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AG's Office calls off its second attempt to curb Free Speech

Attorney General Beau Biden and his staff refused to comment about the decision.

By Lee Williams

DOVER –Attorney General Beau Biden's Office balked, the second time in as many weeks, in its latest attempt to restrict the First Amendment rights of a well-respected Department of Correction critic.

Deputy Attorney General Marc P. Niedzielski was due in court this morning to ask a judge to stop Dover attorney Steve Hampton from speaking out about the inadequacies of prison health care, and physical abuse by guards at the Sussex Correctional Institution (SCI).

Niedzielski also wanted the court to stop the public from viewing video evidence of inmate abuse by staff at SCI – which can be viewed at the CaesarRodney.org – that the Caesar Rodney Institute included as part of its recent special report "Rogue Force."

Hampton is one of the few attorneys willing to accept inmate cases, and he has never hesitated to warn the public about atrocities committed behind the barbed wire by state employees or prison health care vendors.

In a motion that was supposed to have been argued Friday morning, Niedzielski asked the judge to gag Hampton, and to have him ask the Caesar Rodney Institute to remove the video, even though Hampton is not affiliated with CRI.

Less than two hours before the hearing was set to begin, however, Niedzielski withdrew his motion.

"I have been directed by the State Solicitor [Lawrence W. Lewis] to withdraw the Motion for Protective Order scheduled to be heard today October 9, 2009 in the above-referenced case," Niedzielski wrote in his withdrawal letter. "I apologize to the Court and counsel for any inconvenience this has caused."

"It bothers me that the state is wasting precious resources trying to find out who gave the video to CRI, rather than trying to stop guards from abusing inmates," Hampton said. "The state would be better served doing that, than by trying to kill the messenger."

Neither Biden nor Niedzielski or Lewis returned calls or e-mails seeking comment for this story.

Lewis would not say when the Attorney General's Office will start prosecuting abusive prison guards rather than defending them, or why he ordered Niedzielski to withdraw his motion.

This is not the first time Biden's office has attempted to stop Hampton from talking about horrific conditions within Delaware's prisons.

Last week, Deputy Attorney General Michael McTaggart tried to silence Hampton by seeking a confidentiality order in a different case, in front of a different judge.

Then, like today, the AG's office quickly announced they were withdrawing the motion after the Caesar Rodney Institute published a story that revealed their attempt.

Solicitor Lewis did not respond to an e-mail asking why the public should not view the two recent attempts to gag Hampton, and the two subsequent withdrawals, as anything other than an attempt by the AG's office to harass and intimidate someone for criticizing the DOC.

Conflict of Interest

Legal experts say these types of cases highlight the conflict of interest that exists within the AG's office.

If a member of the public is accused of a crime, the AG's Office assumes the role of prosecutor.

If, however, a state employee or a state agency is accused of wrongdoing, the AG's office assumes the role of defense attorney for the employee and their agency.

Delaware taxpayers pay millions of dollars for both roles.

Nowhere does this conflict of interest become clearer, with more potential for harming the public good, than when a Department of Correction employee is involved.

Biden has a team of attorneys deciding whether to charge a group of guards at SCI with a crime for assaulting former inmate David Sully.

Sully suffered a series of savage beatings in June during a brief stay at the Georgetown facility. Several wounds on his face that he received during three separate beatings required stitches to close.

Meanwhile, Biden has a similar team of attorneys defending a group of guards who also work at SCI. These guards are accused of beating former inmate David Kalm in 2006. At some point during this attack someone is alleged to have shoved a nightstick or similar object down Kalm's throat, tearing his trachea.

Biden never charged any of these guards with a crime for beating Kalm. His office is defending the guards from a civil suit, after Kalm sued for the injuries he claims the guards inflicted.

As if this conflict of interest isn't confusing enough, if Biden decides not to prosecute the guards for beating Sully in June, and Sully sues the DOC and the state, Biden's prosecutors will then have to switch roles and defend the guards from the civil suit – the same guards who they decided not to prosecute for assault.

“The AG's office represents the guards, the Department of Correction and even its Internal Affairs unit,” Hampton said. “Who represents the inmates that are being abused?”

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