

STATE OF INDIANA)
) SS: IN THE MARION CIRCUIT COURT
COUNTY OF MARION) CAUSE NO: 49C01-2012-CT-045464

Ashley Kincaid Eve,)
)
Plaintiff,)
)
 vs.)
)
Andrew Sutton,)
)
Defendant.)

COMPLAINT FOR DAMAGES

COMES NOW, the Plaintiff, Ashley Kincaid Eve, pro se, and for her Complaint for
Damages against Andrew Sutton, the Defendant, does allege and state as follows:

PARTIES

1. Plaintiff Ashley Kincaid Eve is an adult resident of Marion County, Indiana and is licensed to practice law in the State of Indiana.
2. Defendant Andrew Sutton was the Counselor of the Special Confinement Unit (“SCU”), otherwise known as federal death row at the United States Penitentiary Terre Haute located in Terre Haute, Indiana where it is believed he is still employed.
3. To Plaintiff’s belief and knowledge, the Defendant can be served at 4700 S Bureau Rd, Terre Haute, IN 47802.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter and venue is preferred pursuant to Indiana Trial Rule 75(A)(5) because the Plaintiff resides in Marion County, Indiana.

FACTS COMMON TO ALL COUNTS

5. This Complaint arises out of defamatory tweets the Defendant published on Twitter on September 23, 2020
6. As well as tweets published on September 25, 2020 in which Defendant taunted Plaintiff with the described fear of Christopher Vialva as he was being executed.
7. Christopher Vialva was an individual incarcerated on the Special Confinement Unit.
8. Mr. Vialva was executed on September 24, 2020.
9. At all times relevant to the Complaint, Plaintiff was working alongside Christopher Vialva's legal team as an attorney.
10. More specifically, Plaintiff was contacted by Mr. Vialva's legal team on August 28, 2020.
11. Mr. Vialva's legal team asked Plaintiff to help with media outreach as part of a clemency strategy.
12. At all times relevant to this Complaint, the Defendant was the Counselor of the SCU.
13. The Counselor of the SCU is responsible for setting up all legal calls and legal visits with the incarcerated individuals on death row.
14. The Counselor is also responsible for deciding all personal contacts the incarcerated individuals on death row are allowed to have.
15. The Counselor is given significant discretion in determining who these individuals can contact on the outside.
16. Prior to his execution, Plaintiff corresponded frequently with the Defendant to arrange legal calls with Mr. Vialva.
17. Mr. Vialva requested the Defendant set up a legal call with the Plaintiff.

18. Mr. Vialva also made it clear he wished to have a legal visit with the Plaintiff.
19. On September 6, 2020, Mr. Vialva sent the Plaintiff an email through Corrlinks, a monitored email system the Defendant had regular access to.
20. The email read in full: “i have decided that we have to do whatever we can to get you in here for a visit, because all these piece meal interviews you are doing with me is dragging things out. contact my attorney and see how you can make that happen. we just need one visit, then you can spend all day asking me anything you want. do you have the contact info for my attorney? i don’t think you even have to be my specific attorney to come see me. hopefully we can get you in here this week. shalom.”
21. Plaintiff contacted Mr. Vialva’s court appointed federal defender and she stated she would request a visit with the warden.
22. On September 9, 2020, Mr. Vialva sent the Plaintiff another email through Corrlinks that read in relevant parts: “i am sure you don’t need me to remind you that time is short. however i am getting ready for an attempt at a media push next week. i just want to have all my ducks in a row...i will have my legal team sending you something very soon. at least that is the plan. i am not putting all my eggs in one basket. i am just trying to see what baskets i will have available when the need comes....i talked to my lawyer and she is saying that she is looking into it the visit thing. i don’t think it is going to pan out. i have been requesting a call with you, they are dragging their feet about it though. i was told a long time ago we can request a call with any lawyer we want. i will try again and see what they say. they will probably give me the runaround though.”

23. In a separate email sent to Plaintiff through Corrlinks on September 9, Mr. Vialva expressed his frustration with his current legal team.

24. He also expressed what his goals were.

25. He wrote “i am not scared. i am only worried that i won’t be able to make a real effort to shine a light on the humanity in here, that is for me and others. the thing that bothered me the most about the executions that have gone on is that it was so quiet in the national media. i feel like if you are going to use tax dollars to kill people then they should own it and discuss it in front of everyone. don’t do it secretly....i feel like i and my legal team are behind. i have a feeling the same about my family and the preparations for my demise. i don’t want there to be a mad dash to do stuff that we could have done a long time ago. tomorrow is the 2 week marker. i just keep feeling like people are not ready or willing to do what is necessary to show the truth about this whole thing on a grand scale.”

26. On September 10, 2020, Mr. Vialva sent an email to the Plaintiff stating “i also have been having strategy disagreements with my lawyer.”

27. In a separate email sent the same day, Mr. Vialva informed Plaintiff to expect something soon that will be coming out in the press from his appointed legal team.

28. He noted “my attorneys are waiting to finish something before they take the next step. that should be done today. if so i will get her to send you something today as well. if not it will probably be in the next two days. if it goes through i think you will find it very useful.”

29. Mr. Vialva continued, expressing his legal goals: “my hopes are not up. in fact i don’t think any of this stuff will save my life. that is not necessarily my focus. i have a more important and attainable goal. if my death can just bring attention to the humanity of my condemned brothers, i will gladly give up this mortal body.”
30. On September 11, 2020, the Defendant emailed the Plaintiff from his official BOP email address asutton@bop.gov.
31. The email read in full: “Good Afternoon, Inmate Christopher Vialva is requesting a legal call with you. We need to confirm your Bar Assn. standing and law firm employment. Also, are you appointed to inmate Vialva’s case? Please advise.”
32. The Plaintiff responded with her Indiana Bar number as well as the verification link to the Indiana Roll of Attorneys indicating Plaintiff was licensed to practice law in the State of Indiana and was in good standing.
33. The Plaintiff indicated she had not been officially appointed to the case by a court, but had been contacted by Mr. Vialva’s legal team to help with “the media strategy as well as the clemency aspect” and that “for all intents and purposes, [she] was part of his legal team” and was “actively working on legal issues related to his case.”
34. The Plaintiff further advised that she had her own practice, and the articles of incorporation were officially filed at the beginning of September.
35. The Plaintiff concluded the email with a show of good will by commenting on a quote included in the Defendant’s email signature: “PS—I like your quote—it’s crazy how many times we tell ourselves ‘I will never forget this’ only to forget it.”

36. The Defendant promptly replied “Fantastic, thanks for the info” and scheduled a legal call between the Plaintiff and Mr. Vialva on Saturday, September 12, 2020.
37. Plaintiff followed up and requested an in-person legal visit with Mr. Vialva that read:
- “We were working to get an in person legal visit scheduled since I’m the one on the ground here—the rest of the team is based in Oklahoma, and won’t be in town until the week of the execution. Obviously, time is of the essence here. Is that possible?”
38. That same evening, the Plaintiff had a phone call with Mr. Vialva via the normal phone lines that are monitored and recorded.
39. When Plaintiff inquired what she should be expecting from his legal team, Mr. Vialva replied that it was “secret squirrel stuff” and he was afraid to say anything over the phone for fear of retaliation from the Prison.
40. After the phone call with Mr. Vialva, his legal team forwarded Plaintiff a video recording that they had made for clemency purposes.
41. In the video, Mr. Vialva is shackled and reads directly from a letter he had prepared.
42. Throughout the video, Mr. Vialva does not make eye contact with the camera
43. and reads the letter in a relatively monotonous tone.
44. Mr. Vialva’s legal team communicated to Plaintiff their consultants said the video would be better for print media rather than broadcast media.
45. After viewing the video, Plaintiff was very concerned about the quality and did not feel the video at all depicted Mr. Vialva as she had come to know him.
46. Plaintiff forwarded the video to a consultant and a journalist who had been working on Mr. Vialva’s case for their reactions.

47. The consultant replied “If you ever submit anything like that as an attempt to save your client’s life, I will sue you for malpractice. What a disappointing effort.”
48. The journalist felt the video stripped the words of their life.
49. On September 12, Plaintiff emailed her concerns to Mr. Vialva’s appointed counsel and strongly recommended a follow up video be prepared while there was still time to disseminate the footage to achieve Mr. Vialva’s stated legal goals.
50. Plaintiff specifically expressed that she did not feel the video would resonate with the public the way Mr. Vialva wanted it to and expressed confidence that if she were able to shoot a video with Mr. Vialva, she would be able to get him to appear less nervous, engage in eye contact, and would have discussed his remorse more deeply as well as other important aspects of his life that would shine a light on his humanity.
51. The following morning Mr. Sutton replied to Plaintiff’s request for an in-person legal visit asking for her to “provide verification that [she] is on inmate Vialva’s legal team, and also fill out the attached and return.”
52. He had attached a background check as well as an “Application to Enter Institution as Representative” which was a form for non-lawyers to fill out.
53. Plaintiff then replied and stated “the main hopeful purpose would be for me to re-shoot a video for clemency purposes. The legal team had recorded one prior, but after sharing it with consultants, it could have been stronger—and that’s ultimately my role in this case—humanizing Christopher for media pushes and our clemency requests. Is there anything additional I would need in order to bring in a recording device for this purpose?”

54. Defendant replied, "I'll have to check on the video equipment."
55. Plaintiff promptly filled out the requested forms and emailed them back to the Defendant noting she had filled out the representative form on behalf of herself,
56. "this form is more of an attorney sponsoring a non-licensed member, like a reporter or mitigation specialist. However since I am the attorney, I listed myself."
57. Plaintiff elaborated further: "To be clear—I'm working alongside his legal team. I'm not officially contracted on the case because of government bureaucracy and the timeline. However I was contacted by his legal team on August 28, 2020 about helping them consult with local media and other national reporters, as well as other consultations on this case specifically as it relates to clemency. The official legal team is based in Oklahoma and is primarily working on meeting the filing deadlines right now."
58. The Plaintiff concluded with, "his official lawyer said she would email you letting you know she has worked with me and that Mr. Vialva has repeatedly requested a visit with me, as I am a licensed attorney and he wants my assistance on the case."
59. In this email, Plaintiff also expressed her appreciation to Defendant for finally getting a legal call set up, noting that "for what it's worth, Christopher expressed his appreciation with how quickly you've moved on this. I guess other people have given him the run around. I also greatly appreciate it."
60. Mr. Vialva's court appointed lawyer sent the Defendant an email with a letter attached dated September 12, 2020 stating "Ashley Kincaid Eve has requested my assistance with her request for an attorney client meeting with Mr. Vialva. I confirm Mr. Vialva advised

me he initiated communication with Ms. Eve and is requesting her assistance as a lawyer. Mr. Vialva also asked me to facilitate an attorney client meeting with Ms. Eve.”

61. The Defendant replied “Alright, I am in receipt of all required documentation, and have forwarded it for approval. I have also sent an inquiry about getting you approved for bringing in a video recording device.”

62. Plaintiff replied and said “if it helps for the recording device—I have an ipad that DOES NOT have a cellular connection—and would NOT have wifi either. It would ONLY be able to record. I think that would be the best for security purposes—I understand the concerns with devices and what not within the prison.”

63. That afternoon Plaintiff was able to have a 5-hour legal call with Mr. Vialva that provided her with substantial mitigation and background information that was helpful to the strategies being pursued.

64. The Plaintiff believed after that phone call it was even more important for her to be able to reshoot the clemency video as the extreme remorse he felt and the emotional depth he displayed on the phone with Plaintiff was much more powerful than the video prepared for clemency.

65. The Plaintiff believed this to be essential to accomplishing Mr. Vialva’s legal goals

66. and there was still plenty of time left to accomplish these goals.

67. After the phone call, Plaintiff emailed Defendant and said “I just wanted to sincerely thank you for arranging that legal call—and for not enforcing the 1 hour time limit.

Given that I’ve been brought into the fold only recent—there was a lot to discuss. I am extremely grateful we were given the opportunity to discuss everything fully without a

time limit. Thanks for working this weekend, and for making this possible. I hope you have a wonderful evening!”

68. The BOP has extensive policies regarding legal access to incarcerated individuals in federal prisons.

69. These policies are outlined in what are called “Program Statements.”

70. The Program Statement regarding legal visits and phone calls is Program 1315.07 “Legal Activities, Inmate.”

71. Section 543.12, titled “Retention of Attorneys” outlines the general policy regarding open access to attorneys.

72. Section 543.12 reads in full: “The warden shall allow an inmate to contact and retain attorneys. With written consent of the inmate, staff may advise an attorney of the inmate’s available funds. Staff may not interfere with selection and retention of attorneys if the inmate has attained majority and is mentally competent.”

73. Section 543.13, titled “Visits by Attorneys” lays out the policies regarding legal visits between the incarcerated individuals and licensed attorneys.

74. Section 543.13 states “The warden shall, under the conditions of this section permit visits by the retained, appointed, or prospective attorney of an inmate or by an attorney who wishes to interview an inmate as a witness.”

75. The policy continues “The Warden generally may not limit the frequency of attorney visits since the number of visits necessary is dependent upon the nature and urgency of the legal problems involved.”

76. According to the policy, “The Warden may require an attorney to indicate where he is licensed as an attorney and how that fact may be verified.”
77. Additionally, “The Warden may not ask the attorney to state the subject matter of the lawsuit or interview. If there is any question about the identity of the visitor or his qualification as an attorney in good standing, the Warden shall refer the matter to the Regional Counsel.”
78. The policy permits an attorney to tape record a visit if advance writing is given and the sole purpose of the recording is to facilitate the attorney-client or attorney-witness relationship.
79. Generally, the use of any other electronic device, such as a video recorder, is not permitted.
80. The Warden may permit use of video recorders however “if it is shown that such use is absolutely essential to facilitate the attorney-client relationship, and such use would not be inconsistent with the institution’s maintenance of security, good order, or discipline.”
81. On September 15, 2020, the Defendant sent an email to the Plaintiff that read: “Good Morning. After discussion with our legal counsel and the administration, it has been determined that you do not meet the requirements to be authorized admittance into the institution for the purposes of visiting with inmate Vialva. Should you need further information, you should correspond directly via U.S. Mail to: Complex Warden T.J. Watson, Federal Correctional Complex Terre Haute, 4700 Bureau Road South, Terre Haute, IN 47802.”
82. This was in direct violation of the 6th Amendment of the United States Constitution

83. as well as BOP's own policies

84. which only require an attorney to be licensed and in good standing in order to visit an inmate who has requested a legal visit.

85. Plaintiff replied "I will look into possible recourse in regards to this 6th Amendment violation."

86. Plaintiff further stated "Clemency is part of the legal process and continues as long as he's breathing. Given the poor performance of his legal team to that exact effect, he certainly has the right to a lawyer of his choosing to rectify those issues and failure to allow me to do that is causing unnecessary delay when there is a strict deadline."

87. Plaintiff sent an email to Mr. Vialva via Corrlinks that said "They said no....I'm looking into if that's a violation of your 6th amendment rights and I think it is. A suit alleging that would be sure to generate some press.....Your legal team should have shot a better video. Clemency is part of the process and is what I'm working on. You have the right to seek other counsel for that limited purpose if unhappy with your current appointed attorneys. It's an extrajudicial process so that would be the lawsuit. And if it's because they don't want you talking, well then that's a first amendment one.....I'm sure these are definitely being monitored now-but then again when you have the truth on your side that doesn't matter too much."

88. Mr. Vialva replied "did they ever give you a reason why they rejected the visit? listen they are probably going to reject the visit until my attorneys put you down on my team. if you call and offer our services pro bono they will sign you up immediately. however there is not enough time to get you up here. there is only a few days left in the week

and i will be visiting my mom next week. we gave it a try and here we are. i appreciate your efforts but it is what it is. let us do the best with what we got. you could ask for another call though.”

89. On September 18, 2020, Plaintiff emailed Defendant to request a call with her “pro-bono client, Mr. Vialva.”

90. The Defendant scheduled a call with the Plaintiff and Mr. Vialva the same day.

91. The Defendant noted in his email “I have also received requests for calls with you from inmate Fulks, and inmate Webster.”

92. Plaintiff responded “as far as other inmates, this is news [to] me, as I do not represent them or have communicated with them, and right now my sole focus is Christopher. Can you please provide those inmates with my mailing address and ask them to write me about the legal issues they would like to discuss? I’m not opposed to helping them, and am quickly realizing I’m soon going to be someone that probably interacts with you frequently but right now I have zero energy to even think about or schedule anything beyond September 24.”

93. After the legal call with Mr. Vialva on September 18, Plaintiff emailed the Defendant to schedule legal calls the week of his execution.

94. She noted “I don’t know if you can schedule me one for Monday and/or Wednesday.

This call was tremendously productive, and want to have something lined up if possible for any follow ups I discover as I continue my work.”

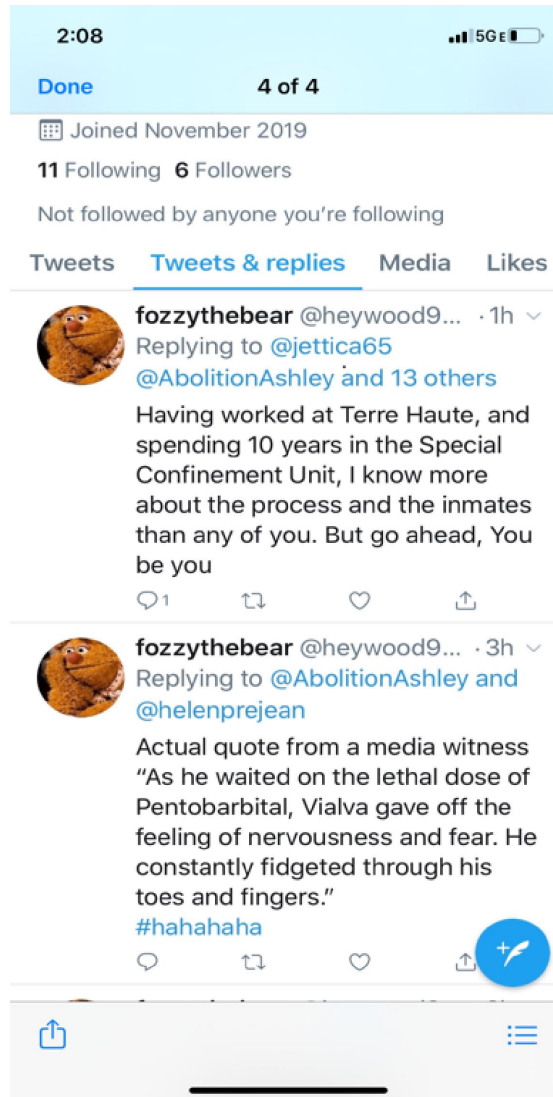
95. The Defendant noted that Mr. Vialva had all day visits scheduled with his mom that week, and asked what days or times would work best.

96. Plaintiff asked if they could schedule calls after visiting hours, and if that didn't work, she could "discuss it more via email and/or his regular minute phone calls. Just with the timing and limits on those forms of communication, they are not always sufficient, or confidential, for some of the matters that need to be discussed as we wrap up business."
97. Plaintiff added "this is my first rodeo when it comes to this type of case—while this type of work is what prompted me to go to law school, I certainly didn't see myself being in this position so soon—but here we are."
98. The Defendant replied that he would schedule a legal call between Plaintiff and Mr. Vialva for Monday, September 21, 2020 and Wednesday, September 23, 2020 at 3:15 pm on both days.
99. Mr. Vialva's execution was scheduled for September 24, 2020 at 6:00 pm.
100. During previous legal calls, Plaintiff would take diligent notes during the phone calls, but determined this to be ineffective and made the decision to record the remainder of her calls with Mr. Vialva.
101. Mr. Vialva had already given Plaintiff permission to share all communications as she saw fit pursuant to their discussed legal strategy.
102. After the three-hour legal call on Monday, September 21, 2020, Plaintiff shared a 7-minute clip of the phone call where Mr. Vialva described what it was like to say goodbye to his aunt for the last time and what it was like for his Mother to memorize her face.

103. He described several other emotional and unique aspects that Plaintiff later decided the public needed to hear.
104. Further, because Plaintiff was unable to record another clemency video, she wanted something to be out there sharing the authentic Christopher his clemency video did not capture.
105. Plaintiff posted the clip on social media in a desperate hope it could go viral and reach the President who had the power to grant clemency.
106. The President often gets his news from social media and also conducts official business via social media.
107. On September 23, 2020 at 3 pm, the day before Mr. Vialva's scheduled execution, the Defendant emailed the following to Plaintiff: "We are cancelling your call today at 3:15. It has come to our attention that you have recorded and made public, at least one of your past legal calls, which violates Bureau of Prisons policy. You do not have any active litigation issues that needs to be addressed at this juncture."
108. Katherine Siereveld, the Senior Attorney at the facility was cc'd on the email.
109. Plaintiff responded "That's a violation of his first amendment rights and very cruel under these circumstances. My literal legal role is protecting his first amendment rights and trying to save his life by humanizing him which I've always represented."
110. Mr. Vialva later called Plaintiff using the final minutes he had saved for his mom
111. and he had not been informed why the legal call had been cancelled.

112. Plaintiff explained to Mr. Vialva what had happened and that she believed this coupled with the denial of the legal visit constituted an egregious violation of Mr. Vialva's rights to pursue clemency
113. and seek an independent legal consultation in the last weeks of his life.
114. Plaintiff had already consulted with a well-known civil rights attorney who was very familiar practicing before the Southern District of Indiana, the Seventh Circuit Court of Appeals, as well as the Supreme Court.
115. That lawyer was prepared to help Plaintiff seek a stay of execution for Mr. Vialva to compel the requested legal visit
116. given that it was BOP who illegally denied his rights when there was still plenty of time before his execution.
117. Mr. Vialva expressed his fear that he would be tortured like Daniel Lee
118. who was strapped to the gurney for 4 hours with the needle in his arm as last-minute appeals played out before he was executed.
119. He had also expressed the emotional distress he witnessed William LeCroy experience who had been executed days before after last minute stays delayed his execution for hours
120. as well as the anguish experienced by Keith Nelson when he received a last-minute stay that was later reversed.
121. Mr. Vialva had expressed numerous times how difficult it is to prepare your mind for death, and once you have done so, false hope can be devastating.

122. Mr. Vialva expressed that while he wanted Plaintiff to loudly seek justice for the wrongs against him in other ways, he was prepared to accept his fate and did not wish for her to file for a stay of execution.
123. That same day, on September 23, 2020, local news station WTHI aired an interview with the Plaintiff and published stories about Plaintiff's advocacy for Mr. Vialva.
124. On September 24, 2020, Mr. Vialva was executed as scheduled while the Plaintiff stood vigil across from the Prison.
125. On September 25, 2020, an anonymous Twitter user operating under the name of "fuzzythebear" with the twitter handle "@heywood92210955" directed the following tweet at Plaintiff: "Actual quote from a media witness 'As he waited on the lethal dose of Pentobarbital, Vialva gave off the feeling of nervousness and fear. He constantly fidgeted through his toes and fingers.' #hahahaha"
126. Two hours later, fuzzythebear sent a reply tweet directed at 15 people including Plaintiff that read "Having worked at Terre Haute, and spending 10 years in the Special Confinement Unit, I know more about the process and the inmates than any of you. But go ahead, You be you"



127. Plaintiff was horrified that someone who had worked on death row for 10 years would go out of their way to taunt her with the described fear of someone she openly and publicly cared very much about as he was being killed.

128. When Plaintiff investigated further, she saw that at 7:14 pm on September 23, 2020, fozzythebear replied to a tweet WTHI posted sharing the news story about Plaintiff's advocacy for Mr. Vialva.

129. The reply said "#FakeNews This crazy lady is not a part of his legal team. She is just trying to be famous."



130. This was visible to any and all twitter users who had come across WTHI's story.

131. In addition to replying to the tweet, fozzythebear tweeted the article from his account.

132. The tweet read "#FakeNews! Eve isn't on Vialva's legal team. Eve isn't on any filing or court records. She's a con-artist looking for 15 minutes of fame from the "first black man" executed in 15 years. She's using Vialva for her own gain. #factcheck @WTHITV"



133. This tweet was aimed directly at WTHI in an attempt to smear Plaintiff's name with the local news station.
134. This tweet was also publicly available
135. and fuzzythebear used hashtags in an attempt for the defamatory tweet to reach more people.
136. This tweet was directly related to Plaintiff's profession.
137. While public record, it was not widely known what lawyers were on court filings and records.

138. After further investigation into fozythebear's account, it became evident that this individual still worked at USP Terre Haute.
139. It was further evident this individual had access to information consistent with someone who was a higher official at BOP.
140. For instance, it was publicly reported that 2 inmates had died from COVID-19 at the Prison where federal executions were scheduled in September.
141. In a reply to an article on the subject, fozythebear tweeted "This is #fakenews one inmate was from FCI Terre Haute, and the other from USP Terre Haute, who had been in the hospital for weeks. #fakedunham spreading misinformation once again."



142. This was information that was not publicly available anywhere.

143. In another example, fozythebear tweeted “Another #fakenun propaganda story. I know for a fact Honken set these two up and Nelson didn’t have any religious persuasion. This was all a setup to see if the gov’t would allow a minister of record in the execution chamber. Texas halted an execution for not allowing one.”



144. This information was not publicly known.
145. On September 20, 2020, fozythebear retweeted an old tweet of his and said “This has aged well! Set Dates!”

146. The tweet he retweeted read “Roane, Tipton, Johnson, Orlando Hall, Mitchell have all had dates in the past and only require 20 days notice....”



147. This was the same day extremely old stays of execution were vacated in court for those individuals.
148. This information was not widely known or reported
149. nor was information regarding the 20 days' notice.

150. After further review, it was clear this twitter account existed solely for the purpose of expressing pleasure and support of executions.
151. On September 16, 2020, fozythebear replied to a tweet that read “That leaves only three executions scheduled for the remainder of 2020: two next week by the federal government (which doesn’t care about COVID-19) and the 12/3 scheduled execution of #PervisPayne in #Tennessee.”
152. His reply tweet said “Don’t count your chicken before they hatch, hopefully November and December will be a very busy month!”



153. On July 18, 2020 he tweeted “Roane, Tipton, Johnson, Orlando Hall, Mitchell have all had dates in the past and only require 20 days notice....”

154. On August 20, 2020 fozzythebear tweeted “Lining them up, as should have been done years ago.”

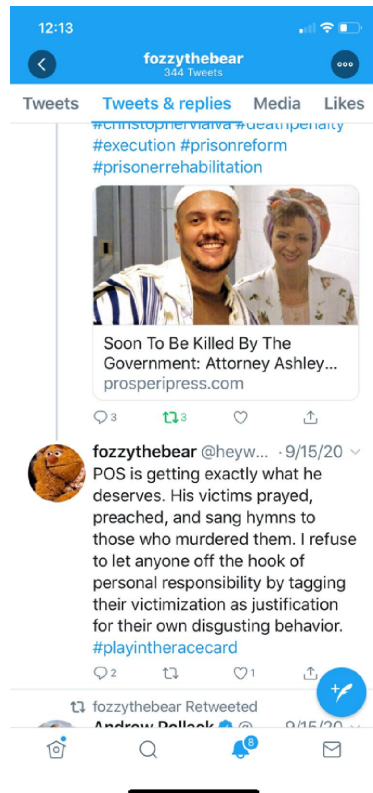


155. He also tweeted on the same day “Roane, Tipton and Johnson better be ready.”
156. On August 26, 2020 fozzythebear replied to a tweet about Lezmond Mitchell who was executed that day, “He deserved to be beaten and brutalized like his victims.”



157. On September 15, 2020, the same day Defendant wrote to Plaintiff to deny her legal visit with Mr. Vialva, fuzzythebear commented on an article about Mr. Vialva and the Plaintiff.

158. His tweet read “POS is getting exactly what he deserves. His victims prayed, preached, and sang hymns to those who murdered them. I refuse to let anyone off the hook of personal responsibility by tagging their victimization as justification for their own disgusting behavior. #playintheracecard”.



159. The article was titled “Attorney Ashley Kincaid Eve Hopes Understanding Will Save the Life of Christopher Vialva, Set to be Executed on September 24th”.
160. This caused extreme mental distress in Plaintiff
161. because not only had fozzythebear defamed her,
162. she was aware that individuals at the Bureau of Prison had been monitoring her social media.
163. Further, it seemed inconceivable to Plaintiff that officials working at the prison tasked with the official power to kill would go out of their way to not just defame Plaintiff, but taunt her with the described fear of her client as he was being executed.
164. This caused extreme distress to Plaintiff as it was clear there were individuals taking pleasure in these killings,

165. and it made her question the motives for not allowing her legal visit with Mr. Vialva and for canceling her legal call.
166. It has caused Plaintiff to lose all faith in the institution tasked with putting to death the citizens of the most powerful nation in the world.
167. Plaintiff began fearing for her safety as this person clearly had access to sensitive information about her
168. and this individual was clearly mentally unstable for the position he was in.
169. Further Plaintiff suffered emotional distress knowing this individual also had access to all personal communications via corrlinks between her and Mr. Vialva.
170. This individual also had access to all monitored phone calls she had with Mr. Vialva.
171. Plaintiff began to fear her life might also be in danger if she pursued action against the defendant
172. Or the BOP for their illegal denial of her legal calls and visits with Mr. Vialva.
173. Plaintiff also began to experience fear that if this individual was high enough in the government, he could also find ways to monitor her personal communications
174. —as the government’s surveillance capabilities are well known.
175. On September 26, 2020, Plaintiff emailed Defendant to set up a legal call with another incarcerated individual on death row who had requested a legal call with her.
176. She noted that it was her “right and his right under the First and Sixth Amendments” and that she would “be recording the call, and if it’s in [her] client’s best interests based on his legal goals [she] will release it.”

177. She noted that “the Constitution trumps BOP policy”
178. And the “public has a very important right to know who these people are as well”.
179. She again made clear her position that the incarcerated humans on death row “have the right to seek independent legal consultation if they are unhappy with their court appointed lawyers.”
180. She pointed out the BOP’s lawyer should be well aware the attorney client relationship forms well before there are any official filings
181. And that some legal representations don’t ever require court filings,
182. Clemency being one of those.
183. She then included “By the way—and maybe its even you—but some BOP official who got promoted after ten years of working on death row has been defaming me and got a little too twitter happy over the last few months about the sadistic pleasure being taken from these killings.”
184. Plaintiff did not receive a reply from the Defendant.
185. Shortly after, an incarcerated human on death row who had been requesting a legal call with Plaintiff Informed her that Defendant had been unexpectedly and suddenly removed from his position.
186. When Plaintiff inquired why this individual felt it was “unexpected” he replied
187. everything done at the BOP, especially changes in officials like Defendant are planned well in advance.
188. Additionally, he stated such changes are announced in advance to everyone

189. And the Individual leaving the position would train their replacement usually for weeks before the change.
190. The individual said he had been incarcerated for over ten years on the SCU and that nothing is ever unexpected.
191. The individual also expressed the staff at the Prison were also shocked of the sudden change.
192. Plaintiff had not actually suspected that Defendant was fozythebear until that point.
193. She then looked up his linked in profile, and Defendant's profile indicated he worked as a correctional officer on the SCU for approximately 9 ½ years
194. before he was promoted to his position of Counselor of the SCU.
195. This was consistent with tweet the from fozythebear about the time he spent as a guard on death row
196. And was consistent with the profile Plaintiff believed to be the prison official running the fozythebear twitter account.
197. Plaintiff then began fearing retaliation against her or any potential clients requesting her advice or legal consultations
198. particularly as this individual had already called for the execution of an already executed inmate (Lezmond Mitchell).
199. This fear was compounded when the execution date for Orlando Hall was set, another inmate that the Defendant had specifically called for to be executed.

200. Since then, an execution for Corey Johnson has been set for January 14, 2021, the third inmate the Defendant specifically advocated for execution.
201. Plaintiff has since been retained to represent another incarcerated individual sentenced to death and housed on the SCU in Terre Haute.
202. That individual relayed to Plaintiff that a BOP staff member indicated the Defendant had been removed from his position after “being too loose on the internet.”
203. Defendant operated an anonymous Twitter account under the name of “fozzythebear” and
204. Defendant defamed the Plaintiff twice.
205. Defendant taunted Plaintiff with the described fear of her client being executed the morning after his execution.

CAUSES OF ACTION

COUNT 1 DEFAMATION PER SE

206. Plaintiff incorporates by reference all allegations above and below this as though the same were fully set out herein.
207. Plaintiff posted two communications with defamatory imputation on Twitter on September 23, 2020.
208. Plaintiff knew these statements to be false, or should have known these statements to be false based on the extensive communications between Plaintiff and Defendant as outlined above.
209. These statements were made with actual malice.

210. These statements were published on Twitter-a public platform accessible to millions of people.
211. These statements suggested wrongdoing within Plaintiff's profession.
212. Defendant specifically incorporated hashtags and tagged the local news station in an effort to harm Plaintiff's reputation and lower her standing in the community regarding her legal advocacy for individual's facing execution.
213. Defendant's aim was to deter the local news station WTHI, which regularly interviews Plaintiff about the executions, from taking Plaintiff seriously and working with her.
214. Plaintiff is entitled to presume damages "as a natural and probable consequence" of Defendant's *per se* defamation.
215. Even though damages are presumed, Plaintiff has suffered mental and emotional damages and harm to her character and reputation among the community of Terre Haute and possibly beyond.

COUNT 2
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

216. Plaintiff incorporates by reference all allegations above and below this Count as though the same were fully set out herein.
217. The Defendant engaged in extreme and outrageous conduct towards Plaintiff by
218. Acting intentionally,
219. using his position of power over Plaintiff and her clients, and

220. the Defendant used privileged information obtained from that position to go out of his way to taunt her with the described fear of her client as he was being killed in a state-sanctioned, premeditated homicide.

221. Plaintiff has suffered extreme emotional distress that has affected her job, her reputation, and her ability to advocate for her clients or potential clients.

222. The Defendant's actions have caused Plaintiff to fear retaliation or surveillance from the Prison given the official power to kill by the most powerful government in the world.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, pro se, respectfully requests that this Honorable Court Grant Plaintiff relief in an amount sufficient to compensate Plaintiff for her injuries, including compensatory damages, punitive damages, pre-and post-judgment interest, costs, attorney's fees that may be accrued throughout this litigation, and for all other relief just and proper.

PLAINTIFF'S REQUEST FOR TRIAL BY JURY

COMES NOW the Plaintiff, by counsel, and respectfully requests that this Honorable Court set this matter for trial by a jury of Plaintiff's peers.

Respectfully submitted,

/s/ Ashley Kincaid Eve

Ashley Kincaid Eve

Plaintiff, pro se

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