

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

\*\*\*\*\*

<b>LAWRENCE CARTY, ET AL.,</b>	)	<b>CIVIL NO. 1994-78</b>
	)	
<b>Plaintiffs,</b>	)	
	)	
v.	)	
	)	
<b>GOVERNOR KENNETH MAPP, ET AL.,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	

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**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO ENFORCE  
SETTLEMENT AGREEMENT AND COMPEL DEFENDANTS TO ALLOW  
PLAINTIFFS' SCHEDULED SITE VISIT AND FOR EXPEDITED  
CONSIDERATION**

COME NOW, Defendants, by and through undersigned counsel, and hereby oppose Plaintiffs' Motion to Enforce Settlement Agreement and Compel Defendants to Allow Plaintiffs' Scheduled Site Visit and for Expedited Consideration, D.E. 842. Defendants state as follows:

**I. PRELIMINARY STATEMENT**

This dispute concerns Plaintiffs' unwillingness to cooperate with scheduling site visits. Plaintiffs insist ignoring Defendants attempt to coordinate. Defendants coordinate site visits with several experts, and in the St. Croix Consent Decree with the United States.<sup>1</sup> These Plaintiffs and Attorney Balaban in particular, are the only parties who have ignored repeated, good-faith, requests to coordinate schedules. The parties should have been able easily resolve this issue without bringing it to this Court's attention. However, Defendants have quietly accommodated Plaintiffs' contumacious and unilateral

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<sup>1</sup> The parties presently confer with the experts with respect to scheduling mutually agreeable dates for site visits. **Exhibit 1.**

conduct in the past. This gamesmanship must end.

Plaintiffs' misguided Motion paints an incomplete picture for this Honorable Court. Defendants had twice requested that the parties meet and confer to mutually agree on dates for site visits. Plaintiffs blatantly ignored this request and sent notice of their intent to tour the facilities. In response, Defendants, *inter alia*, reasserted their request to meet and confer. .

Plaintiffs' rejected Defendants' good faith overture. This frivolous motion followed. Rather than raise substantive disputes regarding the conditions of the facility to Court, Plaintiffs' Motion underscore their own unreasonableness. Additionally, their ill-advised Motion relies on the 1994 Settlement Agreement, which has been superseded by the 2013 Settlement Agreement, adopted and entered by Order of the Court, D.E. 780.

### **2013 SETTLEMENT AGREEMENT IS CONTROLLING**

Plaintiffs' reliance on the 1994 Settlement Agreement is misplaced. The 2013 Settlement, adopted and entered by the Court by Order dated August 29, 2013, D.E. 780, supersedes the 1994 Settlement Agreement. Specifically, the 2013 Settlement Agreement states: "This agreement supersedes all prior settlement agreement[s] and remedial orders . . . ." 2013 Settlement Agreement, Section P.7 (emphasis added).

#### **I. DEFENDANTS' REQUEST FOR MUTUALLY AGREEABLE DATES FOR SITE VISITS IS REASONABLE**

Pursuant to the 2013 Settlement Agreement, Defendants open their facilities to the Plaintiffs. Plaintiffs are permitted to meet with prisoners, staff, review logbooks and other documents. Plaintiffs' counsel onsite tour usually lasts for five days. In addition to Plaintiffs' onsite tour, the experts are entitled to tour the facilities, review logbooks, interview staff and speak to prisoners. The experts' visits are separate and apart from

Plaintiffs' visits. *See* Settlement Agreement, Section VII.

Because of the magnitude of this case, affecting virtually all aspects of the jails, all tours require the presence of the Bureau of Corrections' managerial staff, which includes the Director, Assistant Director, Warden, Assistant, Chief, Compliance Coordinators and Territorial Health Services Administrator. In addition, maintenance, medical and mental health staff must avail themselves. Counsel for Defendants must be present.

With this in mind, in August of 2015, Defendants' counsel verbally requested of Plaintiffs' counsel provide sufficient advance notice of intent to conduct a visit and to select mutually agreeable dates to ensure that the tours are convenient for both parties.<sup>2</sup> Plaintiffs' disregarded this request, and scheduled a site visit for the week of August 24<sup>th</sup>—their second site visit for the month of August. **Exhibit 2.** Prior to this, Plaintiffs visited the jails on August 14, 2015. Defendants' counsel immediately informed Plaintiffs of their scheduling conflicts and reasserted their request to select amenable dates. **Exhibits 3 & 4.** During the week of August 24<sup>th</sup>, Attorney Balaban conducted a site visit.

Weeks after Plaintiffs rejected the Defendants suggestion that Plaintiffs tour during the week of October 12 rather than the week of August 24, Plaintiffs unilaterally notified Defendants of their intended tour, to commence on October 12, 2015.

**a. PLAINTIFFS' PREVIOUSLY REFUSED THE OCTOBER 5-15, 2015  
DATES**

Devoid from Plaintiffs' Motion is the fact that on August 17, 2015, Defendants

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<sup>2</sup> Defendants note that the parties do not need to confer regarding visits with prisoners, as they are counsel's clients. Plaintiffs' counsel may provide reasonable advance notice and Defendants will accommodate by facilitating meetings in the attorney-client room at the facilities.

suggested several dates, including October 5-15, 2015 for the onsite tour, which are inclusive of the dates that Plaintiffs' have now scheduled to visit. **Exhibits 3 & 4.** In response, Plaintiffs offered silence and refused to cooperate, respond or confirm. As a result, Defendants scheduled other matters.

**b. DEFENDANTS AND THEIR COUNSEL ARE UNAVAILABLE**

As communicated to Plaintiffs in an October 7, 2015 correspondence, the dates for the site tour are not feasible. Specifically, counsel has deadlines and appearances in other cases. Irrespective of Plaintiffs' improper suggestion of how counsel should handle this litigation, Defendants are entitled to counsel and their counsel is entitled to be present at all site visits.

With respect to Defendants, civilian staff are not expected to work on October 12, 2015, which is a federal holiday, which raises a specter of impropriety. These suspicions notwithstanding, the Classification Officer and Compliance Coordinator will be on holiday leave. Importantly, the Compliance Coordinator is a civilian and position required by the 2013 Settlement Agreement. The Compliance Coordinator is responsible for compiling documents and logbooks and otherwise facilitating the tour. On October 14, 2015, Defendants are also scheduled to conduct a facility-wide, full scale fire drill and evacuation, which requires participation of all staff and prisoners, and coordination with the Superior Court of the Virgin Islands, the Virgin Islands Police Department, the Virgin Islands Territorial Emergency Management Agency and the Virgin Islands Fire Service. **Exhibit 5.** Additionally, The Peace Officer Standards Council ("POST") has scheduled for training for the week of October 12, 2015, and pursuant to Virgin Islands law, the corrections officers, who are also peace officers, must attend the training.

Moreover, Attorney Balaban and the security expert are scheduled to visit the jail only two weeks after their October visit - on November 2-6, 2015. To say the least, Plaintiffs' scheduled tour is unduly burdensome.

## **II. PLAINTIFFS WILL NOT BE PREJUDICED BY RESCHEDULING THEIR TOUR**

Importantly, a glaring, self-serving void from Plaintiffs' Motion is that just two-weeks following their intended tour, they will tour the facilities on November 2-6, 2015 and have already inspected many of the logbooks and other documents that they request for the October 12-16, 2015 tour.

### **a. PLAINTIFFS WILL BE ONSITE ON NOVEMBER 2-6, 2015**

Unlike the unilaterally scheduled October 12-16, 2015 tour, the parties, along with the expert, mutually agreed on the November 2-6, 2015 tour several months in advance. **Exhibit 1.** Plaintiffs have not indicated that they have cancelled this tour. Even more perplexing is that by their refusal to respond to Defendants' standing request, Defendants presumed that October 12-16, 2015 was not a viable time for the site visit. Defendants' materially relied upon Plaintiffs' rejection of those dates.

### **b. PLAINTIFFS HAVE ALREADY INSPECTED MANY OF THE REQUESTED LOGBOOKS AND DOCUMENTS**

In Plaintiffs' October 1, 2015 correspondence, they indicate that they would like to review "all CJC and CJC Annex log books (including unit logs, Main Control logs, disciplinary logs, contraband logs, and any other log (including recreation logs) maintained at the Jail, from March 1, 2015 – present." Plaintiffs' Exhibit A.

In reverse chronological order, Defendants note that Plaintiffs have received the following log books and logs:

- On September 18, 2015, via e-mail Plaintiffs received the August 2015 contraband, recreation, and church logs.
- On August 24, 2015, via email Plaintiffs received the shakedown and church logs covering May to June, 2015
- During Plaintiffs' August 24<sup>th</sup> site visit, Defendants provided Main Control and all unit log books and logs for the period March to August, 2015, in addition Plaintiffs' counsel received the disciplinary and contraband logs, generally covering the period of April to July, 2015; on August 10, 2015, Plaintiffs received the recreation log.
- On August 14, 2015, Plaintiffs' counsel reviewed the Main Control and all unit log books located on the posts and toured both facilities. Plaintiffs also interviewed prisoners.
- On July 13, 2015, Plaintiffs, via email, received the recreation log covering the month of June.
- On June 10, 2015, Plaintiffs', via email, received the May recreation log.
- On May 18, 2015, Plaintiffs', via email, received the April recreation log.
- During Plaintiffs' site visit from April 20-22, 2015, Defendants provided Plaintiffs all logs and log books covering the period December 1, 2014 to April 2015. Plaintiffs also toured the facilities and interviewed prisoners.  
  
*See Exhibit 6.*
- On April 17, 2015, Plaintiffs, via email, received the March recreation log.

Further, aside from logs and log books otherwise provided on site or emailed, Plaintiffs have requested and received numerous prisoner classification and medical

records. Moreover, Plaintiffs are scheduled to receive logs typically sent in Defendants' monthly submissions, along with incident, investigative classification, grievance, work detail, significant incident, environmental, maintenance, medical, and management information systems reports.

Aside from onsite tours, Plaintiffs are entitled to request documents. *See* 2013 Settlement Agreement, Section VII ("Defendants shall provide Plaintiffs' Counsel with written answers and any requested documents . . ."). A delay of a mere two weeks—when they are scheduled onsite on November 2-6, 2015—will not unduly prejudice Plaintiffs. *See, e.g., Exhibit 5.*

**c. ST. CROIX BOC CONSENT DECREE CASE**

In the BOC Consent Decree Case on St. Croix, *United States v. Territory of the Virgin Islands*, Civ. No. 1:86-cv-265 (D.V.I.), which is akin to this matter and in some respects more involved due to the number of experts, the parties always meet and confer to decide dates for site visits. Indeed, in scheduling the next site visit, the undersigned indicated to the United States and the monitoring team her potential unavailability and the parties amicably selected another date. Although the St. Croix litigation proceeds in a different manner from this instant case, Defendants note that at every status conference the parties inform the court of the mutually agreed upon site visit days. The court uses those dates to schedule the future status conference. Accordingly, Defendants' request in this case—to dates that are amenable to the parties—is neither unique nor unreasonable.

**d. VIRGIN ISLANDS POLICE DEPARTMENT CONSENT DECREE**

In the Virgin Islands Police Department Consent Decree Case, the parties, including the monitors, mutually agree on dates for site visits. The Court, at the February

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24, 2015 hearing, indicated that this matter shall proceed in the same manner as the Virgin Islands Consent Decree Case. Thus, similar to the Virgin Islands Police Department Consent Decree Case, this case must proceed in the same manner with respect to the selection of mutually agreeable dates for site visits.

### **III. PLAINTIFFS' VISIT POSES BURDEN ON DEFENDANTS**

Lastly, Defendants note that they bear the cost of Plaintiffs' attorneys' fees. To date, Plaintiffs have visited the jails four times, wish to visit October 12-16, and will visit on November 2-6, 2015. This expenditure of attorneys' fees takes away from funds that could be directed towards compliance with the Settlement Agreement. Accordingly, Defendants ask that the Court require the parties to adopt a schedule for site visit.

Respectfully submitted,

**CLAUDE EARL WALKER, ESQ.  
ACTING ATTORNEY GENERAL**

October 9, 2015

**BY:** /s/ Shari N. D'Andrade  
**SHARI N. D'ANDRADE, ESQ.**  
**ASSISTANT ATTORNEY GENERAL**  
V.I. Bar. No. 1221  
V.I. Department of Justice  
Office of the Attorney General  
6040 Estate Castle Coakley  
Christiansted, VI 00820  
Telephone: (340) 773-0295  
Fax: (340) 773-1425  
Email: sdandrade@doj.vi.gov

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2015, I electronically filed a true copy of the  
**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO ENFORCE THE**



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**SETTLEMENT AGREEMENT AND COMPEL DEFENDANTS TO ALLOW  
PLAINTIFFS' SCHEDULED SITE VISIT AND FOR EXPEDITED**

**CONSIDERATION** with the Clerk of the Court using the CM/ECF system, which gives  
notification of such filing (NEF) to the following:

Eric Balaban  
National Prison Project of the ACLU  
915 15<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor  
Washington, DC 20005  
Telephone: (202) 393-4930  
Fax: (202) 393-4931  
Email: ebalaban@npp-aclu.org

Benjamin A. Currence  
Law Offices of Benjamin A. Currence  
5045 Norre Gade, Suite 2  
St. Thomas, VI 00802  
Telephone: (340) 775-3434  
Fax: (340) 774-1001  
Email: bencurrence@gmail.com

Carol Thomas-Jacobs  
Department of Justice  
Office of the Attorney General  
8050 Kronprindens Gade  
St. Thomas, VI 00802  
Telephone: (340) 774-5666  
Fax: (340) 776-3494  
Email: cjacobs@doj.vi.gov

/s/ Shari N. D'Andrade

# Re: Carty-Site Visit in October

David Bogard <[dbogard@pulitzerbogard.com](mailto:dbogard@pulitzerbogard.com)>

Mon 7/6/2015 1:03 PM

To: Shari D'Andrade <[Shari.D'Andrade@doj.vi.gov](mailto:Shari.D'Andrade@doj.vi.gov)>;

Cc: Eric Balaban <[ebalaban@aclu.org](mailto:ebalaban@aclu.org)>; Michael Gatling <[mgatling@pulitzerbogard.com](mailto:mgatling@pulitzerbogard.com)>; Alicia Gathers <[agathers@aclu.org](mailto:agathers@aclu.org)>; Benjamin A. Currence <[bencurrence@gmail.com](mailto:bencurrence@gmail.com)>; Carol Jacobs <[Carol.Jacobs@doj.vi.gov](mailto:Carol.Jacobs@doj.vi.gov)>; Thomas, Bonnilyn <[bthomas@voc.vi.gov](mailto:bthomas@voc.vi.gov)>; Kim Lyons (klyonsvi@gmail.com) <[klyonsvi@gmail.com](mailto:klyonsvi@gmail.com)>;

Thank you, Shari. I will plan accordingly.

David M. Bogard  
Pulitzer/Bogard & Associates, LLC  
P- 516,432.5177  
C- 516.456.4944

On Jul 6, 2015, at 11:37 AM, Shari D'Andrade <[Shari.D'Andrade@doj.vi.gov](mailto:Shari.D'Andrade@doj.vi.gov)> wrote:

Good morning, David:

November 2-6 works for the Defendants.

Shari

---

**From:** Eric Balaban <[ebalaban@aclu.org](mailto:ebalaban@aclu.org)>

**Sent:** Thursday, July 2, 2015 2:12 PM

**To:** David Bogard

**Cc:** Michael Gatling; Alicia Gathers; Benjamin A. Currence; Carol Jacobs; Thomas, Bonnilyn; Kim Lyons ([klyonsvi@gmail.com](mailto:klyonsvi@gmail.com)); Shari D'Andrade

**Subject:** RE: Carty-Site Visit in October

That is fine with Plaintiffs.

Eric Balaban\*  
senior staff counsel

ACLU National Prison Project

915 15th St., N.W.

Seventh Floor

Washington, D.C. 20005

202/393-4930 (ph)

202/393-4931 (fax)

[ebalaban@aclu.org](mailto:ebalaban@aclu.org)

\*not admitted in D.C., practice limited to the federal courts

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**From:** David Bogard [<mailto:dbogard@pulitzerbogard.com>]

**Sent:** Thursday, July 02, 2015 12:42 PM

**To:** Eric Balaban

**Cc:** Michael Gatling; Alicia Gathers; Benjamin A. Currence; Carol Jacobs; Thomas, Bonnilyn; Kim Lyons ([klyonsvi@gmail.com](mailto:klyonsvi@gmail.com)); Shari D'Andrade ([sdandrade@doj.vi.gov](mailto:sdandrade@doj.vi.gov))

**Subject:** Re: Carty-Site Visit in October

All- I can do the week of November 2-6. That appears to be okay with plaintiffs so would defendants please confirm that week is ok. I really need to finalize this so may I please hear from both parties today? Thanks.

David M. Bogard

Pulitzer/Bogard & Associates, LLC

P- 516,432.5177

C- 516.456.4944

On Jul 2, 2015, at 12:10 PM, Eric Balaban <[ebalaban@aclu.org](mailto:ebalaban@aclu.org)> wrote:

David:

Those dates are not good for Plaintiffs, despite our efforts. Oct. 16-24 are not good. If you are looking at November, Nov. 14-21 is not good for Plaintiffs, but otherwise the month is good.

Thank you for your patience. I hope you have a good and safe holiday.

Eric Balaban\*

senior staff counsel

ACLU National Prison Project

915 15th St., N.W.

Seventh Floor

Washington, D.C. 20005

202/393-4930 (ph)

202/393-4931 (fax)

[ebalaban@aclu.org](mailto:ebalaban@aclu.org)

\*not admitted in D.C., practice limited to the federal courts

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**From:** Shari D'Andrade [<mailto:Shari.D'Andrade@doj.vi.gov>]

**Sent:** Thursday, July 02, 2015 11:46 AM

**To:** Eric Balaban

**Cc:** David Bogard; Michael Gatling; Alicia Gathers; Benjamin A. Currence; Carol Jacobs; Thomas, Bonnilyn; Kim Lyons ([klyonsvi@gmail.com](mailto:klyonsvi@gmail.com))

**Subject:** Re: Carty-Site Visit in October

Those dates work for Defendants.

Sent from my iPhone

On Jun 30, 2015, at 5:55 PM, Eric Balaban <[ebalaban@aclu.org](mailto:ebalaban@aclu.org)> wrote:

Apologies. We are trying now to determine our availability.

Eric Balaban\*  
senior staff counsel  
ACLU National Prison Project  
915 15th St., N.W.  
Seventh Floor  
Washington, D.C. 20005  
202/393-4930 (ph)  
202/393-4931 (fax)  
[ebalaban@aclu.org](mailto:ebalaban@aclu.org)

\*not admitted in D.C., practice limited to the federal courts

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**From:** David Bogard [<mailto:dbogard@pulitzerbogard.com>]  
**Sent:** Tuesday, June 30, 2015 5:51 PM  
**To:** Shari D'Andrade  
**Cc:** Eric Balaban; Michael Gatling; Alicia Gathers; Benjamin A. Currence; Carol Jacobs; Thomas, Bonnilyn; Kim Lyons ([klyonsvi@gmail.com](mailto:klyonsvi@gmail.com))  
**Subject:** Re: Carty-Site Visit in October

Counsel- may I please hear back from you regarding site visit days I proposed by tomorrow? Thank you.

David M. Bogard  
Pulitzer/Bogard & Associates, LLC  
P- 516,432.5177  
C- 516.456.4944

On Jun 29, 2015, at 10:50 AM, Shari D'Andrade  
<[Shari.D'Andrade@doj.vi.gov](mailto:Shari.D'Andrade@doj.vi.gov)> wrote:

My apologies, David. I was unaware of the email because of technical issues with the email server. Defendants are conferring internally and will advise as to those dates.

Shari

Sent from my iPhone

On Jun 26, 2015, at 3:25 PM, David Bogard  
<[dbogard@pulitzerbogard.com](mailto:dbogard@pulitzerbogard.com)> wrote:

Counsel- I previously wrote concerning tentative dates for our next site visit. Please confirm that the week of October 19-23 is acceptable to the parties so that we may plan our work and secure more affordable travel rates. Thank you.

**David M. Bogard**

*Principal*

Pulitzer/Bogard & Associates, LLC  
516-432-5177 ■ Fax 516-432-3414 ■ Cell 516-456-4944  
[www.pulitzerbogard.com](http://www.pulitzerbogard.com)

PLEASE NOTE MY NEW EMAIL ADDRESS  
[[DBogard@PulitzerBogard.com](mailto:DBogard@PulitzerBogard.com)][DBogard@PulitzerBogard.com](mailto:DBogard@PulitzerBogard.com)



**BY ELECTRONIC MAIL**

August 13, 2015

Shari D'Andrade  
Assistant Attorney General  
Virgin Island Department of Justice  
GERS Building, 2<sup>nd</sup> Floor  
34-38 Kronprindsens Gade  
St. Thomas, VI 00802  
[sdandrade@doj.vi.gov](mailto:sdandrade@doj.vi.gov)

AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION

**Re: *Carty v. Mapp*, Civil Action No. 94-78**

PLEASE RESPOND TO:  
NATIONAL PRISON PROJECT  
915 15TH STREET, NW  
7TH FLOOR  
WASHINGTON, DC 20005-2112  
T/202.393.4930  
F/202.393.4931  
WWW.ACLU.ORG

DAVID C. FATHI  
DIRECTOR  
ATTORNEY AT LAW\*

\*NOT ADMITTED IN DC;  
PRACTICE LIMITED TO  
FEDERAL COURTS

Dear Shari:

This is to notify you that I plan to make a site visit to the CJC and CJC Annex from August 24-28, 2015. Ben Currence may join me for all or part of this site visit. As with previous site visits, I ask that you make arrangements so that I can bring my laptop computer with me to use at the jail.

I have listed our itinerary below. As part of our visit, we would like to review all CJC and CJC Annex log books (including unit logs, Main Control logs, disciplinary logs, contraband logs, and any other log (other than recreation logs) maintained at the Jail, from March 1, 2015-present.

**Monday, August 24, 2015:** Inspection, document reviews, log book reviews, and prisoner interviews at the CJC, beginning at 9:00 a.m. We also may want to review health care records and classification records (including computerized classification records). For our prisoner interviews, we would like to meet individually with some prisoners, and talk with some in groups.

**Tuesday, August 25, 2015:** Inspection, document reviews, log book reviews, and prisoner interviews at the CJC, beginning at 9:00 a.m. Should we complete our work at the CJC, we also want to conduct an inspection, document reviews, and prisoner interviews at the CJC Annex, beginning in the afternoon. We also may want to review health care records and classification records (including computerized classification records). For our prisoner interviews at both facilities, we would like to meet individually with some prisoners, and talk with some in groups.

**Wednesday, August 26, 2015:** Inspection, document reviews, log book reviews, and prisoner interviews at the CJC, beginning at 9:00 a.m. Should we



complete our work at the CJC, we also want to conduct an inspection, document reviews, and prisoner interviews at the CJC Annex, beginning in the afternoon. We also may want to review health care records and classification records (including computerized classification records). For our prisoner interviews, we would like to meet individually with some prisoners, and talk with some in groups.

**Thursday, August 27, 2015:** Inspection, document reviews, log book reviews, and prisoner interviews at the CJC, beginning at 9:00 a.m. Should we complete our work at the CJC, we also want to conduct an inspection, document reviews, and prisoner interviews at the CJC Annex, beginning in the afternoon. We also may want to review health care records and classification records (including computerized classification records). For our prisoner interviews, we would like to meet individually with some prisoners, and talk with some in groups.

**Friday, August 28, 2015:** Inspection, document reviews, log book reviews, and prisoner interviews at the CJC, beginning at 9:00 a.m. Should we complete our work at the CJC, we also want to conduct an inspection, document reviews, and prisoner interviews at the CJC Annex, beginning in the afternoon. We also may want to review health care records and classification records (including computerized classification records). For our prisoner interviews, we would like to meet individually with some prisoners, and talk with some in groups

Thank you for notifying the Warden and staff about our visit, and your help in setting up our visit.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Eric Balaban', with a long horizontal flourish extending to the right.

Eric Balaban

cc: B. Currence

## Re: Carty v. Mapp

Eric Balaban <ebalaban@aclu.org>

Fri 8/14/2015 7:13 PM

Inbox

To: Shari D'Andrade <Shari.D'Andrade@doj.vi.gov>;

Cc: Alicia Gathers <agathers@aclu.org>; Carol Jacobs <Carol.Jacobs@doj.vi.gov>; bencurrence@gmail.com  
<bencurrence@gmail.com>;

Shari:

I sorry , but I do not have alternate dates readily available. Please tell me what personnel are unavailable that week, and I will be happy to reconsider the scope of my visit.

Sent from my iPhone

On Aug 14, 2015, at 4:59 PM, "Shari D'Andrade" <[Shari.D'Andrade@doj.vi.gov](mailto:Shari.D'Andrade@doj.vi.gov)> wrote:

Good afternoon Eric:

Unfortunately, Defendants will not be able to accommodate you on those dates. We kindly ask that you provide reasonable advance notice so that we can coordinate schedules.

Although on August 4, 2015, we represented to Dr. Austin that we were available that week, after Plaintiffs objected to him visiting and he acquiesced, other matters related to separate cases arose and were scheduled. Today, we made ourselves available to your co-counsel for a site visit. Please provide proposed alternate dates in September.

Kind regards,

Shari

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**From:** Alicia Gathers <[agathers@aclu.org](mailto:agathers@aclu.org)>  
**Sent:** Thursday, August 13, 2015 3:18 PM  
**To:** Shari D'Andrade; Carol Jacobs; [bencurrence@gmail.com](mailto:bencurrence@gmail.com)  
**Cc:** Eric Balaban  
**Subject:** Carty v. Mapp

Ms. D'Andrade,

Please see the attached correspondence from Mr. Balaban.



Thank you,

**Alicia Gathers**

Paralegal/Legal Assistant  
National Prison Project of the ACLUF  
915 15<sup>th</sup> Street, NW, 7<sup>th</sup> Floor  
Washington, DC 20005  
■ 202-548-6602 ■ [agathers@aclu.org](mailto:agathers@aclu.org)  
[www.aclu.org](http://www.aclu.org)

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OFFICE OF THE ATTORNEY GENERAL

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GERS COMPLEX, 2<sup>ND</sup> FLOOR  
ST. THOMAS, VI 00802  
(340) 774-5666 FAX: (340) 776-349

6040 ESTATE CASTLE COAKLEY  
DESIGN CENTER BUILDING  
CHRISTIANSTED, ST. CROIX, VI 00820  
(340) 773-0295 FAX: (340) 773-1425

August 17, 2015

Eric Balaban, Esq.  
ACLU—National Prison Project  
915 15<sup>th</sup> Street, NW, 7<sup>th</sup> Floor  
Washington, DC 20005  
**Via Electronic Mail:** ebalaban@aclu.org

**RE:** *Carty v. Mapp*, Case No. 3:94-cv-78  
On-site Tour

Dear Attorney Balaban:

Thank you for adjusting the scope of your visit. Defendants' counsel are unavailable during the week of August 24<sup>th</sup> and accordingly, object to you discussing any aspect of the case with Defendants, including BOC correctional staff, civilian staff, administration and vendors outside of our presence.

Of course, you are entitled to meet with prisoners. We ask that you forward a list of prisoners whom you would like to speak with, so that Defendants can make them available to you in the attorney-client room. During your visit you may also want to meet with additional prisoners. Once you've forwarded the names of these prisoners, Defendants will also make them available to you. The logbooks you have requested will be available for your review and inspection in the lounge between the hours of 8:00 a.m. to 5:00 p.m.

In light of defense counsel's absence and your co-counsel's recent on-site tour of both St. Thomas jails on August 14, 2015, we ask that you re-schedule your on-site tour to coincide with the security expert, Mr. Bogard's, visit on November 2-6, 2015. Otherwise, Defendants and counsel are available on October 5-16, 2015. Please let us know which dates are most amenable to you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shari N. D'Andrade".

Shari N. D'Andrade  
Assistant Attorney General



GOVERNMENT OF  
THE VIRGIN ISLANDS OF THE UNITED STATES  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
6040 Castle Coakley  
Christiansted, St. Croix, U.S. Virgin Islands 00820

Tel: (340) 773-0295  
Fax: (340) 773-1425

October 7, 2015

**Via Electronic Mail:** ebalaban@aclu.org

Eric Balaban  
ACLU  
National Prison Project  
915 15<sup>th</sup> Street, NW, 7<sup>th</sup> Floor  
Washington, DC 20005

**RE:** *Carty v. Mapp*, Civil No. 3:94-cv-78  
Response to ACLU's October 1, 2015 Correspondence Regarding Site Visit

Dear Attorney Balaban:

We are in receipt of your October 1, 2015 correspondence notifying us of your intended site visit on October 12 – 15, 2015. Unfortunately, counsel for Defendants are unavailable and Defendants cannot accommodate your site visit.

In August, during your co-counsel's site visit to the St. Thomas jails, we indicated that because site visits generally last up to five days, we requested advance notice of proposed dates for such visits so that the parties can confer and select mutually agreeable dates. Despite this standing request, on August 13, 2015, you unilaterally scheduled a site visit for the week of August 24, 2015. In response, we re-asserted our request of advance notice, indicated counsel's unavailability because of other matters, and requested that you reschedule the visit for any date in September, October 5-15, 2015 or November 2-6, 2015, the same dates of the security expert's site visit. You, however, were unwilling to reschedule. We reluctantly accommodated and you visited the jails during the week of August 24, 2015.

Again, without conferring with us to select mutually agreeable dates, on October 1, 2015, you independently scheduled a site visit for October 12 – 15, 2015. We are surprised that the dates of the visit are the exact dates that we proposed back in August, to which you failed to respond and left the impression that the dates were inconvenient.

During the week of October 12<sup>th</sup>, counsel is unavailable and Defendants cannot accommodate this visit. Specifically, October 12<sup>th</sup> is a federal holiday and therefore, counsel and civilian staff at the St. Thomas jails (with the exception of nursing staff) are unavailable. Furthermore, security staff will be in training the week of the October 12<sup>th</sup> and Defendants will conduct a facility-wide, full-scale fire evacuation drill, tentatively set for October 14, 2015, that requires participation of all staff and prisoners.

In light of this, the fact that Plaintiffs' counsel has visited the facilities in February, April, and on two separate occasions in August of this year, and that you are expected on site on

Defendants' response to ACLU's October 1, 2015 Letter

Page 2

November 2-6, 2015 (during the security expert's site visit), we ask that you forgo this visit. If you do not, Defendants can only make the prisoners available to you in the attorney-client room on October 12, 13, and 15. Finally, we avail ourselves to the exchange of proposed dates for future site visits.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shari N. D'Andrade". The signature is stylized with a large initial "S" and "D".

Shari N. D'Andrade  
Assistant Attorney General

cc: Benjamin Currence, Esq. (via email)



**VIA ELECTRONIC MAIL**

April 7, 2015

Shari D'Andrade  
Assistant Attorney General  
Virgin Island Department of Justice  
GERS Building, 2<sup>nd</sup> Floor  
34-38 Kromprindsens Gade  
St. Thomas, USVI 00802  
[sdandrade@doj.vi.gov](mailto:sdandrade@doj.vi.gov)

AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION

PLEASE RESPOND TO:  
NATIONAL PRISON PROJECT  
915 15TH STREET, NW  
7TH FLOOR  
WASHINGTON, DC 20005-2112  
T/202.393.4930  
F/202.393.4931  
WWW.ACLU.ORG

DAVID C. FATHI  
DIRECTOR  
ATTORNEY AT LAW\*

\*NOT ADMITTED IN DC;  
PRACTICE LIMITED TO  
FEDERAL COURTS

**Re: *Carty v. Mapp*, Civil Action No. 94-78**

Dear Shari:

This is to notify you that I plan to make a site visit to the CJC and CJC Annex on April 20 -22, 2015. Ben Currence may join me for all or part of this site visit. As with previous site visits, I ask that you make arrangements so that I can bring my laptop computer with me to use at the jail.

I have listed our itinerary below. As part of our visit, we would like to review all CJC and CJC Annex log books (including unit logs, Main Control logs, and any other logs other than recreation logs) maintained at the Jail from December 1, 2014 to present.

**Monday, April 20, 2015:** I will be accompanying Dr. Kathy Burns on her expert tour. Inspection, document review, log book reviews, and prisoner interviews at the CJC, beginning at 9:00 am. We also may want to review health care records and classification records. For our prisoner interviews, we would like to meet individually with some prisoners, and talk with some in groups.

**Tuesday, April 21, 2015:** I will be accompanying Dr. Kathy Burns on her expert tour. Inspection, document review, log book reviews, and prisoner interviews at the CJC, beginning at 9:00 am. We also may want to review health care records and classification records. For our prisoner interviews, we would like to meet individually with some prisoners, and talk with some in groups.

**Wednesday, April 22, 2015:** Inspection, document review, log book reviews, and prisoner interviews at the CJC, beginning at 9:00 am. We also may want to review health care records and classification records. For our

prisoner interviews, we would like to meet individually with some prisoners, and talk with some in groups.

Thank you for notifying the Warden and staff about our visit and your help in setting up our visit.

Sincerely,

A handwritten signature in black ink, appearing to be 'E. Balaban', with a long horizontal flourish extending to the right.

Eric Balaban

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

cc: Ben Currence  
Carol Jacobs