

Testimony of Public Justice
Before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
Concerning the Prison Litigation Reform Act
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Introduction

Public Justice welcomes this opportunity to present testimony to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security regarding our concerns about the administrative exhaustion requirement of the Prison Litigation Reform Act of 1996 (PLRA). The PLRA's exhaustion requirement imposes severe limitations on the ability of prisoners to challenge and obtain relief, through civil litigation, for abusive prison conditions. It prevents countless meritorious claims—including claims of serious physical abuse—from being fully adjudicated by federal courts. This is in part due to overly stringent internal grievance procedures that require prisoners to meet tight deadlines for filing initial grievances and making administrative appeals, as well as interference with prisoners' efforts to avail themselves of the internal grievance process.

Public Justice does not lobby and generally takes no position in favor of or against specific proposed legislation. We do, however, respond to information requests from legislators and persons interested in legislation, and have occasionally been invited to testify before legislative and administrative bodies on issues within our expertise. In keeping with this practice, we are grateful for the opportunity to share our experience with respect to the important issues the Subcommittee is considering today.

In particular, we would like to inform the Subcommittee about a lawsuit pending in Louisiana that illustrates one of the ways in which the PLRA's exhaustion requirement prevents prisoners with meritorious claims of serious abuse from getting their day in court and obtaining relief for the abuse they have suffered.

Background on Public Justice

Public Justice (formerly Trial Lawyers for Public Justice), founded in 1982, is a national public interest law firm specializing in precedent-setting and socially significant individual and class action litigation. We handle a broader range of high-impact, cutting-edge litigation than any other public interest firm in the nation. Our litigation fights for consumer and victims' rights, the environment, civil rights and civil liberties, public health and safety, workers' rights, government and corporate accountability, and the protection of the poor and powerless. Through

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our Access to Justice Campaign, we strive to keep the courthouse doors open to all—by battling federal preemption, unnecessary court secrecy, class action bans and abuses, the misuse of mandatory arbitration, and other efforts to deprive people of their day in court.

Public Justice is the principal project of the Public Justice Foundation, a non-profit membership organization. We are supported by a nationwide network of over 3,000 attorneys and others, including trial lawyers, appellate lawyers, consumer advocates, constitutional litigators, employment lawyers, environmental lawyers, civil rights lawyers, class action specialists, law professors, and law students. Public Justice and the Public Justice Foundation are headquartered in Washington, D.C., and have a West Coast Office in Oakland, California. More information about Public Justice and our work is available on our web site at www.publicjustice.net.

Public Justice's broad-ranging docket includes litigation on behalf of prisoners and immigration detainees who have suffered egregious abuse and/or medical neglect. Based on our experience, we believe that the PLRA's exhaustion requirement deprives countless prisoners with meritorious claims of abuse from getting their day in court. Public Justice is currently litigating a prisoner abuse case in the United States District Court for the Western District of Louisiana (Alexandria Division)—*Dillon v. Rogers, et al.*, Civil Action No. 06-1258—that illustrates this problem.

Problems with the PLRA's Exhaustion Requirement

On March 20, 2008, the United States District Court for the Western District of Louisiana dismissed an abused prisoner's case for failure to exhaust administrative remedies, even though no grievance procedures were available to him and he had tried to submit a grievance. Although the case is now on appeal, and the decision could ultimately be reversed, the district court's interpretation of the PLRA's exhaustion requirement illustrates one of the ways in which the overly restrictive requirement deprives prisoners with meritorious abuse claims from obtaining relief through our civil justice system.

A. The Beatings Suffered by Keith Dillon

Dillon v. Rogers is one in a series of civil rights actions arising out of a pattern of unconstitutional beatings that occurred at Jena Correctional Center (Jena) after Hurricane Katrina hit the Gulf Coast Region in August 2005. It is related to at least five other cases pending in the same court: *Smith v. Stalder*, No. 06-1561; *Cummings v. Stalder*, No. 06-1511; *Gilmore v. Stalder*, No. 06-1509; *Hall v. Stalder*, No. 06-1510; and *Vassar v. Stalder*, No. 06-1512.

Jena had been closed for five years before the hurricane, after a federal judge had concluded that it was the site of numerous constitutional violations. After Katrina, the Louisiana Department of Safety and Corrections (DPSC) hastily reopened the facility to house prisoners from several facilities, including the Jefferson Parish Correction Center (JPCC), where Keith

Dillon had been detained. Jena then stayed open for just over a month. The Jena prisoners, including Dillon, were then sent to other facilities in Louisiana.

Attorneys who interviewed prisoners during their incarceration at Jena reported that prisoners repeatedly expressed that they were “terrified” and “scared for their lives” inside Jena. The Jena prisoners were reportedly slapped, punched, beaten, stripped naked, hit with belts, and kicked by correctional officers. It was reported that, when prisoners broke prison rules, such as moving when told to be still, or not moving quickly enough, officers often responded by hitting and kicking the men and threatening to whip them.

Dillon’s experience at Jena was no exception to the lawlessness that pervaded the atmosphere there. On September 27, 2005, Dillon and other prisoners were made to stand in line for an excessive period of time in order to be fed. Dillon ended up having a minor scuffle with a fellow prisoner, Jesse Gilmore, which ended as soon as Defendant Walker, a prison guard, yelled for them to stop. Both men complied immediately.

Dillon was grabbed by Walker and punched in the side of his head by two other guards, Defendants Edwards and Casper. Both Dillon and Gilmore were then dragged along the floor, and each was taken into the back of separate hallways. The guards then slammed Dillon down to the floor and handcuffed him behind his back. At this point, Defendant Pietsch, another guard, approached and kicked Dillon several times in the back.

Defendant Walker commented that the rest of the room could see what was happening. The guards then picked Dillon up, moved him further back in the hall, and slammed him to the floor again. Defendant Pietsch continued to kick Dillon repeatedly in the back, each time causing Dillon’s face to hit the wall. Dillon could hear the guards beating Gilmore as well.

Dillon was next picked up by Defendants Edwards and Walker and was forced to face them. Edwards then punched Dillon in his right shoulder. He then repeated this action, punching Dillon hard in the same spot. Dillon continues to experience, among other serious injuries, searing pain in his right shoulder and bicep as a result Edwards’s punches.

Up to this point in the beating incident, Dillon estimates that he was hit in the shoulder twice and on the sides of his head six to eight times by Defendant Edwards, kicked in the back several times and hit in the head three times by Defendant Pietsch, hit in the head twice and slammed to the ground twice by Defendant Walker, and hit in the head at least once by two other guards, Defendants Caspers and Hartzoglou.

Dillon was then dragged into the lock-down area, where he observed Gilmore being beaten. Defendant Hollifield pushed Dillon onto his knees, forcing Dillon’s his head to hit a wall. Hollifield then proceeded to hit Dillon in the head.

Defendant Rogers, who supervised the guards at Jena, then came into the lock-down area. Rogers began to verbally harass Dillon and then hit him repeatedly in the head, alternating sides. At this point, Dillon was in serious pain and feared for his life. Dillon believes Rogers hit him approximately 12 to 15 times in the head. On approximately the fifth blow to the left side of his head, Dillon heard a “pop” and lost the hearing in his left ear.

After Rogers beat Dillon, Defendant Hollifield commented that “you should have given him more,” and proceeded to hit Dillon approximately three more times in the head. Dillon was then stripped naked and put in a cell next to another inmate who also appeared to have been badly beaten.

During the entire beating, Defendants used the hard “ball” of their palms, as opposed to their closed fists, to strike Dillon in the head. This decreased the chances of visible scarring and other damage to their hands, thereby decreasing evidence of the beating they inflicted on Dillon.

Despite making Jena medical and other personnel aware of the injuries he suffered, Dillon received nothing more than inadequate pain medication for the serious injuries he sustained. While at Jena, and while subsequently detained at other facilities, Dillon received no diagnosis of, nor treatment for, the multiple injuries he sustained, including the hearing loss in his left ear.

As a result of the beatings he received at Jena, Dillon has pain and hearing loss in his left ear and continues to suffer from pain in his back and knees, severe shooting pain in his right shoulder and down his bicep, as well as frequent headaches, pain in his eye-sockets, blurred vision, and broken teeth. Moreover, as a result of the abuse he endured, Dillon has been suffering from emotional distress and bouts of depression.

B. Dillon’s Efforts to File an Administrative Grievance

On or about September 28, 2005, the day after Dillon’s beating, Dillon attempted to file an administrative grievance, or Administrative Remedy Procedure (ARP), but Jena, having been closed down for several years, had no grievance procedure in place. This absence of any internal grievance procedure was reported by other inmates and attorneys who surveyed the conditions at Jena at the time of Dillon’s detention there. When Dillon asked Defendant Rogers about the abuse that was going on at Jena and whether he could file a complaint, Rogers ordered Dillon to kneel in his office for approximately an hour, stating “stay here a while until you forget about that ARP.”

Moreover, the continuing explicit threats by guards, the concerted efforts to mask the abuse that was occurring, the widespread complicity of Jena officials—including Warden Thompson himself—and the intimidation witnessed by the nurse who saw Dillon after the beating, all left Dillon in fear for his life had he further attempted to report the abuse while detained at Jena.

On October 5, 2005, Rachel Jones, a Louisiana attorney, visited Jena and interviewed numerous prisoners, including Dillon. Jones has sworn under oath that Jena had no grievance procedure. She has also sworn under oath that Dillon told her about his beatings and that she saw bruises on his head and ears. Dillon was able to smuggle a handwritten grievance to Jones, in an envelope addressed to the DPSC, in the hope that she would pass it on to the DPSC and the FBI.

Within days after speaking with Jones, Dillon was transferred out of Jena. Soon after Dillon's transfer, Jena was shut down by Richard Stalder, Secretary of the DPSC, amid allegations of egregious abuse and inquiries from Human Rights Watch and Louisiana state legislators.

From Jena, Dillon was transferred to and remained at Allen Correctional Facility ("Allen") from in or about October 2005 until on or about March 21, 2006. Allen is privately operated by Geo Group, Inc. (formerly Wackenhut Corrections Corporation). Dillon was subsequently transferred from Allen back to the JPCC.

Upon his arrival at Allen, Dillon inquired about filing a grievance for the abuse he endured at Jena. He was told by Allen officials, including a Captain Wheaton, that he could not file a grievance about that from Allen, stating, in essence, "you are here now . . . and we are Wackenhut and they are the DOC and we have nothing to do with them . . . there is no point in filing your grievance . . . you are here now."

Despite Dillon's requests, officials at Allen provided Dillon with no means of filing a grievance concerning the events at Jena. Though Dillon did file grievances at Allen regarding his medical care there, he did not file a grievance about the events at Jena because he was told not to do so by Allen officials, was provided no means of doing so, and he had learned that Jena had been closed down.

Dillon did, however, file a grievance at Allen requesting that the authorities at Allen confirm whether he could file a grievance there concerning the abuse he suffered at Jena, and complaining about the fact that Allen officials had told him he could not file a grievance about his beatings at Jena. That grievance went unanswered.

C. The Court's Dismissal of Dillon's Case

On March 20, 2008, the district court granted Defendants' Motion for Summary Judgment and dismissed Dillon's case for failure to exhaust administrative remedies. This was done notwithstanding that: (1) there was no available administrative grievance procedure at Jena while Dillon was there; (2) even without an available administrative grievance procedure, Dillon managed to smuggle a grievance to an attorney who visited Jena after his beating, in an envelope addressed to the DPSC; (3) Dillon was told there was no available administrative grievance procedure at Allen for complaints involving misconduct at Jena; and (4) Dillon submitted a

grievance at Allen complaining about being told that he could not file a grievance there for the beatings he suffered at Jena, but never received a response.

Perhaps even more important, the district court dismissed Dillon's case, even though, as a matter of law, there was no grievance procedure available at Allen for complaints concerning events at Jena. This is because Jena was closed down shortly after Dillon was transferred to Allen, and Louisiana regulations require the sending institution—i.e., Jena—to complete the processing of the grievance through the first step.² Based on Louisiana regulations, even if Dillon had filed a grievance at Allen about the abuse he suffered at Jena, Allen's only role would have been to facilitate communication between Dillon and Jena. Since Jena ceased to exist—notably, because of overwhelming allegations of abuse—there truly were no procedures available to Dillon and no one with authority to provide any redress.

In short, Dillon has been denied his right to seek redress through our civil justice system for failing to exhaust his administrative remedies under the PLRA, even though no administrative grievance procedures were actually available to him and even though he made efforts to file a grievance. Dillon was physically abused while in prison and is now suffering an abuse of his right to be heard in court. This kind of injustice should not be permitted.

Conclusion

The PLRA's exhaustion requirement prevents countless prisoners with meritorious abuse claims from obtaining redress. Not only does it unjustifiably deny prisoners access to the federal courts, but it permits unconstitutional prison conditions to fester because it prevents courts from holding corrections officials accountable for their wrongdoing.

Public Justice is grateful to the Subcommittee for examining reforms to the PLRA's exhaustion requirement and we appreciate the opportunity to present this testimony.

² The Louisiana Administrative Review Procedure states:

Transferred Inmates: When an inmate has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, *the sending institution will complete the process through the first step*. The Warden of the receiving institution will assist in communication with the inmate.

Title 22. Corrections, Criminal Justice and Law Enforcement. Chapter 3 § 325(G)(8) (“Adult Administrative Review Procedures”) (emphasis added).