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Richards

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James Craven

KYLE RICHARDS ARRIVED AT THE US DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN WITH TWO FELLOW PLAINTIFFS AND A DISTURBING ALLEGATION.

ACCORDING TO RICHARDS—A PRISONER AT BARAGA CORRECTIONAL FACILITY—HE AND OTHERS EXPERIENCED BRUTAL, PERSISTENT **SEXUAL HARASSMENT** AND RETALIATION FROM ONE OF THE PRISON'S RESIDENT UNIT MANAGERS...

...THOMAS PERTTU.

BUT THE JUDGE RULED THAT RICHARDS NEEDED TO GO THROUGH THE PRISON'S GRIEVANCE SYSTEM FIRST, SHUTTING DOWN HIS CASE BEFORE IT COULD REACH A JURY.

UNDER THE PRISON LITIGATION REFORM ACT (PLRA),* COURTS CAN'T HEAR CASES UNLESS A PRISONER HAS EXHAUSTED ALL AVAILABLE REMEDIES WITHIN THE PRISON SYSTEM, AND NONE OF YOU HAVE DONE THAT YET.

*The Prison Litigation Reform Act (PLRA) is a 1996 federal law designed to reduce frivolous prisoner lawsuits by requiring prisoners to complete all available prison grievance procedures before bringing civil rights claims to federal court.

RICHARDS, HIS FELLOW WOULD-BE PLAINTIFFS, AND MANY WITNESSES HAD TESTIFIED THAT THE GRIEVANCE SYSTEM WAS **BADLY BROKEN**—AND THAT THE DEFENDANT USED IT TO ENSURE PRISONERS' HARASSMENT AND RETALIATION CLAIMS NEVER SAW THE LIGHT OF DAY.

WE TAKE GRIEVANCES SERIOUSLY. BUT RICHARDS NEVER FULLY COMPLETED THE PROCESS.

YEAH... THAT'S BECAUSE PERTTU KEEPS DESTROYING OUR GRIEVANCE PAPERWORK EVERY TIME WE TRY TO FILE IT!

BUT THE JUDGE DIDN'T FIND RICHARDS' WITNESSES CREDIBLE.

AND THIS HAPPENED ON THURSDAY, RIGHT?

JUDGE

I DON'T KNOW THE EXACT DATE...

THE DAYS KIND OF BLUR TOGETHER FOR US.

YOUR WITNESSES CAN'T RECALL KEY DETAILS, AND YOU'RE LEADING THEM IN YOUR QUESTIONS. I CAN'T FIND THAT THE PLRA'S INTERNAL-GRIEVANCE REQUIREMENTS HAVE BEEN MET BASED ON THIS TESTIMONY.

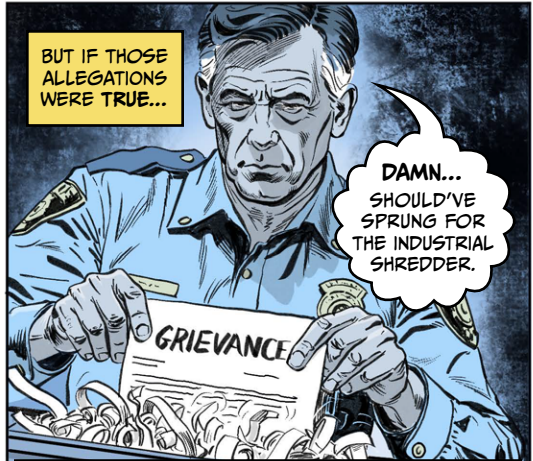
HAD THE PLRA'S EXHAUSTION REQUIREMENTS FILTERED OUT A FRIVOLOUS CASE—OR LET PRISON OFFICIALS BURY AN EXPLOSIVE ONE BEFORE IT EVER REACHED A JURY?

IT'S IMPOSSIBLE TO SAY WITHOUT KNOWING WHETHER PERTTU REALLY WAS PREVENTING RICHARDS FROM FILING INTERNAL GRIEVANCES.

IF RICHARDS' ALLEGATIONS ABOUT PERTTU AND OTHER PRISON OFFICIALS INTERFERING WITH HIS EFFORTS TO PURSUE INTERNAL GRIEVANCE PROCEDURES WERE **BASELESS**, THEN THE PLRA HAD WORKED AS INTENDED.



BUT IF THOSE ALLEGATIONS WERE TRUE...



DAMN...
SHOULD'VE
SPRUNG FOR
THE INDUSTRIAL
SHREDDER.

... THEN THE PLRA WAS BEING MISUSED TO SWEEP HORRIFIC MISCONDUCT UNDER THE RUG AND ENSURE THE VICTIMS NEVER GOT THEIR DAY IN COURT.

IN OTHER WORDS, WHETHER RICHARDS COULD "EXHAUST ALL REMEDIES" UNDER THE PLRA HINGED ON THE VERY ALLEGATIONS HE WAS TRYING TO PROVE.

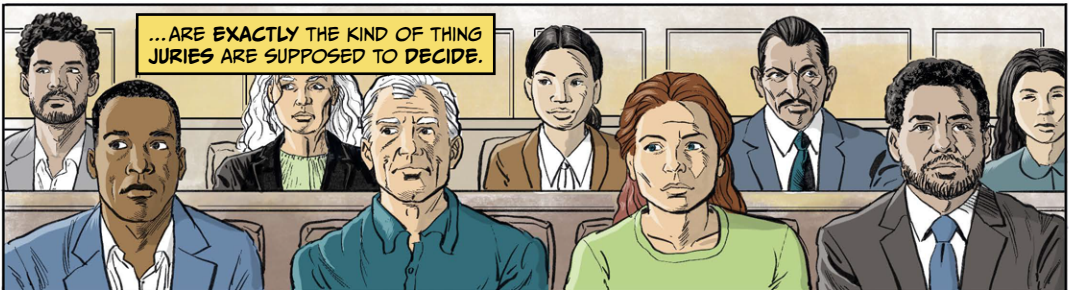


AND THE PLRA PREVENTED HIM FROM PUTTING THOSE ALLEGATIONS IN FRONT OF AN IMPARTIAL JURY, A SAFEGUARD THE SEVENTH AMENDMENT WAS MEANT TO PRESERVE.

IN FACT, QUESTIONS LIKE THE CREDIBILITY OF THE WITNESSES WHO SUPPORTED RICHARDS AND HIS FELLOW PLAINTIFFS...



...ARE EXACTLY THE KIND OF THING JURIES ARE SUPPOSED TO DECIDE.



THE FOUNDING FATHERS INTENDED CITIZEN JURIES TO BE THE ULTIMATE CHECK ON GOVERNMENT POWER.

I CONSIDER TRIAL BY JURY AS THE ONLY ANCHOR EVER YET IMAGINED BY MAN, BY WHICH A GOVERNMENT CAN BE HELD TO THE PRINCIPLES OF ITS CONSTITUTION.



AND THE FOUNDERS KNEW WHAT HAPPENED WHEN GOVERNMENT OFFICIALS USED LEGAL TRICKS TO AVOID JURY TRIALS...

AH, JOHN HANCOCK. FRESH OIL AND TAR ABOARD... BUT NO PERMIT?

I HAVEN'T LEFT PORT!

HEARD YOU BROUGHT QUITE THE HAUL OF WINE IN LAST MONTH. YET YOU'VE PAID FEW DUTIES.

YOU'LL HAVE TO PROVE WHATEVER YOU'RE ALLEGING.

OUR TIDESMAN'S SWORN AFFIDAVIT SAYS THE MISSING WINE WAS UNLADEN BEFORE ENTRY. THAT PROVES ENOUGH!

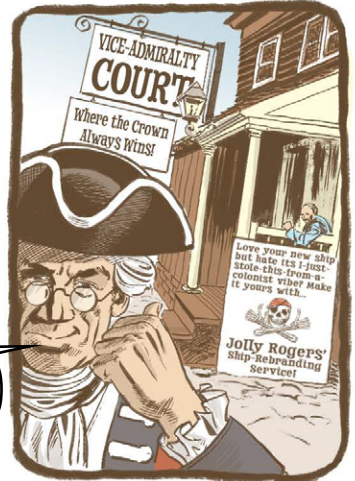


GIVEN THE CHARGES, WE'RE GOING TO HAVE TO TAKE YOUR SHIP.

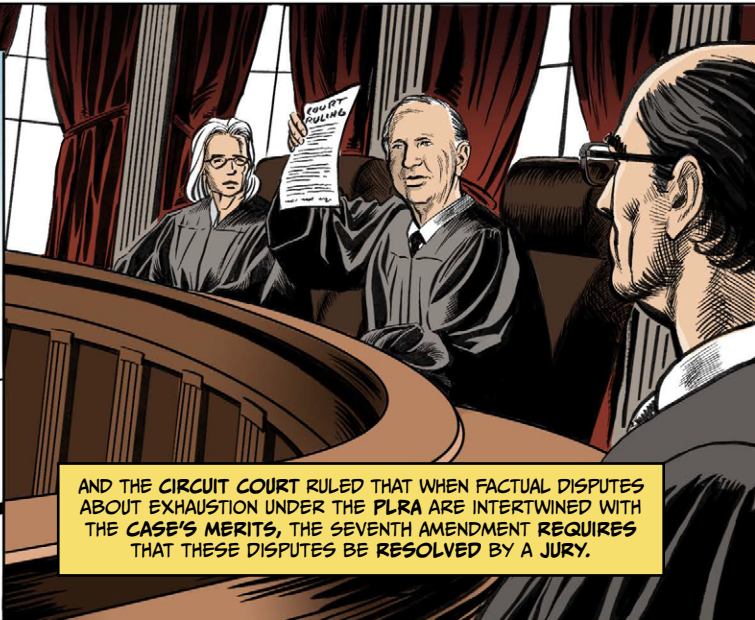
FORGET IT!

I HAVE A RIGHT TO TRIAL BY JURY--AND MY FELLOW COUNTRYMEN WILL NEVER LET YOU GET AWAY WITH THIS.

I'M AFRAID JURY TRIALS AREN'T AVAILABLE FOR SHIP-CONDEMNATION CASES. BUT DON'T WORRY--THE CROWN HAS A VERY EFFICIENT SYSTEM FOR THESE MATTERS.



RICHARDS APPEALED TO THE SIXTH CIRCUIT, ASSERTING HIS RIGHT TO A JURY TRIAL.



AND THE CIRCUIT COURT RULED THAT WHEN FACTUAL DISPUTES ABOUT EXHAUSTION UNDER THE PLRA ARE INTERTWINED WITH THE CASE'S MERITS, THE SEVENTH AMENDMENT REQUIRES THAT THESE DISPUTES BE RESOLVED BY A JURY.

AFTER PERTTU APPEALED THAT DECISION, THE CASE MADE ITS WAY TO THE SUPREME COURT.

WRITING FOR THE COURT, CHIEF JUSTICE ROBERTS SAID THE ANSWER LAY NOT IN THE CONSTITUTION—BUT IN THE STATUTE ITSELF.

"BEFORE INQUIRING INTO THE APPLICABILITY OF THE SEVENTH AMENDMENT, WE MUST FIRST ASCERTAIN WHETHER A CONSTRUCTION OF THE PLRA IS FAIRLY POSSIBLE BY WHICH THE CONSTITUTIONAL QUESTION MAY BE AVOIDED."

IN DOING SO, ROBERTS LIMITED THE COURT'S HOLDING TO PLRA CASES, RATHER THAN ADOPTING A BROAD CONSTITUTIONAL RULE ABOUT INTERTWINED FACTUAL DISPUTES.

BUT WHILE THE COURT'S DECISION WAS NARROWER THAN THE SIXTH CIRCUIT'S, IT ULTIMATELY AFFIRMED THE SIXTH CIRCUIT'S RULING.

IT DETERMINED THAT SINCE THE PLRA WAS SILENT ON WHETHER JUDGES OR JURIES SHOULD RESOLVE EXHAUSTION DISPUTES, THE USUAL PRACTICE SHOULD BE FOLLOWED.



IT PROVED TO BE A CLOSE CASE, WITH ROBERTS' OPINION NARROWLY SECURING A 5-4 MAJORITY.

JUSTICE BARRETT AUTHORED THE DISSENT.

THE PLRA SAYS NOTHING ABOUT THE RIGHT TO A JURY TRIAL ON THE QUESTION OF EXHAUSTION.

NOW, ANY PRISONER CAN POTENTIALLY OBTAIN FULL JURY REVIEW OF THE EXHAUSTION QUESTION THAT WAS DESIGNED TO STREAMLINE PRISONER LITIGATION—BY TRANSFORMING HIS INABILITY TO USE THE PRISON SYSTEM INTO A CLAIM FOR RELIEF.

THOUGH IT WAS A CLOSE DECISION, RICHARDS' CLAIM CAN NOW MOVE FORWARD.

WHAT HAPPENS NEXT WILL BE UP TO THE JURY!

