

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
CIVIL DIVISION  
No.

TIMOTHY J. MUISE, pro se,  
plaintiff,

Vs.

MASSACHUSETTS DEPARTMENT OF CORRECTION,  
KELLY RYAN,  
Superintendent of MCI Shirley,  
KEITH NANO,  
Deputy Superintendent of MCI Shirley,  
DAVID SHAW,  
IPS Commander of MCI Shirley,  
DAVID HAVENS,  
Disciplinary Officer of MCI Shirley,  
THOMAS PERRY,  
IPS Officer of MCI Shirley  
JOHN DOE,  
Co-Conspirator of MCI Shirley,  
defendants,

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C O M P L A I N T

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STATEMENT OF THE CASE

1. This is an action in the nature of certiorari in which the pro se plaintiff is seeking review of a decision of the Massachusetts Department of Correction (DOC) imposing a disciplinary sanction on the plaintiff, for declaratory judgment seeking the plaintiff's rights in this matter at bar be clearly defined, as well as for damages under 42 U.S.C. ss. 1983 for violations of the plaintiff's civil rights by individual officers/employees of the DOC. These claims are brought on the grounds that the plaintiff was falsely and maliciously charged, in retaliation for his exercise of free speech and constitutionally protected rights, with violations of DOC regulations.

This retaliation was visited upon the plaintiff to silence his complaints about conditions of confinement as well as to chill his free speech, and these activities are protected by the First and Fourteenth Amendments to the United States Constitution as well as by various articles of the Massachusetts Constitution.

Prisoner Timothy Muise was convicted of participation in an improbable conspiracy to accomplish what was acknowledged to be an impossible objective and was undertaken for an unbelievable purpose.

The substance of the charge(s) against Muise was that three prisoners at MCI Shirley, each having no technical computer skills and no access to the needed equipment planned to "somehow" build a computer using only a flat screen television and hard drive from a laptop computer. This home-made computer was then to be used, again "somehow", to hack into the Department of Correction computer network to cause some unspecified damage to that network. The purpose of this supposed conspiracy was to retaliate against the DOC for preventing prisoners from MCI Shirley from testifying at a legislative hearing at the Massachusetts State House. There had, however, been no such interference because the prisoners had not been asked to provide such testimony. Indeed, a meeting with the legislators at which the prisoners had hoped to raise this did not take place until well after the supposed planning of a computer hack was alleged to be done.

The pro se plaintiff will show, through a chronology of events, that the defendants in this case conspired to silence his free speech with the legislators through the fabrication of this improbable, unbelievable, and impossible computer building and network hacking fantasy, as well as will show the numerous errors of law the disciplinary proceedings were rife with, and that, for lack of a better term, the "fix was in" at the disciplinary hearing.

#### PARTIES

2. Plaintiff Timothy J. Muise is a resident of Massachusetts, a well known prisoner rights activist, and is currently in the custody



of the DOC confined at MCI Norfolk.

3. Defenadnt Kelly Ryan is at all times relevent to the all allegations of this complaint an employee of the DOC. Her current position is unknown at the time of filing.

4. Defendant Keith Nano is at all times relevent to the allegations of this complaint an employee of the DOC and is currently the Deputy Superintendent at MCI Shirley.

5. Defendant David Shaw is at all times relevent to the allegations of this complaint an employee of the DOC and is currently the IPS Commander at MCI Shirley.

6. Defendant David Havens is at all times relevent to the allegations of this complaint an employee of the DOC and is currently the Disciplinary Officer of MCI Shirley.

7. Defenadnt Thomas Perry is at all times relevent to the allegations of this complaint an employee of the DOC and is currently an IPS Officer at MCI Shirley.

8. Defendant John Doe is at all times relevent to the allegations of this complaint an employee of the DOC and a co-conspirator in this matter but who is at this time unknown to the plaintiff. Doe's identity will be uncovered through discovery.

#### FACTS

9. For many years, Plaintiff Timothy Muise, has been a prisoner rights activist and outspoken advocate for prisoners rights as well as a vocal and active critic of the DOC. His criticism of the DOC, and, in particular, the administration of MCI Shirley has been widely reported by various news services. His prison writing has been extensively published and is well known to DOC officials and corrections officers who may have been the target of his criticism. Muise is an avid blogger and social media participant.



10. Muise has filed scores of formal grievances complaining of legitimate issues great and small. He has written to the DOC with complaints regularly and has complained about confinement conditions to legislators, public safety officials, and the Governor of the Commonwealth. The DOC once even wrote the plaintiff a disciplinary report for inviting the Governor, Charles Baker, to come to the prison and meet with him and others.

11. Muise has filed previous litigations against the DOC and some of its employees challenging his treatment and his expression of free speech; two (2) of those cases were settled out of court.

12. Muise has encouraged legislators to come into the prisons and meet with him and his associates. He met with Senator Patricia Jehlen, Senator James Eldridge, Representative Paul Heroux, and Representative Christine Barber at MCI Shirley in October of 2015. He also met with Representative Ben Swan, Representative Gloria Fox, Representative Barber, and Representative Paul Tucker at MCI Shirley in February of 2016. Most recently Muise has met with Senator William Brownsberger, Representative Thomas Sannicandro, and Representative Benjamin Swan, at MCI Norfolk.

13. The plaintiff's efforts to engage public officials in a review of the treatment of prisoners at MCI Shirley have been opposed by the DOC officials, including defendants Ryan, Nano, Shaw, Havens, and Perry. (As well as "Doe")

14. Based on Muise's initial meetings with Representative Ben Swan (2015), and with the encouragement of other legislators, Muise and other prisoners looked for a way to more effectively present their concerns about prison conditions. This began a process leading to several larger meetings between prisoners and state legislators (all attended by Muise). These legislators have



a legal right in Massachusetts to enter the prisons and Muise has continuously requested that they exercise that right through meetings with him and his associates.

15. Muise devised a three "Phase" plan to describe to the legislators the negative treatment of prisoners and public safety failures of the DOC. The three phases to foster legislative awareness were;

a. Phase 1 involved requesting members of the legislature participate in a Prisoner Presentation Forum at MCI Shirley where prisoners would offer the lawmakers presentations on certain topics. This meeting was held at MCI Shirley on October 23, 2015, at which time Muise and his associates met with senators, representatives, and their staff, with Muise acting as MC and affording a presentation.

b. Phase 2 involved a second meeting with the legislators and their staff with a Roundtable Discussion at which the legislators asked probing questions of the prisoner presentors from the first meeting in order to certify them as "experts" on the topics presented.

c. Phase 3 contemplated a formal legislative hearing at the State House in Boston at which prisoners would be subpoenaed to testify as experts. Phase 3 was dependent on the interest and willingness of the legislators to conduct such a legislative hearing at the State House. The plaintiff hoped for favorable action in that regard and was willing to facilitate prisoner involvement.

16. As the defendants failed to deter the meetings between members of the legislature and prisoners at MCI Shirley, which had been promoted by the plaintiff, defendants Ryan, Nano, Shaw, Perry, and Doe schemed to initiate an investigation of the plaintiff and other prisoners who had been involved in the meetings with the legislators, with the ultimate goal of having the prisoners removed from MCI Shirley and thwarting any future



such meetings. This would stop Muise from inviting lawmakers.

17. On March 23, 2016, defendants Ryan, Nano, Shaw, Perry and Doe, purporting to rely on information they had received from a "Confidential Informant" identified at C.I. No. 419 (CI-419), and of a review of emails sent by Muise, Fisher and Serra from a computer skills class closed email system, requested an investigation by the DOC Office of Investigative Services (OIS) of what they ascribed as a plan by the plaintiff and other prisoners, apparently including Shawn Fisher, Steven James, Edwin Lozada and Michael Serra, to build a computer with the intention of hacking into the DOC Network.

18. Upon receiving the defendant's request, OIC directed that the plaintiff, as well as Fisher, James, and Lozada be transferred to solitary confinement units at various DOC prisons.

19. On March 24, 2016, the plaintiff was taken from his cell in the middle of the night and transported to the solitary confinement unit at MCI Norfolk where he was labeled an escape risk and held in solitary for two (2) months.

20. On March 25, 2017, Muise, Fisher and James were interviewed by OIS investigators at their respective solitary confinement units. Muise exercised his right to counsel, but Fisher and James both spoke to investigators denial any participation in or knowledge of a "plot to build a computer.

21. OIS also interviewed Mike Serra and determined that he did not possess the knowledge or ability that was required to build a computer.

22. The only theft of computer parts reported in the investigation was alleged by the informant Mark Melendez to be by Lozada who allegedly used them to build "tattoo guns". Muise was not alleged to have any involvement in that, nor were Fisher, or James.

23. OIS had information that the FBI and Secret Service had



previously deemed Serra an "unreliable witness" and a liar. This was also know to the defendants.

24. As a result of the OIS interviews that office declined to further investigate. The matter was still though pursued by the defendants in an attempt to silence Muise and his associates.

25. Notwithstanding the decision by OIS to drop the investigation and the failure of the IPS investigation to uncover additional evidence of the plaintiff's involvement in an alleged plot, on May 17, 2016, defendant Perry, at the direction of Ryan, Nano, Shaw and Doe, brought disciplinary charges against the plaintiff.

26. The defendants made it clear to Fisher, James, Serra, and Lozado that "Muise" was the target of their investigation and asked tha they "just give them something on Muise." In the course of their investigation into the alleged plot to build a computer, DOC investigators, acting in cooperation with the defendants, acknowledged that Muise was the target of the investigation. The two other prisoners who were ultimately charged with disciplinary offenses for the alleged involvement in a plot to build a computer were told by investigators that they would receive lenient treatment if they were willing to implicate Muise in the alleged plot. The purpose of this whole investigative process was to "get Muise" and silence him.

27. A chronology of events exists where after Muise and his associates met with legislators that the defendants met with so called "informants" in a convenient fashion. The actions of Ryan, Nano, Shaw, Havens, Perry and Doe all follow an evidenced chronology documented by DOC materails that they were out to silence the plaintiff's complaints about conditions of confinement. Nano is on the record conspiring to "lock Muise up" for his free speech.

28. Muise's conduct, the DOC and the defendants allege, violated



numerous disciplinary regulations, including;

- Category 2-10: Engaging in or inciting a group demonstration inside the correctional institution or a hunger strike inside the correctional institution.
- Category 2-16: Tampering with, damaging, blocking or interfering with any locking or security device or window.
- Category 2-17: Impersonating any staff member, contract employee, volunteer or visitor.
- Category 2-24: Conduct which interferes with the security or orderly running of the institution.
- Category 2-29: Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.
- 3-13: Organizing or participating in an unauthorized group activity or meeting.
- 3-29: Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

29. Upon being notified of the disciplinary charges against him the plaintiff made a formal request for discovery of relevant evidence, and for the presence of certain witnesses needed to present his defense. These included the testimony of the two other prisoners who had been charged with the offense and the instructor of the computer program at MCI Shirley, and for any and all reports concerning the investigation.

30. Prior to the hearing, counsel for the plaintiff supplemented the discovery request for evidence, specifically requesting unredacted informant reports, the full notebook found in Serra's position, as well as stressed the need for Serra to be available as a witness.

31. The DOC and the defendants intentionally withheld exculpatory evidence, the disclosure of which was required by 103 CMR 430.11, including (a) photographs of physical evidence, (b) information that Michael Serra, whose statements provided the only direct evidence on the record linking the plaintiff to the alleged plot,



had a history of making false statements to law enforcement, (c) the full contents of a notebook seized from Michael Serra which would have explained that the only physical evidence of efforts to build a computer, a list of computer parts, was simply classroom notes written by Edwin Lozada, and (d) reports or records concerning information purportedly obtained from a confidential informant, as well as a video tape that was listed but never disclosed.

32. The DOC also specifically denied significant requests for relevant and material evidence including communications to or from the investigating officer which would have provided additional exculpatory evidence and demonstrated improper command influence in bringing and prosecuting charges against the plaintiff in retaliation for his meetings with legislators.

33. The DOC denied the plaintiff's request for the presence or testimony of Michael Serra whose statements provided the information essential to the proof of the charges against the plaintiff and who had recanted his statement.

34. Following a hearing Muise was found guilty of the offense of planning to violate a DOC rule prohibiting "conduct which interferes with the security or orderly running of the institution." 103 CMR 430.24(2-29). Muise was sanctioned with 15 days in solitary confinement and in actuality spent over 60 days in such confinement.

35. The Hearing Officer's finding of guilty was based on informant information which was withheld in its entirety from the plaintiff and his attorney. The evidence presented by the DOC included three pages which apparently concerned information from an informant; an informant who conveniently appeared after Muise would meet with legislators. These pages were "blacked out" in their entirety with no indication of what they were or what they contained. The investigating officer's report contained a section concerning information received from C.I. No. 419. There were three separate entries in this section of the report. All were blacked



out with the exception of the month in which the information was received. The plaintiff was also provided with two "Informant Information Summary" forms. All substantive information on these forms was "blacked out". Each stated that information was redacted pursuant to 103 CMR 430.15. No summary was afforded. No information was afforded.

36. Although the hearing officer made no specific findings, and seemed to issue a report that was merely a cut & paste of her notes from the hearing, other than to say that she was relying on the report and testimony of defendant Perry, the evidence presented by defendant Perry rested in significant part on statements made by Michael Serra. The reports of these statements indicated that Serra's information was not trustworthy. In the unredacted OIS report, which was available to the hearing officer but not to Muise and his attorney, it was noted that Serra did not have the technical skills which were needed to build a computer, much less to connect it to the internet and to access the DOC network, and that he had a history of lying to law enforcement. At one point, after the plaintiff's hearing, Serra was sent to Bridgewater State Hospital for a psychotic episode.

37. The plaintiff (Muise) was found guilty by the hearing officer and filed a timely appeal with the superintendent of MCI Shirley as required by regulation. Prior to receiving the results of that appeal the plaintiff's co-defendant, Shawn Fisher, was found "not guilty" by a DOC hearing officer due to the fact that exculpatory evidence was withheld and that in the unredacted informant report it indicated that Lozado was the focus of stolen computer parts for tattoo guns, which had nothing to do with the plaintiff, but due to the full redaction of this information in the copies provided to the plaintiff and his attorney the plaintiff was unable to use this exculpatory information. The hearing officer in the Fisher matter also made reference in her not guilty decision to the fact that the unredacted report spoke to the unreliability and untrustworthiness of Serra.



37. The plaintiff's attorney attempted to enter the Fisher "not guilty" finding, and the unredacted investigation report information Fisher's attorney was unable to obtain, onto the record, but defendant Havens denied this request merely stating it was "too late". The fix was in.

38. No computer parts were ever found or reported missing. The only hint of such conduct was alleged about Lozada.

39. The foundation for the charges against the plaintiff were based on the unreliable testimony of Serra. Serra was initially interviewed on March 30, 2016 by Sgt. Sylvia of OIS concerning comments Serra was reported to have made concerning "building an unapproved PC, to potentially make unauthorized contact with external individuals and to attempt to disrupt the security of the DOC network and applications." Serra was specifically questioned about the involvement of Timothy Muise, after giving a statement which had NO mention of MUise, but Sgt. Silvia's report had no mention of that. To the contrary, the report noted that Serra had indicated that hacking the DOC network was something he was interested in doing for his own purposes. It was his intention to "duplicate DOC accounts, such as the Commissioner's, to send emails to MCI Shirley staff, hoping to get moved.

It was only later, after Serra asked OIS investigators, "How can I help myself out here?", that the plaintiff's name was mentioned. Serra gave a recantation affidavit and went on the record that OIS wanted him to implicate Muise. It is clear that defendant Perry encouraged Serra to implicate Muise, offering help with Serra's parole issues in return.

40. Both Shawn Fisher and Steven James, who were initially implicated in the plot, stated that the investigators also asked them to implicate Muise.

41. The written statement from Serra says he was told by



Officer Perry that he could be released from segregation if he was willing to implicate Muise in pressuring him to assist, "in a matter involving disrupting the Department of Correction." Fisher submitted a similar affidavit in which he stated that he was told by DOC investigators that Muise was the "problem" and that he needed to "give them something on Muise." It is clear from these statements, which were not contested, that the defendants were involved in a conspiracy to target the plaintiff, have him transferred - possibly out of state - and silence his free speech with the legislators and beyond.

42. In the course of their so-called investigation into the so-called plot to build a computer, DOC investigators, acting in cooperation with defendants Ryan, Nano, Shaw, Havens, Perry and Doe, acknowledged the plaintiff was the target of the investigation. The two other prisoners who were ultimately charged with offenses for their alleged involvement were told by investigators that they would receive lenient treatment if they were willing to implicate the plaintiff.

43. As a result of the actions of the defendants, the plaintiff was placed in solitary confinement for two months, lost his job, lost his programming placements, lost his seniority single cell, and had his prison sentence extended due to the loss of good time by 100 days.

#### FIRST CAUSE OF ACTION: CERTIORARI

44. Plaintiff repeats and realleges the allegations contained in paragraphs 1 thru 43 and incorporates them herein as fully set forth.

45. Review of the disciplinary proceedings against the plaintiff is necessary to correct substantial errors of law in the course of the proceeding:



a. The DOC intentionally withheld exculpatory evidence, the disclosure of which was required by 103 CMR 430.11(1);

b. The DOC withheld relevant evidence, intentionally and without lawful cause, in violation of 103 CMR 430.11(2);

c. The DOC intentionally and without lawful justification refused to make available witnesses whose testimony was essential to his defense;

d. In basing her decision on informant information which was withheld in its entirety from the plaintiff, the hearing officer failed to comply with both the procedural and substantive requirements of 103 CMR 430.15;

e. The charges against the plaintiff were not proved by a preponderance of the evidence.

f. The hearing officer failed to remove herself due to bias, in the fact that the plaintiff had previously sued her and prevailed regarding a prior unconstitutional disciplinary proceeding.

g. The acts of the defendants deprived the plaintiff of his liberty without due process of law.

h. The acts of the defendants deprived the plaintiff of rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and by Article 16 of the Declaration of Rights.

#### SECOND CAUSE OF ACTION: DEPRIVATION OF CIVIL RIGHTS

46. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 thru 45 and incorporates them herein as fully set forth.

47. The sole purpose of the disciplinary charges brought against the plaintiff was to disrupt and discredit his efforts and the efforts of other prisoners to engage elected officials in a dialogue about conditions in the state's prisons and, in particular, to retaliate against and punish the plaintiff for his persistent



criticism of the DOC, its officials and their practices.

48. The acts of the defendants deprived the plaintiff of rights guaranteed by the First and Fourteenth Amendments to the United States Constitution.

49. The conduct of the defendants as set forth herein deprived the plaintiff of his liberty without due process of law.

RELIEF REQUESTED

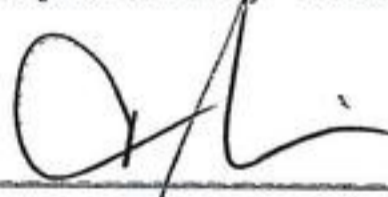
50. Review the disciplinary proceedings and decisions against the plaintiff, by the DOC, which imposed disciplinary sanctions upon him, and on review vacate the guilty finding(s) which were a result of those flawed proceedings.

51. Grant the plaintiff damages in the amount of \$50,000.00.

52. Award plaintiff reasonable attorney fees if he is able to secure counsel at a further date from filing of the instant complaint.

53. Grant such further relief as the Honorable Court sees fit.

Respectfully Submitted,



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Dated: 05/05/17