

2/15/2017

## Declaration of Noelle Hanrahan

“A past criminal offense does not extinguish the offender’s constitutional right to free expression... the First Amendment does not evanesce at the prison gate”<sup>1</sup> - Chief Judge Conner, Middle District PA Memorandum Case 1:14-cv-02148-CCC

I, Noelle Hanrahan, am an investigator and reporter. I gather information inside prisons by speaking with men and women who live there. I have done this for over a quarter of a century in over 100 prisons, jails, holding facilities, and detention centers throughout the United States.<sup>2</sup>

As a journalist I have used film, photos, and audio recordings to bring the voices of prisoners to the airwaves.

1 in 46 Americans will do prison time.<sup>3</sup> That figure grows exponentially depending on the race, location, and class status of the defendant. Upwards of 52% of a particular community, young black men in Baltimore for instance, will be behind bars in their lifetime.<sup>4</sup> 2+ million American citizens are currently in prison; that figure means 1-99 people on any given day are in prison.<sup>5</sup> Over seven million people are under correctional control.<sup>6</sup> Budget expenditure totals, the money it costs to incarcerate a person, for each and every state is counted in the billions.<sup>7</sup> Mass incarceration not only directly affects those who are arrested and imprisoned, it is also definitively impacts every budget line item in every statehouse in the country. Prison budget spending is a vast economic juggernaut.

In person, on-camera interviews with people in prison are crucial to securing public access to vital information about perhaps the most important and controversial issue of our day: mass incarceration. Words and numbers on a page cannot convey or illustrate the human story that needs to be told.

First-person, on-camera interviews will inform and engage communities, and are a vital and essential part of a healthy democracy. The public interest is served by more, rather than less, public debate. More rigorous engagement, more sunshine, and less secrecy and isolation serves democratic institutions and is the foundation of the role of journalism as the Fourth Estate.

Journalists often uncover embarrassing truths and shameful realities, but this result of the

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1 Abu-Jamal v Kane Chief Judge Conner Middle District PA Memorandum Case 1:14-cv-02148-CCC

2 Per Noelle Hanrahan biography

3 <http://www.sentencingproject.org/>

4 [http://articles.baltimoresun.com/2005-03-15/news/0503150071\\_1\\_justice-policy-institute-incarceration-drug-treatment](http://articles.baltimoresun.com/2005-03-15/news/0503150071_1_justice-policy-institute-incarceration-drug-treatment)

5 <https://www.prisonpolicy.org/reports/pie2016.html>

6 <http://www.justicepolicy.org/research/category/35?PageSize=25&PageIndex=2>

7 <https://www.vera.org/publications/the-price-of-prisons-what-incarceration-costs-taxpayers>

rigorous exercise of First Amendment rights should not be the reason or motive for institutional actors seeking to prevent prisoner interviews.

The reality is that imprisonment is under reported. Prison officials want to conduct the “business of incarceration” without the benefit of transparency and oversight. It is notable that the prison guards convicted in the Abu-Ghraib scandal overseas had day jobs at American prisons. It is important to note that these crimes were only revealed and documented through video and photo footage.<sup>8</sup>

The Ohio Department of Corrections News Media regulations do allow for on-camera access to inmates held in their institutions.<sup>9</sup> The ban on cameras and in-person recordings for those inmates I would like to speak with could be simply an antiquarian reaction, if it were not accompanied by a very specific content-based test and restriction. The prison has decided that certain prisoners cannot speak on camera to the press because they simply do not like what the prisoners might say. Even more to the point of this litigation, the prison will allow this speech in written communication and in telephone calls of a limited duration, but not on-camera. Is this in itself a recognition of the value of on-camera and in-person interviews? Is it an admission that these forms are more valuable or powerful in their ability to communicate immediacy and ideas? It is likely that the ban is an implicit recognition that what might be revealed through the videotaped speech of the prisoner could illustrate the realities and scope of a innocence, or issues behind the bars.

Cell phones, tablets, laptops, digital cameras, and digital audio recorders are standard operating tools for the busy legal advocate and reporter. These devices are portable, easy to use, and increase productivity. The *ABA Criminal Justice Standards on Treatment of Prisoners* (approved in 2010) say that “correctional authorities should allow professionally accredited journalists reasonable use of notebooks, writing implements, video and still cameras, and audio recorders.”<sup>10</sup>

The use of video and audio broadcasts of prisoners in popular American Media is ubiquitous, which is not inconsistent with my comment about underreporting: ubiquitous yet underreported as well. The essence of the First Amendment entails that exercise of the right to speech cannot be subject to a litmus test for the expressed content of the speech. The government cannot censor the speakers, listeners, or those recording the words because it does not like what the person in prison has to say.

Corrections Departments are used to exercising unfettered power, they are rarely called upon to justify its use or abuse. Certainly, policy makers at the Ohio State Department of Corrections are not necessarily inclined to place value on the constitutional rights of those it houses. Simply denying constitutional rights is often excused as being more convenient when running a prison.

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<sup>8</sup> <http://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib>

<sup>9</sup> OH DOC Media Policy Number 01-COM-09

<sup>10</sup> [http://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/Treatment\\_of\\_Prisoners.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf)

When forced to answer to its use of power behind closed prison doors, Department of Corrections officials often resort to handy theories such as the “Big wheels” and “security” and “burdens on staff”. These are antiquated excuses that obscure the real purpose of the isolation, censorship and secrecy: the fact that prison officials opposed the content of the speech. The truth and the reality of what happens behind bars may be inconvenient when revealed, but society needs this critical information.

It can be argued that the airing of grievances could in and of itself be a way to increase the peace and security of an institution. It is not automatically true that the airing of grievances is the prelude to disruption. Certainly the capping, ignoring, and lack of public attention to perceived injustice could be directly responsible for situations that are difficult for the prison to manage.

“The First Amendment’s guarantee of free speech extends to convict felons whose expressive conduct is ipso facto controversial or offensive. The right to free expression is the shared right to empower and uplift, and to criticize and condemn; to call to action, and to beg restraint; to debate with rancor, and to accede with reticence; to advocate offensively, and to lobby politely.”<sup>11</sup> - Chief Judge Conner Middle District PA Memorandum Case 1:14-cv-02148-CCC

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<sup>11</sup> Abu-Jamal v Kane, Chief Judge Conner Middle District PA Memorandum Case 1:14-cv-02148-CCC