

State of Indiana : In the Marion Superior Court  
County of Marion : Civil Division, Room No. 7  
Cause No. 49D07-9205-CP-498

KATAZA TAIFA, PAUL KOMYATTI, :  
WILLIAM SAMPLEY, MARK S. :  
DOUGLAS, AARON ISBY, KEVIN :  
SANDIFER, JAMES E. :  
SHROPSHIRE, JOHN CHARLES :  
COLE, JR., PRESTON GARDNER, :  
EDWARD BROADUS, JAMES :  
THOMPSON, NOLAN McDANDAL, :  
ROBERT SMITH, ROBERT :  
JENKINS, RICHARD MUMFORD, :  
TILLMAN MORRIS, MICHAEL :  
HEGWOOD, TERRENCE DRAIN, :  
ERIC MALONE, MICHAEL :  
HOLLAND, ALBERT ESTEP, and :  
ROOSEVELT WILLIAMS, on their :  
own behalf and on behalf of :  
all other individuals simi- :  
larly situated, :

Plaintiffs, :

v. :

EVAN BAYH, in his individual :  
and official capacity as :  
Governor of the State of :  
Indiana; JAMES E. AIKEN, in :  
his individual and official :  
capacity as Commissioner of :  
the Indiana Department of :  
Correction; NORMAN G. OWENS, :  
in his individual and offi- :  
cial capacity as Director of :  
the Classification Division :  
of the Indiana Department of :  
Correction, JOHN NUNN, in :  
his individual and official :  
capacity as Deputy :  
Commissioner of Operations :  
of the Department of :  
Correction; and, CHARLES E. :  
WRIGHT; in his individual :  
and official capacity as :  
Director of the Maximum :  
Control Complex of the :  
Indiana Department of :  
Correction, :

Defendants. :

FILED

MAY 22 1992

*Thayer J. Mowery*

PLAINTIFFS' FIRST AMENDED  
COMPLAINT

Taifa v. Bayh



PC-IN-006-001

## I. INTRODUCTION

1. The defendant state correction officials have implemented a program at the Westville Correctional Center's Maximum Control Complex which incarcerates prisoners in long-term solitary confinement, subjects them to sensory deprivation and arbitrary and irrational rules, physically abuses them, denies them visitors and medical and psychiatric care, and deprives them of educational, vocational, recreational, and other rehabilitative programs. This punitive segregation scheme tortures prisoners by depriving them of the basic necessities of human existence. These conditions have caused prisoners to engage in extended hunger strikes and acts of self-mutilation. This segregation scheme violates numerous state statutes, as well as the Indiana and United States Constitutions. This lawsuit seeks to end this inhumane, unjust and illegal practice.

## II. JURISDICTION AND VENUE

2. This Court has general jurisdiction over this cause of action.

3. Venue is proper in this Court pursuant to Trial Rule 75(1) because a greater percentage of individual defendants reside in Marion County.

### III. PARTIES

#### A. Plaintiffs

4. Kataza Taifa, Paul Komyatti, William Sampley, Mark S. Douglas, Aaron Isby, Kevin Sandifer, James E. Shropshire, John Charles Cole, Jr., Preston Gardner, Edward Broadus, James Thompson, Nolan McDandal, Robert Smith, Robert Jenkins, Richard Mumford, Tillman Morris, Michael Hegwood, Terrence Drain, Eric Malone, Michael Holland, Albert Estep, and Roosevelt Williams are adult prisoners incarcerated in the Maximum Control Complex (MCC), a "supermaximum" security institution, located in Westville, Indiana.

5. Plaintiffs bring this action on their own behalf, for declaratory, injunctive and money damages relief, and, pursuant to Trial Rule 23(b)(2), for declaratory and injunctive relief, on behalf of all persons who are now or in the future will be confined in the Defendants' "supermaximum" security institutions such as MCC.

6. At the time of this filing, the class consists of over eighty (80) prisoners. This number is expected to increase to several hundred in the near future. Joinder of all members is impracticable.

7. Questions of law and fact concerning the long-term solitary confinement of prisoners in the Indiana Department of Correction are common to members of the class.

8. The claims of the representative parties are typical of the claims of the class.

9. The prisoners and their counsel will thoroughly and adequately represent the interests of the class.

10. The defendants have acted and have refused to act on grounds generally applicable to the class and final injunctive relief is appropriate to the class as a whole.

**B. Defendants**

11. Defendant Evan Bayh is Governor of the State of Indiana and head of the State's executive branch of government. As Governor, he appoints the Commissioner of the Department of Correction (DOC) and retains ultimate administrative authority over that Department. Governor Bayh is sued in both his individual and official capacities.

12. Defendant James E. Aiken is the Commissioner of the Department of Correction for the State of Indiana. He exercises supervisory power over Indiana State prisons including the MCC. Commissioner Aiken is sued in his individual and official capacities.

13. Defendant Norman G. Owens is Director of the Classification Division of the Indiana Department of Correction. He developed the criteria used to assign prisoners to solitary confinement in the MCC. Mr. Owens is sued in his individual and official capacities.

14. Defendant John Nunn is the Deputy Commissioner of Operations for the DOC. Applying Defendant Owens' selection criteria, Nunn decides which prisoners are to be assigned to

long-term solitary confinement at MCC. Mr. Nunn is sued in his individual and official capacities.

15. Defendant Charles E. Wright is Director of the MCC in Westville, Indiana. He exercises supervisory power over the conditions and operations at the MCC. Mr. Wright is sued in his individual and official capacities.

#### IV. FACTS

##### A. Assignment to MCC

16. Prisoners committed to the DOC must be classified pursuant to Ind. Code 35-38-3-5 and 6 as in need of minimum, medium, or maximum security, and are then to be assigned to a facility or program designated either as minimum, medium, or maximum security.

17. Indiana law provides that a prisoner can be separated from an institution's general population and subjected to solitary confinement only as provided for by statutes authorizing administrative and disciplinary segregation.

18. Contrary to Indiana law, the DOC has circumvented the statutory segregation guidelines and procedures by administratively subjecting prisoners to long-term solitary confinement in "supermaximum" security institutions such as MCC.

19. The DOC presently has one supermaximum security institution known as the Maximum Control Complex ("MCC") located in Westville, Indiana, and is constructing another supermaximum security institution in Sullivan, Indiana.

20. Approximately eighty prisoners are held in the MCC, although it has a maximum capacity of 186 prisoners.

21. The DOC's criteria and admission procedures for maximum control complexes promulgated by Defendant Owens are vague, subjective, and discretionary, and allow prison authorities to transfer prisoners to the MCC in retaliation for the prisoners' exercise of speech and association rights or their rights of legal redress.

22. Specifically, these criteria permit prisoners to be transferred to the MCC for such reasons as having "a proven and/or documented history of . . . serious disruption of the orderly management of a facility or unit . . . [or] . . . intensive involvement in gangs or gang activities."

23. The criteria do not define the terms "serious disruption," "intensive involvement," "gangs," or "gang activities."

24. The criteria do not require these allegations to be "proven," in any proceeding, only "documented." Who can "document" these allegations, and what standards they are required to follow, are not set forth in the criteria.

25. Pursuant to these vague standards, several prisoners, including Plaintiff Paul Komyatti, have been placed in solitary confinement in the MCC because they have sued the DOC and assisted other prisoners in pursuing their legal rights against the DOC.

26. The admission criteria allow prisoners who have served all their disciplinary segregation time for past offenses, and

who have been released back to a prison's general population, to be resegregated in MCC based solely on their past, already-punished, conduct. This has happened to many prisoners, including Plaintiffs Mark Douglas and James Edward Shropshire.

27. The admission criteria leave so much discretion to prison officials that an offense as minor as throwing water on a guard can result in the prisoner being sent to the MCC. This is why Plaintiff Robert Jenkins was sent to the MCC.

28. Prisoners are not provided notice of charges against them, nor given a hearing to contest their assignment to the MCC.

29. To be assigned to the MCC, a prisoner must be free from disciplinary or administrative segregation status.

**B. Defendants' "Behavior Modification" Program**

30. The MCC has adopted a "behavior modification" program which requires total submission of the prisoners to state authority, and allows a high level of discretion on the part of administrators and staff.

31. All new arrivals at the MCC are initially assigned to "Program Level III." Prisoners in Level III are denied visits for ninety (90) days, after which they are allowed only one visit every thirty (30) days. They are denied telephone privileges except one call per week. They are denied access to radios and televisions.

32. Prisoners must remain infraction-free at Level III for 180 days before they can petition for promotion to the next program level.

33. Infractions as minor as violating the rules prohibiting prisoners from getting under their blankets in bed during the day, attempting to talk to other prisoners, or talking back to staff, can result in prisoners being denied promotion out of Level III.

34. Guards can give "bad day" reports to prisoners that deprive them of a full month of vested good time, thus keeping the prisoner in Level III a longer time. Prisoners are not provided a hearing to contest these bad day reports.

35. There are no clear policies to guide correctional staff with respect to stripping cells. Bedding can be removed from a prisoner's cell for such minor infractions as the failure to make the bed by 7 a.m.

36. Since prisoners must remain alone in their cells 23 hours per day with essentially nothing to do, and that temperatures can get very cold in the cells, the rule prohibiting prisoners from getting under their covers is arbitrary and unduly harsh.

37. Since many prisoners can neither read nor write, isolating them from other human beings, denying them visits and telephone calls, depriving them of educational opportunities, and prohibiting them from watching television and listening to the

radio, essentially prevents them from communicating with the outside world.

38. The second program level, Level II, provides prisoners with televisions and radios for six hours per day (but only between the hours of 12 noon and 6:00 p.m. when mostly "soap operas" are telecast), two telephone calls per week, and one visit every fourteen (14) days.

39. Prisoners must remain infraction-free at Level II for 365 days before they can petition for promotion to Level I.

40. Prisoners in Level I gain access to daytime and evening radio and television, are allowed three telephone calls per week, and permitted one visit every ten (10) days.

41. Prisoners can petition to return to their parent institution if they remain infraction-free in Level I for eighteen (18) months.

42. In view of the harsh conditions, arbitrary rules, and the total discretion of prison authorities, prisoners have little hope of ever being released from solitary confinement and going back to general population.

### C. Conditions at MCC

#### Isolation

43. Prisoners transferred from their parent institution to the MCC are held in complete segregation from each other, and have little contact with other human beings.

44. Prisoners at the MCC are kept in their cells 23 or more hours per day. When they are let out to exercise or shower, they do so by themselves and have no contact with other prisoners.

45. The prisoners' cell doors are solid except for a small glass window and a food slot.

46. The lights are kept on in prisoners' cells twenty-four hours per day.

47. MCC prisoners are deprived of most of their personal possessions. They are not even allowed to display pictures of loved ones in their rooms.

48. Prisoners lose track of time in MCC. There are no clocks on the walls within sight of the prisoners, and prisoners are not allowed to possess clocks or wrist watches. The MCC staff has been ordered not to tell prisoners the time of day or the day of the week.

49. Prisoners transferred to the MCC are denied visitors for ninety (90) days.

50. On the few occasions when they are allowed to receive visitors, prisoners are not allowed to see close personal friends who are not members of their immediate families.

#### Absence of Programs

51. Prisoners solitarily confined in the MCC are denied vocational, educational, and rehabilitative opportunities that are statutorily required to be provided to general population prisoners.

52. Prisoners solitarily confined in the MCC are denied meaningful recreation and exercise time that is statutorily required to be provided to general population prisoners.

Physical Conditions

53. Prisoners are exposed to extremely cold temperatures in the MCC. Temperatures have been recorded as low as 46 degrees in the cells. Even so, prisoners are denied warm clothing and are not permitted to get under their blankets during the day. If the prisoners do get under their blanket, their cells are "stripped," and they are forced to lay on the cold steel bedframe or the concrete floor. To inflict more pain on prisoners by these cold temperatures, prisoners on strip-cell status have their socks removed.

54. The ambient air within the MCC is extremely dry and the water hard. As a result, prisoners have experienced extreme skin irritations. This dryness has caused some of the inmates' skin, including their lips, feet, and scalp, to peel, crack, and bleed. Because of these conditions, the MCC physician prescribed vaseline and skin lotions to be given the prisoners. Notwithstanding doctor's orders, Defendant Wright denied vaseline and lotions to the prisoners.

55. The water that the inmates have been forced to drink contains contaminants which have resulted in making many of them nauseous and has contributed to skin irritations.

### **Access to the Courts**

56. Prisoner access to legal materials and attorney visits is severely restricted in the MCC.

57. The defendants have denied prisoners visits with attorneys, even though these visits were prearranged and all DOC policies were followed.

58. Even when attorneys are allowed to visit prisoners, attorney-client communications are severely restricted.

59. During the limited visitation that prisoners are allowed, including attorney-client visitation, prisoners are handcuffed and in leg irons. Prisoners and visitors are separated by a wall and window, communication is possible only through an electronic device, and these conversations can be overheard by prison officials and other visitors.

60. The law library is inadequate; no inmate trained in the law is allowed to assist prisoners; and inmates are not allowed to check-out law books.

61. Prisoners are not allowed to purchase legal books from publishers; nonlegal books are allowed.

62. Despite the fact that many prisoners can neither read nor write, they are not provided an attorney or lay advocate during disciplinary proceedings.

### **Mail**

63. Inmate mail, including legal mail, is tampered with and sometimes confiscated.

64. The defendants have instituted a new policy denying free postage and copying of legal materials to any MCC prisoner with over \$5.00 in his prison account. Prisoners in other DOC facilities are provided this service.

#### Religion

65. Prisoners are not permitted to practice their religions. They are not allowed to congregate for religious services, and some have had their Bibles, Korans, religious medallions, and headwear confiscated.

66. During the holy Muslim month of Ramadaan, the defendants deliberately denied wholesome food to Muslim prisoners. These prisoners were only fed twice per twenty-four (24) hour period, and, at times, were fed spoiled green meat and rotten eggs. The prisoners were also denied medication during this time.

67. Prisoners are not allowed to enroll in education correspondence courses, including Bible study correspondence courses. Pursuant to this policy, Plaintiff Paul Komyatti was prevented from enrolling, at his own expense, in Charles Colson's Prison Ministries Bible Study Correspondence Course.

#### Commissary

68. Prisoners are prohibited from smoking cigarettes or using smokeless tobacco.

69. Prisoners are not allowed to have drinking cups in their cells.

70. Prisoners are not allowed to purchase food items from the commissary.

71. Prisoners are not allowed to use a washcloth while bathing.

#### Verbal Harassment and Physical Abuse

72. Many of the prisoners are subject to verbal abuse and harassment by prison officials.

73. Some prisoners have been physically abused. Prisoners have been injured during unnecessary and unduly rigorous cell extractions for minor rules violations, and the defendants have maliciously and wantonly inflicted pain on inmates by spraying them with chemical agents and with firehoses.

74. Plaintiff Albert Estep was savagely beaten by guard Carl Johnson.

75. Plaintiff Roosevelt Williams, had his eye severely injured when the defendants used a firehose on him.

76. Handcuffs are routinely put on too tight during cell extractions, causing great pain and injury.

77. If prisoners resist this abusive treatment, they are placed in full restraints and strapped to their steel bedframes. During this time they are only provided two meals a day.

### Medical and Mental Health Care

78. Medical care at the MCC is grossly inadequate, and defendants are deliberately indifferent to the prisoners' serious medical needs.

79. Plaintiff William Sampley, who has a known heart condition, was on an extended hunger strike, and experienced chest pains for several days. Despite this, he was inadequately monitored and suffered a heart attack. Although he was given an Electrocardiogram (EKG), the results of the test were not even read for ten days, and thus Sampley did not receive treatment for his heart attack until ten days after it occurred.

80. Plaintiff Edward Broadus is disabled and cannot walk, yet he is not provided a wheelchair. Prison officials have denied him visits with attorneys by saying that he has refused to walk to these visits, even though he cannot do so. They have also turned a firehose on him in his cell to serve as a "shower."

81. Plaintiff Robert Jenkins had his four front teeth knocked-out in April, 1991. Despite his repeated requests for dental care, he has been told that he will not get replacements for these teeth until sometime in 1993.

82. Many of the prisoners are in need of psychiatric care which they are not receiving. Moreover, the harsh and cruel conditions which prisoners are forced to endure create great stress and exacerbate their mental health problems.

83. As a result of extended isolation and cruel conditions, Plaintiff Albert Estep had a mental breakdown and began eating

his own feces and wiping it all over his cell. Still, he was not provided mental health care.

84. Plaintiff Robert Jenkins is in need of extensive psychiatric care which he is not receiving. As a result of extended isolation and the harsh conditions, Jenkins has repeatedly gouged deep cuts in his forearms in senseless acts of self-mutilation.

85. The conditions are so harsh and cruel that prisoners have protested them by going on extended hunger strikes. Plaintiffs Kataza Taifa, Paul Komyatti, William Sampley and Mark Douglas were on a hunger strike for thirty-seven (37) days. They ended this hunger strike when a court ordered them to be force fed.

86. The conditions are so harsh and cruel that Plaintiff Paul Komyatti attempted to cut off his finger, and Plaintiff Kataza Taifa did cut off his finger, in desperate attempts to publicize these conditions and gain assistance in challenging them.

87. The defendants have taken the above actions under color of state law and with the intent to deprive the prisoners of their rights and/or with deliberate indifference to the safety and well-being of the prisoners.

## V. CLAIMS FOR RELIEF

### A. Indiana Code Provisions

88. The classification of prisoners as in need of "super-maximum" security violates Indiana Code §§ 35-38-3-5 and 6 which provides that prisoners shall be classified as minimum, medium, or maximum security. There is no statutory authorization for a supermaximum security classification.

89. The segregation of prisoners in supermaximum security institutions, and the disciplining of prisoners within MCC, all done without charges, notice, or hearings, violates the Disciplinary Segregation procedure set forth in I.C. 11-11-5 et seq. These provisions require, inter alia, that before a prisoner can be segregated from the general population for alleged misconduct, written charges of misconduct must be filed, the prisoner provided the assistance of a lay advocate, a hearing held before an impartial decisionmaker, at which the prisoner is allowed to submit evidence, and the filing of written findings of fact, evidence relied upon and the reasons for the action taken.

90. The segregation of prisoners in supermaximum security institutions violates the Administrative Segregation procedures set forth in Ind. Code § 11-10-1-7, which require, inter alia, that before a prisoner may be administratively segregated from the general population, prison officials must make a finding that segregation is necessary for the prisoner's own physical safety, or for the physical safety of others. Administrative segregation

is limited to thirty days unless preauthorized by the filing of additional findings of fact within that time.

91. The minimum three years of segregation violates Ind. Code § 11-10-1-7 which requires the review of a prisoner's segregation status every thirty (30) days.

92. The assignment of prisoners to at least three years of solitary confinement in the MCC violates Ind. Code § 11-10-1-6, which requires an annual review of a prisoner's security classification, and reassignment to an appropriate security classification after providing the prisoner with notice and the opportunity to challenge the classification.

93. The denial of vocational and educational programs and opportunities violates Ind. Code 11-10-5-1, which requires the DOC to implement academic and vocational programs for prisoners.

94. The denial of employment and educational programs and opportunities violates Ind. Code 11-10-1-3(b) which requires the DOC to assign prisoners to employment, education, or training programs within their assigned facility.

95. The denial of industrial or agricultural programs violates Ind. Code § 11-10-6-2 which requires the DOC to maintain and operate industry and farm programs to equip prisoners with marketable skills and the means to earn a livelihood upon the prisoners' return to the community.

96. The isolation and sensory deprivation imposed upon MCC prisoners violates Ind. Code § 11-10-11-1 which requires the DOC to establish recreational and cultural programs and activities

designed to develop and maintain the physical and mental health of confined persons.

**B. State Constitutional Provisions**

97. The vague and discretionary admission criteria and procedures, which permit the isolation of prisoners based on their speech and association and their prior already-punished conduct, and which do not provide prisoners with notice or hearings, violate the speech, association, due process and double jeopardy provisions of Article I, §§ 3, 9, and 12 of the Indiana Constitution.

98. The solitary confinement scheme and conditions of confinement violate Article I, § 15 of the Indiana Constitution, which prohibits unnecessarily rigorous treatment of prisoners.

99. The solitary confinement scheme and conditions of confinement violate Article I, § 16 of the Indiana Constitution which prohibits cruel and unusual punishment and requires that penalties be proportioned to the nature of the offense.

100. The solitary confinement scheme and conditions of confinement violate Article I, § 18 of the Indiana Constitution, which requires that the penal laws of the state be founded on principles of reformation, and not vindictiveness.

101. The solitary confinement scheme and conditions of confinement violate Article I, § 12 of the Indiana Constitution, which mandates due course of law.

102. Defendants' interference with the prisoners' rights of conscience, worship and belief violate Article I, §§ 2, 3, 4 and 9 of the Indiana Constitution.

103. Defendants' interference with the prisoners' access to legal materials, access to court, and attorney-client communications, violates Article I, § 12 of the Indiana Constitution, which protects the prisoners' rights to due course of law.

C. United States Constitutional Provisions

104. The solitary confinement scheme and conditions of confinement violate the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution.

105. The solitary confinement scheme and conditions of confinement deprive the prisoners of their state-created liberty interests as outlined above without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

106. Defendants' interference with the prisoners' access to court and with their attorney-client communications violate the Sixth Amendment to the United States Constitution.

107. Defendants' segregation of prisoners in retaliation for the exercise of their speech and association rights and for their attempts to petition the government for redress of their grievances violates the petition, speech and association clauses of the First Amendment to the United States Constitution.

D. Reservation of Rights

108. Pursuant to the rules of pleading and practice plaintiffs reserve the right to assert additional violations of state and federal laws.

VI. PRAYER FOR RELIEF

The plaintiffs ask this Court to:

1. Certify this cause as a class action.
2. Declare that the solitary confinement scheme and conditions of confinement at MCC violate Indiana Code §§ 11-10-1-3(b), 11-10-1-6, 11-10-1-7, 11-10-5-1, 11-10-6-2, 11-10-11-1, 11-11-5 et seq., 35-38-3-5 and 35-38-3-6.
3. Declare that the solitary confinement scheme and conditions of confinement at MCC violate Article I, §§ 2, 3, 4, 9, 12, 15, 16 and 18 of the Indiana Constitution.
4. Declare that the solitary confinement scheme and conditions of confinement at MCC violate Amendments One, Six, Eight, and Fourteen to the United States Constitution.
5. Enjoin the defendants from further violating the above state and federal laws; require defendants to return the prisoners presently incarcerated in the Maximum Control Complex to the general population of their parent institutions; and prohibit the defendants from assigning prisoners to the supermaximum security institutions at Westville and, in the future, at Sullivan, Indiana, in violation of Indiana and United States law.

6. Award money damages to the individual plaintiffs under their federal claims. At the present time, plaintiffs are pursuing their claims for money damages under their state claims directly with the defendants pursuant to the Indiana Tort Claims Act. If these efforts are unsuccessful, plaintiffs intend to amend their Complaint and seek money damages on these claims in this Court.

7. Retain jurisdiction of this case until all remedial orders have been fully implemented.

8. Award the plaintiffs their attorneys' fees and costs under both federal and state law.

9. Grant whatever additional relief is just and proper.

Respectfully submitted,

Dated: May 21, 1992

  
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