

# Brush Fires

"It does not require a majority to prevail, but rather an irate, tireless minority keen to set brush fires in people's minds." – Samuel Adams, Father of the American Revolution.

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## Political Prisoner Wins Sentence Reduction

Political prisoner and LibRA member Jason Swanson has been re-sentenced to a shorter term of imprisonment after he succeeded in having his previous sentence vacated as exceeding the federal sentencing guidelines, and which used an unjustified upward departure. This is a (so far) rare victory for our political prisoners who have long been routinely penalized for their pro-Eurofolk affiliations as much as (some times more than) for any "offenses" they were alleged to have committed.

After a jury trial, in November, 2000, Swanson was sentenced to 90 months, or within a Level 4 guideline range instead of within a more appropriate Level 3. Fighting his case pro se, Swanson filed under 28 USC 2255 a challenge to the unjustified excessive sentence. Issues raised included ineffective assistance of counsel and the use of inflammatory and irrelevant statements. The sentencing judge based an upward departure partially upon a false claim in the PSI that Swanson was on parole at the time he was supposed to have committed the offense for which he had been convicted. Swanson's attorney failed to notice or to correct this serious error. The prosecution had also submitted CD's and literature taken from Swanson's car which originated from AN or other pro-Eurofolk sources. This "evidence" neither contributed towards proving "guilt" for the offense of which he was charged nor contained anything which even alluded to anything illegal, but was presented solely for the inflammatory effect the prosecution hoped it would have upon the jury and the judge.

Swanson was returned to the district court in Detroit, and on Oct 25 was re-sentenced to 71 months.

I subscribe to several e-newsletters from Findlaw.com, and have begun to lose count of the number of court decisions since *US v Booker*, 543 US 220, 125 S.Ct 738, 160 LE2d 621, in which appellate courts have vacated sentences and remanded for re-sentencing. To the growing number of federal prisoners who have become LibRA members or who are joining who have yet to do so, I want to encourage you to seriously look at this decision and how it may benefit you. Swanson has also shown that our political prisoners can—and should—challenge excessive sentences imposed in retaliation for otherwise legal and constitutionally protected pro-Eurofolk affiliations, beliefs or activities.

## Battles for Religious Rights Continue

The first major religious rights trial since the US Supreme Court decision last May in *Cutter v Wilkinson*, 123 S.Ct 213, 161 LE2d 1020, 2005 USLexis 4346, was held in Missouri Oct 11-14 in the case of *Murphy v MO DOC*. LibRA member Mike Murphy, whose earlier victory in *Murphy v MDOC*, 814 F2d 1252 (CA 8 1987) resulted in the 8<sup>th</sup> Circuit Court of Appeals ruling prisoncrat thought police blanket bans on publications is unconstitutional, has a well-earned reputation as an excellent litigator and "jailhouse lawyer." Murphy is suing for the right to separate Christian Separatist services as well as for other claims.

Order POW, political prisoner and LibRA member David Tate, who, like Murphy, is also CS and confined in the same prison, sent me and several others a report on this trial, titled, "Christian Separatist Prisoner Litigation: Lost?" After reading Tate's report, I have to agree that concluding the title with a question mark rather than a period is not only appropriate, but more accurate.

District Judge Gary Fenner's earlier dismissal of *Murphy* had been reversed on appeal. Compelled by the 8<sup>th</sup> Circuit to conduct a trial, Fenner seemed to have done more to defeat Murphy than

the assistant state attorney general defending Missouri prisoncrat thought police and assorted other jailer-employees Murphy had named as defendants. Fenner refused to appoint counsel and forced Murphy to proceed pro se. As Murphy has subsequently pointed out, this judge would not have been able to get away with as much if an attorney had been at trial on Murphy's behalf.

Murphy has been in poor health, and on the morning of the trial he suffered a mild stroke, which necessitated transporting him to a hospital. Consequently Murphy arrived late for trial when he was finally transported to court. Despite this, Judge Fenner refused to postpone trial. During the trial, Fenner ruled in favor of motions or objections by counsel for defendants about 95% of the time, yet consistently ruled against Murphy on anything he raised. This judge also severely restricted Murphy on exhibits and other items he attempted to introduce into evidence but was much more lenient in allowing defense to submit what they wished to. One piece of evidence Murphy was allowed to submit, Anointed Standard Translation of the New Testament, "mysteriously vanished" when it came time for jurors to begin deliberations. When Fenner was confronted with this, he refused to allow time for a search to locate it, and it has yet to resurface.

Fenner also attempted what could be construed as a virtual reversal of *Cutter* and nullification of Congressional intent in enacting this religious rights law when he seriously misquoted the Religious Land Use & Institutionalized Persons Act (RLUIPA) when he gave jury instructions, and he would not correct this "error" when objections were made or later when jurors submitted questions to clarify his muddled misreadings of the law.

I have mentioned only some of the misdeeds of this latter-day wanna-be Roy Bean. Reviewing the more detailed report sent to me by Tate, I can spot several appealable "errors" or issues. For those without Internet access, a copy of Tate's report may be obtained for \$1.00 or its rough equivalent in postage stamps or postage-paid embossed # 10 size envelopes. The trial court's "verdict" is being appealed, and Murphy needs your help to meet costs and expenses.

Indicative of the damage which a biased judge run amok can inflict, I have received contrasting reports of prisoners winning on religious rights issues elsewhere, including a settlement without trial. Murphy and Tate also helped provide information to several Colorado CS prisoners, some of whom at their prompting had also written to me. An earlier suit filed by them had been dismissed for failure to exhaust administrative remedies. During the second round of administrative complaints, Colorado prisoner Jacob Ing won the right to separate CS services through the administrative process, without having to file another civil rights action.

RLUIPA restores a more favorable legal standard for prisoners who are compelled to file civil rights litigation to secure their right to the free exercise of religion, but it does not in itself guarantee that every prisoner will win against prisoncrat thought police. Some prisoners lost, at least at the trial court level, under the former Religious Freedom Restoration Act (RFRA). Those who have had to engage in serious legal research may have noticed that, over the past several decades, most significant prisoner rights cases were won, not in trial courts, but at the appellate level. Once you prepare and file civil rights litigation, be determined to fight this all the way through to the end and never be discouraged by any setbacks you may encounter along the way. Perseverance is essential to ultimately winning. This has been my habit for a very long time, as well as Murphy's and just about every other "jailhouse lawyer" who has earned a reputation for excellence in

legal work. All LibRA members, especially those in prison, are admonished to always remember that when one of us fights a legal battle, despite differences in religious beliefs, the outcome of any case will impact upon the rights of others. Diligently sharing or helping to track down documentary evidence or other information is imperative, some times can make a difference, and is something we all need to keep in mind, and reflect that this should be one of the benefits of being part of a growing network of those fighting for our rights.

As reported in the last issue of *Brush Fires*, the Ohio Attorney General's office, despite the Supreme Court decision in *Cutter*, attempted again to get RLUIPA ruled unconstitutional. In September, the 6<sup>th</sup> Circuit, in *Cutter v Wilkinson*, 423 F3d 579 (CA 6 2005), upheld the constitutionality of RLUIPA. The deadline for the state to file for certiorari to appeal this latest decision came and went in mid-December, and reportedly no appeal was filed. The three suits temporarily combined for the limited purpose of resolving the question of the constitutionality of RLUIPA—*Cutter v Wilkinson*, *Miller v Wilkinson* and *Gerhardt v Lazaroff*, are free to be remanded to the district court, and other civil rights suits with religious rights claims filed by Ohio prisoners which have been on hold should now also be free to proceed.

### **Congratulations, Kortney**

On Sept. 25 LibRA activist and member Kortney Gessler held a successful Eurofolk Potluck & BBQ in the Phoenix area to promote support for LibRA members Gary Yarbrough, David Tate and Mike Murphy for their court battles. Yarbrough and Tate are both Order POW's and political prisoners, and Murphy, re-imprisoned for religious beliefs and prior successful litigation, should also be considered a political prisoner. There was a good attendance, and a good time was had by all as pro-Eurofolk kinsmen and kinswomen from different factions set aside differences to come together in a spirit of unity and friendship. Kortney also introduced many to LibRA, our purposes and to some of what we have been working on. She has been actively working with Arizona prisoners and with our Order POW's and other political prisoners, and is proving to be an excellent organizer and activist and a valuable addition to our growing association. Kortney deserves a hardy congratulations for the great job she's been doing.

### **1983 Suit Filed Against "STG" Thought Crime Policies**

LibRA members Alfar Kynwulf and Jason Ratcliff, and several other Ohio Asatru prisoners, have filed a class action suit, *Ratcliff v Moore*, case # 1:05-CV-582, in the US District Court, Southern District of Ohio, Eastern Division, asking the court to find unconstitutionally vague and selectively enforced the "STG" policies of the Ohio Dept of Rehabilitation & Correction (DORC). We previously reported the filing of *Eberle v Wilkinson*, case # C2-03-272, in the US District Court, Southern District of Ohio, Western Division, by LibRA members Brian Mann, Alfar Kynwulf and several other CI and Asatru prisoners. *Eberle*, which is still pending, challenges DORC profiling of Eurofolk prisoners and disproportionately targeting Asatru and Christian Identity prisoners to be subjected to "STG" thought police disciplinary proceedings. The claims in *Ratcliff* are broader, and challenges DORC's "unauthorized group" and "STG" policies generally. Claims include the misuse of "STG" rules to impose blanket bans on publications and to repress religious and political views disliked by DORC's thought police.

DORC's thought police, as well as prisoncrat thought police of several other state prison systems, some times try to circumvent the constitutional right to the free exercise of religion with the ruse of labeling religions they dislike and want to repress as "security threat groups" or "STG." At issue in *Ratcliff* is the arbitrary, irrational and unjustified manner in which religious beliefs or religious groups, and prisoners who sincerely follow them, are labeled "STG." No due process rights are allowed, nor appeals available, nor is there any procedure other than litigation to dispute and remove "STG" labels once some prison thought cop has applied it. Asatru and Christian Identity, both of which are recognized as valid religions, are two religious belief systems specifically targeted for repression under the guise of "security." Unconstitutional blanket bans on publications are imposed, and

there has been numerous incidents of prisoners being punished merely for being sent literature. (One of the claims in *Gerhardt v Lazaroff* is the cumulative total of 75 days I was made to spend in "the hole" for having been mailed religious literature. On summary judgment defendants were denied qualified immunity on this claim.)

Section 5120.13.2(A)(3) of the Ohio Revised Code authorizes DORC to spend money on religious programs, including purchasing religious publications and literature and paying the salaries of religious personnel. DORC is guilty of blatant discrimination when it funds the programs and services of some religions while repressing with spurious "STG" labels other religions. Ohio's Marion Correctional Institution (MCI) has a special "religious dorm" reportedly with better housing accommodations and privileges than is generally available to other prisoners, called the "Horizon Housing Project." DORC's website touts this as "the first interfaith residential program in a correctional institution" in which "Muslim, Jewish and Christian inmates live together in a dormitory and participate in programs designed to deepen their chosen faith commitment while becoming more knowledgeable of other faiths." As part discovery in *Eberle*, it was admitted that Asatru, Hindu, Buddhist and Wiccan prisoners are excluded. Nor are all Christians allowed in this program, as it was stated that Identity Christians are also specifically prohibited. Perhaps DORC's thought police administering this program as well as its "STG" policies aspire to be theologians and wanna-be latter day grand inquisitors enforcing state imposed "PC" orthodoxy with their usurped authority to determine who are and are not "true" Christians and to determine which creeds the adherents of which will be allowed the opportunity to "deepen their chosen faith commitment."

In Aug, 2003, MCI held an institution-wide day of special religious programming. This event received outside media notice when reports surfaced that jailers and prisoncrats coerced prisoners not following their "PC" state approved religions into participating, and punished some who resisted. Reminiscent of scenes from Orwell's *1984*, this program was piped into the Ohio Reformatory for Women in Marysville through turned up loudspeakers placed throughout the prison to make it impossible for anyone confined in the compound to escape being blasted with program lectures. Prisoners on lock down in the maximum security prison in Lucasville were also subjected to forced participation in DORC's religious programming. TV's were placed outside cells with the volume turned up as high as it could be to screech this program inescapably at prisoners who were confined in those cells. At the time this happened, the Ohio Attorney General's office, defending DORC employees named as defendants in various religious right suits, with a straight face tried to claim in federal court that RLUIPA was unconstitutional because to allow prisoners to be involved in religions of their choice "favors" religion and thus violates the establishment clause of the 1<sup>st</sup> Amendment.

### **Concluding Misc Updates**

LibRA members can now obtain assistance in legal research, typing, preparing or filing pro se petitions or briefs, which will be less expensive and more reliable than what is available to many.

We recently mass mailed, mostly by e-mail, an essay titled "A Defining Issue," which pulled no punches in dealing with a pathetic track record when it comes to supporting our political prisoners and the need for some serious changes in attitudes. Response has varied, from support by some to silence by others some of whom may be made to feel uncomfortable when confronted with writings which indicate who are for real and who are lets pretend. Also sent was a shorter promotional item titled "Voice of the Political Prisoner", which is a collection of statements from political prisoners, including several of the Order POW's, who are LibRA members, on the importance of our work and the need for more to support it. Those without Internet access may obtain a copy of both for \$1.00 or its rough equivalent in postage stamps or postage paid embossed # 10 size envelopes.

John W Gerhardt  
Administrator