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FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

SEP 10 2007

Stephan Harris, Clerk  
Cheyenne

PRO SE ATTORNEY FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

STEPHEN L. PEVAR and RYAN )  
FORNEY, on Mr. Forney's own behalf )  
and on behalf of all other persons )  
similarly situated, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ROBERT LAMPERT and MICHAEL )  
MURPHY, in their official capacities, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Civ. No. 07-CV-193B

FIRST AMENDED  
CIVIL RIGHTS COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF

**PRELIMINARY STATEMENT**

The two named Plaintiffs in this lawsuit are an attorney and his prisoner-client. Plaintiffs bring this action to enjoin a policy and practice of Defendant prison officials that permits prison staff to interrogate prisoners regarding the substance of their privileged, attorney-client communications. This suit is brought as a class action on behalf of all prisoners confined in the Wyoming State Penitentiary, each of whom is equally at risk of having his attorney-client communications invaded by these Defendants and their employees.

## JURISDICTION AND VENUE

1. This action seeks relief pursuant to 42 U.S.C. § 1983. Accordingly, 28 U.S.C. §§ 1343(3) and (4) confers jurisdiction on the Court. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b).

## PARTIES

2. Plaintiff **Stephen L. Pevar** is a licensed attorney employed by the American Civil Liberties Union Foundation ("ACLU"). He has been licensed to practice law since 1971. Mr. Pevar is lead counsel in *Skinner v. Lampert* (formerly *Skinner v. Uphoff*), a class action lawsuit on behalf of all prisoners confined in the Wyoming State Penitentiary ("WSP"). See *Skinner v. Uphoff*, 234 F. Supp.2d 1208 (D. Wyo. 2002).

3. Plaintiff **Ryan Forney** is serving a criminal sentence in the state of Wyoming and is incarcerated at WSP. As such, he is one of Mr. Pevar's clients in the *Skinner* case. Mr. Forney is under the care, custody, and control of the Wyoming Department of Corrections (WDOC) and the named Defendants. Mr. Forney is 21 years old.

4. This action is filed on behalf of Mr. Forney and on behalf of a class of all other persons similarly situated pursuant to Rule 23(a), (b)(2) F.R.Civ.P., for purposes of obtaining declaratory and injunctive relief. The class is defined as all persons presently incarcerated at WSP, and all persons who in the future may become incarcerated at WSP. This action satisfies all four requirements of Rule 23(a), in that (1) the class includes hundreds of persons, on a fluid basis; (2) there are questions of law and fact common to the class regarding the extent to

which prison employees may be authorized by Defendants to interrogate them concerning the substance of their attorney-client communications; (3) the claims of Mr. Forney are typical of the claims of the class, in that all prisoners may be adversely impacted by the policy and practice challenged in this action; and (4) Mr. Forney and his counsel will fairly and adequately protect the interests of the class.

5. Defendant **Robert Lampert** is a citizen and resident of Wyoming. At all times material to this action, Mr. Lampert has been the Director of WDOC. As such, he is the official ultimately responsible under state law for the operation and administration of WSP, including the operation and implementation of the policy and practice challenged in this action.

6. Defendant **Michael Murphy** is a citizen and resident of Wyoming. At all times relevant to this action, Mr. Murphy has been the Warden of WSP. As such, he has a duty to operate and administer WSP in a manner consistent with state and federal law.

7. All acts and omissions of the Defendants described below were done under color of state law and were performed during the scope of their employment. Both Defendants are sued only in their official capacities.

#### FACTUAL ALLEGATIONS

8. All relevant events giving rise to this lawsuit occurred within the past thirty days. These events began on July 31, 2007, when Mr. Pevar, in his capacity as class counsel in *Skinner*, telecopied a letter to John Renneisen, counsel for Defendants in *Skinner*. (A copy of this letter is attached and filed

under seal as "Exhibit 1.") The letter notified Mr. Renneisen that Mr. Pevar had just received a letter from a prisoner who advised that both Mr. Forney and another prisoner had been assaulted previously, and were at risk of being assaulted again. Mr. Pevar requested that Administration officials assign someone to interview these two prisoners to determine if they had been assaulted and if they felt at risk of being assaulted.

9. Mr. Pevar stated in his letter that all of his information was derived, not from either of these alleged victims, but from a third prisoner who had just written him.

10. On August 14, 2007, Mr. Renneisen mailed a letter to Mr. Pevar, attached to which was a two-page memorandum. The memorandum is authored by Lt. L. Stilwell, dated August 7, 2007, and it is addressed to (Defendant) Warden Michael Murphy. (A copy of this letter and Stilwell's memorandum is filed under seal as "Exhibit 2.") Stilwell's memorandum states that he had received an e-mail from Warden Murphy, after which he interviewed Mr. Forney. This interview occurred on August 7, the memorandum states.

11. According to Lt. Stilwell's memorandum, Mr. Forney informed Lt. Stilwell during the interview that he had not been assaulted and that he was not in fear of being assaulted. These responses from Mr. Forney, therefore, *completely addressed* Mr. Pevar's inquiries concerning Mr. Forney.

12. During the interview, however, Lt. Stilwell also interrogated Mr. Forney regarding his confidential communications with Mr. Pevar. Lt. Stilwell did not indicate to Mr. Forney that Mr. Forney could refuse to answer these

questions, nor did Lt. Stilwell ask Mr. Forney if he was willing to waive his attorney-client privilege. Due to the inherently coercive nature of Lt. Stilwell's interrogation, Mr. Forney felt compelled to answer Lt. Stilwell's questions regarding his communications with Mr. Pevar.

13. Lt. Stilwell began this interrogation into Mr. Forney's confidential communications with counsel--as revealed in his memorandum to Warden Murphy--by asking Mr. Forney: "Have you ever contacted an attorney about [a certain particular incident with another prisoner]?" (See Exhibit 2 at page 2.) Mr. Forney replied: "I contacted the ACLU." Plaintiffs contend that Defendants had no legitimate penological purpose for asking this question, and that seeking this information violated Plaintiffs' attorney-client privilege.

14. Lt. Stilwell then asked Mr. Forney to provide the name of the person at the ACLU with whom he had corresponded. Mr. Forney replied: "Steven Pevar." (See Exhibit 2 at page 2.) Plaintiffs contend that Defendants had no legitimate penological purpose for asking this question, and that seeking this information violated Plaintiffs' attorney-client privilege.

15. Lt. Stilwell then asked Mr. Forney: "Did you tell [Mr. Pevar] you were being [assaulted]." Mr. Forney responded by telling Lt. Stilwell: "I told him what happened . . . ." (See Exhibit 2 at page 3.) Plaintiffs contend that Defendants had no legitimate penological purpose for asking this question, and that seeking this information violated Plaintiffs' attorney-client privilege.

16. Mr. Forney acknowledged to Lt. Stilwell that he had received a letter from Mr. Pevar the day before the interview. Lt. Stilwell then asked Mr. Forney:

"What did it say?" Mr. Forney said that he couldn't remember. (See Exhibit 2 at page 3.) Plaintiffs contend that Defendants had no legitimate penological purpose for asking this question, and that seeking this information violated Plaintiffs' attorney-client privilege.<sup>1</sup>

17. Lt. Stilwell then asked Mr. Forney if he had informed Mr. Pevar about a particular prior incident involving another prisoner. Mr. Forney replied by saying that he had not given that information to Mr. Pevar. (See Exhibit 2 at page 3.) Plaintiffs contend that Defendants had no legitimate penological purpose for asking this question, and that seeking this information violated Plaintiffs' attorney-client privilege.

18. As noted by the file stamp on Exhibit 2, Mr. Pevar received Mr. Renneisen's letter and Lt. Stilwell's memorandum on August 20. That same day, Mr. Pevar sent Mr. Renneisen an e-mail regarding Lt. Stilwell's interview of Mr. Forney, a copy of which is filed under seal as "Exhibit 3." In that e-mail, Mr. Pevar advised Mr. Renneisen that, in Mr. Pevar's opinion, Lt. Stilwell's interrogation of Mr. Forney violated their attorney-client privilege. The e-mail then states: "I believe I need to file something here, unless you can show me that Lt. Stilwell has already been given appropriate and very pointed corrective action."

19. During the next several days, Mr. Pevar and Mr. Renneisen traded additional correspondence regarding this matter, all of which is attached in

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<sup>1</sup>Mr. Forney disputes Lt. Stilwell's memorandum on this point, but this dispute is not relevant to the legal issues raised by this Complaint. Mr. Forney recalls that in response to this question, he told Lt. Stilwell some of the contents of Mr. Pevar's letter. But whether Forney divulged those contents is irrelevant. The fact is, Lt. Stilwell should never have asked the question.

chronological order and filed under seal as Exhibits 4 through 11. In each correspondence, Mr. Pevar reiterated his position that Lt. Stilwell's interrogation violated Mr. Pevar's and Mr. Forney's attorney-client privilege, whereas Mr. Renneisen was equally as adamant in claiming otherwise. For instance, in Mr. Renneisen's letter of August 21, he states: "I do not believe that right [the attorney-client privilege] was violated by the interview of Ryan Forney by Lt. Stilwell on August 7, 2007." See Exhibit 10 at page 2.

20. Mr. Pevar has sought to discover whether Defendants have placed any limit on the authority of prison employees to interrogate Mr. Pevar's clients regarding their communications with Mr. Pevar, or whether this authority may be used by employees at anytime and for any reason, or for no reason at all. In an e-mail to Mr. Renneisen on the morning of August 22, Mr. Pevar stated:

*Under the Director's policy, Major Moore [a WDOC investigator] is free to ask every prisoner he interviews whether they've had any correspondence with me and, if so, what the prisoner has told me, and what I have told them. (If this is not the case, then please answer the following two questions: (1) tell me what the Director's policy is, and (2) tell me how Major Moore and Lt. Stilwell will know what they are permitted to do and what they are not permitted to do under that policy, given that the policy permitted Stilwell to do what he did here.)*

See Exhibit 11 (emphasis in original). Mr. Renneisen has not yet responded to those inquiries. Accordingly, as far as Plaintiffs know, Defendants have placed no limit on the discretion of prison employees to interrogate Mr. Pevar's clients regarding their communications with Mr. Pevar.

21. Mr. Pevar has notified Mr. Renneisen that the Director's policy chills his communications with his clients and that he must seek prompt judicial relief

as a result. For instance, Mr. Pevar advised Mr. Renneisen in an e-mail dated August 21:

Your clients read what Mr. Forney was asked, and what he answered, and found nothing wrong with Lt. Stilwell's inquiries. As a result, I am reluctant to write letters to my clients, and I'm worried that letters in their possession will be the focus of further inquiries. You certainly aren't in a position to tell me not to worry. Do you see any reason why I shouldn't bring this to the Court's attention so that we can get a ruling on a practice about which we clearly disagree and which presents a current and immediate impact on all of my attorney-client communications, both past and future?

*See Exhibit 7. See also Mr. Pevar's email of August 21, 2007 (Exhibit 11) ("Here's what I think is a fair course of action under the [exigent] circumstances. Given that you're busy and can't research this subject immediately, I believe I should file something with the Court. . . . I will seek immediate injunctive relief. If at some point during that process your clients should decide to prohibit what they now permit, we can discuss an appropriate resolution.")*

22. Upon information and belief, Mr. Forney recently filed a formal grievance at WSP concerning the fact that Lt. Stilwell violated his attorney-client privilege. Due to the fact that Defendants' policy and practice is currently chilling the exercise of Plaintiffs' First Amendment rights, and will continue to chill those rights until this policy and practice is enjoined by this Court, the Court is not required to delay resolving this matter until such time as Mr. Forney exhausts the prison's grievance process. Besides, given that Plaintiff Pevar is not a prisoner, he is under no obligation to seek an administrative or informal exhaustion of his federal claims prior to filing this action. Mr. Pevar, as noted above, has attempted to promptly resolve this matter, to no avail.



23. Plaintiffs do not know at the present time whether Defendants' policy of allowing employees to interrogate prisoners regarding their attorney-client communications is written or unwritten, or even its precise scope. All that Plaintiffs know for certain is that Lt. Stilwell engaged in conduct that these Defendants ratified and condoned, and in which they acquiesced. Clearly, they have not trained Lt. Stilwell to refrain from seeking to discover through his interrogations of prisoners their privileged, attorney-client communications. On the contrary, Defendants apparently see no reason to prohibit their staff from seeking to uncover those privileged communications.

24. As a result of Lampert's and Murphy's failure to properly control and supervise Lt. Stilwell, they condoned, ratified, and acquiesced in the errors he committed that violated Plaintiffs' attorney-client privilege.

25. Plaintiffs believe that Lt. Stilwell was aware at the time of the interview that Mr. Forney was one of Mr. Pevar's clients in *Skinner v. Lampert*. If Lt. Stilwell didn't know about the existence of the *Skinner* case and the fact that it is a class action, then the Defendants inadequately trained him, and he should not have been promoted to a ranking position.

26. At no time did Lt. Stilwell ask Mr. Forney if he was willing to waive his attorney-client privilege. Mr. Forney did not voluntarily and knowingly waive that privilege during his interrogation by Lt. Stilwell.

27. Lt. Stilwell's interrogation of Mr. Forney was inherently coercive. Mr. Forney, a 21-year old prisoner, was not on an equal footing with Lt. Stilwell. Lt.

Stilwell, Plaintiffs contend, took undue advantage of Mr. Forney when he asked him to divulge confidential communications with counsel.

28. When Lt. Stilwell interviewed Mr. Forney, both Mr. Forney and Mr. Pevar had a reasonable expectation of privacy in their mutual correspondence.

29. Plaintiffs' reasonable expectation of privacy in their mutual correspondence was invaded when Lt. Stilwell asked Mr. Forney to disclose the substance of those communications.

30. Mr. Forney has a right of access to the courts, a right that was inhibited when Mr. Forney was interrogated regarding his attorney-client communications with Mr. Pevar.

31. Lt. Stilwell did not have a judicial warrant authorizing him to invade Mr. Forney's and Mr. Pevar's attorney-client communications. Nor did Lt. Stilwell have any other lawful authority to invade Plaintiffs' reasonable expectation of privacy in their privileged communications.

32. Lt. Stilwell intentionally and deliberately sought to induce Mr. Forney to disclose the substance of his privileged communications with Mr. Pevar. For instance, when Lt. Stilwell asked Mr. Forney "What did it say?" when Mr. Forney told him that he had just received a letter from Mr. Pevar, that inquiry was clearly intended to discover Plaintiffs' privileged communications.

33. Based on information and belief, Lt. Stilwell knew at the time he interrogated Mr. Forney that WSP employees were not permitted to open and read incoming privileged mail from attorneys to prisoners. Therefore, Lt. Stilwell

was deliberately attempting to circumvent that prohibition by asking Mr. Forney to divulge the contents of Mr. Pevar's letter.

34. Lt. Stilwell's actions in coercing Mr. Forney to disclose privileged, attorney-client communications were not intended to benefit Mr. Forney or Mr. Pevar, and did not benefit Mr. Forney or Mr. Pevar. Rather, they were intended to benefit Lt. Stilwell and the Defendants, and they did benefit them to the prejudice of the Plaintiffs. Lt. Stilwell's invasion into Plaintiffs' privileged communications allowed Lt. Stilwell and the Defendants to learn what Plaintiffs had discussed, what they were pursuing, and what they were planning or not planning, at least to some degree. As a result of Lt. Stilwell's interrogation, Defendants acquired more information regarding Plaintiffs' privileged discussions than they were entitled to know.

35. The policy described above infringes on the rights of all WSP prisoners to communicate with counsel without having to disclose those communications afterwards to WSP employees, and it chills attorney-client communication. Plaintiff Pevar is now reluctant to engage in full and frank discussions with his clients at WSP. Thus, the named Plaintiffs and the entire class are presently suffering, and will continue to suffer, irreparable harm due to the operation and application of the policy challenged herein.

#### CLAIM FOR RELIEF

34. Based on the facts set forth above, Plaintiffs Pevar and Forney contend that Defendants' policy, under which employees like Lt. Stilwell are authorized to interrogate prisoners regarding their attorney-client

communications, did violate and continues to violate Plaintiffs' freedom speech and their attorney-client privilege, and inhibits Mr. Forney's right of access to the courts, as guaranteed to and protected by the First and Fourteenth Amendments to the United States Constitution. Relief is sought pursuant to 42 U.S.C. § 1983.

### SECOND CLAIM FOR RELIEF

35. Based on the facts set forth above, Plaintiffs Pevar and Forney contend that Defendants' policy, under which employees are authorized to interrogate prisoners regarding their attorney-client communications, did violate and will continue to violate Plaintiffs' reasonable expectation of privacy in their attorney-client communications as guaranteed to and protected by the Fourth and Fourteenth Amendments to the United States Constitution. Relief is sought pursuant to 42 U.S.C. § 1983.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court will:

1. Accept jurisdiction of this cause.
2. Grant Plaintiffs Pevar and Forney declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that Defendants violated Plaintiffs' rights under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution by permitting Lt. Stilwell to invade and violate their attorney-client privilege.
3. Issue injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure on behalf of Plaintiffs Pevar and Forney, as well as on behalf of a class of all present and future prisoners incarcerated at WSP, enjoining

Defendants from any further application or enforcement of their policy of authorizing employees to interrogate prisoners regarding their attorney-client communications.

4. Grant such additional and further relief as the Court may deem proper under the circumstances.

  
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Stephen L. Pevar  
PRO SE ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned attorney of record in this case hereby certifies that a true and correct copy of the foregoing Amended Complaint was sent by U.S. mail postage prepaid and by electronic mail this 6<sup>th</sup> day of September, 2007, to:

John Renneisen  
Office of the Attorney General  
Herschler Building, First West  
Cheyenne, WY 82002

  
\_\_\_\_\_  
Stephen L. Pevar