

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

DEANE BROWN)
 Plaintiff)

 v.)

MARTIN MAGNUSSON,)
Commissioner, Maine Dep't. of Corrections)
JEFFREY MERRILL,)
Warden, Maine State Prison)
JAMES O'FARRELL,)
Deputy Warden, Maine State Prison)
NELSON RILEY,)
Deputy Warden, Maine State Prison)
DAVID CUTLER,)
Captain, Maine State Prison)
DOUGLAS STARBIRD,)
Unit Manager, Maine State Prison)
TROY ROSS)
Sergeant, Maine State Prison)
RUSSELL L. WORCESTER, JR.)
Unit Manager, Maine State Prison)
JOHN DOES I – V)
Defendants)

CIVIL ACTION NO. _____

CIVIL RIGHTS COMPLAINT

Plaintiff, Deane Brown (hereinafter Mr. Brown) brings this action for injunctive, declaratory and monetary relief and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action against employees of the Maine Department of Corrections, arising out of the deprivation of Mr. Brown's civil rights under 42 U.S.C. § 1983, and Maine constitutional, statutory and regulatory provisions, in connection with Mr. Brown's incarceration at the Maine State Prison in Warren, Maine.

2. Mr. Brown alleges that defendants violated his First Amendment right to freedom of speech by refusing him access to the news media and by transferring him to the Maryland Correctional Adjustment Center (“MCAC”) in Baltimore, Maryland in retaliation for his assertion of constitutionally and statutorily protected freedom of speech. Mr. Brown further alleges that defendants violated his Eighth Amendment right to be free from cruel and unusual punishment by subjecting him to inhumane and dangerous conditions at the Warren State Prison and repeatedly transferring him to the Administrative Segregation unit in retaliation for asserting his constitutional rights under the Eighth Amendment. Mr. Brown seeks injunctive and declaratory relief and compensatory and punitive damages.

PARTIES

3. Plaintiff Deane Brown was incarcerated at the Maine State Prison until November 13, 2006, when he was transferred to the MCAC in Baltimore, Maryland, where he is incarcerated at the time of this complaint. At all times relevant to this complaint Mr. Brown was incarcerated at the Maine State Prison.

4. Defendant Martin Magnusson is an individual who at all times relevant to this complaint was the Commissioner of the Maine Department of Corrections and, as such, is in charge of the Maine State Prison. Magnusson is sued in his individual and official capacities.

15. Defendant Jeffrey Merrill is an individual who at all times relevant to this complaint was the Warden of the Maine State Prison. Merrill is sued in his individual and official capacities.

16. Defendant James O'Farrell is an individual who at all times relevant to this complaint was a Deputy Warden at the Maine State Prison. O'Farrell is sued in his individual and official capacities.

17. Defendant Nelson Riley is an individual who at all times relevant to this complaint was a Deputy Warden at the Maine State Prison. Riley is sued in his individual and official capacities.

18. Defendant David Cutler is an individual who at all times relevant to this complaint was a guard at the Maine State Prison. Cutler is sued in his individual and official capacities.

19. Defendant Douglas Starbird is an individual who at all times relevant to this complaint was a Unit Manager at the Maine State Prison. Starbird is sued in his individual and official capacities.

20. Defendant Troy Ross is an individual who at all times relevant to this complaint was a guard at the Maine State Prison. Ross is sued in his individual and official capacities.

21. Defendants John Does I-V are guards and other personnel at the Maine State Prison, whose identities are presently unknown to Mr. Brown who consequently sues these defendants under such fictitious names until their true names are ascertained. The Does are sued in their individual and official capacities.

22. All defendants have acted and/or continue to act under the color of state law at all times relevant to this complaint.

JURISDICTION

23. This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), (4). Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

EXHAUSTION

24. Plaintiff is a prisoner as defined under 42 U.S.C. 1997(e) and at the time of the occurrence of the events giving rise to Plaintiff's claims, was incarcerated at the Maine State Prison in Warren, Maine. Plaintiff exhausted all administrative remedies as were available to him, by filing grievances, appealing grievance decisions, and appealing placement decisions.

FACTUAL AVERMENTS

25. Deane Brown was a resident of Maine at all times relevant to this complaint.

26. Mr. Brown was incarcerated at the Maine State Prison until he was transferred to MCAC in Baltimore, Maryland, on or about November 13, 2006. He remains there at this time.

27. From the time of his incarceration in 2004, Mr. Brown was a model prisoner, with minimal disciplinary incidents and, for the period of time leading up to April 2005, he worked in Prison Industries.

28. On April 1, 2005, Mr. Brown was found to have contraband in his cell, to wit, tweezers and cut up wire, used to repair electronic equipment for other prisoners. A disciplinary report was completed, and the tweezers were construed to be a tool, not a weapon, resulting in the dismissal of this charge. Mr. Brown pled guilty to possession of contraband, to wit, the wire.

29. On April 12, 2005, at 0945 hours, Sgt. Troy Ross discovered contraband in Mr. Brown's cell, to wit, a radio, a television, a stereo, a cassette player, a guitar, a cable box, two home made speakers, one fan, one lamp, one watch with no band, some headphone adapters and headphones, cassette tapes, memory cards and a typewriter. When asked if

there was anything more, Mr. Brown showed the officers additional items, including a couple of screwdrivers. The Unit Management paperwork was not done until April 13, 2005, at 1353 hours, and was not signed by Unit Manager Worchester, but rather by a sergeant who was an unauthorized signer. Likewise, Mr. Brown did not receive his Section A paperwork until this time, despite policy regulations stating that “Section A must be provided to prisoner within 24 hours of placement.”

30. As a result of his possession of these tools, Mr. Brown was placed in Administrative Segregation. On April 14, 2005, Mr. Brown wrote a letter to Warden Merrill, in which he discussed his objections to the unauthorized signature on his segregation papers. In his letter, Mr. Brown noted that in January 2004, he had been placed on Administrative Segregation and the paperwork at that time had been signed by an unauthorized signer. He stated that following a complaint, Warden Merrill had “agreed that this was procedurally improper and assured [Mr. Brown] that it would not happen again” Mr. Brown went on to note that it had happened again, and he also pointed out the failure to deliver the segregation papers within 24 hours. Mr. Brown then requested an informal resolution, in lieu of litigation, and asked to be restored to his cell, to have the possession of contraband allegation dismissed, to have his items returned and to keep his job with Prison Industries.

31. An Administrative Segregation Review was held on April 19, 2005, and was attended by Sgt. Troy Ross, as well as by two other officers. The minutes state as the reason for the Administrative Segregation placement, that Mr. Brown “may constitute a threat to the security or orderly management of the facility if in a less restrictive status.”

32. On the same day, Mr. Brown's letter was returned to him, apparently so that he could re-file utilizing the proper appeal form, which he did complete and file on April 19, 2005, and on which he made the same comments regarding the delivery of the papers and the improper signature. In addition, in light of the lack of detail in the Administrative Segregation minutes, he stated "no legitimate or credible argument has been made that I currently pose a threat to security."

33. On April 20, 2005, Mr. Brown wrote a letter to the Commissioner of the Department of Corrections, Martin Magnusson. In this letter, he reiterated the objections made in his appeal of the Administrative Segregation decision. In addition, he noted that at the April 19, 2005 review, when he asked why he was in Administrative Segregation, he was simply told "We're not letting you go." He also objected to the fact that the same individual, Sgt. Troy Ross, located the contraband, wrote the inventory, signed the report and was the security officer designated to receive the report, under departmental policy 20.1(B0(10)). He therefore designated another officer to write the report, even though that officer had not been present at the search, and this officer, Officer Luce, claimed to have found the items, even though he was not present at the search. The Unit Manager signed off on the report and recommended a disciplinary board hearing.

34. A Disciplinary Hearing was scheduled for April 30, 2005 and then rescheduled for May 2, 2005. The Disciplinary Hearing Officer, Capt. David George, noted that "during the hearing Prisoner Brown argued several issues which amounted to gross procedural policy errors. I concurred and dismissed all charges."

35. Mr. Brown was transferred out of Administrative Segregation into the Medium Custody Housing Unit on May 5, 2005.

36. On May 24, 2005, Mr. Brown was again accused of being in possession of contraband. Section A of the placement form stated that the reason for placement was that “the prisoner may constitute a threat to the security or orderly management of the facility if in a less restrictive status.” The form stated that contraband was found in Mr. Brown’s cell, but provides no details, such as a list of contraband, merely stating that “[o]n the above date and approximate time prisoner Deane Brown MDOC #4059 is being placed on Administrative Segregation due to contraband found in his cell indicating him as an escape risk.” However, the photos that were attached to this form are exact duplicates of the photographs of the contraband found on April 1, 2005.

37. Mr. Brown was technically placed on Administrative Segregation on May 24, 2005, at 1510 hours; however, he was permitted to remain in population until 2300, ate dinner and went to night recreation as usual, despite being considered “a threat to the security or orderly management of the facility” and an escape risk. A June 1, 2005 document entitled “Placement Criteria for High Risk Management Status” stated the following: “The prisoner has committed, attempted to commit, threatened to commit, or planned to commit an escape from a correctional or detention....” No specific details were provided.

38. On May 26, 2005, Mr. Brown wrote to Warden Merrill, requesting the he be informed of the factual basis of his placement in Administrative Segregation and classified as an escape risk. Warden Merrill responded to this letter on June 6, 2005. In this letter, Merrill justified the delay in Mr. Brown’s actual removal to Administrative Segregation as being due to the transfer of other prisoners within the prison. He also stated that Mr. Brown was placed in Administrative Segregation and approved for High

Risk placement because “based on [his] overall case history it was determined that [he was] a threat to the security of this facility.” Once more, no factual basis for the placement was given, nor is the justification for the High Risk placement listed as one of the stated criteria for such a placement.

39. On June 1, 2005, Mr. Brown filed an appeal of the Administrative Segregation decision. In his written appeal, he stated that during the course of the Segregation Board meeting, Sgt. Troy Ross stated that he did not know why Mr. Brown was in Administrative Segregation, and that he could only assume that it was for the contraband found in his cell on April 12, 2005. However, Mr. Brown had already been cleared of those charges, on May 2, 2005.

40. Mr. Brown never received a Section A regarding the High Risk placement and did not sign the Administrative Segregation Review minutes, dated June 1, 2005. This meeting was attended by Sgt. Troy Ross and two other officers. The unsigned form had checks next to statements indicating that Mr. Brown both “waived right” to appeal and “did not waive right” to appeal. A handwritten note on the form, dated June 6, 2005, stated “appeal rec’d and attached.” There is no indication that this appeal was ever addressed.

41. A second Administrative Segregation Review was held on June 7, 2005. This meeting was attended by three officers who did not attend the June 1, 2005 meeting, and was not attended by Sgt. Ross. At this time, it was recommended that Mr. Brown be released to High Risk status. A June 14, 2005 Prisoner Classification form recommended continued placement as High Risk. On a June 23, 2005 Prisoner Classification form, it

was noted that Mr. Brown had requested that his original appeal of the High Risk classification cover review of this affirmation of that classification.

42. In August or early September 2005, Mr. Brown filed two grievances regarding the handling of food trays passed through slots and health and cleanliness issues with same. On September 14, 2005, Mr. Brown was told by Robert Costigan, Prison Administrative Coordinator (“PAC”), to attempt a resolution of these issues with Unit Manager Douglas Starbird. Mr. Brown sent the grievances to Mr. Starbird and, a week later when they spoke, Mr. Brown requested that they be returned to him. Starbird refused to return the copies of the grievances. Therefore, Mr. Brown filed yet another grievance, asking that the original grievances be returned to him. On October 10, 2005, Mr. Brown, in frustration, wrote to Warden Merrill, querying how he might “force” Starbird to return the grievances to him. In this letter, Mr. Brown also stated that he had been “high risked for beating a write up. Prison records were falsified and are on the outside to go to court. I’m not filing an “80C”- I will sue in federal court for damages.” There is no indication that this letter was ever responded to.

43. Beginning during the late fall of 2005, Mr. Brown established a relationship with Lance Tapley, a reporter for the Portland Phoenix. Mr. Brown shared information with Mr. Tapley, which detailed human rights abuses that were occurring in the prison, particularly with regard to mentally ill and suicidal inmates.

44. In a November 28, 2005 letter to Warden Merrill, Mr. Brown submitted that he had not received copies of the Portland Phoenix, send to him by the Phoenix’s publisher, on November 17, 2005, eleven days earlier. Said paper contained articles reflecting unfavorably on the Maine State Prison. He also noted that he had not received a number

of letters recently sent by a friend. Mr. Brown concluded the letter by stating that he had requested an investigation by the U.S. Postal Service into the handling of mail sent to Maine State prisoners.

45. On December 6, 2005, it was recommended by James Phillip Hernandez, a Care and Custody Treatment worker, that Mr. Brown be released from High Risk Management. Mr. Hernandez noted that Mr. Brown had been good and respectful, with no write-ups. On that same date, Charlie Charlton, of Mental Health Services, recommended that Mr. Brown be released from High Risk status. During the next two weeks, Mr. Brown was in fact removed from High Risk status.

46. On January 9, 2006, Mr. Brown wrote to Deputy Warden Riley, requesting the return of his lost property, confiscated on April 12, 2005. In this letter, Mr. Brown discussed his electronics skills and requested that he be considered if a position for someone to work on radios, jacks, etc. ever opens. It should be noted, that all of Mr. Brown's letters to prison personnel, including this one, were respectful and articulate.

47. On January 12, 2006, the name of Ron Huber was added to Mr. Brown's Prisoner Telephone System Number Request. Mr. Huber hosts a radio show on WRFR-LP, a low power community radio station in Rockland, Maine. From this time until late October 2006, Mr. Brown communicated with Mr. Huber, by mail and telephone, discussing various topics that reflected very unfavorably upon the prison.

48. On February 16, 2006, Mr. Brown met with Unit Manager Dwight Fowles, at which time Mr. Brown expressed that he was upset by the loss of his property in April 2005, in particular his cassette recorder. In a letter written the same day by Mr. Fowles to Deputy Warden Riley, Mr. Fowles recounted the conversation with Mr. Brown and also

noted that Mr. Brown had not taken his medication for six months, and that Medical staff said this had caused permanent damage that will eventually cause Mr. Brown's death. On March 2, 2006, Mr. Brown wrote to Deputy Warden Riley, thanking him for helping with the lost property. He also noted that he had spoken to the Portland Phoenix that day, and told the reporter that Deputy Warden Riley was working with him on issues and things were getting better. Mr. Brown's stereo was subsequently replaced and Deputy Warden Riley asked Prison Industries to restore Mr. Brown's job. Bob Waldron, of Prisoner Industries agreed to do so. However, Captain David Cutler, and Deputy Warden O'Farrell objected and the job was not restored. On June 12, 2006, Mr. Brown detailed these facts in a letter to Commissioner Magnusson, but never received a response. He subsequently detailed these facts, as well as more details about his May 2005 placement in High Risk status, in a letter to Governor John Baldacci, dated July 21, 2006. Mr. Brown did receive a response from the Governor's office, which he forwarded to WRFR reporter Ron Huber.

49. While never receiving a response from the Commissioner, Mr. Brown did receive a September 25, 2006 response to his letter from Warden Merrill, to whom his letter to the Governor was forwarded. Warden Merrill stated, in that letter, that "[t]he reasons for your placement on high risk status in May of 2005 were previously addressed and your appeal of that decision was considered. I also note that you are no longer on that status."

50. In early October, Mr. Brown was given a copy of an exit interview report about a guard who was leaving employment at the Maine State Prison. This document was given to Mr. Brown in his capacity as an inmate correspondent for the Portland Phoenix and for WRFR radio. Mr. Brown shared the document with reporters Lance Tapley of the

Phoenix, and Ron Huber of WRFR, who placed it on his website, “Penobscot Bay Watch,” and discussed the contents on air. The document discusses, *inter alia*, issues of corruption in the system, low morale, the serving of food that was more than a year old, incompetence, and forced over-time.

51. Mr. Tapley prepared a draft of a story based on allegations made by the guard in his exit interview and sent a story draft to Commissioner Magnusson and Deputy Commission Denise Lord, asking for a response. This letter was dated October 16, 2006. Upon information and belief, no response was ever received by Mr. Tapley.

52. On October 14, 2006, an Incident Report was prepared by Officer Steven Wigdzinski. In this report, the officer stated that he had positioned “himself in such a manner as to observe Room 12 (Diane White’s office) and the surrounding area without being seen.” The officer goes on to state that he heard the voice of Deane Brown entering the education area, stating that he was “here for the elections.” He further stated that Mr. Brown looked through office windows and into a mop closet and then approached Room 12. At that time he heard another, unidentified prisoner, enter the area and state to Mr. Brown that “there’s no one here yet.” The prisoners continued to walk around the area and Mr. Brown “made several attempts, *as it would appear*, to open Room 12....” They walked down the hall, came back, went into the mop closet and “*examined a squeegie*.” Obviously they had not closed the closet door when doing this, since the officer was apparently able to see them. The two men eventually left the area, almost **two hours** later, at least if the officer’s report is accurate, meaning also that the officer remained in hiding, unnoticed, for two hours. Upon leaving, according to the report, Mr. Brown stated “it’s inside the hole,” and the other prisoner replied “we’ll try

again later,” and sighed audibly. Yet, at no time during this supposed two-hour period did the officer ever question the two men about what they were doing.

53. On October 16, 2006, a Prisoner Telephone System Number Request was completed (signature unreadable), ordering that Mr. Brown’s phone calls to Lance Tapley, reporter for the Portland Phoenix, and Ron Huber, reporter for WRFR, be monitored.

54. On October 17, 2006, Mr. Brown received a letter from Warden Merrill, stating that it had been brought to his attention that he Mr. Brown was “disclosing confidential information through the media and in particular through the website, “Penobscot Bay Watch.” Merrill then informed Mr. Brown that he had ordered the telephone numbers that Mr. Brown had been using to contact the website and WRFR radio to be deleted from his list of authorized telephone numbers. He further stated that he was “warning [Brown] that [he] may not disclose confidential information through any other means, such as writing letters. If [he does] not heed this warning, further appropriate action will be taken, up to and including disciplinary action.”

55. On October 17, 2006, Mr. Brown wrote to Dwight Fowles, Unit Manger, asking him to look into the reason that Ron Huber and Bethany Berry, a personal friend of both Mr. Brown and Mr. Huber, had been removed from Mr. Brown’s phone list.

56. On October 18, 2006, Mr. Brown wrote a letter to Merrill in which he noted that “no information has been provided to me in confidence.” Brown further stated that “I am a correspondent with WRFR. WRFR, the Portland Phoenix and myself enjoy the freedom of the press,” and he stated that Merrill “should not be surprised to find this letter on the Penobscot Bay Watch website, reprinted (with permission) in any of many

publications, and, especially read live over the air at WRFR.” The letter ended with Brown stating that if he is correct in his assessment of his rights, “I will insist that you and your ensemble take you [sic] feet off my Constitution. If you proceed with your threat to transfer me out of state in in [sic] retaliation for exercising my Constitutional rights I will sue for that as well.”

57. On or about October 20, 2006, Lance Tapley, reporter for the Portland Phoenix, visited Mr. Brown and told him that he would return the following Wednesday, October 25, 2006. Mr. Tapley has written numerous articles on the conditions at the Maine State Prison and last year received an award from his fellow journalists for his coverage of issues at the prison. This year he was honored by the Maine State Bar Association as “Legal Journalist of the Year.”

58. On October 24, 2006, Ron Huber, of WRFR radio, wrote a letter to Warden Merrill concerning Merrill’s decision to prohibit Mr. Brown from continuing as a correspondent for WRFR. Huber stated that “while correctional facilities may restrict a prisoner’s right to freedom of speech for cause, constitutional rights cannot be summarily denied.” Huber also reiterates the contention that the confidential information that Merrill accused Mr. Brown of disclosing was “information supplied by the person who generated the information,” and noted that if that person chose to release it, it is no longer confidential, noting that “[i]t appears that the new restriction on Mr. Brown is retaliation for the legitimate news he has reported on WRFR.”

59. In a letter dated October 26, 2006, Merrill responded to Mr. Huber’s October 24, 2006 letter. In his letter, Merrill stated that “The first Amendment does not give a prisoner the right to act as a news correspondent. Departmental policy also provides that

a prisoner may not act as a reporter, publish under a byline or act as an agent of the news media.” Merrill ends by stating that his “decision stands as previously stated.”

60. In a memo dated October 26, 2006 from Deputy Warden O’Farrell to Deputy Warden Riley, O’Farrell stated that prisoner Deane Brown was involved in an escape attempt that was being investigated. Apparently, Mr. Brown was speaking with Officer Robert Moore on October 24, 2006 about his communications with the press, Lance Tapley in particular, and he stated that his next item was going to be an “atomic bomb.” This was the same day that Mr. Tapley was to visit Mr. Brown and, coincidentally, the same day that a prisoner’s wife tried to smuggle a weapon into the prison. In his memo, O’Farrell stated that Mr. Brown told Officer Moore that “an atomic bomb is about to hit the place,” and, with no evidence, Mr. Brown was automatically linked to this escape attempt. Not noted by O’Farrell in his memo was the fact that the Brown-Moore conversation took place after the inmate who initiated the escape attempt had already been taken to the segregation unit and the fact that Mr. Brown had never met the inmate in question. Mr. Brown was, once again, ordered into Administrative Segregation, and put on suicide watch, because he “may constitute a threat to the security or orderly management of the facility if in a less restrictive status,” per Deputy Warden O’Farrell. When Mr. Tapley arrived at the prison that day to see Mr. Brown he was turned away.

61. Minutes of the Administrative Segregation Review on October 27, 2006, once more stated that “the prisoner may constitute a threat to the security or orderly management of the facility if in a less restrictive status.” This form also noted that the prisoner waived his right to appeal, although Mr. Brown has never been known to waive his appeal rights, and did not in this instance.

62. During the ten days following October 27, 2006, Mr. Brown's friend Bethany Berry attempted to visit Mr. Brown and was repeatedly turned away. No one was able to contact Mr. Brown by telephone. Due to his isolation, Mr. Brown was unable to prepare and file an appeal of his Administrative Segregation Placement. Minutes of a November 1, 2006 Administrative Segregation Review meeting stated that the matter was "pending investigation." This form, however, noted that the prisoner did not waive the right to an appeal.

63. On October 31, 2006, Mr. Brown was moved out of suicide watch and placed in "15-minute logged watch," in a cell with a camera. On the evening of November 1, 2006, he was finally given clothes, having had no clothes for a week. On Thursday, November 2, 2006, he was given a regular mattress, sheets and blankets, and placed in a regular cell, with door check at 15-minute intervals.

64. On the evening of November 3, 2006, Mr. Brown made a telephone call to Bethany Berry and assured her that he would begin taking his medications, which he had not taken for an extended period of time. One hour after this telephone call, Mr. Brown was again placed on suicide watch, "per order of the Warden." As part of this placement, Mr. Brown was to be given no access to visitors or telephone calls until cleared by the Warden and Mental Health.

65. On November 8, 2006, it was noted in an e-mail written by an individual in charge of interstate transfer of Maine prisoners, that "I received a call from Warden Jeffrey Merrill....who indicated that it is very urgent that we transfer this prisoner [Deane Brown] today or tomorrow at the latest."

66. Another Administrative Segregation Review meeting was held on November 9, 2006, and the basis for placement was, once again, "Pending investigation." At this meeting, Mr. Brown made the following statement: "I've done nothing wrong. O'Farrell told me that he would let me know what was going on by the end of last week. He hasn't seen me yet. I'm not trying to kill myself. I'm choosing not to fight to live." Mr. Brown's status was also raised to Escape Risk at this time.

67. On November 11, 2006, the undersigned filed a Maine Freedom of Access Request, requesting copies of all records pertaining to Deane Brown, "including but not limited to disciplinary reports and documents pertaining to Mr. Brown's recent transfer to solitary confinement and Mr. Brown's communication with members of the press.

68. Another Administrative Segregation Review meeting was held on November 13, 2006. The minutes of this meeting noted that the matter is "pending investigation," that the prisoner "waived his right to appeal," and that "the prisoner may constitute an escape risk if in a less restrictive status," and "may constitute a threat to the security or orderly management of the facility if in a less restrictive status."

69. On November 13, 2006, Captain David George delivered Mr. Brown to the custody of the Reception and Diagnostic Center in Baltimore, Maryland, although the Certificate of Transfer out of the Maine Interstate Compact Office, signed by Captain George, stated that he delivered the prisoner on November 11, 2006. Whether Mr. Brown was transferred on November 11 or 13, Ms. Berry, who holds Mr. Brown's power of attorney, was not notified of this transfer, even as she attempted to see him on the day of his transfer. The undersigned, who was then on record as Mr. Brown's attorney, was not notified.

70. For at least ten days before the date that Mr. Brown was transferred to the Maryland prison, and for five days after, the undersigned repeatedly tried to confirm with the Department of Corrections whether Mr. Brown had been transferred or was still in Maine. No response was received. On or about November 18, 2006, the undersigned was finally notified by the Office of the Attorney General that Mr. Brown had been transferred to the Maryland Correctional Center in Baltimore, Maryland.

CAUSES OF ACTION

71. Mr. Brown re-alleges and incorporates by reference all averments of the preceding paragraphs of this complaint as fully set forth herein. All Defendants have acted under the color of state law at all times referenced in this complaint. With respect to each of the following claims, Defendants engaged in conduct with malice and reckless or callous indifference to the constitutional rights of Plaintiff.

COUNT I

Denial of Access to the Media in Violation of the First and Fourteenth Amendments, Maine State Constitution and 42 U.S.C. § 1983 by All Defendants

72. Mr. Brown, a jailhouse correspondent, was ordered to cease his communication with the media, an order made without any justifiable cause. Furthermore, he was informed that under Departmental policy, “[a] prisoner may not act as a reporter, publish under a byline or act as an agent of the news media,” in violation of the First and Fourteenth Amendments and 42 U.S.C. § 1983.

COUNT II

Retaliation and Deliberate Indifference **Violations of the First, Eighth and Fourteenth Amendments,** **42 U.S.C. § 1983, 42 U.S.C. § 1997(d), and departmental policies and procedures.** **(All Defendants)**

73. Defendants knowingly and intentionally engaged in a deliberate abuse of the power granted to them by the state by retaliating against Mr. Brown because of his contact with the press at which time he disclosed the nature of human rights abuses that were occurring in the Maine State Prison, and because of his numerous grievances related to prison conditions, by repeatedly labeling him as a security risk with no evidence to support the charge, and disciplining him through placement in Administrative Segregation, in violation of Plaintiff's clearly established constitutional rights under the First, Eighth and Fourteenth Amendments and 42 U.S.C. § 1983.

74. Defendants knowingly and intentionally targeted Plaintiff for a speedy transfer to a "distant location" because of his exercise of his right to communicate with the press to speak out on abuses within the prison, and his right to file grievances regarding prison conditions, in violation of Plaintiff's clearly established constitutional rights under the First, Eighth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

75. Defendants' suppression of Plaintiff's speech through practice and policy is an unwarranted and unconstitutional response to penological interests and offends the First Amendment and 42 U.S.C. § 1983, as well as 42 U.S.C. § 1997(d) ("No person reporting conditions which may constitute a violation under this subchapter shall be subjected to retaliation in any manner for so reporting") and the Department of Corrections' own

regulation (“No prisoner or resident filing a grievance in good faith shall be subjected to retaliation in the form of an adverse action or a threat of an adverse action for using the grievance process...”) Department of Corrections Policy and Procedure Manual, Subsection 29.1 (VI)(A)(9).

COUNT III
Fourteenth Amendment Due Process
Of Law Violations by All defendants

76. On at least one occasion, Defendants made it impossible for Plaintiff to complete the grievance process, when prison personnel refused to return grievance forms so that Mr. Brown could, as directed by the Prison Administrative Coordinator, attempt to resolve the matter informally with the Unit Manager. At that time, Mr. Brown was forced to file yet another grievance about the refusal to return the earlier grievance forms, producing yet more hurdles for him to overcome in order to follow the administrative grievance process, in violation of the Fourteenth Amendment and 42 U.S.C. § 1983.

77. Plaintiff was unjustifiably transferred to a distant prison without any notice or knowledge of the reasons for the transfer and without any opportunity to appear before an administrative body, in retaliation for his communications with the media, in violation of the Fourteenth Amendment and 42 U.S.C. § 1983.

78. Defendants repeatedly committed gross procedural due process violations regarding notice and processing of grievances filed by Plaintiff in violation of the Fourteenth Amendment and 42 U.S.C. § 1983.

COUNT IV
Eighth Amendment Violations by All Defendants

79. During the period from at least April 2005 to mid-November 2006, Plaintiff was repeatedly subjected to cruel and inhumane treatment, to wit his unjustified placement

on 24-hour watch, 15 minute logged watch and in Administrative Segregation, in violation of the Eighth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

WHEREFORE, Plaintiff Deane Brown requests the following relief from this Court:

1. A declaratory judgment that the practices, acts and omissions complained of herein violated Plaintiff's rights under the U.S. Constitution and federal and state laws and regulations.
2. Compensatory damages against Magnusson, Merrill, O'Farrell, Riley, Cutler, Starbird, Ross, Worcester and Does I – V on Counts I-IV in their individual capacities.
3. Punitive damages against Magnusson, Merrill, O'Farrell, Riley, Cutler, Starbird, Ross, Worcester and Does 1- V on Counts I-IV in their individual capacities.
4. Reasonable attorney's fees and costs pursuant to 42 U.S.C. sec 1988; and
5. Such further relief as the Court may deem just and proper.

DEANE BROWN, PLAINTIFF

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