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FEDERAL BUREAU OF INVESTIGATION

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MAR 23 2000

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN LESTER COX,

Plaintiff,

vs.

JACK RAY, SHARI TUCKER,  
AARON JAMES, JOHN/JANE DOE -  
THIRD SHIFT SARGENT, SARGENT  
ROSENCRANTZ, NATASHA  
RUDELL, MR. WILSON, JANE  
DOES 1&2 - COMMUNITY  
CORRECTIONS OFFICERS, JOHN  
DOE - CORRECTIONAL UNIT  
SUPERVISOR, CHUCK LAW, MR.  
PACKENBUSH, JOSEPH LEHMAN,  
TOM ROLFS, and LYNN PAXTON,

Defendants.

NO. CS-99-154-RHW

ORDER DISMISSING COMPLAINT WITHOUT  
PREJUDICE

By Order filed February 3, 2000, the court advised Plaintiff of the deficiencies of his Amended Complaint and granted Plaintiff an opportunity to voluntarily dismiss within thirty (30) days. Plaintiff did not comply.

Specifically, the court noted a finding that the actions taken against Plaintiff were retaliatory, would necessarily invalidate the disciplinary proceedings taken and the sanctions imposed against Plaintiff. Therefore, Plaintiff's retaliation and due process claims

1 were not presently cognizable under 42 U.S.C. § 1983. See *Heck v.*  
2 *Humphrey*, 512 U.S. 477, 489 (1994); see also *Edwards v. Balisok*, 520  
3 U.S. 641, 647-48 (1997).

4 Furthermore, Plaintiff's claim regarding the failure to provide  
5 *Miranda* warnings during investigatory questioning at the prison, which  
6 did not result in criminal proceedings, did not state a Fifth  
7 Amendment violation. See *Cervantes v. Walker*, 589 F.2d 424, 427-28  
8 (9th Cir. 1978); *Baxter v. Palmigiano*, 425 U.S. 308, 317 (1976).  
9 Also, Plaintiff's initial placement in segregation failed to state a  
10 due process claim under *Sandin v. Conner*, 515 U.S. 472, 484 (1995).  
11 See also *May v. Baldwin*, 109 F.3d 557, 565 (9th Cir. 1997).

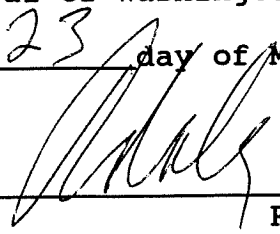
12 For the reasons set forth in the Order Granting Opportunity to  
13 Voluntarily Dismiss Complaint (Ct. Rec. 17), and because the amended  
14 complaint lacks an arguable basis either in law or in fact, see *Denton*  
15 *v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S.  
16 319, 325 (1989), **IT IS ORDERED** the amended complaint is **DISMISSED**  
17 **without prejudice** as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i), and  
18 28 U.S.C. § 1915A(b)(2).

19 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a  
20 prisoner who brings three or more civil actions or appeals which are  
21 dismissed as frivolous or for failure to state a claim will be  
22 precluded from bringing any other civil action or appeal *in forma*  
23 *pauperis* "unless the prisoner is under imminent danger of serious  
24 physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read  
25 the new statutory provisions under 28 U.S.C. § 1915. This dismissal  
26 of Plaintiff's complaint may count as one of the three dismissals

1 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to  
2 file future claims.

3 IT IS SO ORDERED. The District Court Executive is directed to  
4 enter this Order, enter judgment, forward a copy to Plaintiff at his  
5 last known address and close the file. The District Court Executive  
6 is further directed to forward a copy of this Order to the Office of  
7 the Attorney General of Washington, Criminal Justice Division.

8 DATED this 23 day of March 2000.



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11 ROBERT H. WHALEY  
12 UNITED STATES DISTRICT JUDGE  
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