

FILED

JUN 24 2011

RICHARD W. HENNING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

TODD ASHKER, C58191
DANNY TROXELL, B76578
Box 7500/DI-SHU
Crescent City, Ca. 95532
Plaintiffs, In pro-se

UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TODD ASHKER and DANNY TROXELL,
Plaintiffs,
vs.
EDMUND G. BROWN, JR, et al.,
Defendants.

Case No. CD9-5796 CW

Plaintiffs' Notice & Motion
For Emergency Protective Order
Prohibiting Retaliatory Acts
and Return of Property

To Defendants and their counsel of record, PLEASE TAKE NOTICE:
Pro-se plaintiffs' do hereby respectfully request the Hon. Court
for emergency relief in the form of a protective order enjoining
defendants' agents from retaliating against plaintiffs' in response to
the exercise of their first amendment rights to free speech and
to challenge their conditions of confinement.

And, order defendants' agents to immediately return the property,
including legal-material, wrongfully seized from plaintiffs' on 6/15/11.
The basis for this request for emergency relief is stated below.

I. Summary of Supporting Facts

Plaintiffs' are confined indefinitely in Pelican Bay State Prison, Security Housing Unit [PBSP-SHU], and subject to the severe restrictions therein [for the last 21 years]. They are thus under the full control of defendants and their agents at all times [See Plts' Accompanying Decl's]

Plaintiffs' First Amended Complaint [FAC], basically challenges all aspects of their indefinite (SHU) confinement and related conditions, policies and practices therein; as well as, related parole board issues. The [FAC], names (25) defendants, many of whom are former, and current correctional gang unit [LEU, OSC, SSU, and I.G.I] supervisors and investigators; as well as warden(s), former wardens, and other administrators, and staff.

The [FAC] includes claims re: gang unit staff's illegal acts/omissions, and such includes issues concerning gang validation, re-validation(s), active/inactive gang-status, debriefing [i.e. coercive acts intended to compel SHU-inmates to become notorious informants for the state - and indifference to, and inability to ensure, the safety of said informants and their families]

Notably, plaintiffs' have been before the Court on such claims since May 19, 2004, due to dismissals of most claims - without prejudice - for failure to fully exhaust administrative remedies [See FAC, pp1-5]

Yet, even prior to May 19, 2004, plaintiffs' were collecting material related to such claims [e.g., newspaper, magazine, and internet articles containing relevant information - as part of their investigative information gathering process], and they've continued to do so to this day. Additionally, Mr. Ashker, was a subscriber to the "Daily Journal" legal newspaper for many years, and he had saved

numerous cases published in the papers' "daily appellate report" re: prison condition cases, as well as "continuing education in the law" type articles. [See Plaintiffs' Dec's - Mr. Ashker's, paras[#] 1-6 ; Mr. Troxell's, paras[#] 1-3]

During the past (21) years, the above referenced material was not ever confiscated by prison staff, this includes 100's of cell searches, property-reviews, and investigations - by gang unit staff [Id., Dec's]

In addition to the above legal challenges, plaintiffs have also been very publically critical of Calif prison policies and practices, especially the illegal policies and practices described in their (FAC) - via posting of a summary titled "Formal Complaint", and "Notice of Peaceful Protest To Begin On July 1, 2011" on numerous web. sites [Id., Dec's]

On June 6, 2011, PBSP-SHU, Institutional Gang Unit Staff [I.G.U., Sgts. J. Frisk, J. Pieren, and Officers Morgan, Pimental, and Knight], tore up the plaintiffs' cells and removed all of their paperwork, books and magazines, under a pretext of "investigation" [per Sgt. Pieren, "... because your names are all over the place lately" Id., Plt's Dec's, Mr. Ashker's, paras[#] 9-10; Mr. Troxell's, paras[#] 2, 4, 5]

On June 15, 2011, Sgts Frisk, and Pieren, returned a portion of this property to plaintiffs; and showed plaintiffs (2) large clear garbage bags stuffed full of material they claimed was confiscated - to be trashed - based on such items were "altered material" [i.e., newspaper articles, magazine pgs, etc]; additionally, at least (2) legal booklets were missing, as were personal addressed, letters, wall calendars, body lotion, etc, etc [Id., Dec's, Mr. Ashker's, paras[#] 11-12; Mr. Troxell's, paras[#] 4-6] Additionally, Sgt. Pieren, issued Mr. Ashker, a serious rule violation report - for alleged "promotion of gang activity" based on the Sgt's confiscation of a picture he claimed had a gang symbol on it - which was a legal exhibit

even though such possession of such material has always previously only been cause for issuance of an informational chrono - and fact that possession of such material does not meet criteria for being a "serious" rule violation per C.C.R., Title 15 § 3315 [Id., Ashker Decl., paras #1445; Mr. Troxell's, paras 5-6] Many of the articles, etc., are directly related to the (FAC) claims, and are needed to aid plaintiffs' with their discovery process, as they contain specific references to names, places, dates, statistics, etc., etc., and this pretextual "investigative" search and confiscation of said material is causing harm to plaintiffs' ability to proceed with their discovery process and other case related preparations; and although defendants' agents claimed they'd hold onto such material pending appeal via inmate goz process - this "process" of (gozs) takes months, and plaintiffs don't have "months" to wait to proceed on this case, plus, they worry defendants' and/or their agents will destroy some/all such material once they know their actions are such blatant violations [Id., Decl's]

Thus, emergency relief is necessary to protect plaintiffs' rights, and protect them from immediate, and future harm re: ability to prosecute this case.

II. MEMORANDUM OF POINTS AND AUTHORITIES

The First Amendment forbids prison officials from retaliating against prisoners for exercising the right of Free speech. Farrow v. West, 320 F.3d 1235, 1248 [11th Cir. 2003]; accord, Crawford-El v. Britton, 523 U.S. 574, 588 n.10 [1998]

It is also unconstitutional to retaliate against prisoners for exercising the right of access to the courts [Id., Crawford-El v. Britton, supra; Siggers-El v. Barlow, 412 F.3d 693, 699 [6th Cir. 2005]; DeTomaso v. McGinnis, 970 F.2d 211, 214 [7th Cir 1992]

The Court can enjoin such practices - Gomez v. Vernon, 255 F.3d 1118, 1127, 1129-

1130 [9th Cir. 2001]; Ruiz v. Estelle, 679 F.2d 1115, 1154 [5th Cir. 1982].

Additionally, defendants' agents confiscation of Mr. Ashker's legal exhibit [picture of phoenix bird with shamrock, and related support documents/article - see Ashker Decl. paras 15 a-d], and issuance of a CDC-115 Rule Violation Report classified wrongly as "serious" when possession of such written does not even qualify as any type of reportable CDC-115 offense [neither "administrative", nor "serious" per. CCR, Title 15 §§ 3314 or 3315], with claim such picture promotes gang activity, when in fact the symbolism has many meanings for many people and cultures is the same type of action the Court deemed abusive in Lira v. Cate, USDC-N.D. Cal # 00-0905 S.I. [Order dated 9-30-09 at p#28:1-20] [Id., Ashker Decl, para*15]

And, defendants' agents acts re: confiscation of the articles, pictures, etc., based on pretext that such items were "altered", is also a violation of CDCR - Rules and Regulations, because inmates are allowed to receive articles, etc., from newspapers, magazines, and downloaded from the internet per Dept. Operations Manual [D.O.M.] § 54010.10.

And defendant Lewis, PBSP - Warden, has failed to instruct staff not to confiscate such items [as he was ordered to on 4/26/11, by CDCR-Director Level Staff, See Mr. Crawford's accompanying Declaration, paras 1-2, and exhibit A, attached thereto). All of which supports the need for the relief requested.

CONCLUSION

Good cause being demonstrated, based on this motion, accompanying declarations, and file and record in the case, the pro-se plaintiffs respectfully move the Honorable Court to grant the motion via order deemed just, proper, and equitable.

Dated: June 19, 2011

Respectfully Submitted,

Todd Ashker & Danny Troxell
TODD ASHKER DANNY TROXELL

<5>

Plaintiffs, In pro-se

PROOF OF SERVICE BY MAIL

(C.C.P. Section 101(a) # 2015.5, 28 U.S.C. 1746)

I, Danny Truxell, B76578, am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. I am over eighteen (18) years of age and am a party to the below named action.

My Address is: P.O. Box 7500, Crescent City, CA 95531

On the 20 day of June, in the year of 2011, I served the following documents: (set forth the exact title of documents served)

- ① Plt's Notice & Motion For Emergency Protective Order Prohibiting Retaliatory Acts & Return OF Property ② Decl of Ashker In Support
③ Decl of Truxell In Support ④ Decl of Crawford In Support [w/exh. A]

on the party(s) listed below by placing a true copy(s) of said document, enclosed in a sealed envelope(s) with postage thereon fully paid, in the United States mail, in a deposit box so provided at Pelican Bay State Prison, Crescent City, CA 95531 and addressed as follows:

<u>U.S. District Court</u>	<u>Nicola Roman</u>
<u>1301 Clay St, Ste #400S</u>	<u>att'y at law</u>
<u>Oakland, Ca 94612-5212</u>	<u>180 Grand Ave, Ste 225</u>
	<u>Oakland, Ca 94612</u>

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 20 day of June, 2011.

Signed: Danny Truxell
 (Declarant Signature)

Todd Ashker, C58191
Danny Troxell, B76578
Box 7500/DI-SHU
Crescent City, Ca. 95532
Plaintiffs, In pro-se

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND-DIVISION

TODD ASHKER and DANNY TROXELL,
Plaintiffs,
vs.
EDMUND G. BROWN, JR., et al.,
Defendants.

Case No. C09-5796 CW

Declaration Of Todd Ashker,
In Support Of Motion For
Emergency Protective Order
Prohibiting Retaliatory Acts and
Return Of Property.

I, Todd Ashker, declare:

- 1> That I am a pro-se plaintiff in the above numbered case and I submit this declaration in support of our "Motion For Emergency Protective Order Prohibiting Retaliatory Acts and Return Of Property", based on personal experience, and I am competent, willing, and able to testify to, if called to do so.
- 2> That I have read the above referenced "Motion...", and I hereby verify the statements therein are true and correct pursuant to penalty of perjury.
- 3> That I have been challenging CDCR prison conditions since 1988, and have done so while confined in PBSP-SHU, since May 2, 1990.
- 4> That during the past (23) years of challenging prison conditions, I have

<1>

often found newspaper, magazine, and internet articles, relevant to the issue(s) I'm challenging to be helpful with my investigative, and discovery processes [I know this is true for attorneys too, e.g., the *Brown v. Plata, et al.*, prison overcrowding case [563 U.S. — [2011] May 23, 2011], wherein attorneys for the inmates used former Gov. Schwarzenegger's own public statements re: Calif. Prison overcrowding to constitute a state of emergency, to support the claims [*Id.*, *Brown v. Plata*, 563 U.S. —, at p. 5]]

5) That I've been challenging the issues raised in the (FAC) going back to 1988, and have been in this court on such issues since May 19, 2004 [USDC-N.D. Cal # C04-1967 CW; # C05-3286 CW [at 9th Cir., #10-15911]; and current case], and, had compiled many newspaper, mag., and internet articles directly relating to the claims in this case re: defendants, witnesses, and many publicized incidents about gangs or CDCR - general population prisons; informants being in danger, and being killed in protective custody, and CDCR's publicized indifference, inmates on inactive gang status being denied release from PPSF - situ, even inspite of court orders to do so, and program - privilege issues. All of which are crucial for my investigative/discovery process in this case - many of which I had separated, by category(s), with the case # on envelopes in my cell.

6) That I was also a subscriber for many years - up to 2010 - to the San Francisco Daily Journal, a legal newspaper that includes Daily Appellate Reports of published cases. And, I've collected many "continuing education in law" type articles re: strategy, discovery, appeals, etc., and D.A.R. cases re: prison issues I'm litigating. And, I had many of the above in envelopes, in my cell.

7) That for (21) years, I'd compiled magazine articles re: culture, history, and art [including artist reference pictures], in envelopes in my cell.

8) That in 2008, I received a nice wall calendar, with large pictures of

colored, mathematical-geometrical designs - which I used to focus on during my daily meditation practice [note: In 2009, PBSP no longer allowed SHU inmates to receive wall calendars - after (19) years of allowance - however, this did not ban old ones already in your possession]; I also had a watch cap made from an old thermal sleeve to keep my head warm, which a majority of PBSP-SHU inmates make, and which I'd had for over (7) years; we make our own watch caps because the administration doesn't allow us the state issue ones, as part of our (SHU) punishment [the only time staff confiscate them is when they're pissed off]

9> That between June 6, 2011 and June 15, 2011, defendant's agents - I.G.I. staff subjected Mr. Troxell, and I to retaliatory acts in response to our litigation, [and related free speech issues concerning the same issues raised in our F.A.C.], as follows.

10> On June 6, 2011, I.G.I. Sgts Frisk and Pieren, and I.G.I. officers Morgan, Pimental, and Knight, removed Mr. Troxell, and I from our cells and put us in holding cells. When Sgt. Pieren came by the holding cell with Mr. Troxell's property on a cart, I asked him what this cell search and property removal was about? Sgt. Pieren responded, "You and Troxell's names are all over the place regarding the upcoming peaceful protest - we know California Prison Focus is supporting you guys, and the stuff you've posted on their web site has pissed a lot of people off, so we're taking your property to see what we can find", [My cell had been trashed]

11> On June 15, 2011, I.G.I. Sgts Frisk, and Pieren, brought what was left of our property back to Mr. Troxell and I. They had trashed a lot of our property, and had a large clear trash bag half full of what they stated was altered - loose articles, pictures from magazines etc - of Mr. Troxell's property, and a bag twice the size - containing similar items removed from my property. I heard the conversation between Mr. Troxell and Sgt. Frisk [described in Mr. Troxell's Declaration, para #4]

12) That the Sgts had attempted to conceal what was in the (2) trash bags of confiscated property by having open sheets of paper in the bags between the bag and material inside - but I could make out several newspaper articles, and I told the Sgts such was all material related to my case, and Sgt. Frick stated, "it was just articles ~~the~~ talking about various wardens of PBSP, and prison incidents," to which I responded, "Yeah, the wardens are defendants in our case, and all the articles are related to our claims." To which Sgt. Prioren, smiled and told me, "this is all altered material, good luck appealing that Ashken."

13) That it's taken me (4) days to go through my property to get it back in ^{many} order and determine what's missing, which is most of my articles ^{from D.A.R.S. TH} described in above paragraphs* 5-6, and all of the material described in paras* 7-8, as well as my personal body lotion, and at least (1) personal letter with photograph, and a request for a declaration re: medical care issues from inmate Madsen.

14) Additionally, Sgt. Prioren, wrote me up a serious rule violation report on June 17, 2011, for "promoting gang activity", on basis of claiming he discovered a picture of a "Phoenix" rising from a "Shamrock", which the Sgt. claims is an A.B. gang symbol.

15) That Sgt Prioren's issuance of a "serious" rule violation for the above picture, is yet another retaliatory act in direct response to our civil suit, and recently posted summary titled "Formal-Complaint" and "Notice of Peaceful Protest" on the Calif. Prison Focus site, as shown by:

- a) For the past 15 years, inmates having possession of pictures containing alleged gang symbols were issued CDCR-128 informational chronos
- b) Possessing such material does not meet the criteria for a "serious" rule violation [per. CCR, Title 15 § 3315(2) (1), nor is it within the criteria of an "administrative" rule violation per. guidelines enumerated in CCR,

Titel 5 § 3314(a) [On 6/15/11, Sgt Reran, told me he'd make it a 128 chrono, but didn't]

c) The picture was in an envelope of legal material re: gang validation, re-validation documents - including 128 Info. Chrones, with photocopies of pictures referenced - right in the chrones [none of which were taken], and the picture was a legal exhibit, which included an article speaking on the Phoenix bird rising from a shamrock, is symbolism used by Irish Republican's to represent the Irish people's freedom from British rule. Which has personal meaning to me because some of my ancestry is from Ireland County Sligo - a republic area, which I also had paperwork on in my property - - - all of the above referenced article/documents are also gone. [This is similar to "symbol" interpretation issue deemed a violation in Lira case]

d) All of the I.G.I. Sgts' actions are directly linked to the web posting of our "Formal Complaint" and "Notice of Protest" on the Calif. Prison Focus site - Wherein, we point out we have never been written up - found guilty of an illegal gang related act [all of a sudden, the Sgts' attempt to criminalize possession of a picture]; as well as unjustified - punitive restrictions being constantly dreamed up - - - with specific reference to watch caps, art material, wall Calendars, etc [which the Sgts confiscate, - - things Mr. Trossell, and I have had for years - through 100's of searches] I'm also missing (2) legal bks.

16) That the requested relief we seek in the emergency motion is necessary because we need the articles re: legal related matters asap in order to continue our investigative/discovery process; and, the inmate appeals process takes months to complete. Plus, we expect that absent a "protective order" the defendants' agents will continue their retaliatory acts, causing us further irreparable harm - as alot of what they've taken is irreplaceable.

I hereby swear the aforementioned is true and correct pursuant to penalty of perjury, and this declaration is executed June 19, 2011, at Crescent City, California,

s/ Todd Ashker

Todd Ashker, Plaintiff

In pro-se *

Todd Ashker, C58191
Darry Troxell, B76578
Box 7500/DI-SHU
Crescent City, Ca, 95532
Plaintiffs; In pro-se +

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RICHARD W. WIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND-DIVISION

TODD ASHKER and DANNY TROXELL,
Plaintiffs,
vs.
EDMUND G. BROWN, JR., et al.,
Defendants.

Case No. C09-5796 CW
Declaration Of Darry Troxell,
In Support Of Motion For
Emergency Protective Order
Prohibiting Retaliatory Acts and
Return Of Property.

I, Darry Troxell, declare:

1) That I am a pro-se plaintiff in the above numbered case and I submit this declaration in support of our "Motion For Emergency Protective Order Prohibiting Retaliatory Acts and Return Of Property," based on personal experience, to which I am competent, willing, and able to testify to, if called to do so.

2) That I have read the above referenced "motion...", and I hereby verify the statements therein are true and correct pursuant to penalty of perjury.

3) That I personally had numerous news articles re: legal issues, as well as (21) years worth of cultural, history, and art related clippings and pictures,
& D.A.R. CASES DIT.
<1>

as well as an envelope containing several personal addresses, and a wall calendar and home made watch cap [made from old thermal sleeves - to keep my head warm], all of which I'd had for 10 - 21 years, through 100's of searches of my property - ~~all~~ of which was missing from my property when I received it back from I. G. I. Sgts' Frisk and Pieren on 6/15/11.

4) On June 15, 2011, IGI Sgts' Frisk and Pieren, told me that the items were confiscated because they were "altered", and they showed me a large clear plastic bag of crumpled up property, which they claimed was the material confiscated. I told Sgt Frisk, that I wanted this bag held pending appeal - his response was, 'we don't have space in the office for that, this is just trash.' I told him ~~again~~ that I wanted it held while I appeal. Sgt. Frisk made no response, and just smiled and laughed as he walked off. Sgt. Pieren said "good luck".

5) That I personally witnessed, and heard all of the exchanges between my co-plaintiff Ashker, and I.G.I. Sgts. Frisk and Pieren, that occurred on June 6th, and 15th, 2011, as described in Mr. Ashker's accompanying declaration.

6) That based on the above, I'm certain Sgts Frisk and Pieren's actions were a direct retaliatory response to our litigation and related peaceful protest activities; and absent the relief sought I am certain PBSP- staff will continue to subject me to similar retaliatory acts, and I will never see any of my missing property again.

I hereby swear the above is true and correct pursuant to penalty of perjury, and this declaration is executed June 19, 2011, at Crescent City, California.

/s/ Danny Troxell
DANNY TROXELL, Plaintiff

Todd Ashker, C58191
Danny Troxell, B76578
Box 7500/DI-SHU
Crescent City, Ca. 95532
Plaintiffs, In pro-se

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UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND-DIVISION

TODD ASHKER and DANNY TROXELL,
Plaintiffs,
vs.
EDMUND G. BROWN, JR., et al.,
Defendants.

CASE No. C09-5796 CW
Declaration of James Crawford,
In Support of Plaintiffs' Motion
For Emergency Protective Order
Prohibiting Retaliatory Acts and
Return of Property.

I, James Crawford, declare:

1> That I am not a party to the above numbered action, but I am submitting this declaration in support of the plaintiffs' motion for emergency protective order prohibiting retaliatory acts and return of property", based on personal knowledge.

2> That attached hereto as [Exhibit A], is a true and correct copy of the Director Level Decision dated April 26, 2011, IAB Case No.: 1002961. This decision includes an order for PBSP - to train staff concerning D.O.M. § 54010.10 [re: staff are not to confiscate articles from inmates property based on "altered property" excuse]

I hereby swear the above is true and correct pursuant to penalty of
<1>

perjury, and this declaration is executed on June 19, 2011, at Crescent City, California.

/s/ James Crawford

James Crawford, Declarant

A

EXHIBIT A

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: **APR 26 2011**

In re: James Crawford, D05996
Pelican Bay State Prison
P.O. Box 7000
Crescent City, CA 95531-7000

IAB Case No.: 1002961

Local Log No.: PBSP-10-01648

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner C. Tileston, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that he disagreed with the confiscation of his property by the Pelican Bay State Prison (PBSP) staff. On April 15, 2010, his cell was searched by Correctional Officer (CO) Ford and Vermeer. The officers confiscated a manila envelope in which they labeled gang information. He contends that they also confiscated personal magazines and numerous pictorials with the magazines. He stated that he filed an appeal on this issue and did not hear anything back. He also requested in his last appeal to send all of the confiscated property home. He is requesting to be allowed to send his personal property home. He is requesting for an itemized list of all confiscated property, number of magazines, and of the alleged gang activity in the envelope. He is also requesting to know why the CDC Form 602, Inmate/Parolee Appeal Form, dated April 16, 2010, was not responded to.

II SECOND LEVEL'S DECISION: The reviewer found that there was no basis to grant the grievance. The appellant was informed of the rules and regulations that apply to this appeal. The appellant was informed that the PBSP Operational Procedure #806 provides that inmates can mail items out if they have sufficient funds to do so. The Second Level of Review (SLR) also notes that the confiscated items were altered, misused, and/or could not be identified as belonging to either the inmates assigned to the cell or other inmates. CO Ford was never asked to retain the items for appeal purposes, or to mail them home at the conclusion of the search. The contraband items were disposed of pursuant to institutional procedures. The appellant's items that were confiscated as being gang activity were reviewed by the PBSP Institution Gang Investigator (IGI) staff. The items consisted of news and magazine clippings about crimes and other nefarious acts and were not returned to the appellant. A CDC Form 128-G, Classification Chrono, will not be issued because the information is not being used against the appellant. The SLR also noted that the appellant's cellmate, Inmate Drewberry (C35671) also filed an appeal claiming ownership of the items as well. Since the items were considered altered and removed from magazines and newspapers, they were considered contraband and disposed of.

III DIRECTOR'S LEVEL DECISION: Appeal is granted in part.

A. FINDINGS: The Director's Level of Review (DLR) does not fully concur with the decision rendered at the SLR. In this case, the appellant disagrees with the items that were confiscated and the disposition of those items. The appeals examiner reviewed the cell search receipt and notes that it indicated that a manila envelope containing gang information was confiscated. It also included items of excess trash, magazines, newspapers, and trash. CO Ford was interviewed at the SLR and stated that the magazines were in bundles and were altered. The name of who the magazines were sent to was removed. Therefore, proper ownership of the magazines and newspapers could not be determined. In addition, at the conclusion of the search the appellant did not request to mail the items out or to hold the items pending the outcome of the appeal. Therefore, the staff members disposed of the items pursuant to local operating procedures.

The items that the staff considered to be gang activity were reviewed by the PBSP IGI staff. The staff noted that it was newspaper/magazine clippings about crime and other nefarious acts and was not returned to the appellant. These items were also disposed of since they were altered. The

JAMES CRAWFORD, D05996

CASE NO. 1002961

PAGE 2

CDC Operations Manual, Section (DOM) 54010.10 states, "Inmates may receive First-Class Mail containing newspaper clippings, Internet downloaded articles, photocopies of clippings/articles, or electronic

mail (e-mail). Prior to issuance, they shall be reviewed to ensure that they comply with California Code of Regulations, Title 15, Section (CCR) Sections 3006, 3135 and DOM Sections 54010.14 and 54010.15." Therefore, the appellant could have the items unless they materials violated the listed sections, which was not established by the PBSP; however, since a value cannot be establish for suitable replacement, the appellant shall not receive compensation. Therefore, the DLR does find cause to intervene.

B. BASIS FOR THE DECISION:

California Penal Code Section: 5058

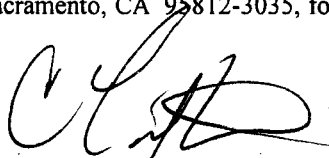
CCR: 3001, 3006, 3084.1, 3084.2, 3084.7, 3134.1, 3190, 3191, 3192, 3193, 3270, 3287, 3380

DOM: 54010.10, 54030.1, 54030.2, 54030.3, 54030.4, 54030.5, 54030.6, 54030.7, 54030.7.1, 54030.7.2, 54030.8, 54030.9, 54030.9.1, 54030.9.2, 54030.10, 54030.10.1, 54030.10.2, 54030.10.3, 54030.10.4, 54030.10.5, 54030.10.6, 54030.10.6.1, 54030.10.6.2, 54030.10.7, 54030.10.8, 54030.10.9, 54030.10.10, 54030.10.11, 54030.12, 54030.12.1, 54030.12.2, 54030.13, 54030.13.1, 54030.13.2, 54030.17

C. ORDER: The PBSP shall provide training to the PBSP staff concerning the DOM 54010.10.

This issue was discussed with the office of the chief deputy warden.

This decision exhausts the administrative remedy available to the appellant within CDCR. If dissatisfied, the appellant may forward this issue to the California Victims Compensation and Government Claims Board, (formerly known as the State Board of Control), Government Claims Unit, P.O. Box 3035, Sacramento, CA 95812-3035, for further review.



C. TILESTON, Appeals Examiner
Inmate Appeals Branch



D. FOSTON, Chief
Inmate Appeals Branch

cc: Warden, PBSP
Appeals Coordinator, PBSP

NAME Danny TROXEJ
CDC NO. B76538 HOUSING D1-120

PELICAN BAY STATE PRISON
SHU LAW LIBRARY
PO BOX 7500
CRESCENT CITY, CA. 95532

US NORTHERN DIST COURT OF CA
1301 CLAY ST. SUITE 400 SOUTH
OAKLAND, CA 94612-5212

LEGAL MAIL

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#62076

6/20/11

General Information

Case Name	Ashker et al v. Brown et al
Docket Number	4:09-cv-05796
Court	United States District Court for the Northern District of California
Nature of Suit	Prisoner Petitions: Habeas Corpus - Prison Condition
Related Opinion(s)	2010 BL 120874