

John Neff
 Name
P.O. Box 1489
Ely, NV. 89301
54213
 Prison Number

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COUNSEL/PARTIES OF RECORD	
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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN NEFF,)
 Plaintiff,)
 vs.)
Lt. A. NEAGLE, individually,)
Ronald Bryant, individually,)
Eldon K. McDaniel, individually,)
and officially,)
CCS M. Dxborough, individually,)
Adam Endel, individually,)
Debra Brooks, individually,)
 Defendant(s).)

CASE NO. 3:09-cv-00271-HDM-JPC
 (To be supplied by the Clerk)

**FIRST AMENDED
 CIVIL RIGHTS COMPLAINT
 PURSUANT TO
 42 U.S.C. § 1983**

JURY DEMAND

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff, John Neff,
 (Print Plaintiff's name)
 who presently resides at P.O. Box 1489, Ely, NV. 89301, were
 violated by the actions of the below named individuals which were directed against
 Plaintiff at Ely State Prison / Ely on the following dates
 (institution/city where violation occurred)
4-3-07, through to →, and 1-22-09.
 (Count I) (Count II) (Count III)

**Make a copy of this page to provide the below
information if you are naming more than five (5) defendants**

2) Defendant Arthur Neagle resides at P.O. Box 1989, Ely, NV. 89301,
(full name of first defendant) (address if first defendant)
and is employed as ESP Lieutenant. This defendant is sued in his/her
(defendant's position and title, if any)
 individual ___ official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: Employee, state of Nevada

3) Defendant Ronald Bryant resides at P.O. Box 1989, Ely, NV. 89301,
(full name of first defendant) (address if first defendant)
and is employed as ESP Sergeant. This defendant is sued in his/her
(defendant's position and title, if any)
 individual ___ official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: Employee, state of Nevada

4) Defendant Eldon K. McDaniel resides at P.O. Box 1989, Ely, NV. 89301,
(full name of first defendant) (address if first defendant)
and is employed as ESP Warden. This defendant is sued in his/her
(defendant's position and title, if any)
 individual official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: Employee, state of Nevada

5) Defendant M. Oxborough resides at P.O. Box 1989, Ely, NV. 89301,
(full name of first defendant) (address if first defendant)
and is employed as ESP caseworker / CCS. This defendant is sued in his/her
(defendant's position and title, if any)
 individual ___ official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: Employee, state of Nevada

**Make a copy of this page to provide the below
information if you are naming more than five (5) defendants**

2) Defendant Adam Endel ^(At time of incident) resides at P.O. Box 1489, Ely, NV, 89301,
(full name of first defendant) (address if first defendant)
and ^{was} employed as AWP at ESP at time. This defendant is sued in his/
(defendant's position and title, if any)
 individual ___ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Employee, State of Nevada

3) Defendant Debra Brooks resides at P.O. Box 1489, Ely, NV, 89301,
(full name of first defendant) (address if first defendant)
and is employed as AWD at ESP / Associate Warden. This defendant is sued in her/
(defendant's position and title, if any)
 individual ___ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: Employee, State of Nevada

4) Defendant N/A resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ___ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: _____

5) Defendant N/A resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ___ official capacity. (Check one or both). Explain how this defendant was
acting

under color of law: _____

6) Defendant N/A resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
____ individual ____ official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: _____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.
As Cited above ↗

B. NATURE OF THE CASE

1) Briefly state the background of your case.
This series of misadventures begins with the fact that plaintiff was early on misidentified as a Security Threat Group Member (STG) known as the Aryan Warriors. In fact, he is a member of a protected religious group known as Asatru (or Odinism) which does not involve violence at any time. Any violence-related incidents plaintiff has been involved in are either unsubstantiated or part of his life as a maximum security inmate. It has nothing to do with gangs or religion. Odinism is a recognized and First Amendment protected religion. See, exhibit A-attached. The series of calamities begins on March 21, 2007, when plaintiff's cellmate Michael Beavers said he had Hepatitis and plaintiff refused to be celled with him because Odinism prohibits close contact with illness. See, exhibit A-attached. His cellmate told him he had

C. CAUSE OF ACTION

Hepatitis. On April 3, 2007, plaintiff, having been charged with "disobeying a direct order" (for not returning to the cell with Michael Beavers) a "G-1" violation, and with "disruptive demonstration or practice", a "MS-28" violation, appeared before Lieutenant Neagle for a disciplinary hearing about the charges. As the disciplinary hearing got ready to take place, plaintiff informed Neagle that as a religious tenet of Odinism, he is not allowed to have close contact with people who have illness or disease. See, exhibit A-attached. Nevertheless, Lt. Neagle punished plaintiff with 15 days of disciplinary detention which was appealed via grievance to the 2nd level, completed on July 25, 2007. Plaintiff's prison complaint occurred prior to March 21, 2007, however, the statute of limitations is tolled during administrative remedies. See, *Brown v. Valoff*, 422 F.3d 926, 943 (9th Cir. 2005). Plaintiff was punished for his religious belief and practice.

As a part of the above incident, Warden McDaniel enacted a rule without enabling legislation known as "I.P. s.13" (Now Operational Procedure "OP" s.13). It adds the following sanctions below which are not authorized by the state Code of Penal Discipline (NRS 209.246) (Administrative Regulation - AR-707, legislatively enacted regulations.):

These are the following sanctions imposed:

- All personal phone calls forfeited for 180 days.
- All electrical appliances forfeited for 180 days.
- All visits forfeited for 1 year.
- Loss of canteen for 180 days.
- Eliminated participation from the package program for 2 years.

This unauthorized rule applies to inmates who refuse to cell with their assigned cellmate. Notice is given that the Code of Penal Discipline (AR 707) prohibits the loss of visiting privileges unless it involves an incident related to visiting events, and all these sanctions exceed the allowed sanctions for the rule violations of "G-1" and "MS-28" under the state Code of Penal

discipline. Plaintiff seeks both damages, punitive award individual capacity, and permanent injunctive relief, official capacity, and declaratory judgement as to this unauthorized "I.P.S. 13" against Defendant Eldon K. McDaniel.

After serving the 15 days of disciplinary detention for the "G-1" and "MS-28" violations, plaintiff sought his return to general population. Instead, he was told he was now on "Administrative Segregation" (Ad Seg). His disciplinary detention expired on May 15, 2007. Commencing May 16, 2007, plaintiff continuously sent written inquiries to the caseworker, Defendant Oxborough, and Associate Warden of Programs Adam Endel asking when he can return to general population (GP). There was no specific response until May 24, 2007, when Oxborough stated:

"you came to the hole to do disciplinary detention sanction. For a safety and security issue the Administration has made the decision to leave you in MLU (maximum lockdown unit)"

All during this time, Defendant Ronald Bryant had spoken to plaintiff and continued the ESP allegation that plaintiff was a member of the Aryan Warriors. Each time, plaintiff explained that Odinism is a religion - not part of a gang - and is a protected First Amendment activity (exhibit A). Bryant replied "it's all the same to me." It was clear that a conflict existed between Bryant and plaintiff.

Not knowing what Oxborough's above response of safety and security issue meant, plaintiff sent an inquiry to Associate Warden Adam Endel on May 27, 2007, for an explanation, who replied:

"You will remain on Ad Seg status because of STG activity."

There were no rule infractions for STG activity. On June 11, 2007, plaintiff formally grieved the "I.P.S. 13" unauthorized sanction through the 2nd level without result. From May 15, 2007, when the 15 days of disciplinary detention had ended and Ad Seg began, absolutely no compliance with the regulations governing administrative segregation (AR 507) was made. The regulations

contain mandatory predicates limiting official discretion of a particularized criteria, dictating specific outcome and thus rise to Fourteenth Amendment liberty interests.

No Formal classification process occurred to place plaintiff in Ad Seg, to wit:

AR 507 Administrative Segregation

Procedures:

1.3 Inmates will be retained in administrative segregation only after completion of Formal classification procedures. (emphasis added)

Since Adam Endel claimed the status was because of "STG activities" (which didn't exist) Ad Seg was being used as punishment.

1.4 Administrative segregation is not to be used for the purpose of punishment. (emphasis added)

Plaintiff was simply abandoned in a lock-up cell without any process.

507.02 Placement in Administrative Segregation

1.3 Inmates placed in Administrative Segregation will receive an initial Administrative Segregation hearing within 3 working days... (emphasis added)

1.4 Inmates will receive at least forty-eight (48) hours notice prior to conducting an initial Administrative Segregation hearing. (emphasis added)

1.5 The classification committee for the initial Administrative Segregation hearing, or any subsequent regular reclassification of an Administrative segregation inmate will consist of at least 3 employees. (emphasis added)

1.5.2 The inmate will be present at all times during the classification meeting except for decision deliberations, discussion of information from anonymous sources, or if they become disruptive. (emphasis added)

None of these procedures occurred, despite the mandatory language contained in them. In fact, From May 15, 2007, the end of the 15 day sanction, until October 29, 2007, no classification hearing occurred. That is 167 days from the start of Ad Seg before the required hearing within "3 days". Plaintiff pointed this out to defendants Endel, Brooks, and McDaniel without result.

Officer Bryant continued to harass plaintiff about STG allegations, maintaining these, despite plaintiff's talk about his religion Odinism, stating it was "just another part of gang activities." And on November 19, 2007, Bryant played a role in plaintiff's move to another Ad Seg cell and took all of plaintiff's property to his office (even toothbrush and toilet paper) for two (2) full days as retaliation after plaintiff denied any involvement in gang activities and maintained his actions were part of his religious beliefs.

Ely State Prison Operational Procedure 420 (OP) mandates two (2) staff members for conducting a search, along with a panoply of other mandatory requirements ("shall"). None of which was complied with.

During this property seizure, Bryant took plaintiff's address book claiming it contained the names and numbers of STG members. In fact, these were only alleged as being such and they were actually witnesses plaintiff intended for legal court proceeding (which was disclosed), along with the names of attorneys and family members and friends. Bryant used this as a predicate for a rule violation gaining plaintiff 60 days disciplinary segregation on January 12, 2008, for "contraband", the address book. Notice is given that there is no rule that prohibits having an address book or the having of fellow prisoners' names and numbers. The address book contained pertinent legal information which was made clear and fully exhausted through grievances. This amounts to more retaliation by Bryant and other named defendants for plaintiff's religious status.

which was still being called "gang activities." see, exhibit A.

Continuing on Ad seg after the 60 day punishment for an address book that wasn't "contraband" and was needed for court purposes, the AR 507 also dictates:

507.02 Placement in Administrative Segregation

1.5.4 The classification committee shall review inmates in administrative segregation every seven days for the first two months and every 30 days thereafter. (Emphasis added)

As previously stated, 167 days elapsed with absolutely no compliance to any of these regulations.

As to Defendant McDaniel, he has also instituted a policy of not allowing law clerks to come to the housing units, and employing the use of a "paging system" held as unconstitutional by the 9th Circuit which is why this current litigation has been improvidently protracted.

507.04 Administrative Segregation Operations

1.12 Law clerks will be allowed to provide administrative segregation inmates with legal materials and books. (Emphasis added)

Additionally, a mental health doctor is required to complete a "meaningful evaluation" after 30 days to Ad Seg inmates:

1.17 A qualified clinical psychologist or psychiatrist will interview in person and complete a meaningful evaluation on the status of each person classified to administrative segregation within 30 days of assignment to that unit.

~~where~~ (AND)

1.17.2 The evaluation will be completed for every inmate every 90 days. (Emphasis added)

None of these evaluations occurred.

On December 27, 2007, without plaintiff appearing for a hearing, a

"classification Results Notice" was issued stating plaintiff was continued on Ad Seg for safety and security reasons, no explanation was provided.

Again, after nearly a year, on November 13, 2008, another "notice" was issued stating the same as the one before with no proper explanation and plaintiff wasn't brought for a hearing.

On January 23, 2009, plaintiff's Ad Seg status ended but only because he was implicated in another unsubstantiated matter wherein Bryant participated claiming he (Bryant) found written correspondence allegedly written by plaintiff, not found on plaintiff or in his cell, that allegedly told another inmate to harm another. Yet, this isn't true and no incident occurred. Plaintiff was never allowed to see the mysterious correspondence "he" wrote whereas Bryant admitted that he conducted the investigation as well as the handwriting analysis. AR 707 requires that an inmate be provided evidence of a rule violation and certain process be observed. It wasn't and this matter is raised in ancillary litigation. (3:09-cv-672-RCS-VPC)

Each incident described herein will be supported by irrefutable evidence.

-000-

Note! Plaintiff spent a total of 557 days in Ad Seg, not counting the 15 day and 60 day disciplinary time, and such status constitutes an atypical and significant hardship.

C. CAUSE OF ACTION

COUNT I

The following civil right has been violated: _____

First Amendment U.S.C.A.

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

As to Defendant Neagle: punishment for plaintiff's religious tenet,
As to Defendant Ronald Bryant: 1st Amendment retaliations over plaintiff's
religious status as described in Nature of the Case and-

Defendant Bryant confiscated plaintiff's address book and made unsubstantiated
claims as for the legal information it contained as a trick to again
retaliate. The loss of the address book affected plaintiff's court matters
and litigation, because the names of witnesses and lawyers were
contained for multiple legal proceedings. Bryant took all plaintiff's property
at that time leaving plaintiff with nothing despite a list of required
items to be left to inmates per O.P. 420 which includes legal materials.

A 1st Amendment continuing violation by Defendant McDaniel for
upholding Bryant's actions in reference to the address book and for
dis-allowing law clerks to come to housing units and with the use
of unconstitutional "paging system" as ineffective access.

COUNT II

The following civil right has been violated: _____

Fourteenth Amendment U.S.C.A.

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

As to Defendant McDaniel: the illegal "I.P. 513" used to punish plaintiff such "I.P." has no enabling legislation and prison rule matters are governed by NRS 209.246, AR 707. McDaniel cannot create his own regulations on discipline, individual and official capacities.

Due process and liberty interest constitutional violations over Ad Seg punishment of 557 days contrary to AR 507 regulation rules as to Defendants Endel, Oxborough, Brooks, and McDaniel.

Defendant Bryant seized all plaintiff's property as retaliation over plaintiff's religious tenets and failed to comply with the mandates of O.P. 420 leaving plaintiff with no clothing for warmth, no hygiene items, no soap, no shampoo, and no legal records. A list of items that must be left to inmates is shown on O.P. 420, but wasn't adhered to.

The 557 days in Ad Seg constituted an atypical and significant hardship violating a secured set of liberties.

COUNT III

The following civil rights has been violated: _____

N/A

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

N/A

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

- 1) Have you filed other actions in state or federal courts involving the **same or similar facts** as involved in this action? ___ Yes No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below

outline).

- a) Defendants: See, 3:09-cv-672-RCS-VPC
- b) Name of court and docket number: _____
- c) Disposition (for example, was the case dismissed, appealed or is it still pending?): _____
- d) Issues raised: _____
- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

- 2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**
 Yes ___ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: Robert Bannister / Sue Brackbill / Gregory Martin
- b) Name of court and case number: U.S. District Court / 3:09-cv-117-LRH-VPC
- c) The case was dismissed because it was found to be (check one): ___ frivolous ___ malicious or failed to state a claim upon which relief could be granted.
- d) Issues raised: Medical Indifference
- e) Approximate date it was filed: January 20, 2009
- f) Approximate date of disposition: June 2009

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: N/A
- b) Name of court and case number: _____

- c) The case was dismissed because it was found to be (check one): _____ frivolous
_____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: N/A
- b) Name of court and case number: _____
- c) The case was dismissed because it was found to be (check one): _____ frivolous
_____ malicious or _____ failed to state a claim upon which relief could be granted.
- d) Issues raised: _____

- e) Approximate date it was filed: _____
- f) Approximate date of disposition: _____

3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ___ Yes ___ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) ___ disciplinary hearing; (2) ___ state or federal court decision; (3) ___ state or federal law or regulation; (4) ___ parole board decision; or (5) ___ other _____.

If your answer is "Yes", provide the following information. Grievance Number _____
Date and institution where grievance was filed _____

Response to grievance: All claims are Fully exhausted with a long list of grievances and these will be filed in this litigation.

Exhibit A

Excerpts From "Living Asatru" (Odinism) From printed materials
From: World Tree Publications, P.O. Box 961, Payson, AZ, 85547:

What is Asatru?

Asatru (sometimes called Odinism) is the organic/primal religion of the indigenous Northern European peoples. Asatru, in Old Norse, means "Faith in the Gods". Old Norse is the liturgical tongue of the religion of Asatru. The religion is recognized by the courts and government as an authentic religion and has obtained I.R.S. tax exemption under Title 501-c.

Values of Asatru

Strength: To meet life's challenges.

Courage: To master all fears.

Joy: Eliminate guilt, shame and fear, to initiate ambition, competence, pleasures.

Honor: The good name never dies of one who has done well. Being recognized by everyone is being in honor.

Freedom: Liberation within society's controls without abridging them.
Spiritual Freedom = real Freedom.

Realism: Be within natural things and nature.

Vigor: Be physically and mentally robust. Avoid sickness and those who are ill. (emphasis added)

Ancestry: what has passed down generation to generation is to be carried forth.

Exhibit A