

DISTRICT COURT, Logan County, Colorado
13th Judicial District Court
PO Box 71
110 Riverview Rd.
Sterling, Colorado 80751

DANIEL IMMEL and THOMAS WILLSEY,
Plaintiffs,

v.

BILL OWENS, Governor, State of Colorado;
ALLAN STANLEY, Chairman, Colorado State
Parole Board; BOARD MEMBERS, Colorado
State Board of Parole; JOE ORTIZ, Executive
Director, Colorado Department of Corrections;
CASE MANAGERS, Colorado Department of
Corrections,

Respondents.

COURT USE ONLY

Daniel Immel, 57862, Pro se, Unit 35 &
Thomas Willsey, 63529, Pro se, Unit 31
SCF, PO Box 6000
Sterling, Colorado 80751

Case No.

Division:

RM:

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs, Daniel Immel and Thomas Willsey, pro se, for their
Complaint For Declaratory Relief state the following:

I. JURISDICTION and PARTIES

1. This is an action for Declaratory Relief pursuant to Rule 57,
C.R.C.P. and C.R.S. 13-51-101 et seq.
2. Plaintiffs Immel and Willsey request that this case be certified as
a Class Action pursuant to Rule 23 of the Colorado Rules of Civil Procedure.
3. Daniel Immel, DOC# 57862 is an inmate at the Colorado Department of
Corrections (DOC) and is being housed at the Sterling Correctional
Facility (SCF) in Sterling, Colorado. Immel has a "Minimum" Classification.
4. Thomas Willsey, DOC# 63529 is an inmate at the Colorado DOC and is
also being housed at the Sterling Correctional Facility in Sterling, Colorado.
5. The "Class" members of this action will be defined as ALL inmates
convicted of felony crimes in the State of Colorado who committed their
crimes on or after July 01, 1985 and before July 01, 1993. The Class

consists of ALL inmates who are under the "Discretionary" Parole laws that went into effect on July 01, 1985 until the Mandatory Parole Law that went into effect July 01, 1993.

6. The issues and questions raised herein apply to hundreds, and possibly thousands of potential Plaintiffs who are Colorado State Inmates, and would most likely apply to inmates being housed in every correctional facility in the State, and possibly those being housed in out-of-state facilities as well.

a. Rule 23 of the Colorado Rules of Civil Procedure provides that "...one or more members of a class may sue ... as representative parties...."

7. The Class, as defined in Paragraph 5 above is so numerous that joinder of all members would be impracticable.

8. There are questions of law and fact common to the class.

9. The claims of the class are typical and the representatives Inmel and Willsey will fairly and adequately protect the interests of the class.

10. This Court has original jurisdiction pursuant to Colorado Law, as facts and allegations herein pleaded to have occurred in Logan County, as well as other counties in the State of Colorado, and continue to occur in Logan County.

11. Venue is also proper in Logan County. Plaintiff Inmel's last parole application hearing (his 5th such hearing) was conducted at the SCF in February of 2005.

12. Respondent Bill Owens is the current Governor of the State of Colorado and is responsible for the appointing of members to the Colorado State Board of Parole (BOP), for appointing the Chairman of the BOP, and for mandating and/or approving any specific policies and instructions concerning the Parole Application Process, and the granting or denying of parole applications in the State of Colorado. Governor Owens is sworn by law to uphold the constitutional and statutory laws of the State of Colorado and the United States.

13. Allan Stanley is the Current Chairman of the BOP. He is an appointed member of the Board and he is authorized by law to oversee the rules, regulations, and policies of the BOP, as well as the Board's actions, in relation to Parole Applications, Parole Hearings, and BOP decisions. Allan Stanley is responsible for upholding the constitutional and statutory laws of the State of Colorado and the United States.

14. Board Members of the BOP are also appointed by the Governor, and they are responsible for conducting the daily operations of the BOP, including the conducting of Parole Application Hearings, making decisions to grant or deny parole applications, and any other business the BOP may be authorized to conduct. The Members of the BOP are responsible to uphold the

constitutional and statutory laws of the State of Colorado and the United States.

15. The authority and responsibility of the BOP, including the Chairman, are established by section 17-2-201 of the Colorado Revised Statutes.

16. Joe Ortiz is the current Executive Director of the DOC and is responsible for the overall operations of the Department. This authority and responsibility is established by section 17-1-103 of the Colorado Revised Statutes.

17. Case Managers for the DOC are responsible for pre-parole planning and the presenting of Parole Applicants to the BOP pursuant to DOC Administrative Regulation (AR) 550-08.

18. The issues raised herein, and the claims being pleaded do bring forth questions concerning the constitutionality and/or ambiguity of Colorado's Parole Laws and the procedures being used to implement those laws. Therefore, the Colorado State Attorney General's Office will be provided a copy of this Complaint.

19. There is no Administrative Appeal or any other remedy available for the denial of a Parole Application in the State of Colorado.

II. FACTUAL BACKGROUND

20. Plaintiff Immel incorporates paragraphs 1 through 19 above and states the following factual background as grounds for the claims in this action.

21. Plaintiff Willsey incorporates paragraphs 1 through 19 above and provides his factual background concerning this action by submitting the attached affidavit. (See "Affidavit of Thomas Willsey").

22. Plaintiff Immel in support of his claims provides the Court with the following background (Immel can provide documentation of all his factual statements upon request of the Court).

23. On November 09, 1987, Immel was sentenced in the El Paso County District Court to a term of 48 years to the Colorado Department of Corrections. He pled guilty to the crime of Second Degree Kidnapping and ALL other charges were dismissed. The crime was classified a Class 2 Felony based on the fact the "victim was robbed" (Case No. 87CR1254, "Information, Count Two") (Also see Section 18-3-302, C.R.S., 1986 Replacement Volume).

24. On March 04, 1988, Immel was back in front of Judge James M. Franklin in the El Paso County District Court to reaffirm and reenter his plea to the crime as outlined in Paragraph 23 above. This was due to an error at the original advisement by Judge Franklin. On April 25, 1988 Immel was resentenced to a 48 year term to the DOC.

25. On October 25, 1990, after an extensive Reconsideration Hearing in

the El Paso County District Court, Judge Franklin granted Immel's Motion for Reconsideration and reduced his sentence to a 36 year term to the DOC. Of particular interest and importance concerning the issues raised in this action is that Immel's Reconsideration was supported by the victim of his crime. In addition, 3 Colorado DOC employees testified on Immel's behalf. Immel's Case Manager at the time, Mr. Joe Aragon; Immel's immediate prison job supervisor Sgt. Wil Siler; and, Ms. Tina Gurule, One of Immel's Drug and Alcohol counselors at the time. Furthermore, Immel was evaluated at that time by Court Appointed Clinical Social Worker Mr. Peter Howells. This was in 1990, and all reports and prognosis concerning Immel were very positive. In fact, Peter Howells reported that it was his opinion then that Immel would be placed in a Community Corrections based program in "the not too distant future".

26. During ALL plea negotiations in 1987, and up until the time Immel first met with the Colorado BOP in 2001, he was led to believe he would have a reasonable and fair chance to be granted parole after serving half of his sentence minus any earned time he was awarded. Under the laws Immel, and members of the class, were sentenced, this was a reasonable expectation created by statute.

a. After serving approximately 14 years of his sentence, Immel did become eligible for parole and has to date met with the BOP 5 times.

27. Until the late 1980's, it was, in fact, the custom and common practice of the BOP to parole inmates under the "Discretionary Parole Laws" of 1985-1993 reasonable soon after they became eligible for parole. However, as the State of Colorado began its quest to build new State Prisons, and soon thereafter private prisons as well, the BOP and the DOC began working together to apply new standards and practices concerning parole applications. This became even more prevalent after Governor Owens was elected Governor. The BOP began to deny far more applicants for parole than they had. Often, as is the case with Immel, the only reasons being stated are "not enough time served", and "aggravating factors". In other words, it was during the late 1980's and early 1990's that the BOP and DOC began putting more of a focus on an inmate's "Statutory Discharge" rather than "Parole Eligibility" date when considering Parole Applications and progressive moves within the DOC.

28. By 1990, the BOP was beginning to keep inmates incarcerated so far beyond their parole eligibility dates that inmates began opting to "discharge" their sentences rather than go on parole with only 6 months to a year left on their entire sentence. In response, the Colorado Legislature passed the new "Mandatory" Parole Law that went into effect July 01, 1993. With the new Mandatory parole law, the DOC and the BOP could now keep inmates incarcerated for a definite period of time and force them to do additional time on parole.

29. It is clear that since the late 1980's the DOC and the BOP have been working together to keep inmates incarcerated for longer periods of time, regardless of what the inmate does in prison to rehabilitate themselves, and regardless of each inmates particulars concerning their cases. In doing so, the DOC and BOP have been applying increasingly more stringent and punitive

laws, policies, practices and procedures. The DOC and BOP are applying these to inmates of the class when the more punitive and stringent laws do not apply.

a. An example of this would be the fact that in 1993, the Colorado Legislature passed a law that requires second time, violent offenders to serve 75% of their sentences before becoming eligible for parole. While inmates who committed their offenses before July 01, 1993 do not fall under this new law, the DOC and BOP have effectively applied it to them non-the-less by continually denying parole applications. Members of the class see this as very methodical and systematic to prevent inmates under the discretionary laws from gaining a significant time reduction by being granted parole when they are eligible under the laws they were sentenced under.

30. On February 23, 2001, Immel became eligible for release on parole pursuant to Colorado statutes he was sentenced under. On February 26, 2001 Immel's First (1st) Parole Application Hearing was held at the Four Mile Correctional Center (FMCC) in Canon City, CO. FMCC is a Level 2 "Minimum Restricted" DOC Facility. Dr. Richard Martinez was the BOP member who conducted this hearing. (Parole Application Hearing Tape# 01-0325).

a. Dr. Martinez denied Immel's Application for parole and deferred him for 1 year.

b. Immel scored a 1 on the Colorado Actuarial Risk Assessment Scale- A rating in the lowest category that suggests a "low risk of reoffending".

c. On the "Notice of Colorado Parole Board Action Form" (NCPBAF), Dr. Martinez cited "Aggravating Factors/Inadequate Time Served" and "Risk Control Problem, Needs More Correctional Treatment" as the reasons for denying parole.

31. On February 04, 202, Immel's second(2nd) Parole Application Hearing was held at the FMCC in Canon City. Board Member Daniel Miraflor was the officiating member. Mr. Tom Meek was Immel's acting Case Manager who presented his application for parole to the board. Immel's family was present from Ohio and his Pastor from Colorado Springs. In addition, the victim of Immel's crime was also present at this hearing to SUPPORT Immel's application for parole. (Parole Application Hearing Tape# 02-0142)

a. Mr. Miraflor made a recommendation to Grant Immel's application by taking his application before the "Full Board". In addition, Mr. Miraflor filled out the NCPBAF to reflect the "Release" of Immel on parole. This original Action Form was also signed by Mr. Allan Stanley, a second Board member.

b. Again, Immel also scored a 1 on the Colorado Actuarial Risk Assessment Scale (CARAS)(See paragraph 30(b) above).

c. Two (2) days after his hearing, on February 06, 2002, someone crossed out the original Board Action Form signed by Miraflor and Stanley and filled out a second form denying Immel's Parole Application and deferring him for another year. This second Action Form was then signed

by all members of the BOP, including Stanley and Miraflor, who just two (2) days prior signed a form to release Inmel.

d. Reasons cited for denial were again "Aggravating Factors/Inadequate Time Served", "Risk Control Problems, Needs Continued Correctional Treatment", and this time an added reason of "Public Risk". Inmel does not understand these reasons in light of the fact the CARAS scores Inmel as a "LOW RISK", and Inmel has always thought that the "Aggravating Factors" played more of a part in the sentencing phase, which is why he had to serve extra time before ever seeing the Board for the first time. In addition, Inmel has had NO Further Treatment needs recommended by the DOC since July of 2000, well before he even became eligible for parole.

e. Since this second (2nd) Parole Application, Inmel has never again been referred to the "Full Board" even though the BOP Regulations say he needs a majority vote to get paroled. Inmel is very concerned about this practice.

32. On February 03, 2003, Inmel's Third (3rd) Parole Application Hearing was held at the FMCC in Canon City. (Parole Application Hearing Tape# 03-0119). For the second (2nd) time, Dr. Richard Martinez conducted Inmel's Hearing for Parole consideration. He also officiated over Inmel's First Application Hearing. Mr. R. Baca was Inmel's Case Manager at this time and presented Inmel to the Board. For this hearing, Inmel prepared an entire portfolio of letters, Degrees, Diplomas, and a variety of certificates to demonstrate to the Board all the programs he has completed and preparations for reentry he has made. However, Mr. Baca returned the Packet a couple of days after the hearing and informed Inmel that the Board didn't find it necessary to have. This is very troublesome to Inmel, ESPECIALLY when considering the reasons for denial and other comments made on the Notice of Action form filled out by Dr. Martinez.

a. Again, Inmel was not even referred to the "Full Board" for review as he had been the second time he applied for parole, but was denied by Dr. Martinez and deferred for yet another year.

b. Again, Inmel scored low on the CARAS, actually scoring a 0 this time.

However, on the Notice of Colorado Parole Board Action Form, Mr. Martinez cites once again "Aggravating Factors/Inadequate Time Served", and "Risk Control Problems, Needs More Correctional Treatment" as reasons for denying Inmel's third (3rd) application for parole. In addition, Mr. Martinez made several comments on the Form that are of concern. He stated Inmel should complete the "Impact of Crime On Victims" class (Inmel completed this class nearly a year and a half before this hearing and had Mr. Martinez looked at the portfolio Inmel provided, he would have seen it was the top certificate. Inmel also wonders why his case manager didn't inform Mr. Martinez that he had completed that program. Mr. Martinez also stated he wanted Inmel to "Complete any other programs deemed appropriate by the DOC". (Well, once again, Inmel has completed all recommended programs since July of 2001 and has had no further recommended programs to participate in).

c. Inmel can only surmise that Dr. Martinez had no idea what Inmel had

done during his incarceration, and furthermore Immel believes that the decision to deny parole was one that had already been determined before he even had his hearing.

33. On February 02, 2004, Immel's Fourth (4th) Parole Application Hearing was held at the FMCC in Canon City. (Parole Application Hearing Tape# 04-0130). This time Board Member Deborah C. Allen conducted the hearing. Again, Mr. R. Baca was Immel's Case Manager.

a. Again, Immel was denied parole and deferred for another year without being taken before the "Full Board" as was done in 2002 after Immel's second hearing.

b. Again, Immel scored a 0 on the CARAS.

c. This time, Board Member Allen cited only "Aggravating Factors" as the reason for denial with no other comments made on the Notice of Colorado Parole Board Action Form.

34. On December 14, 2004, Immel was transferred to the Sterling Correctional Facility (SCF) in Sterling, Colorado. He was progressed to the Level I "Minimum" custody units at SCF and was told it was a progressive move.

35. On February 15, 2005, Immel had his Fifth (5th) Parole Application Hearing held at the SCF in Sterling, Colorado. (Parole Application Hearing Tape# 05-0287). Immel's Fifth Hearing wasn't even conducted in person with a BOP Member. Rather, it was held via Teleconference and conducted by Board Member Sharon Bartlett. Case Manager Wilson was present, as well as several other SCF Case Managers.

a. Again, Immel was denied parole, was not presented to the "Full Board" and was deferred for another year.

b. Again, Immel scored a 0 on the CARAS.

c. On the "Notice of Colorado Parole Board Action" Form, Ms. Bartlett cited "Aggravating Factors" as the reason for denial. However, when Immel spoke with his case manager a couple of days after said hearing, his case manager told him that Board Member Bartlett had made the comment that "to parole Mr. Immel now would be just too much of a gift". In addition, Immel's Case Manager told him that "it would actually be another 3 to 4 years before the Colorado Parole Board would start seriously considering him for parole". Mr. Wilson also made the comment that "as long as Owens is still Governor, things aren't going to change". In fact, many case managers have said this to Immel and many other inmates as well.

36. Since Immel first became eligible for parole in February of 2001, the BOP has received numerous letters of support concerning Immel's applications

for parole. Of particular interest is a letter sent to the Board from Dr. Gary Collins, a Nationally known Clinical Psychologist. He supports Immel's Application for parole and stated so to the parole board in a letter to the Board dated January 29, 2002, prior to Immel's Second Parole Hearing. In addition, Immel has the support of his victim and this was expressed at his second hearing by the victim. Immel has never received a disciplinary report in nearly 19 years of incarceration as well and has completed numerous programs of recovery, prevention planning, and education. He has prepared well for reintegration.

37. Immel has consistently sent letters of appeal to ask the Parole Board to reconsider their decisions to deny parole. In every instance Immel has received a response to his requests and told that the decisions have been made pursuant to the Parole Guidelines in C.R.S. 17-22.5-404. However, when one looks and observes the documents, letters and Parole Board Decision Forms, it is clear that the Board's justifications for denial are contrary, inaccurate, misleading, and false. (See specifically paragraphs 31 and 32 above concerning Immel's 2nd and 3rd Parole Application Hearings. ALSO, Immel can provide the documentary evidence to prove his factual claims upon request from the Court).

38. On April 29, 2005, after Immel's 5th Parole Application denial, Immel sent a letter to Allan Stanley, current Chairman of the BOP. Said letter is dated April 29, 2005, and said letter requests that Mr. Stanley inform Immel of what it is "Specifically" he needs to do to get paroled. To date Mr. Stanley has not responded to Immel's "Good Faith" effort to find out what he needs to do.

39. On June 28, 2005, Immel's family also sent a letter to Chairman Stanley in an attempt to find out "specifically" what Immel needs to do to get paroled and why he continually gets denied. To date, Mr. Stanley has not responded to Immel's family either.

40. Mr. Stanley and the other BOP Members consistently and routinely claim that their decisions are based on the guidelines in C.R.S. 17-22.5-404, which also includes the mandate for the Board to utilize the Colorado Actuarial Risk Assessment Scale (CARAS). However, Immel, Willsey, and other potential plaintiffs believe this to be a false claim of the BOP. If the Board's claim, that they use C.R.S. 17-22.5-404, is true, then the plaintiffs believe that C.R.S. 17-22.5-404 must be faulty in such a way as to allow the Board to abuse the statute's intended fairness and efficacy.

41. The BOP consistently and routinely deny parole applications based on three (3) primary reasons:

- a. Aggravating Circumstances
- b. Public Risk
- c. Needs More Time

One of the questions plaintiffs need clarification on is what are the underlying things these reasons and justifications are based on, other than the crime the plaintiffs were sentenced for? All of the above issues were taken into serious consideration when the plaintiffs were sentenced.

42. According to C.R.S. 17-22.5-404, "Aggravating Factors" are to be considered when determining the "length and conditions of parole"; not whether or not parole should be granted. Those guidelines are outlined in a separate subsection of C.R.S. 17-22.5-404.

43. Furthermore, it is clearly apparent that the BOP seems to be abusing it's use of the Colorado Actuarial Risk Assessment Scale (CARAS) tool. At the very least they either ignor the score when it is favorable to the inmate, or they contradict the score on the Colorado Parole Board Action Form, stating that an inmate is a "Parole Risk" or "Public Risk" when he, in fact, scores low on the scale.

a. Colorado law provides that a Board member can be removed from the board for failure to utilize the the Risk Assessment Scale. However, plaintiffs need clarification as to what constitutes not utilizing it. How can an inmate score low and still be labeled a public risk, especially if he has had a clean prison record that would suggest he is not a risk?

b. In addition to the above, it should also be noted that the DOC no longer submits official pre-parole investigation requests, especially for an inmate paroling out-of-state. The DOC used to do this as pursuant to DOC AR 550-08 "Pre-Parole Planning, Parole Board Presentation, Parole Release". Plaintiffs believe this change of practice and procedure occurred around the year 2000 because it was more common to deny parole by this time anyway. It seems to plaintiffs that a persons verified parole plan would be of some importance when making the decision to grant or deny parole.

CLAIMS FOR RELIEF.

44. Plaintiffs herein incorporate Paragraphs 1 through 43 and state the following Claims for relief:

45. Most, if not all, of the Inmates within the defined class would be able to plead similar facts as outlined herein, and within the Affidavit of Thomas Willsey concerning their experiences with the DOC and the BOP, and their need for clarification such as a Declaratory Judgement would bring.

46. Plaintiffs believe the evidence will show that the BOP, the DOC and the Governor of Colorado are abusing their authority by abusing and/or denying the substantive and procedural due process required by Colorado law when considering inmates for parole suitability. Plaintiffs know there is no right to parole. That has long been established. However, plaintiffs also believe there is a measure of substantive and/or procedural due process required concerning the decision-making process concerning the Parole Board as mandated by Colorado Law, especially C.R.S. 17-22.5-404 concerning parole guidelines.

a. Parole Guidelines under C.R.S. 17-22.5-404 are to be utilized for determining Parole Suitability, and the length and conditions of parole. Section 17-22.5-404(2)(a)(I) through (XIII) are to be used to "determine

whether or not to grant parole, in addition to the use of the Risk Assessment Scale pursuant to Section 17-22.5-404(6).

b. Then, Sections 17-22.5-404(3) "Aggravating" criteria, and 17-22.5-404(4) "Mitigating" criteria are to be used "to determine the length and conditions of parole."

c. In addition, Section 17-22.5-404(7)(a) mandates a responsibility to the BOP to "implement ALL aspects" of section 17-22.5-404 when making their decisions.

d. Plaintiffs claim the BOP, the DOC, and Governor Owens have stepped outside the statutory guidelines, and they believe the evidence and testimonies will prove their claims.

e. Plaintiffs also claim that section 17-22.5-404(2)(b) creates such an ambiguity within the statute that it has created a very wide door for the abuse of the decision-making process concerning Parole Applications in the State of Colorado.

47. Plaintiffs need clarification concerning their status pursuant to C.R.S. 17-22.5-404 especially, but other Colorado statutes in relation to Parole as well, such as the Legislative Intent of Parole, and the Purpose of Parole.

a. Plaintiffs need to know if they are entitled to some measure of substantive and/or procedural due process concerning the decision-making process being used by the BOP and DOC to process, present and decide parole applications.

b. Do the Governor, the DOC and the BOP have a right to ignore the majority of parole guidelines when favorable to the inmate, and to utilize only those guidelines that are detrimental?

c. Do Parole Board Members have the authority to contradict the Risk Assessment Scale when it demonstrates that an inmate is actually a "low" risk?

d. Do parole board members have to be fair in their decision-making process?

e. Does, or has, "sole discretion" come to mean "Absolute Power" in the State of Colorado?

48. Plaintiffs do not here challenge the BOP's "Discretion" to grant or deny parole. However, plaintiffs DO challenge the Decision-Making Process as being unfair and contrary to Legislative intent concerning Colorado Law and Parole Applications.

49. Plaintiffs believe the current policies and unfair practices of the BOP

and the DOC concerning Parole Applications is the direct result of Governor Owens' personal and political agenda to keep prisoners incarcerated, and this regardless of what the inmate does while incarcerated, and to ensure the need for continued prison growth, especially in the private prison arena.

a. Over half of the inmates in Colorado are over their Parole Eligibility Dates, many are far beyond their eligibility dates, such as Immel and Willsey.

b. Plaintiffs further claim that the above facts have led to an unnecessary and great burden on the Colorado tax payers. This is based on inaccurate statistics and misleading claims presented to the public by the current State Administration.

c. Plaintiffs need clarification as to what the "objective parole criteria" consists of pursuant to C.R.S. 17-22.5-404(6) if they are criteria different than, or in addition to, the criteria on the CARAS as mandated by the same subsection of 17-22.5-404. Statutory law mandates that the Department of Criminal Justice develop these criteria, as well as keep records and reports concerning the implementation of the criteria. What are the "forms" that are used pursuant to C.R.S. 17-22.5-404(6)(d) and (g). There is reason to believe that the forms and criteria being used may be in conflict with the guidelines outlined in C.R.S. 17-22.5-404(2), (3), and (4). Plaintiffs need clarification.

IV. RELIEF SOUGHT

50. Plaintiffs are seeking a Declaratory Judgment concerning the alleged abuses of the Decision-Making process of the BOP, the DOC, and Governor Owens in relation to Parole Applications for inmates under Discretionary Parole Laws.

51. Plaintiffs need clarification concerning their due process rights under C.R.S. 17-22.5-404, as well as other parole statutes, and the responsibilities of the BOP under the same statutes.

52. Plaintiffs seek clarification to the above questions as outlined in paragraphs 44 through 49 as well.

53. Do the Governor, the BOP, and the DOC have a right to ignore the intent (in full) of C.R.S. 17-22.5-404, especially when all criteria is positive and suggests that parole is warranted?

54. Do BOP members have a right to, or authority to contradict the Colorado Actuarial Risk Assessment Scale when it demonstrates a low score to non-the-less label an inmate a "Public Risk" and use that false determination as reason to continue incarceration?

55. Do BOP members have a duty to be fair in their decision-making process?

56. In light of all evidence and testimony, is the Colorado BOP abusing their discretion concerning the consideration of Parole Applications?

57. Has "sole discretion" come to mean "absolute power" in the state of Colorado concerning the parole board and the DOC?

58. Plaintiffs seek Declaratory Judgment concerning the issues and questions raised herein and any othe relief the court may deem reasonable in this matter. Plaintiffs seek a fair treatment in relation to their applications for parole.

59. Plaintiffs and members of the class also request the appointment of counsel in this matter due to the complex nature of the issues and the scope of this action. Plaintiffs believe this is an important action that will have affect on the entire State of Colorado. Plaintiffs believe the People of the State of Colorado have a right to know the truth concerning prisons in this area and how they are being unduly exploited for more and more money to be spilled into prisons when it is not necessary.

WHEREFORE, for the above reasons, facts, and claims, the plaintiffs Inmel and Willsey pray this Court will Grant Class Action Status to this case, Appoint Counsel for the plaintiffs, and ultimately Grant Relief in the interest of justice for all.

RESPECTFULLY SUBMITTED this 12th day of September, 2005.



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County of Logan

AFFIDAVIT OF THOMAS WILLSEY

State of Colorado

First Colorado Board of Parole appearance at Arrowhead Facility August 28, 2001 DOC Case Manager Jon Hall represented affiant, and Parole Board Member Larry Swartz conducted the hearing.

At the Pre Board planning Case Manager Hall told me that I would not be paroled no matter what plan was presented or what programs I attended, but that we will just go through the motions.

At the hearing, after discussing the circumstances of my case and my future plans, Parole Board Member Swartz said, "that he would like to send me to the full board, but that it was too political to do that." Instead he Recommended that I progress to Community Corrections, ISP, and stabilize.

In the Post Parole Board interview with Case Manager Hall, he said "that I had one of the better interview he has seen." Hall also said, "that it made no difference what the parole board recommended. When Case Manager Hall submitted the Referral Form to Community Corrections Division, he included False, Inaccurate and Incomplete Information that I had to go to District Court to retrieve the Community Referral Form. Senior Case Manager Joe Peter had to correct the file and the form and eventually re submitted. I reported Case Manager Halls actions to Chariman of the Board Don VanPelt. To no avail.

Second Colorado Board of Paroles appearance was at Four Mile Facility

on March 3, 2003. DOC Case Manager Ryan represented affiant, and Parole Board Member Daniel Miraflor conducted the hearing.

At the Pre Board planning, Case Manager Ryan told me that he was just given my file, and that he did not know what to say about me. I had many letter in my file from friends, former in-laws, family members, and former work colleagues, and a Parole Plan that included a job offer, place to live and many offers of support. Case Manager Ryan said my file was a mess, and it made no difference what people had to say about me in the free world, and that I was not going to get parole in the political climate of the times. I asked for a postponement so my file and plan could get in order an verified. I was told that it was to late and I had to go to the board or be penalized.

At the Parole Hearing Marifore said little, I asked most of the questions. I asked Miraflor if it was to political to get paroled if he would recommend what the last member Swartz did. He made the same recommendation that Larry Swartz did, Progress to Comm Corr, ISP, and stabilize

In my post board interview with Case Manager Ryan we dicussed the Parole Boards Reccomendation. Ryan, like Case Manager Hall said, "it did not matter what the Parole board Recommended" as no one had to follow it, and when it came to Community Corrections the Board had no say. I asked Ryan what if the board wanted me to go see mental health, or get a GED, enroll in TC, is it not true DOC would make every effort to make me attend or comply? He said that was a different matter, and the system did not work that way.

tw Third Colorado Board of Appearance was at Sterling Facility on September 14, 2005. DOC Case Manager Frank Nicols represented affiant, and Parole Board Member John Rosen conducted the hearing.

At the Pre Board planning Case Manager Nicols thought I was a good candidate for parole, as I functioned well in Community Corrections until a medical condition and Social Security , Medicare brought me back. Nicols had letters from the community where I was at, and he confirmed my parole plan. He reviewed my file and came to this conclusion.

At the hearing an incident happened before I entered. DOC allowed a woman who claimed to be a victim of my crime into the facility and into the board room, as she was preparing to testify before the board, Case Manager Nicols discovered that she was not a victim of my crime and stopped her from giving legal testimony, but did not stop her from becoming belligerent and boisterous calling me derogatory names in front of the DOC and Parole Board Member Rosen. When I entered the hearing room the air was tense and I felt a cold reception. There was no questions about my crime or circumstances, yet on the Parole Board Action Form said, "Aggravating Factors/Inadequate Time Served." My Colorado Actuarial Risk Assessment Scale Score was a 1, a low risk level according to the C.R.S. 17-22.5-404(6). I was denied one year. At the post Parole Board interview with Case Manager Nicols told me that Parole Board Hearing Officer Rosen only said the reason for not considering me for parole was my time to Statutory Discharge. I asked Nicols if the Parole Board disruption by the woman had any effect on the hearing or the decision made by Rosen. He said " he could not say."

I wrote to Colorado Board of Paroles Chairman Allen Stanley to ask for another hearing because of the Women Disrupting the hearing. His reply was, "there are many reasons for people getting denied, and that it appeared to him that the board hearing complied with the law."

Thomas Willey

Subscribed before me this day 26 of July, 2005.

Jacqueline Heavilin

Notary Public, My commission expires 1/21/07

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