



PC-DC-0006-0001

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JANE DOE  
Minimum Security Facility  
Lorton, Virginia, 22079,

SALLY ROE  
Minimum Security Facility  
Lorton, Virginia 22079,

KAREN ZOE  
Medium Security Facility  
Lorton, Virginia 22079,

JOHN DOE  
Central Facility  
Lorton, Virginia 22079,

SAMUEL ROE  
Medium Security Facility  
Lorton, Virginia 22079,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

Civil Action No. \_\_\_\_\_

92 0635

COMPLAINT

PRELIMINARY STATEMENT

1. In this civil rights action, five prisoners who are infected with the Human Immunodeficiency Virus (hereinafter referred to as "HIV")<sup>1</sup> and are incarcerated in District of Columbia correctional facilities seek damages, injunctive and declaratory relief for injuries they suffered when correctional officials unlawfully and without permission revealed their HIV

<sup>1</sup>HIV is the virus presumed to cause Acquired Immune Deficiency Syndrome (hereinafter referred to as "AIDS").

status to other prisoners and to correctional staff. These breaches of the plaintiffs' confidentiality were the result, inter alia, of a policy of the defendant to fail to properly train correctional officials concerning the maintenance of the confidentiality of prisoner medical records and of the custom and practice of the defendant to fail to maintain such records in a confidential manner.

2. In addition, plaintiffs Karen Zoe and Samuel Roe were unlawfully denied participation in prison work programs solely on the basis of the fact that they are infected with HIV. The denial of the plaintiffs' rights was caused, inter alia, by a policy of the defendant to fail to properly train correctional staff concerning HIV infection, and a custom and policy of the defendant to discriminate unlawfully against HIV-infected prisoners.

#### JURISDICTIONAL STATEMENT

3. This lawsuit raises claims under the United States Constitution and under federal law. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343 and 2201, 29 U.S.C. § 794a, and 42 U.S.C. § 1983. Plaintiffs also raise pendent claims under state law which arise out of a common nucleus of material fact with their federal claims.

PARTIES<sup>2</sup>

4. Plaintiff Jane Doe is a female prisoner of the District of Columbia Department of Corrections who, at all times relevant hereto, was confined to the Minimum Security Facility in Lorton, Virginia.

5. Plaintiff Sally Roe is a female prisoner of the District of Columbia Department of Corrections who, at all times relevant hereto, was confined to the Minimum Security Facility in Lorton, Virginia.

6. Plaintiff Karen Zoe is a female prisoner of the District of Columbia Department of Corrections who, at all times relevant hereto, was confined to the District of Columbia Detention Facility.

7. Plaintiff John Doe is a male prisoner of the District of Columbia Department of Corrections who, at all times relevant hereto, was confined to the District of Columbia Detention Facility.

8. Plaintiff Samuel Roe is a male prisoner of the District of Columbia Department of Corrections who, at all times relevant hereto, was confined to the Medium Facility in Lorton, Virginia.

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<sup>2</sup> The plaintiffs seek to maintain their confidentiality and have filed this lawsuit under pseudonyms. The plaintiffs' names have been submitted to the Court along with a motion requesting that their names be maintained under seal. A list of their names will be served on Richard Love, Esquire, Chief of the Correctional Litigation Unit, Office of the District of Columbia Corporation Counsel along with a copy of this complaint.

9. Defendant District of Columbia is a municipal corporation organized pursuant to the District of Columbia Self Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973). Defendant District of Columbia operates the Department of Corrections as an agency of government.

#### CLAIM FOR RELIEF

10. Jane Doe: In late November 1991, at the Minimum Security Facility in Lorton, Virginia, Correctional Officer Cynthia Champion and Correctional Officer Dugger confronted a friend of Ms. Doe. These officers advised Ms. Doe's friend that Ms. Doe is infected with HIV and questioned why, in light of her infection, the friend continued to associate with Ms. Doe.

11. As a result of this incident, Ms. Doe's HIV status became common knowledge among prisoners and correctional officers at the Minimum Security Facility.

12. The conduct of Officers Champion and Dugger served no peneological purpose.

13. As a result of these officers' actions, Ms. Doe suffered humiliation, embarrassment and extreme emotional distress.

14. Sally Roe: Sally Roe is confined to the Minimum Security Facility in Lorton, Virginia.

15. The medical staff at the facility fails to maintain her medical records in a secure or a confidential fashion. Moreover,

when she consults with, or is examined by, medical staff, other prisoners and correctional officers are permitted in the examining room despite her requests for privacy.

16. The failure to maintain her records in a confidential manner, and the failure to provide her with confidential medical consultations and examinations has resulted in the disclosure of Ms. Roe's HIV status to correctional officers and to prisoners.

17. There is no peneological purpose served by refusing to maintain medical information concerning Ms. Roe in a confidential manner.

18. As a result of the disclosure of her HIV status, Ms. Roe has suffered humiliation, embarrassment and extreme emotional distress.

19. Karen Zoe: During the fall of 1991, Ms. Zoe was assigned to a prison detail to work in the officers' dining hall at the District of Columbia Detention Facility. Prior to assuming this position, Ms. Zoe had been examined by District of Columbia Department of Corrections medical staff and was given written authorization to work in the officers' dining hall. There was no peneological or public health reason that Ms. Zoe could not hold this position.

20. On information and belief, Correctional Officer Jenkins examined the file kept by the Department of Corrections concerning Ms. Zoe and learned that she is infected with HIV. No peneological purpose was served by permitting Officer Jenkins to have access to information concerning Ms. Zoe's medical status.

The defendant failed to maintain these records in a confidential fashion.

21. On or about November 29, 1991, Officer Jenkins told Ms. Zoe that he knew her HIV status and he arranged for her to be removed from the detail in the officers' dining room.

22. After removing Ms. Zoe from her detail, Officer Jenkins told other correctional officers that Ms. Zoe was infected with HIV.

23. Ms. Zoe appealed her removal from the detail and was reinstated approximately one week later.

24. Upon her reinstatement, a number of officers who had learned of Ms. Zoe's HIV status from Officer Jenkins, or as a result of Officer Jenkins' breach of Ms. Zoe's confidentiality, complained to Detention Facility officials and requested her removal from the detail.

25. Shortly thereafter, she was again removed from the detail. Upon information and belief, her removal was authorized by David Roach, the Administrator of the District of Columbia Detention Facility. Mr. Roach is a final decisionmaker for the District of Columbia concerning the operation of the Detention Facility.

26. As a result of this incident, Ms. Zoe's HIV status became common knowledge among prisoners and correctional officers at the Detention Facility.

27. The conduct of Officer Jenkins served no peneological purpose.

28. As a result of having her HIV status revealed to other prisoners and to correctional staff, Ms. Zoe suffered humiliation, embarrassment and extreme emotional distress.

29. John Doe: On or about April 8, 1991, while confined to the District of Columbia Detention Facility, Correctional Officer Ashford loudly referred to Mr. Doe as a "smart mouthed faggot" within the hearing of other prisoners. On the same occasion, without justification, Officer Ashford shoved Mr. Doe and chained him to a railing in the common area of his housing unit. The only purpose of chaining him to the railing was to humiliate him in front of other prisoners. Upon information and belief, Officer Ashford's hostility towards Mr. Doe was motivated by a belief that he was infected with HIV.

30. On or about April 15, 1991, Officer Ashford loudly referred to Mr. Doe as a "faggot" and as an "AIDS-carrying freak." Following this incident, other prisoners began to shun Mr. Doe and threatened to kill him if he continued to attempt to associate with them.

31. Following these incidents, Mr. Doe made a formal complaint to the Department of Corrections concerning Officer Ashford's conduct. On or about April 22, 1991, Officer Ashford told Mr. Doe that he was "in hot water" because of Mr. Doe's complaint. He requested that Mr. Doe withdraw it. When Mr. Doe refused to do so, Officer Ashford told him that if there were ever a prison riot, Officer Ashford had a 30-30 bullet with Mr. Doe's "name on it."

32. On or about April 23, 1991, Mr. Doe was interviewed by an official of the Department of Corrections concerning his complaint. This official instructed Mr. Doe to withdraw his complaint, which Mr. Doe refused to do. Upon information and belief, no action has ever been taken on Mr. Doe's complaint.

33. As a result of this incident, Mr. Doe's HIV status has become common knowledge among prisoners and correctional officers.

34. The conduct of Officer Ashford served no peneological purpose.

35. As a result of having his HIV status revealed to correctional officers and to other prisoners, Mr. Doe suffered humiliation, embarrassment and extreme emotional distress.

36. Samuel Roe: On or about October 29, 1991, Mr. Roe was transferred from a halfway house to the District of Columbia Detention Facility.

37. On a form related to Mr. Roe's transfer, officials of the Department of Corrections stated that Mr. Roe is infected with HIV. This form has become a permanent part of Mr. Roe's institutional records and is available for review by correctional staff. This form was signed by John Noble, the administrator of halfway houses. Mr. Noble is the final decisionmaker for the Department of Corrections concerning the operation of halfway houses.

38. There was no peneological purpose served by including Mr. Roe's HIV status on this form.



39. As a result of the statements on this form, Mr. Roe's HIV status has become known to correctional staff and to other prisoners.

40. As a result of having his HIV status revealed to correctional staff and to other prisoners, Mr. Roe suffered humiliation, embarrassment and extreme emotional distress.

41. On or about November 3, 1991, Mr. Roe requested a prisoner work detail in the Medium Security Facility kitchen.

42. He was denied the kitchen job solely on the basis that he is infected with the HIV virus. There was no penological or public health reason that Mr. Roe could not hold this position.

#### CAUSES OF ACTION

I. First Cause of Action: Fifth Amendment to the United States Constitution, Right to Privacy, 42 U.S.C. § 1983.

43. Plaintiffs have a liberty interest in the confidentiality of their medical records and of private information concerning their health, which is protected by the due process guarantees of the fifth amendment to the United States Constitution.

44. Defendant District of Columbia violated plaintiffs' constitutionally protected right to privacy by:

a. maintaining a policy of failing to train correctional officials concerning prisoners' rights to confidentiality of medical information;

b. maintaining a custom, pattern and practice of violating prisoners' rights to confidentiality of medical information; and

c. the participation in the denial of confidentiality to Ms. Zoe and Mr. Roe by a final agency decisionmaker.

45. Failure to Train Correctional Officials. The District of Columbia Department of Corrections has a policy to fail to properly train correctional officers concerning:

a. prisoners' right to the confidentiality of their medical records in general and of all information relating to their HIV status in particular; and

b. prisoners' right to be free from discrimination in participation in prison programs and work details.

46. Defendant District of Columbia's policy of failing to properly train correctional officers resulted in injury to the plaintiffs.

47. Custom, Pattern and Practice of Failing to Maintain Confidentiality of Records Related to Prisoners Infected with HIV. Defendant District of Columbia has a custom of being deliberately indifferent to the confidentiality of prisoner records related to HIV infection.

48. Plaintiffs were injured as a result of this custom.

49. Wrongful Conduct by Final Decisionmaker. The District of Columbia is liable for the injuries suffered by Karen Zoe and Samuel Roe when their right to privacy was violated because these injuries were caused by the conduct of a final decisionmaker.

II. Second Cause of Action, Eighth Amendment to the United States Constitution, Cruel and Unusual Punishment, 42 U.S.C. §1983.

50. Plaintiffs were subjected to unnecessary and wanton infliction of pain when their HIV status was revealed to other prisoners and to correctional staff. These injuries were caused by the deliberate indifference of the defendant by:

a. maintaining a policy of failing to train correctional officials concerning prisoners' rights to confidentiality of medical information;

b. maintaining a custom, pattern and practice of violating prisoners' rights to confidentiality of medical information; and

c. participation in the denial of confidentiality to Ms. Zoe and Mr. Roe by a final agency decisionmaker.

51. Failure to Train Correctional Officials. The District of Columbia Department of Corrections has a policy to fail to properly train correctional officers concerning:

a. prisoners' right to the confidentiality of their medical records in general, and of all information relating to their HIV status in particular; and

b. prisoners' right to be free from discrimination in participation in prison programs and work details.

52. Defendant District of Columbia's policy of failing to properly train correctional officers resulted in injury to the plaintiffs.

53. Custom, Pattern and Practice of Failing to Maintain Confidentiality of Records Related to Prisoners Infected with HIV. Defendant District of Columbia has a custom of being deliberately indifferent to the confidentiality of prisoner records related to HIV infection.

54. Plaintiffs were injured as a result of this custom.

55. Wrongful Conduct by Final Decisionmaker. The District of Columbia is liable for the injuries suffered by Ms. Zoe and Mr. Roe when their HIV status was revealed to other prisoners and to correctional staff, because these injuries were caused by the conduct of a final decisionmaker.

III. Third Cause of Action: Rehabilitation Act, 29 U.S.C. § 794.

56. Defendant District of Columbia is a program or agency for the purposes of the Rehabilitation Act, 29 U.S.C. § 794.

57. Plaintiffs Ms. Zoe and Mr. Roe were excluded from participation, denied the benefits of and subjected to discrimination in the participation in programs offered by the defendant solely on the basis of their handicapping condition, to wit: HIV infection.

IV. Fourth Cause of Action: District of Columbia Freedom of Information Law, D.C. Code § 1-1521 et seq., Private Right of Action.

58. All records concerning plaintiffs' medical condition are protected from disclosure pursuant to D.C. Code § 1-1524(2).

59. Defendant violated plaintiffs' right to have this information protected from disclosure by the actions alleged in this complaint, causing each plaintiff to suffer injury.

**V. Fifth Cause of Action: Invasion of Privacy, respondeat superior.**

60. By the above stated actions, defendant's agents committed the tort of invasion of privacy, causing each plaintiff to suffer injury.

61. Defendant District of Columbia is liable pursuant to the doctrine of respondeat superior.

**VI. Sixth Cause of Action: Breach of Confidential Relationship, respondeat superior.**

62. By the above stated actions, defendant's agents committed the tort of breach of confidential relationship, causing each plaintiff to suffer injury.

63. Defendant District of Columbia is liable pursuant to the doctrine of respondeat superior.

**VII. Seventh Cause of Action: Intentional Infliction of Emotional Distress, respondeat superior.**

64. By the above stated actions, defendant's agents committed the tort of intentional infliction of emotional distress, causing each plaintiff to suffer injury.

65. Defendant District of Columbia is liable pursuant to the doctrine of respondeat superior.

**CLAIM FOR RELIEF**

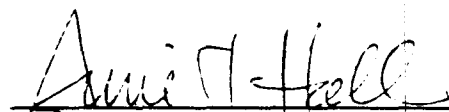
Wherefore, plaintiffs respectfully request:

1. an award of compensatory damages appropriate to the proof presented at trial;
2. a declaratory judgment that their constitutional and statutory rights have been violated;
3. appropriate injunctive relief including, but not limited to, an order prohibiting further disclosure of plaintiffs' HIV status or further discrimination against these plaintiffs;
4. reasonable attorneys' fees and costs; and
5. such other relief as the Court deems just and necessary.

JURY REQUEST

Plaintiffs request a trial by jury.

Respectfully Submitted,

  
Jonathan M. Smith, No. 396578  
Aurie T. Hall, No. 420157  
D.C. Prisoners' Legal  
Services Project, Inc.  
1400 20th Street, N.W.  
Suite 117  
Washington, D.C. 20036  
  
(202) 775-0323

Dated: March 11, 1992