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Bound by Law, Freed by Solidarity: Navigating California Prisons and Universities as a Jailhouse Lawyer

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ABSTRACT

For jailhouse lawyers, winning a lawsuit seems like a victory, but there are multiple barriers to practicing law post-incarceration. Building on personal experiences, this Essay focuses on the deterrents to legal education in prison and post-incarceration for jailhouse lawyers. Through an examination of structural obstacles that keep formerly incarcerated people out of the legal profession, this Essay concludes by describing steps being taken to increase accessibility and support in the legal field.

AUTHOR

Michael Saavedra was released from prison on February 22, 2017, after being incarcerated for over nineteen years—fifteen of which he spent in solitary confinement. Between 2011 and 2013, Michael helped organize, lead, and participated in three separate California prisoner hunger strikes aimed at calling attention to solitary confinement. He also educated himself while in solitary confinement and was able to learn and utilize the law to successfully sue the California Department of Corrections and Rehabilitation several times, as well as assist and teach others to do the same. Michael was a Pathway to Law School student at Riverside City College where he founded the first formerly incarcerated student organization on campus. Now he is an undergraduate at UCLA, majoring in American Indian Studies with a minor in Chicano and Central American Studies. Michael is also a 2020 Justice Catalyst fellow, putting him one step closer to achieving his goal of becoming a barred attorney. He also serves as an executive board member of the first California System's Impacted Bar Association. Since his release, he has been working with numerous social justice and anti-prison industrial complex organizations including the L.A. Youth Justice Coalition and Dignity and Power now, to help end mass incarceration.



A target of the war on drugs, I spent my youth in and out of juvenile detention facilities. The system “graduated” me into state prison at the age of seventeen, and it soon became a revolving door for me. In 1998, at the age of twenty-seven, I was sent to prison for twenty-one years.

I found myself on a level four maximum security yard at Pelican Bay State Prison (PBSP), one of California’s most notorious and oppressive human warehouses. In 2002, I was transferred to a general population yard at Salinas Valley State Prison, where I earned my GED. Meanwhile, I had begun teaching myself the law and became interested in becoming a lawyer. Despite the extremely limited legal and educational resources available to me, I started learning the internal rules governing the California Department of Corrections and Rehabilitations’s (CDCR) administrative grievance process, which I eventually used to free myself from solitary confinement. I began teaching myself how to use the legal system over many years of litigating “pro per,” or self-represented.

Having access to a law library is essential for any person who cannot afford an attorney and must represent themselves. While I was appealing my conviction in 2002 at Salinas Valley State Prison, we went on a lockdown. When the prison is on lockdown, there is no movement: no visits, no showers, no law library. As such, despite having a court deadline, I was denied access to the law library, which made it virtually impossible to file my appeal. The court denied my appeal for being untimely, catapulting me into my first experience with litigation in the federal district court system for a denial of my constitutional right of access to the courts. The courts give a lot of deference to prison officials in how they run and operate their prisons.¹ The process is a mind-boggling catch-22, where the courts require you to prove your case prior to your day in court.² The Antiterrorism and Effective Death

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1. *See, e.g.,* *Turner v. Safley*, 482 U.S. 78, 90 (1987) (“[C]ourts should be particularly conscious of the ‘measure of judicial deference owed to corrections officials . . . in gauging the validity of [a prison] regulation.’” (quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974))); *Thornburgh v. Abbott*, 490 U.S. 401, 407–08 (1989) (“Acknowledging the expertise of these [prison] officials and that the judiciary is ‘ill equipped’ to deal with the difficult and delicate problems of prison management, this Court has afforded considerable deference to the determination of prison administrators . . .”); *Beard v. Banks*, 548 U.S. 521, 522 (2006) (“[D]eference must be accorded prison authorities’ views with respect to matters of professional judgment.”).
 2. *Cf. Beard*, 548 U.S. at 556 (Ginsburg, J., dissenting) (“By elevating the summary judgment opponent’s burden to a height prisoners lacking nimble counsel cannot reach, the plurality effectively tells prison officials they will succeed in cases of this order, and swiftly, while barely trying.”).

Penalty Act (AEDPA)³ and the Prison Litigation Reform Act (PLRA)⁴ are strong examples of specific barriers for prison litigants that make it extremely difficult for pro per prisoners to litigate as effectively and successfully as a person in the free world.⁵ Suffice it to say, I lost that very first case I filed, but I learned how to engage the bureaucratic processes created to deter incarcerated people from pursuing litigation while incarcerated.

In this first lawsuit, I was suing several prison guards who were complicit in the denial of my access to the prison law library. This, in turn, created much resentment and spite against me by almost all prison guards because of the stigma of being a jailhouse lawyer. The prison guards would often employ direct and implicit retaliation against me in the form of additional human rights abuses, including my placement and retention in solitary confinement for over a decade. In 2004, despite being elected by my peers as their spokesperson, prison officials accused me of being an affiliate of a prison gang through a highly discriminatory, racist, and oppressive practice called prison gang validation.⁶ Before the Hunger Strikes, discussed later in this Essay, the CDCR required three independent sources of documentation that provided proof of prison gang membership or association, which could range from a photograph to cultural drawings or a confidential informant's debrief reports⁷ (CDCR

3. 28 U.S.C. § 2254.

4. 42 U.S.C. § 1997e.

5. See AM. CIVIL LIBERTIES UNION, SLAMMING THE COURTHOUSE DOORS: DENIAL OF ACCESS TO JUSTICE AND REMEDY IN AMERICA 9–10, 12–14 (2010), <https://www.aclu.org/slamming-courthouse-doors-denial-access-justice-and-remedy-america> [<https://perma.cc/SP9T-4W6X>]; Michael M. O'Hear, *Not So Sweet: Questions Raised By Sixteen Years of the PLRA and AEDPA*, 24 FED. SENT'G REP. 223, 223 (2012) (describing how the PLRA and AEDPA “constitute multipronged attacks on the ability of prisoners to secure relief from federal courts for claimed violations of their constitutional rights”); Jean Casella & James Ridgeway, *Two Clinton Era Laws That Allow Cruel and Unusual Punishment (Redux)*, SOLITARY WATCH (June 22, 2010), <https://solitarywatch.org/2010/06/22/two-clinton-era-laws-that-allow-cruel-and-unusual-punishment-redux> [<https://perma.cc/4C5T-R8TU>].

6. Cf. Jean Casella & James Ridgeway, *Voices From Solitary: Gang “Validation” and Permanent Isolation in California Prisons*, SOLITARY WATCH (Aug. 7, 2010), <https://solitarywatch.org/2010/08/07/voices-from-solitary-gang-validation-and-permanent-isolation-in-california-prisons> [<https://perma.cc/68DS-A52D>] (describing how the validation process at the time employed criteria such as “tattoos, reading materials, and association with other prisoners (which can amount to as little as greeting)” and was “a system clearly open to abuses”).

7. “Debriefing” is when an incarcerated person implicates others who are involved in gang activities. The California Department of Corrections and Rehabilitation (CDCR) pressures people housed in the Secure Housing Unit (SHU) to debrief in order to get released from solitary confinement. See *id.* (“[An incarcerated person] is left with the

2012).⁸ This would later be changed after political organizing by incarcerated people, to incorporate a point system and oversight from the Institutional Gang Investigator unit of the CDCR to determine validity and objectivity of evidence. This process did not provide rights or a voice for accused people, and, consequently, I was sent back to Pelican Bay for an indeterminate term of solitary confinement without due process. I spent the next decade living in isolation and inhumane conditions.

Having been sentenced to solitary confinement indefinitely (or, until I snitched, paroled, or died)⁹ for fabricated and false evidence against me, I began to dig deeper into the law books in the now even more remote and minimal law library that is accessible to the Security Housing Unit (SHU) at Pelican Bay. In prison, access to the law library is not a right, it is a privilege, unless you have a court order deadline in the next thirty days. A court order, or a priority order, allows incarcerated people access to the law library for two hours per week for the thirty days leading up to the deadline. People in the SHU that do not have a court ordered deadline are required to sign up on a waiting list that can take upwards of three months to gain access to the library. Despite having limited access to the law library, I began to challenge the validity of the so-called prison gang validation and the cruel and unusual conditions of my confinement.

I then began my second lawsuit against the prison industrial complex that is CDCR and specific state actors. This time things were much different. Having overcome all of the barriers to my case posed by the PLRA, AEDPA, and the motions to dismiss and for summary judgement filed by the California Attorney General's Office, I managed to secure myself a day in court; the matter was set for trial. Rather than continuing the suit, the defendants offered me—a prisoner who was supposed to be the lowest of the low—money to leave them alone. I was able to receive what I thought was “just” compensation—a decision I made in consideration of the extremely low percentage of prisoners who successfully win in a trial and the difficulty of proving the de minimis physical injury to receive compensatory damages. This settlement helped me purchase personal law

choice of staying in the SHU or going to the debriefing program so that [CDCR officials] can squeeze out every ounce of information that they can.”).

8. CAL. DEP'T OF CORR. & REHAB., SECURITY THREAT GROUP PREVENTION, IDENTIFICATION AND MANAGEMENT STRATEGY (2012), https://www.prisonlegalnews.org/media/publications/cdcr_gang_management_report_2012.pdf [<https://perma.cc/4XG5-G5F4>].
9. See generally Keramet A. Reiter, *Parole, Snitch, or Die: California's Supermax Prisons and Prisoners, 1997-2007*, 14 PUNISHMENT & Soc'y 530 (2012).

books and help support my family, who were still feeling the effects of the great recession of 2008.

At the same time, other prisoners were and had been litigating and organizing from inside prison with outside grassroots organizers and organizations like Dolores Canales with California Families Against Solitary Confinement; Dorsey Nunn with All of Us or None; Azadeh Zorabi, Danny Murrillo, and many other students with U.C. Berkeley Underground Scholars; lawyers like Marilyn McMahon and Teva Shefler with California Prison Focus; and writer, scholar, and activist Sarah Shourd. Prisoners were tired of this perpetual imposition of solitary confinement used primarily against people of color, organizers, and, of course, jailhouse lawyers to break us and turn us into informants or be in perpetual torture under such inhumane conditions. Many of us united and resisted the system, which turned into one of the largest prisoner hunger strikes in the nation and a class action lawsuit that directly supported us and was led by us.¹⁰

Once we were released from solitary confinement beginning in 2015, most of us were still considered high security threats and kept at maximum security level four general population facilities. These facilities were constantly on lockdown, for a variety of reasons, ranging from being short on staff to inclement weather creating low visibility. When the high security prisons are on lockdown, no one has access to programs or the law library. These facilities did not typically have very much programming, but, after my release from solitary confinement in December of 2016, I was finally able to have contact visits. For the first time in years, I was able to hug my mother on my birthday. Shortly thereafter, I was released from prison altogether on February 22, 2017—a day and moment I will never forget for the rest of my life.

But the fight and struggle did not end there. Once I was released, I still had two additional lawsuits in the U.S. Federal Court that I had filed while inside; I won monetary damages in both. The first of these two lawsuits was regarding violations of due process over a twelve-year term in solitary confinement, resulting in further violations of my Eighth Amendment rights

10. See Josh Harkinson & Maggie Caldwell, *50 Days Without Food: The California Prison Hunger Strike Explained*, MOTHERJONES (Aug. 27, 2013), <https://www.motherjones.com/politics/2013/08/50-days-california-prisons-hunger-strike-explainer> [https://perma.cc/B9KN-QQS4]; Benjamin Wallace-Wells, *The Plot From Solitary*, N.Y. MAG. (Feb. 21, 2014), <https://nymag.com/news/features/solitary-secure-housing-units-2014-2> [https://perma.cc/8J8C-NC22].

and jeopardizing the safety of myself and family through an attempt to force me to proceed through the CDCR “debrief” process.¹¹ The second lawsuit was regarding a lack of due process, a violation of Eighth Amendment rights based on conditions of my confinement, retaliation for involvement in First Amendment-protected action in regards to complaints against some of the named defendants, and further First Amendment violations for withholding my mail.¹² I put on a suit and tie and shiny new black Stacy Adams shoes, and carried a newly purchased briefcase when I appeared in federal district court. I represented myself pro per and attended a mandatory settlement conference hearing, where I was comfortable accepting the settlement proceeds that have helped me achieve my own fresh start at a new and different life.

It is extremely important, not only in the work I do today in the community, but also for any work done in the social justice movement broadly, that I not only witnessed firsthand but was also a part of a significant statewide End of Hostilities Agreement, seeking justice for mistreated Black and Brown prisoners. It is extremely important, not only in the work I do today in the community, but also for any work done in the social justice movement broadly, that I not only witnessed firsthand but was also a part of a significant statewide end of hostilities agreement, seeking justice for mistreated Black and Brown prisoners. The Agreement to End Hostilities, signed on August 12, 2012, was created by the PBSP-SHU Short Corridor Collective, which consisted of representatives from all racial groups held in the PBSP-SHU Short Corridor.¹³ The representatives called for three main points:

1. End racial violence among people who have endured and resisted the state’s torturous system without becoming a state informant via debriefing;
2. On October 10th, 2012, end all race-based hostilities throughout the California penal system from administrative segregation to the county jails, with an emphasis on peaceful conflict resolutions among individuals; and

11. Saavedra v. Chaus, No. 1:14-cv-00870-LJO-EPG (E.D. Cal. June 12, 2017).

12. Saavedra v. Harrington, No. 2:15-cv-00898-AC (E.D. Cal. Jan. 9, 2018).

13. TODD ASHKER, ARTURO CASTELLANOS, SITAWA NANTAMBU JAMAA & ANTONIO GUILLEN, PBSP-SHU SHORT CORRIDOR COLLECTIVE, AGREEMENT TO END HOSTILITIES (2012), https://prisonerhungerstrikesolidarity.files.wordpress.com/2018/03/agreementtoendhostilities_engspan.pdf [<https://perma.cc/GA87-CBC6>].

3. Vigilance among incarcerated people to ensure that state agents, snitches, and informants did not infiltrate the movement to continue the state's longstanding history of dividing and conquering oppressed people.¹⁴

Suffice it to say, we won our fight with solidarity. It is an honor to facilitate conversations between outside lawyers and activists from the California Prison Focus, All of Us or None, and the Prison Advocacy Network. I served as a legal translator relaying legal information from the outside to others in my isolated unit also fighting against the unjust conditions of confinement and the prison gang validation process. Building solidarity also meant leading my own litigation and helping my peers fight their own cases regarding the prison gang validation process. As a result of these collective efforts, California can no longer keep people in SHU confinement for more than two years. In comparison with the prison system's earlier ability to keep people locked up in solitary confinement for two decades or more, this was a significant win. It was nice to be able to make a phone call to a loved one or see them and be able to hug them at a visit. Moreover, the impact of such Black and Brown unity has emptied over into the streets and our communities, where some of the most significant peace treaties have taken place in South Central Los Angeles and many other parts of the state. For me, one of the most personal and heartbreaking outcomes of the hunger strikes was the loss of a close friend, fellow artist, intellectual theorist, comrade, and my neighbor in prison, Billy Michael Sell (*Guero*), who died during the prisoner hunger strikes. It is to his life, honor, and commitment that I dedicate this writing. Hueyotl Cemican! (Eternal Warrior). Your sacrifice will never go overlooked.

Since my release in 2016, I have continued my organizing and activist work within organizations like the Youth Justice Coalition, Dignity and Power Now, Justice LA, and Underground Scholars. Among recent victories was the cancelation of the \$2.2 billion McCarthy Contract to build a new jail in Los Angeles.¹⁵ But it has been difficult to pursue my legal work, other than volunteering at community legal clinics and know-your-rights trainings. I was hired as a paralegal at a law firm, but I was immediately terminated when they learned of my criminal record. Though demoralizing,

14. *Id.*

15. See Francisco Aviles Pino, *Los Angeles County Votes to Stop Construction of New Jail-Like Facility, Adding Momentum to National Abolition Movement*, INTERCEPT (Aug. 22, 2019), <https://theintercept.com/2019/08/22/los-angeles-county-mental-health-facility-abolition> [https://perma.cc/3JRW-7V2N].

this experience clarified my desire to become a bar-admitted lawyer and motivated me to change a culture that stigmatizes people with criminal histories and bars us from opportunities for advancement.

Current progressive goals to reduce mass incarceration, promote fairness and accountability in the justice system, and challenge extreme punishments are hindered by the fact that formerly incarcerated jailhouse lawyers like myself are virtually unrepresented within the bar-admitted legal community.¹⁶ Social movements are often led by directly impacted people, but the implementation and enforcement of these victories is often controlled by lawyers. When the legal community does not reflect the community it serves, lawyers will invariably make strategic errors and replicate the social and racial hierarchies they claim to be opposing. While lawyers are indispensable in the fight against mass incarceration, the approach of most legal organizations is undermined by the lack of formerly incarcerated jailhouse lawyers in leadership positions. Legal nonprofits frequently ask us to serve (unpaid) on their boards or in other highly visible positions, but our voices are seldom given weight and our leadership as partners in the work is often not respected. To truly address this power imbalance requires formerly incarcerated jailhouse lawyers serving as leaders *and* lawyers in these organizations.

One of the reasons there are so few of us in legal organizations is formerly incarcerated jailhouse lawyers face many obstacles in becoming bar-admitted lawyers, particularly from law schools and from the California State Bar. California law schools will frequently screen out formerly incarcerated applicants in their admission process, largely in anticipation of us failing the State Bar's moral character requirement upon graduation.¹⁷ As the final gatekeeper, the State Bar will then frequently reject formerly incarcerated law school graduates based on vague guidelines and opaque processes.¹⁸ For example, people convicted of a "violent felony" are presumed to not have good moral character, despite that term having no formal definition or fixed legal meaning.¹⁹ The State Bar does not collect or share data on moral character determinations—meaning we have no guidance on the rates of rejection either overall or for specific

16. Cf. CAROLINE COHN, DEBBIE A. MUKAMAL & ROBERT WEISBERG, STANFORD CRIM. JUST. CTR., UNLOCKING THE BAR: EXPANDING ACCESS TO THE LEGAL PROFESSION FOR PEOPLE WITH CRIMINAL RECORDS IN CALIFORNIA (2019), <https://law.stanford.edu/wp-content/uploads/2019/07/Unlocking-the-Bar-July-2019.pdf> [<https://perma.cc/83XP-MS7Q>].

17. *See id.* at 31–35.

18. *See id.* at 39–48.

19. *Id.* at 6–7, 43.

convictions, which turns enrolling in law school into a massive gamble with unknown stakes.²⁰

To overcome these barriers, the core of my work has focused on coalition building and grassroots organizing to change policies at both the State Bar and the individual law school levels. Through partnerships with organizations such as Underground Scholars, and Transitioning Minds, which I cofounded at Riverside Community College in 2018, we have been able to propel the movement to eliminate barriers for reentry and decrease recidivism. Through Harvard Law School's Justice Catalyst Fellowship, I have been supported with funding and networking to help support the California System-Involved Bar Association founded by my mentor, inspiration, and friend, Franky Guzman, and James Binnall. I am also proudly working with my femtor, Alicia Virani, UCLA School of Law Director of the Criminal Justice Program at UCLA School of Law. These working connections have inspired me to go to law school and take the bar exam in order to continue the fight for the removal of barriers for jailhouse lawyers in the legal field, even if the chances of me succeeding are slim. After all, so were the chances of me making it out alive from some of the worst human conditions imaginable. I am a very determined individual, and if I have survived over twenty years in prison, I can survive in this concrete jungle as well. And together, we can strive for a better world.

20. *Id.* at 52-53.