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TESTIMONY BEFORE JUDICIARY COMMITTEE
HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
OCTOBER 14, 1999

SUBJECT—THE ESCAPE OF NORMAN JOHNSTON FROM THE STATE CORRECTIONAL INSTITUTION AT HUNTINGDON-- AUGUST 1 AND 2, 1999.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, COLLEAGUES AND GUESTS. I AM ROBERT B. STEWART, III, DISTRICT ATTORNEY OF HUNTINGDON COUNTY.

MY TESTIMONY TOUCHES AND CONCERNS THE PROBABLE MANNER WHEREBY INMATE JOHNSTON RECEIVED THE IMPLEMENTS USED BY HIM IN MAKING HIS ESCAPE FROM SCI HUNTINGDON.

FOLLOWING INMATE JOHNSTON'S ESCAPE, I CONSULTED EXTENSIVELY WITH THE PENNSYLVANIA STATE POLICE AT HUNTINGDON, THE STATE POLICE FUGITIVE TASK FORCE, AND PRESENT AND FORMER LAW ENFORCEMENT PERSONNEL IN CHESTER COUNTY, PA. BECAUSE OF MY PRIOR SERVICE AS AN ASSISTANT DISTRICT ATTORNEY IN CHESTER COUNTY, I KNEW OF THE JOHNSTONS AND I KNOW THE POLICE OFFICERS AND FORMER PROSECUTORS WHO WORKED ON THE CASES AGAINST THEM IN THE LATE 1970S AND EARLY 1980S.

AS A RESULT OF DISCUSSIONS WITH CHESTER COUNTY DETECTIVE TED SCHNEIDER AND PSP CORPORAL DOUG GRIMES, I SECURED LETTERS WRITTEN FROM NORMAN JOHNSTON AT SCI HUNTINGDON TO HIS BROTHER, DAVID, AT ANOTHER PRISON. SEVERAL READINGS OF THOSE LETTERS CONVINCED ME THAT THEY WERE WRITTEN IN CODE. VARIOUS PIECES OF INFORMATION I RECEIVED FROM D.O.C. PERSONNEL, THE STATE POLICE AND CHESTER COUNTY AUTHORITIES WERE HELPFUL AND ASSISTED ME IN PARTIALLY DECIPHERING JOHNSTON'S CODE.

HE REFERS TO VARIOUS D.O.C. EMPLOYEES BY NONCOMPLEMENTARY NICKNAMES AND WRITES ABOUT WANTING TO FILE HIS "HABEAS CORPUS" BEFORE CERTAIN D.O.C. PERSONNEL RETIRE. HE ALSO WRITES ABOUT CERTAIN "RESEARCH" AND "RESEARCH MATERIAL" BEING PROVIDED BY THE "LAWYER" OR "LAWYER COMPANY".

FROM THE VANTAGE OF 20-20 HINDSIGHT AND INFORMATION PROVIDED BY D.O.C. INVESTIGATORS WHO WERE FAMILIAR WITH JOHNSTON'S

BEHAVIORS IN PRISON, I LEARNED THAT THE TERM "HABEAS CORPUS" ACTUALLY MEANT A "BREAKOUT ESCAPE"; "RESEARCH MATERIAL " MEANT IMPLEMENTS OF ESCAPE; AND "LAWYER" OR "LAWYER COMPANY" MEANT SOMEONE ON THE OUTSIDE WHO WAS SENDING ESCAPE TOOLS INTO THE PRISON.

I THEN SEARCHED THE PROPERTY OF INMATE JOHNSTON AND SOME OF HIS ASSOCIATES TO SEE IF I COULD FIND ADDITIONAL CLUES AS TO HOW THE ESCAPE IMPLEMENTS GOT INTO SCI HUNTINGDON OR ONCE INSIDE HOW THEY GOT TO INMATE JOHNSTON.

THE INVESTIGATIONS OF THE STATE POLICE AND D.O.C. INVESTIGATORS HAVE CONVINCED ME THAT THERE WERE A GROUP OF INMATES WHO, ALONG WITH INMATE JOHNSTON, ARRANGED TO MOVE VARIOUS IMPLEMENTS FROM VARIOUS LOCATIONS INSIDE SCI HUNTINGDON AND ULTIMATELY TO INMATE JOHNSTON.

SCI EMPLOYEES DO NOT APPEAR TO HAVE BEEN THE MANNER IN WHICH THESE IMPLEMENTS GOT INSIDE. ONE OF JOHNSTON'S ASSOCIATES RECEIVED "LEGAL MAIL" PURPORTEDLY FROM ONE OF THE JOHNSTONS LAWYERS ON THE SAME DAY THAT NORMAN JOHNSTON WROTE HIS BROTHER THAT HE RECEIVED "RESEARCH" FROM THE "LAWYER COMPANY". THIS PARTICULAR INMATE RECEIVED LEGAL MAIL SUPPOSEDLY FROM THIS LAWYER ON TWO OCCASIONS.

I CHECKED WITH BOTH THE ATTORNEY GENERAL'S OFFICE AND THE D.A.'S OFFICE WHICH CONVICTED THIS INMATE ASSOCIATE. THIS LAWYER HAD NOTHING TO DO WITH THIS CASE, OR THIS INMATE.

INMATE JOHNSTON HAD PREVIOUSLY USED A "LEGAL BRIEF" AS A METHOD OF SMUGGLING DRUGS AND ESCAPE TOOLS LAST YEAR. A SEARCH OF THE ASSOCIATE'S PROPERTY REVEALED 36 PAGES OF PAPER SUPPOSEDLY LEGAL MATERIALS HOT GLUED TOGETHER AND RIPPED OUT OF A PLASTIC BINDER. THESE 36 PAGES CONTAINED THE SAME MATERIAL THAT JOHNSTON HAD USED IN HIS SMUGGLING THE YEAR BEFORE.

ALTHOUGH I DO NOT HAVE EVIDENCE SUFFICIENT TO TAKE INTO A COURT ROOM AGAINST OTHER PERSONS AT THIS TIME, I AM CONVINCED THAT SOME OF THE ESCAPE IMPLEMENTS USED BY INMATE JOHNSTON WERE MAILED INTO SCI HUNTINGDON BY SOMEONE PROBABLY USING OR MAKING AN ATTORNEY'S ENVELOPE, AND MAILING THIS FICTITIOUS BRIEF. THIS "BRIEF" CONTAINING THE IMPLEMENTS WAS HANDED OVER TO THE ASSOCIATE WITH THE CONTRABAND HIDDEN INSIDE THE PAGES BOUND AND GLUED TOGETHER.

ONCE INSIDE THE PRISON, THIS MATERIAL WAS MOVED BY INMATES OR POSSIBLY STAFF OR BOTH UNTIL IT REACHED ITS DESTINATION, INMATE JOHNSTON.

UNDER THE PRESENT REGULATIONS, INMATE LEGAL MAIL CAN BE OPENED IN THE PRESENCE OF THE INMATE RECIPIENT, EXAMINED FOR CONTRABAND, THEN HANDED OVER TO THAT INMATE. LEGAL MAIL CANNOT BE READ BY D.O.C. PERSONNEL. IN MY OPINION,IF THAT MAIL HAD BEEN READ, EVEN IN A CURSORY FASHION, ALMOST ANYONE COULD HAVE SEEN THAT THIS BRIEF WAS LEGAL NONSENSE AND UPON FURTHER INVESTIGATION, THESE ESCAPE TOOLS MIGHT HAVE BEEN DISCOVERED.

I HAVE INCLUDED COPIES OF PAGES FROM JOHNSTON'S ASSOCIATE'S PROPERTY AND COPIES OF PAGES FROM THE BRIEF JOHNSTON USED IN 1998. BECAUSE I AM CONTINUING TO INVESTIGATE THE INVOLVEMENT OF OTHER PERSONS IN INMATE JOHNSTON'S ACQUISITION OF ESCAPE MATERIALS, I AM NOT WILLING TO IDENTIFY FURTHER THE SUBJECTS OF MY INVESTIGATION.

I RECOMMEND THAT THE REGULATIONSGOVERNING LEGAL MAIL BE AMENDED TO ASSURE THAT LEGAL MAIL FOR INMATES IS COMING FROM LEGITIMATE LEGAL SOURCES AND THAT INMATES' PROPER ACCESS TO LAWYERS AND LEGAL MATERIALS IS NOT BEING USED AS A METHOD OF SMUGGLING CONTRABAND.

BRIEFS AND TRANSCRIPTS, WHICH ARE NOT CONFIDENTIAL AND ARE MATTERS OF PUBLIC RECORD, SHOULD BE ABLE TO BE READ, BY APPROPRIATELY TRAINED STAFF. NO LEGAL MATERIAL SENT TO ANY INMATE NEEDS TO BE BOUND. INMATE MAIL SHOULD BE ABLE TO BE X-RAYED OR FLORESCOPED.

AFTER MY SERVICE IN THE CHESTER COUNTY D.A.'S OFFICE, I CAME HOME TO HUNTINGDON AND WAS A DEFENSE ATTORNEY FOR 16 YEARS, INCLUDING 12 YEARS IN THE PUBLIC DEFENDER'S OFFICE, IN SERVICE AS CHIEF PUBLIC DEFENDER. DURING THAT TIME I REPRESENTED MANY INMATED CHARGED WITH CRIMES IN SCI'S HUNTINGDON AND SMITHFIELD, AND HANDLED MANY PAROLE CASES AT BOTH INSTITUTIONS.

I RECITE THIS EXPERIENCE SO THAT YOU WILL UNDERSTAND THAT LAWYERS WOULD NOT SEND CONFIDENTIAL MATERIALS IN TO INMATES IN BRIEFS OR TRANSCRIPTS. THOSE TYPES OF THINGS ARE FILED IN COURTS OF RECORD AND ARE AVAILABLE FOR PROSECUTORS AND THE PUBLIC IN GENERAL TO READ. THE CHANGES THAT I SUPPORT WILL NOT DIMINISH THE PROCEDURAL AND SUBSTANTIVE RIGHTS THAT ANY OF OUR CITIZENS HAVE.

THIS ESCAPE OCCURRED AS A RESULT OF A SERIOUS AND CONCERTED EFFORT BY A GROUP OF INMATES. TO THE EXTENT THAT LAW ENFORCEMENT CAN SECURE CREDIBLE EVIDENCE AGAINST ALL PERSONS INVOLVED, ALL LEGALLY APPROPRIATE PROSECUTIONS WILL BE FILED AND BROUGHT TO COMPLETION.

TO THE EXTENT THAT YOUR COMMITTEE HAS OVERSIGHT OVER THE STATUTES AND REGULATIONS THAT GOVERN STATE PRISONS, I RECOMMEND THAT YOU CONSIDER THIS CHANGE THAT I HAVE PROPOSED AS WELL AS THE CHANGES IN THE LAW RECOMMENDED BY SECRETARY HORN.

ONCE JOHNSTON EFFECTED HIS ESCAPE, THE RESPONSE OF STATE, LOCAL, AND FEDERAL LAW ENFORCEMENT WAS IMMEDIATE AND DIRECT. ALTHOUGH JOHNSTON GOT AWAY FROM TWO PARK POLICE OFFICERS, THE RELENTLESS PRESSURE PUT ON BOTH HIM AND HIS ASSOCIATES LED DIRECTLY TO HIS APPREHENSION. I BECAME PERSONALLY AWARE OF A GREAT VOLUME OF INFORMATION WHICH WENT TO THE FUGITIVE TASK FORCE FIRST AT HUNTINGDON, THEN IN SOUTHERN CHESTER COUNTY, INCLUDING INFORMATION DEVELOPED BY THE STATE POLICE HERE, BY MY OFFICE AND BY D.O.C. INVESTIGATORS

YOU ALSO SHOULD KNOW THAT SCI HUNTINGDON IS A WELL-RUN, WELL-ADMINISTERED PRISON. THE PEOPLE WHO WORK HERE TAKE GREAT PRIDE IN THEIR PROFESSIONALISM AND SINCERELY REGRET THE COMBINATION OF FACTORS WHICH LED TO THIS ESCAPE, SOME OF THOSE FACTORS SUCH AS THE INMATE LEGAL MAIL RULES BEING BEYOND THEIR ABILITY TO CONTROL.

NO PRISON IS ESCAPE PROOF. WHEN ESCAPES HAVE OCCURRED, THE RESPONSE OF LAW ENFORCEMENT IN HUNTINGDON COUNTY HAS BEEN SWIFT AND USUALLY EFFECTIVE. IT WILL CONTINUE TO BE SO.

IN CONCLUSION, I WISH TO THANK YOU FOR THIS OPPORTUNITY TO TESTIFY.

RESPECTFULLY,

ROBERT B. STEWART, III
HUNTINGDON COUNTY
DISTRICT ATTORNEY

EXERPT FROM JOHNSTON'S LEGAL BRIEF USED IN THE SMUGGLING EPISODE IN 1998

SUMMARY OF THE ARGUMENT

Judge McGregor erred in ruling that the Commonwealth would be permitted to impeach Mr. Harris with a conviction for hindering apprehension, not crimen falsi. As a result of this ruling, Mr. Harris did not testify in his own behalf.

In addition, the judge erred in sustaining the Commonwealth's objection to trial counsel's closing argument to "correct" her recounting of facts and in failing to instruct the jury specifically that Mr. Morris had testified that he was placed on medication shortly before the incident.

69- Petitioner avers that there are numerous other issues of error not having been raised in the lower Court; notwithstanding the numerous requests made by petitioner.

70- Petitioner avers that irreconcilable difference between counsel of record (Samuel C. Stretton, Esq.) and petitioner, and that petitioner has been instructed to raise issues of error on collateral attack; thereby forcing petitioner to run the gamut a second (2nd) time, if petitioner is unsuccessful in his efforts. 3)

IV ARGUMENT

71- Petitioner contends that this Honorable Court should grant petitioner the relief he seeks for any one or more of the following reasons:

a) For judicial economy; i.e., petitioner will ultimately raise the issues of error, even if he is forced to raise the errors in a collateral proceeding (PCRA), which will have the effect of causing the courts to pay present counsel as well as counsel in latter proceedings, not to mention all other court expenses.

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3) Counsel claimed that he could not and/or would not raise the issues, and informed petitioner to raise the issues at a later date.

CONCLUSION

For the foregoing reasons, plaintiff's objections should be overruled and summary judgment should be granted in defendants' favor.

Respectfully submitted,

WALTER W. COHEN
Acting Attorney General

BY: _____

MICHAEL L. HARVEY
Deputy Attorney General
I.D. #30098

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

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Date: February 16, 1996

unrelated grievance in the past"); Redding v. Fairman, 717 F.Supp 1105 (7th Cir. 1983) (prison officials who were defendants in unrelated lawsuits brought by prisoners were not necessarily disqualified from hearing tribunals); Jensen v. Satran, 688 F.2d 76, 78 (8th Cir. 1982)(mere delivery of misconduct report to prisoner does not disqualify officer).

Prisoners facing disciplinary proceedings are also entitled to a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken. Wolff, 418 U.S. at 563. The purpose of a written record is "to insure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly." id. at 565.

Some courts have decided that in order to satisfy this constitutional mandate, prison disciplinary officials must do more than give boilerplate statements that they accept the officer's misconduct report. Rather, they must engage in specific fact-finding, detailing the evidence supporting their verdict. For example, in Dyson v. Kocik, 689 F.2d 466 (3rd Cir. 1982), a prisoner was found guilty of contraband possession and issued a written statement indicating, "Inmate is guilty of misconduct as written." id at 468. The Third Circuit remanded the case back to the district court concluding that "the rationale which supports the findings in this case is so vague that the verdict constitutes a violation of the minimum requirements of due process." id at 468. See also Redding v. Fairman, 717 F.2d 1105, 1116 (7th Cir. 1983); Hayes v. Walker, 555 F.2d 625, 633 (7th Cir. 1977)("Rather than pointing out the essential facts upon which inferences were based, the committee merely incorporated the violation report and the special investigator's report. This general finding does not ensure that prison officials will act fairly."). Other courts, however, have accepted lower levels of specificity. See Brown v. Frey, 807 F.2d 1407 (8th Cir. 1986); Mujahid v. Apao, 795 F.Supp 1020, 1027 (D. Hawaii 1992). The Supreme Court will likely revisit this issue in the future to determine the amount of factual specificity required.

The purpose of mandating due process procedures in prison disciplinary hearings is to minimize the possibility of erroneous deprivations of liberty and convey a sense of fundamental fairness. In some cases, however, an accused prisoner can receive all the Wolff procedural safeguards (notice, impartial tribunal, witnesses, and written statement) and still be denied due process if there exists no evidence to support a disciplinary action. See Superintendent v. Hill, 472 U.S. 445 (1985).

In Hill, a prison guard happened upon an inmate named Stephens who was bleeding from the mouth and suffering from a swollen eye. The guard saw three inmates running from the scene. Based upon those observations, the guard concluded that Stephens had been beaten by the other three. At their disciplinary hearings, the accused prisoners declared their innocence, and Stephens gave written statements that they had not caused his injuries. Nonetheless, the disciplinary board found the accused inmates guilty as charged. 472 U.S. at 447-448. Considering whether the disciplinary board's finding had sufficient evidentiary support to satisfy due process, the Supreme Court held that although "the evidence in this case might be characterized as meager, and there was no direct evidence identifying any one of three inmates as the assailant, the record is not so devoid of evidence that the findings of the disciplinary board were

IV. ARGUMENT

A. THE COURT WAS CORRECT IN DENYING DEFENDANT'S MOTION TO DISMISS ALL PENNSYLVANIA CHARGES BASED UPON AN ALLEGED VIOLATION BY DELAWARE AUTHORITIES OF THE INTERSTATE AGREEMENT ON DETAINER.

Kroepil first contends that Pennsylvania improperly obtained temporary custody of him from Delaware in violation of the Interstate Agreement on Detainers ("Detainer Agreement"). He asserts that because he did not receive a Delaware hearing pursuant to the Uniform Criminal Extradition Act ("Extradition Act")[1] prior to his being transported to Pennsylvania, he must now be returned to Delaware and all Pennsylvania convictions be dismissed. This assertion is patently meritless.

Kroepil relies on the recent case of Adams v. Cuyler, 449 U.S. 433, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981), to support his prayer for relief. This reliance is misplaced. In Adams, the court simply held that a federal civil rights action may be brought by an individual who did not under Section 9131 of the Extradition Act receive a hearing prior to his transfer from the sending to the receiving via the Detainer Agreement.[2]

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[1] Pennsylvania and Delaware have both enacted these uniform laws. The respective Detainer Agreements are found at 42 Pa.C.S.A. §9101 et seq. and at 11 D.C.A. §2540 et seq. The respective Extradiction Acts are found at 42 Pa. C.S.A. §9121 et seq. and at 11 D.C.A. §2501 et seq.

[2] Prior to the Adams decisions, many, if not most, jurisdictions viewed the two statutes as operating in independent spheres, with the Retainer Act covering situations where the individual sought was a sentenced prisoner, and the Extradition Act covering all other cases.

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PAROLE RELEASE AND OMMUTATION DECISIONS

Whether and to what extent the due clause applies to parole release was addressed by the Supreme Court cases, one involving Nebraska see Greenholtz v. Inmates of Penal & Correctional Complex, (1979) and the other concerning risoners. See Board of Pardons v. U.S. 369 (1987). In each case, leged that state officials violated enth amendment rights by parole hearings which failed to satisfy due proces

In both deci made clear that pri protected liberty inter Constitution itself, in ob See Allen, 482 U.S. at 373 a parole system by itself to a constitutionally interest in parole release U.S. at 7 ("there is no con inherent right of a convicted conditionally released before the of a valid sentence."). The Court that a prisoner's conviction, with procedural safeguards, has extinguish liberty interest in being released. Greenholtz, 442 U.S. at 7.

Although there is no constitutional entitlement to parole, the Supreme Court found in both cases a liberty interest, grounded in state law, sufficient to trigger the application of due process. Thus, a Nebraska statute mandating that the Board of Parole "shall" release the offender absent specific findings for continued incarceration created a legitimate expectation or entitlement to release that "is entitled to some measure of constitutional protection." Greenholtz, 442 U.S. at 11-12. In similar fashion, a Montana law specifying that its Board of Pardons "shall" release on parole a prisoner who is "able and willing to fulfill the obligations of a law-abiding citizen" also created a protected liberty interest. Allen, 482 U.S. at 376-379.

Having found a protected liberty interest, the Greenholtz Court then considered what procedures were necessary to ensure that the prisoner's interest was not arbitrarily abrogated. The Court again acknowledged that due process is flexible and dependent on the particular situation. Greenholtz, 442 U.S. at 12. Applying the

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Whether and to what extent the due process clause applies to parole release decisions was addressed by the Supreme Court in two cases, one involving Nebraska prisoners, see Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1 (1979) and the other concerning Montana prisoners. See Board of Pardons v. Allen, 482 U.S. 369 (1987). In each case, prisoners alleged that state officials violated their fourteenth amendment rights by conducting parole hearings which failed to satisfy due process requirements.

In both decisions, the Supreme Court made clear that prisoners do not enjoy a protected liberty interest, emanating from the Constitution itself, in obtaining parole release. See Allen, 482 U.S. at 373 ("**the presence of a parole system by itself does not give rise to a constitutionally protected liberty interest in parole release**"); Greenholtz, 442 U.S. at 7 ("**there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.**"). The Court reasoned that a prisoner's conviction, with all its procedural safeguards, has extinguished his liberty interest in being released. Greenholtz, 442 U.S. at 7.

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when its statutes or regulations contain: (a) "substantive predicates" which limit official discretion; and (b) "explicit mandatory language" that requires a particular outcome upon a finding that the predicates or criteria have been met. id. at 463. Applying this standard to the case before it, the Supreme Court agreed that the Kentucky regulations before it -- which listed specific reasons for denying visitation -- did contain substantive predicates or criteria which limited official discretion id. at 463-464. However, since the regulations provided that visitors "may" be excluded and that "administrative staff reserves the right to allow or disallow visits," the Court concluded that the requisite mandatory language necessary to find a state-created liberty interest was lacking. id. at 464-465.

Post-Thompson decisions have reached diverse results regarding the application of due process to the suspension of visitation privileges. This is not surprising given the existence of hundreds of state and county prison systems operated pursuant to its own statutes and regulations. Some courts have found the magical combination of substantive predicates and mandatory language in visitation regulations to justify procedural safeguards. See Mendoza v. Blodgett, 960 F.2d 1425, 1432 (9th Cir. 1992); Patchette v. Nix, 952 F.2d 158, 161 (8th Cir. 1991); Van Poyck v. Dugger, 779 F.Supp 571, 576 (M.D. Fla. 1991). Other courts, however, have reached opposite conclusions. See Cromwell v. Coughlin, 773 F.Supp 606, 611 (S.D.N.Y. 1991). Once again, whether a State creates a liberty interest rests upon the use of explicitly mandatory language in combination with specific substantive predicates limiting official discretion.

The Supreme Court's 1995 decision in Sandin v. Conner, 115 S.Ct. 2293 (1995) calls into question the validity of these decisions. As noted previously, under Sandin, prisoners claiming due process violations must not only prove that state statutory or regulatory measures contain mandatory language and substantive predicates limiting official discretion, they must also prove that the entitlement or benefit revoked "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." 115 S.Ct. at 2300.

Whether the suspension of visiting privileges constitutes an "atypical and significant hardship" is a question the lower courts will decide. Some judges may very well exempt all suspensions of visiting privileges from due process protection under Sandin regardless of whether state law restricts official discretion. Other judges may make distinctions between short- and long-term suspensions of visiting privileges with only the latter satisfying the "atypical and significant hardship" standard. Prior to filing litigation, prisoners should conduct extensive post-Sandin research to find out what trends, if any, are emerging in this area.

Assuming a prisoner can meet the "atypical and significant hardship" standard of Sandin, he or she must still point to state law which contains both mandatory language and substantive predicates limiting official discretion. Here, the Pennsylvania Department of Corrections has distributed written regulations governing visitation privileges to the prisoner population. Internal staff memoranda regarding prisoner visits and the suspension of visitation privileges may also exist. Whether these regulatory measures entitle prisoners to due process is unknown, although one district judge has casually remarked, without analysis, that this regulation "does not place substantive limits on official discretion of a type sufficient to create a liberty interest." Buehl v. Lehman, 802

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Norman Johnston
No. P-4683
P.O. Box 9901
Pittsburgh, Pa.
15233

April 9, 1981

Mr. Donald M. Moser, Esquire
Washington West Building
Northeast Corner 8th and Locust St.
Philadelphia, Pa. 19106

Re: United States vs. Norman Johnston, et al.
Criminal Action Nos. 78-304 and 79-08

Dear Mr. Moser:

I am in receipt of your correspondence dated April 1981, advising me that you have accepted the appointment in this matter.

I certainly appreciate you accepting my case, I'm n totally oblivious to your grandiose reputation as a lawyer I look forward to meating you.

In accordance with your request as to the names and addresses of prior attorneys. I have been represented by t prior attorneys, first was, David Garfunkel, Esquire, Addre Ste. 300 -3 Penn Center Plaza, Philadelphia. My second att ney was, Barbara S. Rosenberg, Esquire, Address 230 South 2 Street, Philadelphia, Telephone-No. 567-2421. Mrs. Rosenbe

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ORMAN L. JOHNSTON : CIVIL ACTION

v.

FILED: OCT 18 1995

ILLIAM J. LOVE, et al. : NO. 95-3727

REPORT AND RECOMMENDATION

HOMAS J. RUETER
S. Magistrate Judge

October 18, 1995

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10-19-95

EXERPT FROM THE PAPERS FOUND IN THE PROPERTY OF JOHNSTON'S ASSOCIATE

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Although confinement in administrative egation is generally a temporary restriction ng only a few days or weeks, a growing of prisoners are finding themselves from the general prison population for and years. In this context, the Hewitt made clear that "administrative ation may not be used as a pretext Jefinite confinement of an inmate. officials must engage in some sort of .e review of the confinement of such ." 459 U.S. at 477, note 9.

The Third Circuit has confronted this in several cases. In Mims v. Shapp, 946 (3rd Cir. 1984) a prisoner had ufined in administrative custody for years due to his participation in the of two corrections officials at burg Prison. At issue was whether fficials could rely upon their subjective s of the prisoner's dangerousness to him in administrative custody ly. Noting that Hewitt explicitly prison administrators to rely upon ubjective evaluations of prisoners' havior, the Third Circuit rejected the ess challenge. 744 F.2d at 953.

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PRISON TRANSFERS

The reality of today's correctional system is a vast bureaucracy composed of prisons which vary widely in terms of conditions, benefits and location. Prisoners confined today in clean, modern facilities near their families can find themselves unexpectedly transferred tomorrow to a distant 19th century prison wracked by overcrowding and violence. Unfortunately, with but few exceptions, prisoners have no due process rights to a hearing prior to a prison transfer absent a statutory or regulatory entitlement to remain at a particular prison.

In Meachum v. Fano, 427 U.S. 215 (1976) six prisoners brought suit alleging that their transfers from a medium- to a maximum-security prison without adequate hearings violated due process. The Court held that there is no constitutional right which protects **"a duly convicted prisoner against transfer from one institution to another within the state prison system."** id. at 225. The Court reasoned that a prisoner's criminal conviction sufficiently extinguishes his liberty interest to empower the State to confine him in any of its prisons. id. at 224. The Court also rejected the notion that persons who suffer a "grievous loss" by state action are automatically entitled to the procedural protections of the due process clause. id. at 224. **"That life in one prison is much more disagreeable than in another does not in itself signify that a Fourteenth Amendment liberty interest is implicated when a prisoner is transferred to the institution with the more severe rules."** id. at 225. Finally, the Meachum Court distinguished its prior holding in Wolff, finding that Nebraska law created a liberty interest in good-time credits entitled to procedural protections, by noting that **"Massachusetts law conferred no right on the prisoner to remain in the prison to which he was**

cated that Mr. Morris' coat lay in the street for some three s afterward. (Id.).

Mr. Harris told Detective McCauley that Anthony Griffin, Demar ls, Michael Richards, Ronnelle Moses and Alan White had beaten orris. (T.T., 114).

The detective also noted that twenty ($20.00) dollars was the dard price for a unit of crack cocaine on the street. (T.T.,

Danielle Bradley witnessed the incident. (T.T., 132). Mr. s was standing there when Mr. Morris came up the street and talking to him. (T.T., 132-133). Morris pulled something out of his pocket and grabbed Harris' jacket. The two men n a fence and others came up the street and joined the fray. 134, 136).

obert Harris was the last man to get up off the ground. 137). Anthony Griffin and Alan White had taken Morris' and Michael Richards continued to strike Morris when he ed to get up. (T.T., 138-139). All of the men had platted T.T., 140).

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itioner avers that there are numerous other issues of er- not having been raised in the lower Court; notwithstanding the numerous requests made by petitioner.

etitioner avers that irreconcilable difference between counel of record ([redacted], Esq.) and petitioner, and that petitioner has been instructed to raise issues of error collateral attack; thereby forcing petitioner to run the ut a second (2nd) time, if petitioner is unsuccessful in efforts. 3)

IV ARGUMENT

71- Petitioner contends that this Honorable Court should grant petitioner the relief he seeks for any one or more of the following reasons:

a) For judicial economy; i.e., petitioner will ultimately raise the issues of error, even if he is forced to raise the errors in a collateral proceeding (PCRA), which will have the effect of causing the courts to pay present counsel as well as counsel in latter proceedings, not to mention all other court expenses.

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3) Counsel claimed that he could not and/or would not e the issues, and informed petitioner to raise s at a later date.

IV. ARGUMENT

THE COURT WAS CORRECT IN DENYING DEFENDANT'S MOTION TO S ALL PENNSYLVANIA CHARGES BASED UPON AN ALLEGED VIOLATION AWARE AUTHORITIES OF THE INTERSTATE AGREEMENT ON DETAINER.

Kroepil first contends that Pennsylvania improperly ed temporary custody of him from Delaware in violation of terstate Agreement on Detainers ("Detainer Agreement"). erts that because he did not receive a Delaware hearing ant to the Uniform Criminal Extradition Act ("Extradition prior to his being transported to Pennsylvania,[1] he must now turned to Delaware and all Pennsylvania convictions be ssed. This assertion is patently meritless.

Kroepil relies on the recent case of Adams v. Cuyler, S. 433, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981), to support ayer for relief. This reliance is misplaced. In Adams, urt simply held that a federal civil rights action may be t by an individual who did not under Section 9131 of the ition Act receive a hearing prior to his transfer from ding to the receiving via the Detainer Agreement.[2]

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