

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 06-cv-01197-WDM

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, INC., a
Colorado not-for-profit Corporation and
TAYLOR PENDERGRASS,

Plaintiffs,

v.

LOU VALLARIO, in his official capacity as Sheriff of Garfield County, Colorado

Defendant.

SUPPLEMENTAL DECLARATION OF TAYLOR S. PENDERGRASS

Taylor Scott Pendergrass, under penalty of perjury, states as follows:

1. In preparation for hearing and testimony on June 27, 2006, I have reviewed the Affidavit of Scott Dawson.

SUPPLEMENTAL FACTS REGARDING POLICY AS OF JUNE 15, 2006

2. The ACLU receives thousands of requests for legal assistance a year. In my role as staff attorney, I review these requests for assistance, approximately half of which come from prisoners.

3. From my experiences reviewing requests for legal assistance, investigating those requests, and interviewing prisoners and ex-prisoners, I am acutely aware that a significant number of prisoners in Colorado's prisoners and county jails are poorly educated, are barely literate or functionally illiterate, and/or have forms of developmental and mental disabilities.

4. I am aware of this fact because many of the prisoners inform me of their disabilities in their letters. Even when the prisoners do not expressly acknowledge these problems, their letters often reflect difficulty forming thoughts or cogent ideas, and/or severely reduced literacy. I am also aware of this fact because I have requested and reviewed the medical and mental health records of a large number prisoners and have personally spoken with prisoners and former prisoners.

5. In my experience, prisoners who have trouble communicating for any of the above reasons are often in the most dire need of assistance.

6. With regard to those prisoners in Garfield County Jail who have indicated that they are interested in obtaining legal assistance from ACLU attorneys, I know that a number of them are poorly educated, are barely literate or functionally illiterate, and/or have mental disabilities and some of them have diagnoses of significant mental health disorders that can easily interfere with their ability to engage in written and even oral communication that requires attention to detail.

7. Indeed, some prisoners who have indicated in an initial letter that they are interested in ACLU legal assistance have not adequately responded to follow-up letters asking them to provide additional details in writing. Yet when I have subsequently had the opportunity to interview the same prisoner in a face-to-face setting, it is clear that 1) the prisoner wanted to communicate additional details; and 2) the prisoner was able to do so only in a face-to-face interview. For that reason, even if jail officials consistently respected the confidentiality of correspondence between ACLU lawyers and prisoners, communication by mail is not an adequate means of investigating and following up on the issues the prisoners have indicated they wish ACLU lawyers to investigate.

8. Furthermore, many of the prisoners who write the ACLU for assistance are also simultaneously writing multiple other organizations. It is not uncommon for me to receive requests for assistance that are addressed to many organizations including the ACLU, such as newspapers or other press outlets, Amnesty International, the Attorney General's Office, the Office of Attorney Regulation Counsel, the Colorado Criminal Justice Reform Coalition, Colorado CURE, and many other governmental and non-governmental organizations. I believe these prisoners might have difficulty remembering all the organizations from whom they have requested assistance.

9. Commander Dawson has indicated that the latest jail policy is that "Jail staff members ask inmates for the name of their attorney, or the name of any group or attorney from whom the inmate is seeking legal representation." Dawson Affidavit ¶ 16.

10. I have no doubt that some prisoners who have requested the ACLU's assistance and who want to meet with me will not understand how to "correctly" answer this question. Just as Mr. Vandehey almost failed to say the "magic words" that opened the door to an attorney interview earlier this month (See Declaration of Taylor S. Pendergrass, ¶¶ 54-56), there is a substantial risk that prisoners who have communicated less frequently with ACLU lawyers than Mr. Vandehey may not provide the "correct answer" to the new question.

11. I don't believe that all prisoners will necessarily understand that they are seeking "legal representation" from "a group" when they ask the ACLU for help, nor will they necessarily remember my name or Mr. Silverstein's name. Indeed, if prisoners who were previously unfamiliar with the ACLU wrote to our organization because of advice from a

more knowledgeable prisoner, the prisoner might have forgotten my name or the name of the ACLU and not respond “correctly” to the deputy’s question.

12. For all the above reasons and based on my experience communicating with prisoners, I believe that many of the prisoners may not understand the question that Commander Dawson now states will be asked as a prerequisite to attorney interviews. This is especially true because it appears that prisoners will be asked the question without being informed that an attorney is present at the jail and willing to meet with them, nor will prisoners know that they may receive an attorney visit if they answer the question “correctly.” I believe that if this policy is enforced, prisoners will be denied their right to meet with me in a confidential setting.

13. Furthermore, I understand from Commander Dawson’s affidavit that the Garfield County Jail has had three different policies on attorney visits in less than a 60 day period. None of these changes have been put in writing, and no notice was given prior to any of these changes.

14. Therefore, I feel it absolutely necessary that the court enter an order that forbids a repetition of what happened to me on June 15, 2006. Without such an order, this unwritten policy can be changed again at any time, without prior notice, preventing me from meeting in a confidential setting with prisoners. This has already happened once and can happen again without the Court’s intervention.

SUPPLEMENTAL FACTS REGARDING JUNE 15, 2006 MEETING

15. At the June 15, 2006 meeting with Sheriff Vallerio, Denise Lynch, Sgt. Erpestad, Commander Dawson, the Undersheriff, and the four ACLU staff members, I instructed ACLU law student intern Lauren Fontana to take detailed contemporaneous notes on her

laptop computer during the meeting. I reviewed these notes on the evening of June 15, 2006 and found that they memorialized my precise recollection of that meeting without error. I read those notes again when preparing this declaration.

16. At that meeting, there was discussion about between Mr. Silverstein and Sheriff Vallario about the fact that Mr. Silverstein and I had been allowed to meet with prisoners on May 11, 2006, without those prisoners first being asked “Who is your attorney?” before being allowed to meet with us.

17. Sheriff Vallario indicated that the policy that prevented me from visiting three prisoners on June 14 was the same policy that was in place on May 11, 2006. He acknowledged that the policy was not followed on May 11, and he further responded with the following words or words to this effect: “the time you visited us here before and allowed access was not appropriate—but that is an internal matter for us to deal with.” At no time during the meeting did the Sheriff, Ms. Lynch, Commander Dawson or any other Garfield County official state that this was a new policy put in place after May 11, 2006. The first time I had ever heard this was upon reading Commander Dawson’s affidavit.

18. During the meeting, the Sheriff said that the policy was established “because it too easy for someone just to come in and say they are representing someone.” At one point, Ms. Lynch justified the policy by stating that it protects the prisoners. She said: “What if they [the prisoners] don’t want to meet with you? We are protecting the inmates.”

19. During this meeting, the Sheriff mentioned staff resources only once, in the context of discussing an issue that is not before the Court today. He stated that conducting simultaneous, face-to-face interviews in separate locations in the jail was not

possible because it took “too much manpower.” This was the only time the Sheriff, Ms. Lynch, Commander Dawson or any other Garfield County officials at that meeting mentioned anything about staff resources.

20. Despite our repeated requests for an explanation of the rationale underlying the policy, at no time during our meeting did the Sheriff, Ms. Lynch, Commander Dawson or any other Garfield County official state that the policy that prevented my visits was instituted because of a recent staff shortage. The first time I had ever heard of this “staff shortage” rationale was upon reading Commander Dawson’s affidavit.

June 27, 2006.

Signed,

s/ Taylor Pendergrass

A handwritten signature in black ink, appearing to read 'JP' with a stylized flourish extending to the right.

Taylor Pendergrass #36008
Staff Attorney
American Civil Liberties Union Foundation
of Colorado, Inc.