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## Federal judge skeptical that toy phone placed on jailhouse lawyer's desk in prison library is contraband

*By Maxine Bernstein | The Oregonian/OregonLive*

7-8 minutes

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A federal judge seemed incredulous that state prison officials would view a plastic toy phone as contraband or believe that an inmate doing legal work for other inmates had somehow compromised a prison law librarian.

The case came before U.S. District Judge Michael H. Simon this week after inmate [Mark James Wilson filed a civil rights lawsuit](#) against a prison investigator.

The investigator found Wilson, a convicted murderer who has served as a jailhouse lawyer for inmates and writes regularly for Prison Legal News, had contraband, the toy phone, and compromised the prison library coordinator. The prison blocked Wilson from serving as a legal assistant for other inmates and placed him in solitary confinement for 120 days, where he remains.

The law librarian at the Salem prison said in a sworn declaration to the court that she put the toy phone on Wilson's desk in the library as a joke because Wilson gets a lot of calls from attorneys.

The judge expressed immediate skepticism at the state's actions during a hearing Monday.

"There is so much here that at a minimum raises serious questions and probably would be enough for a jury to find by circumstantial evidence ... that what really was going on was retaliation against Mr. Wilson," Simon said.

The judge indicated that the ongoing segregation likely has caused irreparable injury to Wilson but that his suit names a defendant who doesn't have the authority to overturn the sanction even if ordered.

So Simon directed Wilson and his lawyers to add a defendant who has that authority.

"I would be prepared to find, if we have the right defendant, that there is a substantial likelihood of irreparable injury from remaining in disciplinary segregation," the judge said during Monday's hearing on Wilson's motion for a temporary restraining order.

On Tuesday, the judge issued a [formal written ruling](#), denying Wilson's motion based on the defendant named in his suit, Jerry Plante, an investigator for the state Department of Corrections.

Attorney Juan Chavez, representing Wilson, said he planned to file an amended lawsuit Wednesday that adds others as defendants in the case, including the Corrections Department's inspector general and disciplinary hearings officer.

Wilson and his lawyers from the Oregon Justice Resource Center alleged the lead prison investigator in his case violated Wilson's free speech and due process rights.

They contend the corrections officials retaliated against Wilson for

his legal advocacy on behalf of other prisoners — particularly his work helping lawyers who sued the Corrections Department, contending it failed to take adequate safety precautions for inmates during the COVID-19 pandemic. A judge in February ordered the state prison system to offer all inmates a vaccine as a result of the legal action.

Simon spent much of Monday's hearing grilling the state's lawyer, first eviscerating the state's contention that Wilson hadn't exhausted all administrative steps before filing the lawsuit and then asking if the Corrections Department truly considered the toy phone contraband.

Attorney Kenneth Crowley from the state Department of Justice told the judge the phone was considered a "gift," which is prohibited. He said Wilson and his boss in the library, Pam McKinney, had "crossed the line" with a personal relationship.

"It can also be a danger when unauthorized transactions like that happen," Crowley said. "It can lead to serious safety concerns."

Simon responded, "If you want to tell the jury *that* was contraband and it was the result of Mr. Wilson having a personal relationship or business transaction with Ms. McKinney, we will both see what the jury will have to say."

Simon then schooled Crowley, reading from the state regulation that defines the offense of compromising an employee in a prison as referring to either a personal relationship or a business transaction between a prisoner and a corrections employee.

"Any evidence of a sexual relationship?" Simon asked.

The state's lawyer said no.

“Any evidence of a personal relationship?” the judge asked.

“Yes, she was providing him with privileges that others did not receive,” Crowley said. “The way that he put it, she was helpful. She was allowing him to cut corners.”

Crowley cited the phone placed on the inmate’s desk and the library coordinator’s practice of sending legal documents by email on Wilson’s behalf to lawyers outside the prison. The library coordinator’s emailing of attached legal documents to lawyers saved Wilson \$387.40 in copy costs, which the prison found to be a violation, according to Wilson’s misconduct report.

“Those are things that add up to their relationship?” Simon asked.

Simon said he understood McKinney might have taken actions that she wasn’t authorized to take and that she would face discipline for that.

“But I’m trying to figure out what did Mr. Wilson do?” the judge asked.

The judge then directed the state’s lawyer to a sworn statement that McKinney submitted to the court in writing and began reading from it.

“McKinney said the following: ‘AIC (adult in custody) Wilson never behaved inappropriately throughout my time working with him. Had he done so, I would have removed him from his position as an LA,’ which I understand to be legal assistant,” Simon said.

In his written ruling, Simon also noted that McKinney got her supervisor’s approval to send legal documents on behalf of inmates via email to the state Department of Administrative Services because some of their legal documents sent by U.S.

postal mail wasn't getting through or arrived late during the pandemic.

McKinney said she wasn't aware that her supervisor's approval of sending inmates' legal documents by email was restricted to that one state office. That's why, she said, she allowed Wilson to give her legal documents that she sent by email to attorneys after inspecting the material but not reading it.

Simon quoted from McKinney's declaration, writing that McKinney believed that her "main priority was to find a way to make legal access and process happen" for the inmates.

"She added that Wilson 'did not push me or manipulate me to get me to email legal documents,' but that she was the one who 'was finding a way to fix (the mail delivery) problem and complete my duties as they had been described to me,' " the judge's order said.

The judge also said during the court hearing that he didn't find any evidence yet of the inmate compromising the library coordinator.

"I don't see that ... so I think there's probably even a substantial likelihood of success on the merits," of the case, he said.

Wilson remains in disciplinary segregation, which is set to run through Dec. 28.

-- Maxine Bernstein

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