \$155 million in punitive damages — the entire net profit reported by the Nashville-based company in 2009.

The ACLU said the money should go to lead plaintiff Marlin Riggs, who sustained permanent facial deformities and other medical problems after he was savagely beaten in his cell.

ACLU drops Idaho from prison violence lawsuit

www.idahostatesman.com

6/8/10

The state "needs to do a better job in monitoring CCA's operation of ICC. But the primary culprit is still CCA," said Stephen Pevar, ACLU senior staff attorney. "This will save Idaho taxpayers thousands of dollars in legal fees and will allow all of us to focus our attention on what is happening at ICC and to get CCA to comply with state and federal standards."

Prison: 'Gladiator school' lawsuit should be axed

www.abcnews.go.com

8/4/2010

Stephen Pevar, the ACLU attorney representing the inmates, said Struck was twisting the issues - and that the inmates only had to broadly raise their concerns through the prison grievance process, not use proper legal terminology and theory to state their cases to prison officials.

For instance, he said one group of inmates called "The Chowhall 5" in court documents satisfied the grievance process for the claim about protection from harm when they complained that CCA set them up to get bad disciplinary reports by allowing them to be beaten by other inmates in the dining area. The Chowhall 5 say they didn't fight back but got bad disciplinary reports for being involved in a fight, and the reports ruined their chances at parole.

Pevar said CCA's interpretation of the PLRA would violate another court rule that allows plaintiffs to amend their lawsuits in some circumstances.

AP Enterprise: Guards shown watching inmate attack

www.idahostatesman.com

11/30/10

Steven Pevar, an attorney for the American Civil Liberties Union, said in 34 years of suing more than 100 prisons and jails, the Idaho lockup is the most violent he has seen.

"This isn't even what we know of as a prison - this is a gulag," Pevar said.

Pevar blames the violence on CCA and the former warden, Phillip Valdez, who was head of the prison when Elabed was attacked. Valdez was later transferred to another CCA prison in Kansas. The company refused to disclose its reason for moving him.

ACLU responds to video of inmate beating
www.journalnet.com (Idaho State Journal)
11/30/10

According to the lawsuit, a deeply entrenched culture of brutality has resulted in higher levels of violence at ICC than at Idaho's eight other prisons combined. The lawsuit highlights 24 different cases of assault that have occurred at ICC since November 2006, all of which were entirely preventable and the direct result of failures by ICC officials to protect prisoners despite being placed on notice that these prisoners faced a substantial risk of serious harm. The cases highlighted in the lawsuit are just a small portion of the assaults that have occurred at ICC during the past four years.

"There are minimum federal standards for prisons that have been created for a reason, and CCA is violating them," said Stephen Pevar, staff attorney with the ACLU. "Mr. Elabed's assault is one of more than two dozen assaults listed in our lawsuit. It is simply the tip of an iceberg, and as a civilized society we cannot allow what CCA is doing to continue on our watch."

ACLU seeks to ban Idaho prison practices
www.argusobserver.com (Argus Observer)
11/30/10

Attorneys for the ACLU are seeking a preliminary injunction on behalf of inmates to immediately ban both practices at the prison run by the Corrections Corporation of America.

The motion for a preliminary injunction is part of larger lawsuit over claims of violence at the prison.

"We want to try to eliminate as much suffering as quickly as we can, these two issues lent themselves to that," said Steven Pevar, an attorney for the American Civil Liberties Union.

....

The motion seeks to block the prison from issuing disciplinary reports to inmates who are acting in self defense and calls for an investigation into claims that the guards are opening the wrong cell doors.

"The first thing you have to do is find out what the problem is," Pevar said. "Is it a mechanical problem, or are people just being careless?"

Since July 2009, 13 assaults have resulted from prison guards opening, or "popping," the wrong cell doors in areas where violent prisoners are kept, allowing inmates to attack other prisoners, attorneys for the ACLU say in a brief supporting their motion for a preliminary injunction.

....

Attorneys for the ACLU claim in court documents that Valdez created the two policies they are seeking to ban, and that Wengler continues to implement them as interim warden.

“One of two things must be true: Valdez and Wengler either failed in their duty to investigate the causes of these incidents, or they failed in their duty to fashion an appropriate solution,” ACLU attorneys say.

The most violent of the “popped” cell door assaults occurred on Aug. 10, when a guard opened some 20 doors and released at least 20 prisoners who then assaulted four rival gang members, sending two to the hospital, according to the brief filed by ACLU attorneys.

Guards issued disciplinary reports for the four victims of the assault, according to the ACLU.

“It makes no sense to punish someone for undertaking the perfectly natural act of self-defense,” ACLU attorneys say in their filing on behalf of the inmates.

EXHIBIT A-1



Prisoners' Rights | Conditions of Confinement

ACLU Lawsuit Charges Idaho Prison Officials Promote Rampant Violence

March 11, 2010

Deliberate Indifference And Longstanding Culture Of Brutality Lead To Epidemic Violence At Privately-Run Idaho Correctional Center

FOR IMMEDIATE RELEASE

CONTACT: (212) 549-2666; media@aclu.org

BOISE, ID – The American Civil Liberties Union and the ACLU of Idaho today filed a class action federal lawsuit charging that officials at the Idaho Correctional Center (ICC) promote and facilitate a culture of rampant violence that has led to carnage and suffering among prisoners at the state-owned facility operated by the for-profit company Corrections Corporation of America (CCA).

Filed in the U.S. District Court for the District of Idaho, the lawsuit charges that epidemic violence at the facility is the direct result of, among other things, ICC officials turning a blind eye to the brutality, a prison culture that relies on the degradation, humiliation and subjugation of prisoners, a failure to discipline guards who intentionally arrange assaults and a reliance on violence as a management tool.

"In my 39 years of suing prisons and jails, I have never confronted a more disgraceful, revolting and inexcusable case of mass abuse and federal rights violations than this one," said Stephen Pevar, a senior staff attorney for the ACLU. "The level of unnecessary human suffering is appalling. Prison officials have utterly failed to uphold their constitutional obligation to protect prisoners from being violently harmed and we must seek court intervention."

According to the lawsuit, a deeply entrenched culture of brutality has resulted in higher levels of violence at ICC than at Idaho's eight other prisons combined. The lawsuit highlights 24 different cases of assault that have occurred at ICC since November 2006, all of which were entirely preventable and the direct result of failures by ICC officials to protect prisoners despite being placed on notice that these prisoners faced a substantial risk of

serious harm. The cases highlighted in the lawsuit are not exhaustive, but instead are merely representative of the scores of additional assaults that have occurred at ICC during the past four years.

The cases of prisoner-on-prisoner violence highlighted in the lawsuit include a prisoner who was hit in his ear so hard that it partially detached from the side of his head, a prisoner who, in anticipation of being brutally assaulted, removed his eyeglasses to protect them prior to receiving a pummeling, a prisoner who was beaten so badly that his teeth were pushed through his lower lip causing effusive bleeding that took an officer more than two hours to clean up, a prisoner who required eight screws to put his jaw back into place after being savagely beaten in the face and a prisoner whose requests for X-rays on the heels of being beaten were met by laughter from a prison guard who callously informed him there was no need for x-rays since his nose was so obviously broken.

Marlin Riggs, one of six named plaintiffs in the lawsuit, entered ICC in May 2008 and was targeted by a group of prisoners he believed were associated with a gang that prison officials knew had a history of threatening and extorting money from other prisoners. Despite his pleas, prison officials refused to move Riggs to a safer living area and he was violently assaulted and left lying in a pool of his own blood with a broken nose and a crushed cheekbone.

"The levels of violence and gross indifference of staff are shameful," said Monica Hopkins, Executive Director of the ACLU of Idaho. "People are sent to prison as punishment, not for punishment. The administrators of ICC are ignoring their constitutional duty to protect prisoners from violence at the hands of other prisoners." ❖

The lawsuit also claims that guards at ICC, in an effort to shield themselves from any complaints of misconduct for having set up many of the assaults, file disciplinary charges against victims. The Commission of Pardons and Parole then has used these fabricated charges as grounds to deny parole to a number of prisoners, including Riggs, creating additional unfair punishment.

Among other things, the lawsuit seeks a court order setting strict deadlines by which ICC must develop and implement adequate policies, as well as hire and train a sufficient number of guards, to safeguard prisoners from assault. The lawsuit argues that if ICC officials continue to ignore their constitutional obligation to protect the prisoners in their care, all prisoners should be removed from the facility.

CCA, which boasts of being the largest owner and operator of private correctional and detention facilities in the U.S. with 63 facilities in 20 states housing approximately 76,000 prisoners, has faced hundreds of lawsuits in recent years, including two ACLU lawsuits challenging overcrowding and unconstitutional medical care at the San Diego Correctional Facility, an immigration detention facility in San Diego.

A copy of today's complaint is available online at: www.aclu.org/prisoners-rights/riggs-et-al-v-valdez-et-al-second-amended-complaint

Additional information about the ACLU is available online at: www.aclu.org

Additional information about the ACLU of Idaho is available online at: www.acluidaho.org

Published on *American Civil Liberties Union* (<http://www.aclu.org>)

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EXHIBIT A-2



OregonLive.com
Everything Oregon

ACLU sues over Idaho prison so violent it's called 'gladiator school' by inmates

Published: Thursday, March 11, 2010, 3:42 PM Updated: Thursday, March 11, 2010, 4:31 PM



By **The Associated Press**

BOISE -- The **American Civil Liberties Union** sued state prison officials and a private company Thursday, claiming violence is so rampant at the **Idaho Correctional Center** that it's known as "gladiator school" among inmates.

The ACLU filed the **lawsuit** against Nashville, Tenn.-based **Corrections Corp. of America** in U.S. District Court in Boise.

The lawsuit says Idaho's only private prison is extraordinarily violent, with guards deliberately exposing inmates to brutal beatings from other prisoners as a management tool.

The group contends the prison then denies injured inmates medical care to save money and hide the extent of injuries.

Steve Owen, Corrections Corporation of America's director of public affairs, said the company would respond to the lawsuit through court filings. He said state officials have unfettered access to the prison and provide strong oversight at the facility, including daily on-site monitoring.

"For the past decade, CCA has safely and securely managed the Idaho Corrections Center on behalf of our government partner, the Idaho Department of Corrections," Owen said in a statement. "Our hardworking, professional staff and management team are held accountable to high standards by our government partner, to include those of the American Correctional Association — the highest professional standards in the country for correctional management."

Idaho Department of Correction Director Brent Reinke said he hadn't seen the lawsuit and couldn't immediately comment.

Stephen Pevar, senior attorney for the ACLU, said he has sued at least 100 jails and prisons, but none came close to the level of violence at Idaho Correctional Center, in Kuna. "Our country should be ashamed to send human beings to that facility," he said.

The ACLU is asking for class-action status and \$155 million in punitive damages -- the entire net profit

reported by the company in 2009. The ACLU says the money should go to lead plaintiff Marlin Riggs, who sustained permanent facial deformities and other medical problems after he was savagely beaten in his cell.

Guards use violence to control prisoner behavior, forcing inmates to "snitch" on other inmates under the threat of moving them to the most violent sections of the prison, ACLU-Idaho executive director Monica Hopkins says.

Hopkins said inmates are beaten by fellow inmates if they become known as a snitch. If they refuse to give up names, the guards have them beaten anyway, she said.

"It doesn't do us any good as a society to put people in there where they have to turn to other gangs and become gang members to protect themselves," she said. "The thing is, there's a constitutional duty to protect prisoners from violence at the hands of other prisoners."

The lawsuit also refers to an investigation by The Associated Press based on public-records requests that found the level of violence at the prison was three times higher than at other Idaho prisons, and that Idaho Department of Correction officials believed it was also dramatically underreported by Corrections Corp. of America and inmates.

At the time of that report, Conry maintained the prison is safe and well run.

The Idaho Correctional Center houses about 2,000 prisoners. The ACLU contends it is understaffed, with sometimes only two guards on duty to control prison wings with more than 350 inmates.

The ACLU lawsuit details the inmate-on-inmate attacks of about two dozen men, all of whom say they told guards they were in danger of being assaulted, had been assaulted or needed medical care after an assault.

In all the cases, the ACLU contends the men were summarily denied help.

Riggs, the lead plaintiff in the case, claimed members of a violent gang on his cell block told him in May 2008 that he'd be beaten unless he started paying "rent" to the gang. He said in the lawsuit he told correctional officers about the threat and begged to be transferred to another cellblock, but the guards refused.

Riggs managed to call his family that day and tell them about the threats. But within moments of the phone call, Riggs said he was beaten by inmates, knocked down and kicked repeatedly in the face and torso. The beating was so bad, the ACLU contends, that blood was spattered on the ceiling of Riggs' cell and pooled on the floor.

Guards eventually intervened and took Riggs to an infirmary where a doctor told him his nose was broken and tried to reset it. However, the doctor refused to take X-rays and ignored several other broken bones in

his face, the lawsuit claims.

Riggs was denied medical care for six months before being taken to an ear, nose and throat specialist, who said he needed immediate surgery, according to the lawsuit. He ended up with a plate in his cheek, pins in his jaw and a permanent dent on the side of his face, and still suffers from blurry vision, headaches, pain, discomfort and mental trauma, the suit states.

Corrections Corporation of America has faced numerous lawsuits from employees and inmates at the Idaho prison and elsewhere, but class-action lawsuits against the company appear to be rare.

In 1999, the company settled for \$1.6 million in a class-action lawsuit brought by inmates at a private prison in Youngstown, Ohio, who said they'd been subjected to excessive force from guards. The company also has paid out millions of dollars to settle dozens of individual lawsuits brought by inmates, family members of prisoners and employees.

-- The Associated Press

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EXHIBIT A-3

THE SPOKESMAN-REVIEW

December 31, 2010

ACLU seeking to ban Idaho prison practices

Jessie L. Bonner
Associated Press

Tags: **aclu Idaho Correctional Center prisons**

Larger suit

The motion for a preliminary injunction is part of larger lawsuit over claims of violence at the prison.

BOISE – The American Civil Liberties Union said Thursday that practices at an Idaho prison that include guards opening the wrong cell doors and allowing inmate-on-inmate attacks have caused violence at the facility and should be immediately banned.

The ACLU also said in a motion filed Thursday in U.S. District Court that victims of the assaults at the Idaho Correctional Center are routinely written up for defending themselves during the attacks, a consequence that can jeopardize their eligibility for parole and access to treatment and education programs.

Attorneys for the ACLU are seeking a preliminary injunction on behalf of inmates to immediately ban both practices at the prison run by the Corrections Corporation of America.

"We want to try to eliminate as much suffering as quickly as we can; these two issues lent themselves to that," said Steven Pevar, an attorney for the ACLU.

The ACLU is representing inmates who sued CCA in March, saying the Idaho lockup is so violent it's known as "gladiator school" and prison workers used inmate-on-inmate violence as a management tool, then refused to provide X-rays to injured prisoners as part of a cover-up scheme.

CCA has denied the claims. Company spokesman Steve Owen declined to comment on the latest legal filing, saying lawyers would respond to the claims in court documents.

The motion seeks to block the prison from issuing disciplinary reports to inmates who are acting in self-defense and calls for an investigation into claims that the guards are opening the wrong cell doors.

"The first thing you have to do is find out what the problem is," Pevar said. "Is it a mechanical problem, or are people just being careless?"

Since July 2009, 13 assaults have resulted from prison guards opening, or "popping," the wrong cell doors in areas where violent prisoners are kept, allowing inmates to attack other prisoners, attorneys for the ACLU say in a brief.

Guards either mistakenly or deliberately opened the wrong doors and allowed the assaults, the ACLU says.

Four of the 13 of the assaults allowed because of "popping" cell doors occurred under warden Timothy Wengler, who has been with the private prison company since 1996 and was appointed interim warden at the Idaho facility after the ACLU sued over claims of brutal inmate-on-inmate violence, ACLU attorneys say.

Former Idaho warden Phillip Valdez was reassigned after the lawsuit was filed.

Attorneys for the ACLU claim in court documents that Valdez created the two policies they are seeking to ban, and that Wengler continues to implement them as interim warden.

"One of two things must be true: Valdez and Wengler either failed in their duty to investigate the causes of these incidents, or they failed in their duty to fashion an appropriate solution," the ACLU says.

The most violent of the "popped" cell door assaults occurred on Aug. 10, when a guard opened some 20 doors and released at least 20 prisoners who then assaulted four rival gang members, sending two to the hospital, according to the brief filed by ACLU attorneys.

Guards issued disciplinary reports for the four victims of the assault, according to the ACLU.

Get more news and information at Spokesman.com

EXHIBIT B

NO. _____ FILED _____
AM _____ PM. 3:41

NOV 16 2010

J. DAVID NAVARRO, Clerk
By _____ DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

JAMES PRESTON HAVER,

Defendant.

Case No. CR-FE-10-0004368

MEMORANDUM DECISION
AND ORDER

This matter comes before the Court on the Associated Press' ("AP") Motion to Obtain Copy of Video Tape. For the reasons explained below, the Court will deny the motion to the extent it requests to copy the video. The Court will allow the AP to view the video.

Background

James Preston Haver (Haver) is an inmate in the custody of the Idaho State Board of Correction. On January 18, 2010, Haver attacked and beat another inmate while housed at the Idaho Correctional Center ("ICC"), a facility operated by Corrections Corporation of America ("CCA"). The institution has a security video recording system. Some of the incident was captured on the video recording system.

On March 15, 2010, the State of Idaho (the State) filed a Complaint charging Haver with the felony offense of Aggravated Battery, Idaho Code §§ 18-903, 907. *State of Idaho v. Haver*, Case

1 No. CR-FE-2010-0004368. On May 18, 2010, the State filed an Amended Complaint, adding a Part
2 II sentencing enhancement for committing the felony offense with the intent to promote gang
3 activity, Idaho Code §§ 18-8502, 8503. The case proceeded to a preliminary hearing before Ada
4 County Magistrate Judge Michael Oths. At the preliminary hearing, the State offered the video
5 recording of the incident as an exhibit. Judge Oths admitted and published the video of the incident
6 during the preliminary hearing. The preliminary hearing was conducted, and the video published, in
7 an open and public proceeding at the Ada County Courthouse. Judge Oths found sufficient cause to
8 bind Haver over to District Court. The criminal case was assigned to the undersigned district judge.
9 The State's exhibits, including the video, were returned to the handling Deputy Ada County
10 Prosecuting Attorney at the conclusion of the preliminary hearing.
11

12 In letter dated July 13, 2010, Rebecca Boone, of the Associated Press, made a request to the
13 Court for a copy of the video recording. Ms. Boone stated that the prosecutor's office declined to
14 provide a copy to her. The video recording was not part of the Court file because it had been
15 returned to the State. The Court contacted Roger Bourne, Chief Deputy Ada County Prosecuting
16 Attorney, for information regarding the request for the video. In response, on July 23, 2010, the
17 Court received a letter dated July 20, 2010 from deputy prosecutor Christopher S. Atwood. The
18 letter outlined the State's objections to providing a copy of the video to the AP and included a copy
19 of the video, which the Court viewed. The video graphically depicts the assault and shows
20 witnesses as well as the physical layout of the room where the assault occurred. Additionally, by
21 watching the video it is possible to determine the scope of the fixed-camera coverage, including its
22 blind spots.
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1 On August 3, 2010, the AP filed a motion to intervene to obtain a copy of the video. The
2 Court conducted a hearing into this matter on August 6, 2010. Attorney Charles A. Brown,
3 Lewiston, Idaho, appeared for the AP and argued for the release of the video. Eric R. Rolfson,
4 Deputy Ada County Public Defender, appeared for Haver and argued against releasing the video.
5 Deputy Ada County Prosecuting Attorney Christopher S. Atwood appeared and argued against
6 releasing the video. The Court declined to provide the AP with a copy of the video for the reasons
7 stated on the record.

8 On August 13, 2010, Haver pled guilty to the felony offense of aggravated battery and the
9 sentencing enhancement related to gang activity. The Court set a sentencing date for October 12,
10 2010.
11

12 On September 10, 2010, the AP filed a renewed Motion to Obtain Copy of Video Tape. On
13 September 30, 2010, Corrections Corporation of America (CCA) filed an opposition to providing a
14 copy of the recording to the AP. CCA is the private operator of the penal institution where Haver
15 was housed at the time of the assault.

16 The Court heard oral argument on the matter on October 1, 2010. Kirtlan G. Naylor, Naylor
17 & Hales, P.C., appeared and argued on behalf of CCA. Attorney David V. Nielson appeared and
18 argued on behalf of the AP. Eric R. Rolfson appeared for Haver and no longer had any objection to
19 providing a copy of the video to the AP. Deputy Ada County Prosecuting Attorney Christopher S.
20 Atwood appeared for the State and expressed a concern that publication of the video could
21 improperly affect the Court's view of the case at the time of sentencing. The State's concern is now
22 a moot point because sentencing has occurred. Except as just noted, neither the State nor Haver
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1 stated any concern that providing a copy of the recording would otherwise affect their rights to a fair
2 trial of the criminal matter. The Court took the matter under advisement.

3 On October 12, 2010, the Court sentenced Haver to the custody of the State Board of
4 Corrections for an enhanced aggregate term of seventeen (17) years, consisting of eight (8) years
5 fixed and nine (9) years indeterminate. The court imposed this sentence consecutively to Haver's
6 existing sentence.

7 Discussion

8 The AP essentially argues that it has a right to inspect and copy the video because it is a
9 public judicial record and there is a strong public policy, under the First Amendment, in favor of
10 granting access to such records. They rely primarily on three cases for the above proposition. (AP's
11 Mem. 4-6.) (citing *Press-Enterprise Co. v. Super. Ct. of Cal. for the County of Riverside*, 478 U.S. 1
12 (1986); *United States v. Criden*, 648 F.2d 814 (3d Cir. 1981); *Cowles Publ'g Co. v. Magis. Ct. of*
13 *the First Judicial Dist.*, 118 Idaho 753, 800 P.2d 640 (1990)). They argue that CCA is effectively
14 attempting to retroactively seal the video, despite the fact that it has already been played at a public
15 hearing.
16

17 CCA counters that: 1) the dissemination of the video would prejudice its fair trial rights in
18 two pending federal civil cases (*Elebad v. Corr. Corp. of Am., Inc.*, No. 1:10-CV-00218 EJM (D.
19 Idaho) and *Riggs, et al. v. Valdez, et al.*, No. 1:09-CV-00010-S-BLW (D. Idaho)); 2) the
20 dissemination of the video would compromise prison security; and 3) the dissemination of the video
21 would implicate the privacy rights of individuals depicted in the video.
22

23 There is no dispute here that the public has a general right to inspect and copy public judicial
24 records. In fact, in Idaho there is a presumption that such records are subject to examination,
25

1 inspection and copying. Idaho Code § 9-338(1)¹; I.C.A.R. 32(d)². However, the right is not absolute.
 2 The cases cited by the AP acknowledge as much. *See, e.g., Cowles Publishing Co.*, 184 Idaho at 759
 3 (holding that “in Idaho a *qualified* first amendment right of public access attaches to preliminary
 4 hearings) (emphasis added); *Press-Enterprise Co.*, 478 U.S. at 13 (stating that there is a *qualified*
 5 First Amendment right of access to criminal proceedings). Moreover, I.C.A.R. 32(d) references
 6 exemptions from disclosure in subsection (g), and other prohibitions or limitations on disclosure in
 7 subsection (i).³

8
 9 In its first ruling on this matter, the Court relied upon Idaho Code § 9-335⁴ to deny the AP’s
 10 request because of concerns about Haver’s right to a fair trial. Haver has since pled guilty. However,
 11 there are two pending federal civil cases in which the right to a fair trial is implicated. The Haver
 12 incident is an issue in both cases. As CCA has pointed out, “fairness to parties and the need for a
 13 fair trial are important not only in criminal, but also in civil proceedings, both of which require due
 14 process.” (CCA’s Mem. 3.) (quoting *Bird v. Glacier Elec. Coop., Inc.*, 255 F.3d 1136, 1151 (9th
 15
 16
 17

18 ¹ Idaho Code § 9-338(1) provides:

19 Every person has a right to examine and take a copy of any public record of this state and there is a
 20 presumption that all public records in Idaho are open at all reasonable times for inspection except as
 21 otherwise expressly provided by statute.

22 ² I.C.A.R. 32(d) provides in part:

23 Access to Court Records, Examination and Copying. Except as provided in paragraphs (g) and (i), the
 24 following are subject to examination, inspection and copying.

25 ...

26 (5) A court record that has been offered or admitted into evidence in a judicial action nor that a court
 has considered as evidence or relied upon for purposes of deciding a motion, unless the custodian
 judge expressly orders otherwise.

³ It does not appear, however, that the video falls into any of the exempt categories of subsection (g). Nor does it appear
 that subsection (i) would apply.

⁴ Idaho Code § 9-335(1)(b) exempts from disclosure investigatory records to the extent such disclosure would “[d]eprive
 a person of a right to a fair trial or an impartial adjudication[.]”

1 Cir. 2001). As such, the concerns that were present with respect to Haver's fair trial are also present
2 with respect to the ongoing *Elabed* and *Riggs* cases.

3 There are additional reasons to deny the AP's request that go beyond the relatively short-
4 term concerns of the above cases. Idaho's Public Records Law, Idaho Code §§ 9-337 *et seq.*,
5 provides exemptions to disclosure of public records under which the Court, as custodian judge, can
6 deny the AP's request to copy the video. Specifically, Idaho Code § 9-340B(4)(b) exempts:

7 Records of buildings, facilities, infrastructures and systems held by or in the custody
8 of any public agency only when the disclosure of such information would jeopardize
9 the safety of persons or the public safety. Such records may include emergency
10 evacuation, escape or other emergency response plans, vulnerability assessments,
operation and security manuals, plans, blueprints or security codes.

11 Idaho Code § 9-340B(4)(b). Further, Idaho Code 9-340B(4)(a)(ii) exempts "[r]ecords that contain
12 any identifying information, or any information that would lead to the identification of any victims
13 or witnesses[.]"

14 CCA expresses legitimate concerns over prison security. Although it may be true that (as
15 counsel for the AP argued at the hearing on the matter) tour patrons may be able to bring in cameras
16 and take pictures, any such picture does not compare to what can be seen from an actual prison
17 fixed-position camera. The video here depicts the entire room wherein the incident occurred,
18 including the blind spots. It is conceivable that an inmate could see the video if released and take
19 advantage of any security information gleaned from it, thereby endangering the public safety and/or
20 the safety of ICC personnel.

22 Additionally, the video depicts individuals who witnessed the incident. The AP argues that
23 the identity of the guards is already known as they are named defendants in the federal lawsuit
24 against CCA. However, as counsel for CCA pointed out at oral argument, there are several other
25


1 inmate witnesses in the room who have nothing to do with that lawsuit and whose identities are not
2 known, but could potentially be identified from watching the video.

3 **Conclusion**

4 For the foregoing reasons, the Court will deny the AP's Motion to Obtain Copy of Video
5 Tape. However, the Court will permit the AP to view the recording. The Ada County Prosecuting
6 Attorney is directed to make the recording available for viewing by the AP at a mutually convenient
7 time and place.

8 IT IS SO ORDERED.

9 Dated this 15 day of November 2010.

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12 Patrick H. Owen
13 District Judge
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CERTIFICATE OF MAILING

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2 I hereby certify that on the 16th day of November 2010, I mailed (served) a true and correct
3 copy of the within instrument to:

4
5 CHRISTOPHER S. ATWOOD
6 ADA COUNTY PROSECUTOR'S OFFICE
7 VIA INTERDEPARTMENTAL MAIL

8 ERIC R. ROLFSEN
9 ADA COUNTY PUBLIC DEFENDER'S OFFICE
10 VIA INTERDEPARTMENTAL MAIL

11 CHARLES A. BROWN
12 ATTORNEY FOR THE ASSOCIATED PRESS
13 324 MAIN STREET
14 P.O. BOX 1225
15 LEWISTON, ID 83501

16 DAVID VICTOR NIELSON
17 ATTORNEY FOR THE ASSOCIATED PRESS
18 P.O. BOX 1192
19 BOISE, ID 83701

20 KIRTLAN G. NAYLOR
21 NAYLOR & HALES, PC
22 950 W BANNOCK, STE 610
23 BOISE, ID 83702

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By *Martha Lyke*
Deputy Clerk

EXHIBIT C

Tara Zoellner

From: DANIEL STRUCK
Sent: Wednesday, December 01, 2010 1:58 PM
To: 'Pevaraclu@aol.com'; 'jameshuegli@yahoo.com'; 'leacandycooper@yahoo.com'; 'LCooper@acluidaho.org'
Cc: 'Kirtlan Naylor'; Tara Zoellner; Marnee Rosenberg; Carol Madden; 'James Stoll'
Subject: Statements to the Press

Stephen,

Since the inception of your involvement in this litigation, you have repeatedly made statements to the press, in addition to issuing press releases, which we believe seriously infringes upon the defendants ability to obtain a fair trial. Specifically, we believe that the extrajudicial statements you have made, many of them quite outrageous, will materially prejudice the defendants right to a fair and impartial jury with respect to the Riggs claim for compensatory damages. We have included the following Idaho Rule of Professional Conduct pertaining to this issue for your convenience. Please review the rule, and let us know whether you and the rest of the attorneys representing plaintiffs will voluntarily refrain from making extrajudicial statements, including but not limited to making statements to the press and issuing press releases, during the pendency of the Riggs litigation. If we do not hear back from you on this issue before 5PM EST on Thursday, December 2, 2010, we will file raise the issue with the court. Please feel free to give me a call if you have any questions.

Dan Struck

Rule 3.6 - Trial Publicity

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter **shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.**
- (b) Notwithstanding paragraph (a), a lawyer may state:
- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
 - (2) information contained in a public record;
 - (3) that an investigation of a matter is in progress;
 - (4) the scheduling or result of any step in litigation;
 - (5) a request for assistance in obtaining evidence and information necessary thereto;
 - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
 - (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent

publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

- (d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).**

Tara Zoellner

From: Pevaraclu@aol.com
Sent: Wednesday, December 01, 2010 2:43 PM
To: DANIEL STRUCK; jameshuegli@yahoo.com; leacandycooper@yahoo.com; LCooper@acluidaho.org
Cc: kirt@naylorhales.com; Tara Zoellner; Marnee Rosenberg; Carol Madden; jrs@naylorhales.com
Subject: Re: Statements to the Press

Dear Dan,

Thank you for your email. I will share it with ACLU Corporate Counsel and my supervisors and will be back in touch with you as soon as possible. You have given me only 24 hours. I will likely need more time than that in order to send you a comprehensive reply.

Just so that I understand what you are asking, Rule 3.6 permits an attorney to state publicly "the claim, offense, or defense involved" in the litigation and to disseminate matters of public record. You aren't saying, for instance, that I cannot participate in a press release or speak with the media in which I reiterate the allegations in our complaint, are you?

Stephen

In a message dated 12/1/2010 3:57:13 P.M. Eastern Standard Time, DStruck@JSHFIRM.com writes:

Stephen,

Since the inception of your involvement in this litigation, you have repeatedly made statements to the press, in addition to issuing press releases, which we believe seriously infringes upon the defendants ability to obtain a fair trial. Specifically, we believe that the extrajudicial statements you have made, many of them quite outrageous, will materially prejudice the defendants right to a fair and impartial jury with respect to the Riggs claim for compensatory damages. We have included the following Idaho Rule of Professional Conduct pertaining to this issue for your convenience. Please review the rule, and let us know whether you and the rest of the attorneys representing plaintiffs will voluntarily refrain from making extrajudicial statements, including but not limited to making statements to the press and issuing press releases, during the pendency of the Riggs litigation. If we do not hear back from you on this issue before 5PM EST on Thursday, December 2, 2010, we will file raise the issue with the court. Please feel free to give me a call if you have any questions.

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- d. No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Tara Zoellner

From: DANIEL STRUCK
Sent: Wednesday, December 01, 2010 3:10 PM
To: 'Pevaraclu@aol.com'; 'jameshuegli@yahoo.com'; 'leacandycooper@yahoo.com'; 'LCooper@acluidaho.org'
Cc: 'kirt@naylorhales.com'; Tara Zoellner; Marnee Rosenberg; Carol Madden; 'jrs@naylorhales.com'
Subject: RE: Statements to the Press

Let us know how much time you need, as long as you agree to refrain from any further statements until a decision is reached. We think that 3.6 is clear, but we believe that many of your statements go well beyond what is allowed in Rule 3.6.

From: Pevaraclu@aol.com [mailto:Pevaraclu@aol.com]
Sent: Wednesday, December 01, 2010 2:43 PM
To: DANIEL STRUCK; jameshuegli@yahoo.com; leacandycooper@yahoo.com; LCooper@acluidaho.org
Cc: kirt@naylorhales.com; Tara Zoellner; Marnee Rosenberg; Carol Madden; jrs@naylorhales.com
Subject: Re: Statements to the Press

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d. No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Tara Zoellner

From: Pevaraclu@aol.com
Sent: Wednesday, December 01, 2010 3:22 PM
To: DANIEL STRUCK; jameshuegli@yahoo.com; leacandycooper@yahoo.com; LCooper@acludaho.org
Cc: kirt@naylorhales.com; Tara Zoellner; Marnee Rosenberg; Carol Madden; jrs@naylorhales.com
Subject: Re: Statements to the Press

Dan,

Until your email, I thought that Rule 3.6 is clear, too. However, your construction of it goes far beyond mine. Rule 3.6 allows counsel to discuss various matters about a case in public, and yet you're insisting that I make no public statements whatsoever. That seems inconsistent with 3.6, the way I read it.

I will agree in the interim to refrain from making any statements that could arguably exceed those permitted by 3.6. However, I need to tell you that earlier today I was interviewed by one media outlet, and I have also given statements in the past that could wind up in future newspapers. But you have my word that until I send you a formal reply, I will stick strictly to the language of 3.6.

Thanks for bringing this matter to my attention.

Stephen

In a message dated 12/1/2010 5:09:25 P.M. Eastern Standard Time, DStruck@JSHFIRM.com writes:

Let us know how much time you need, as long as you agree to refrain from any further statements until a decision is reached. We think that 3.6 is clear, but we believe that many of your statements go well beyond what is allowed in Rule 3.6.

Tara Zoellner

From: DANIEL STRUCK
Sent: Wednesday, December 01, 2010 3:57 PM
To: 'Pevaraclu@aol.com'; 'jameshuegli@yahoo.com'; 'leacandycooper@yahoo.com'; 'LCooper@acluidaho.org'
Cc: 'kirt@naylorhailes.com'; Tara Zoellner; Marnee Rosenberg; Carol Madden; 'jrs@naylorhailes.com'
Subject: RE: Statements to the Press

Thanks. As an example, for clarification purposes, we would consider your statement which appeared in several sources yesterday calling ICC a "Gulag" as being outside the scope of a statement permitted by 3.6.

From: Pevaraclu@aol.com [mailto:Pevaraclu@aol.com]
Sent: Wednesday, December 01, 2010 3:22 PM
To: DANIEL STRUCK; jameshuegli@yahoo.com; leacandycooper@yahoo.com; LCooper@acluidaho.org
Cc: kirt@naylorhailes.com; Tara Zoellner; Marnee Rosenberg; Carol Madden; jrs@naylorhailes.com
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Tara Zoellner

From: Pevaraclu@aol.com
Sent: Thursday, December 02, 2010 1:50 PM
To: DANIEL STRUCK; jameshuegli@yahoo.com; leacandycooper@yahoo.com; LCooper@acluidaho.org
Cc: kirt@naylorhailes.com; Tara Zoellner; Marnee Rosenberg; Carol Madden; jrs@naylorhailes.com
Subject: Re: Statements to the Press

Dear Dan,

Thank you for bringing your concerns to my attention. As you state, Rule 3.6 deserves our attention and our adherence.

However, your request that I "refrain from making extrajudicial statements, including but not limited to making statements to the press and issuing press releases, during the pendency of the Riggs litigation" is unacceptable. Rule 3.6(b)(1) and (b)(2) expressly allow an attorney to make extrajudicial statements regarding the "claim, offense or defense involved" in the litigation, as well as statements regarding "information contained in a public record." Particularly where a lawyer's speech concerns allegations of public misconduct, a too narrow interpretation of Rule 3.6(b)(1) and (b)(2) does not survive constitutional scrutiny. See *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1043 (1991) (recognizing that an attorney has a general right, especially where the attorney is discussing an issue of public concern, to "attempt to demonstrate in the court of public opinion" the client's claims regarding official misconduct).

It is my desire to ensure a fair trial for both sides and to abide by ethical considerations. I will be sure to keep that in mind in making press comments. However, I ask in turn that you keep in mind that Rule 3.6 reflects the democratic principle that the public has a right to know about legal proceedings and about public affairs, and that attorneys have a right to discuss aspects of their litigation in a public forum.

Again, thank you for bringing your concerns to my attention.

Stephen

In a message dated 12/1/2010 3:57:13 P.M. Eastern Standard Time, DStruck@JSHFIRM.com writes:

Stephen,

Since the inception of your involvement in this litigation, you have repeatedly made statements to the press, in addition to issuing press releases, which we believe seriously infringes upon the defendants ability to obtain a fair trial. Specifically, we believe that the extrajudicial statements you have made, many of them quite outrageous, will materially prejudice the defendants right to a fair and impartial jury with respect to the Riggs claim for compensatory damages. We have included the following Idaho Rule of Professional Conduct pertaining to this issue for your convenience. Please review the rule, and let us know whether you and the rest of the attorneys representing plaintiffs will voluntarily refrain from making extrajudicial statements, including but not limited to making statements to the press and issuing press releases, during the pendency of the Riggs litigation. If we do not hear back from you on this issue before 5PM EST on Thursday, December 2, 2010, we will file raise the issue with the court. Please feel free to give me a call if you have any questions.

Dan Struck

Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

d. No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Tara Zoellner

From: Pevaraclu@aol.com
Sent: Friday, December 03, 2010 9:24 AM
To: DANIEL STRUCK; jameshuegli@yahoo.com; leacandycooper@yahoo.com; LCooper@acluidaho.org
Cc: kirt@naylorhales.com; Tara Zoellner; Marnee Rosenberg; Carol Madden; jrs@naylorhales.com
Subject: Re: Statements to the Press

Dan, I do not admit that equating ICC to a Gulag violates 3.6. I will be particularly careful regarding statements I make in the future but I do not admit to, or know of, any violations in the past.

Stephen

In a message dated 12/3/2010 10:03:25 A.M. Eastern Standard Time, DStruck@JSHFIRM.com writes:

Stephen, I can't tell from this response what you are going to refrain from saying to the press. Do you admit that your "Gulag" reference was a violation of 3.6?