

## **Middle Ground Prison Reform**

139 East Encanto Drive  
Tempe, Arizona 85281  
(480) 966-8116

[middlegroundprisonreform@msn.com](mailto:middlegroundprisonreform@msn.com)

December 31, 2007

Ms. Dora Schiro  
Director  
Arizona Dept. Of Corrections  
1601 West Jefferson  
Phoenix, Arizona 85007

Ms. Susan Rogers  
General Counsel  
Arizona Dept. Of Corrections  
1601 West Jefferson  
Phoenix, Arizona 85007

In re: UNCONSTITUTIONAL USE OF FOOD AS  
PUNISHMENT AND PUBLIC RECORDS REQUEST

Dear Ms. Schiro and Ms. Rogers:

Some disturbing but, frankly, not surprising, information has come to my attention through various sources. I have been involved in the past with a serious case of the department withholding food from an inmate as punishment.<sup>1</sup> Now, it seems that the Department has learned nothing from its past mistakes and, in fact, has fine-tuned its attempt to illegally / unconstitutionally withhold food as punishment for an inmate's refusal to house (with another inmate), and issued the procedure in writing.

On or about December 12, 2007, Lisa Timmons issued an email memo, entitled "Refusals to House Inmate Directive," to various individuals, including DW Alfred Ramos, at the Lewis Complex/Buckley Unit. This directive was in place as of December 12<sup>th</sup>, and was discussed in detail at an AM Back Briefing on December 23, 2007. Upon information and belief, this "directive" (policy) was not modified or rescinded until at least Friday, December 28, 2007.

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<sup>1</sup> See Brent Summitt's cash settlement with the state; I was the expert witness on DOC policy on the subject matter, "Inmate Refusal to Eat," for attorney Scott Ambrose. Once my testimony / report was presented, the state decided not to proceed to trial.

Based upon his receipt of the email directive on or about December 12, 2007, there is no way that DW Ramos can claim he was unaware of the policy until much later in the month of December (unless he wished to formally admit to incompetence in his supervisory duty). It is unknown to me as to when Warden Rivas became aware of this directive.

The directive in question unconstitutionally links food and housing issues. It formally attempts to legitimize failure by DOC prison guards to provide meals to inmates, based on local institutional bed management/assignment issues. It directs your institutional staff not to feed inmates at all unless the inmate agrees to a bed assignment, even if the inmate has raised a security/safety concern with staff after he has learned about his bed assignment.

### Facts

Because I have obtained information from several sources, and because this case involves several inmates, I will not refer to them individually unless a specific piece of information is necessary.

On or about December 20, 2007, the below listed group of inmates were placed in the RTW (Refuse to Work) OUTDOOR enclosures at Lewis/Buckley Unit. The inmates were in the enclosures from approximately 6a.m. to 6p.m. each day, and were placed in isolation cells at night. During the day, no blankets were provided and, in most cases, the inmates did not have jackets. You may wish to check the weather reports for this period, which was unusually cold and with wind. Taylor, #046474, a diabetic, was not allowed to keep his KOP (keep on person) medication, nor was he provided medication. Campos, #194553, became so distraught that he swallowed some metal screws on or about December 28<sup>th</sup>, in order to be taken from the enclosures and treated as a suicide risk. One inmate, whose name I do not know, attempted to assault one of your guards because he thought his action would cause him to be removed from the enclosures. It did not.

Sgt. Kudis<sup>2</sup> specifically ordered that the men in the RTW enclosures were not to receive blankets or jackets. (They also were not permitted recreation, telephone calls, visits or any property). The order for no blankets or jackets was not based on an analysis of weather conditions, inmate needs, sufficiency of the clothing the inmates were wearing, or any other rational criteria; it is quite clear that it was an attempt to coerce inmates into accepting the local bed assignment in order to obtain relief from exposure to the cold. You may wish to assist your supervisory staff in identifying the "best practice" upon which this procedure is based, as well as the correlative practice in the community as a whole, so as to demonstrate your department's commitment to a "parallel universe" policy.

The directive in question authorized your staff to ask the men if they "*wanted to eat.*" All of the men wanted to eat and continued to advise staff of their desire to eat. In order to be

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<sup>2</sup> Kudis is well known to this writer as a barbarian cretin who was directly involved in the case of inmate Brian Stallings, who received a large cash settlement from the state because Kudis ordered him to be marched across boiling hot blacktop in his bare feet a few years ago (wherein Stallings suffered 2<sup>nd</sup> and 3<sup>rd</sup> degree burns). Kudis was demoted for his actions in the Stallings incident, but apparently has been recognized as "officer" material by your Department once again....

*permitted to eat*, however, the inmates were required to do so in their assigned cell (at the lunch meal), including with the very cellmate with whom they refused to house, and in the “chow hall” with all inmates from their assigned “run”, including those whom they feared (for the dinner meal). The directive expressly prohibits any eating in the RTW enclosure. If the inmate refused the conditions under which they would be permitted to eat, an IR (Incident Report) was written and a disciplinary citation issued. Notations that the inmate “*refused to eat*” were to be made in the journal and in the observation log.

Many of the below listed inmates did receive write-ups for “staff obstruction” or “disobeying an order.” It is unknown how those who did receive write-ups were selected, and some were not. Mr. Taylor, # 046474, who did receive some write-ups, is scheduled for release eligibility on or about January 19, 2008. It is unknown at this time if his recent disciplinary write-ups will negatively affect his pending release date.

Many of your staff were extremely upset with this unconstitutional policy and attempted to discuss it with their supervisors up the chain of command. They were ignored, chastised, or even threatened with disciplinary action.

Sgt. Kudis wrote an IR on CO Davis because she actually did feed the inmates a sack meal on December 21, 2007. CO Johnson fed the RTW men on one of the days, and IR was written with a verbal warning as punishment. Officers Antonio and Lehman attempted to mediate with supervisors, to no avail. Lehman provided sack meals on Dec. 28<sup>th</sup> and was verbally sanctioned by DW Ramos.

Sgt. Lutz, Lt. Weaver, CO II Davis, Lt. Gibbons, CO Lehman, CO Johnson, and CO Antonio<sup>3</sup>, all tried to convince their supervisors that what they were doing was wrong. In addition, CO’s Gray, Mejia, Shalek, Perry and Frisbee all tried to help, but could do nothing because their supervisors would do nothing.

On December 24, 2007, CO Lehman turned in to Sgt. Leikem an IR regarding information she had received which specifically dealt with a threat that had been received by one of the RTW enclosure inmates, Tornambe # 141249, and she named the inmate who had threatened Tornambe. No action whatsoever was taken to remove Tornambe to a DI 67 investigation, as is required by policy.

Captain Kaufman, Sgts. Brown and Kudis, CO II Saunders, CO’s Fink, Tyrell, Fonche, Whiting and Repp knew about what was going on and either expressed no concern or did

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<sup>3</sup> CO Antonio is a former Lt. with the ADOC. He served a term in Iraq and returned to the DOC, but was willing to begin as a CO. He attempted to mediate the situation, to no avail. If someone has been in the war in Iraq and comes home to work for you, advising you that your practices are inappropriate, you ought to listen.

nothing.

FOR APPROXIMATELY EIGHT (8) DAYS, THE INMATES LISTED BELOW DID NOT HAVE MEALS AVAILABLE<sup>4</sup> BECAUSE THEY REFUSED TO HOUSE WITH OR EAT IN THE SAME OPEN AREA (“CHOW HALL”) WITH INMATES WHOM THEY FEARED.

THE “JUSTIFICATION” USED FOR NOT FEEDING THE INMATES WAS THAT THEY “REFUSED TO EAT.”

NONE OF THE PROCEDURES OR POLICY DIRECTIVES OUTLINED IN DEPARTMENT ORDER 1001 AT SECTION 1101.13 “INMATE HUNGER STRIKES” WAS FOLLOWED.<sup>5</sup>

NONE OF THE PROCEDURES OR POLICY DIRECTIVES OUTLINED IN D.O. 807, ENTITLED “INMATES SUICIDE PREVENTION, PRECAUTIONARY WATCHES AND CLINICALLY ORDERED RESTRAINTS” WAS FOLLOWED.<sup>6</sup>

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<sup>4</sup> Except when an honorable employee decided to surreptitiously provide a sack lunch meal to them.

<sup>5</sup> DO 1101.03, “Inmate Hunger Strikes,” requires that if an inmate is “observed” to have been refraining from eating for a period in excess of 72 hours, an entire series of procedures must be implemented, including preparing and submitting a significant incident report in accordance with DO 105; contacting the Senior Chaplain; requiring medical staff to establish the inmate’s base line weight and vital signs, conduct a standard automated chemistry panel, routine urinalysis and chronic disease history; administration of a mental health assessment by a licensed psychiatrist or psychologist; movement of the inmate to a single occupant cell with provision for three meals/day and adequate supply of drinking water; etc. See DO 1101 in its entirety, and especially section 1101.03.

<sup>6</sup> This policy specifically lists “Incidents that may precipitate suicide attempt”

Public Records Request for the Following Documents:

1. Tower Journals/Buckley Unit (period from December 12, through December 30, 2007), including all comments noted.
2. Observation Logs/Buckley Unit (from December 12 through December 30, 2007), including all comments noted.
3. All IR's concerning the below listed inmates (written from 12/12/07 thru 12/30/07)
4. Disciplinary "tickets" issued to all below listed inmates (for any infractions during above listed dates)
5. Post Orders for Buckley Unit (in effect during any dates between 12/12/07 - 12/30/07) covering the issues of "Refusal to House," "Suicide Watch," and "Refusal to Eat."
6. Weekly Audit Reports prepared during the above dates.
7. Incident Reports written on CO's Johnson, Lehman and any other staff who did feed the RTW-enclosure inmates during the time period from 12/12/07 - 12/30/07.
8. Significant Incident Reports as required by DO 1101.03 for all inmates listed below during the time frames listed above.

Inmates

Jesus Campos	#194553	
Raul Cano	#192311	
Angelo Tornambe	#141249	
Gregory Taylor	#046474	(note: this inmate is a diabetic who requires medication and was denied daily medication during 12/20/07 -12/28/07)
John Stoner	#057236	
Samuel Chayrez	#049091	
Adam Silva	#188253	

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including, REAL OR PERCEIVED THREATS FROM OTHER INMATES, NEW LEGAL OR INSTITUTIONAL PROBLEMS, etc.

Shane Parker

#177336

### You Can't Have It Both Ways

EITHER

the inmate is refusing to eat – as was being documented, in these cases, as “*refusing to eat*” – in which case an entire host of formal ADOC policy and procedures directly related to an inmate’s refusal to eat must be instituted (and your department utterly failed to follow or perform any of these procedures or policies, which even provide you with a choice of whether the inmate is on a hunger strike or is to be placed on suicide watch)

OR

the inmate is refusing to do what he is being ordered to do (in this case, house in the bed assigned to him), in which case he is being punished by denial of food, which is patently unconstitutional.

Either way, your department was clearly in the wrong, either for failing to follow hunger strike procedures or for using denial of food as punishment. This is the position adopted by your Buckley administration, right up to DW Ramos.

### The PLRA (Prison Litigation Reform Act)

We at Middle Ground are aware of the PLRA’s physical injury requirement. We don’t know at this time if any of the named inmates (or others of whom we may not be aware who were also subjected to this blatantly unconstitutional policy) suffered actual provable physical harm (not mental or emotional) as a result of their EIGHT DAYS WITHOUT BEING FED. However, they clearly have a right to file a 42 U.S.C. § 1983 Civil Rights Complaint seeking prospective injunctive relief. In other words, while the inmates may not be able to obtain monetary damages from the state for your actions, they may decide to collectively file or individually file to prevent your Department from EVER doing implementing a policy of this nature again. While we are unable to represent these inmates, we would be willing to assist in locating a competent attorney. Any attempt by your Department to interfere with their mail will be met with First Amendment claims by Middle Ground.

### Staff Disciplinary Action That Should Be Taken

Recognizing that the Department has a severe staff shortage and has a well-established but unwritten policy of avoiding firing people who are completely inappropriate for the jobs they hold (*i.e.* Kudis), it is suggested that your staff – all the way up to DW Ramos – be required to attend and complete additional training in honoring the constitutional rights of the inmates under their control. In addition, your staff need to read and understand their own (already existing) written policies. Considering the cost to the Department of the

actions of Sgt Kudis<sup>7</sup> now and in the past, he should be terminated immediately. At the very least, several of these staff members should be placed in jobs with no contact or supervisory capacity over inmates. There is no accounting for the work product and line of thinking of Liza Timmons, and I have to wonder what has been the policy in the past with respect to inmates who refused to house?

#### Administrative Action That You Should Take

With the exception of the initial disciplinary write-up given to each inmate (of the ones who did receive them), all of the subsequent disciplinary write-ups given to all of the inmates involved should be DISMISSED and permanently removed from their records because once the inmate was labeled and recorded as "refusing to eat," he should have been managed under the provisions of DO 1101.03 or, potentially under DO 807.

In addition, you need to set up a formal procedure which supercedes the ordinary chain of command where an line-staff guard or other low-level staff member believes an unconstitutional action or policy is taking place and where his/her immediate supervisor, after having been informed, fails to timely or appropriately address the issue.

#### Summary

The "*parallel universe*" concept, Dora, does not mean that you should aim to replicate Guantanamo Bay or Abu Gharib.

Failure to timely produce the requested public records documents will result in legal action against the Department, and you will be required (by law) to pay our attorney fees for securing the requested information. In the past, I have had to wait an inordinate amount of time to receive requested public records documents from your agency. I will not do so this time.

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<sup>7</sup> Sgt. Kudis has recently been bragging about spraying mace in very close proximity to the eyes of an inmate who was allegedly engaged in "staff assault." The inmate's name and DOC # are unknown to me, but Kudis will know about the inmate he shot with mace at a distance of only a few inches from the inmate's face. Kudis is dangerous and an instigator.

I await your immediate and lawful response to my request for the named public records documents.

I will also be watching your Department for retaliatory conduct directed toward the above listed inmates or toward the staff identified in this document as those who wanted to intervene on behalf of the tortured inmates.

Sincerely,

Donna Leone Hamm  
Director

cc: Interested parties