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## Failure to Preserve Tape of Jail Gang Assault Leads to Sanction

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Rikers Island officials who allegedly controlled inmates by allowing members of the Bloods gang to assault them have been sanctioned for allowing the destruction of a key piece of evidence.

Southern District Judge Robert Patterson ([See Profile](#)) ordered sanctions against several officials and corrections officers for the destruction of a videotape depicting the violent attack on inmate and now-plaintiff Dwaine Taylor in a holding pen at the Bronx Criminal Courthouse in 2011.

Patterson's decision came in [Taylor v. City of New York](#), 12 Civ. 5881, an action filed under 42 U.S.C. §1983 alleging an unconstitutional policy or custom by the New York City Department of Correction (DOC), a failure to intervene and/or protect Taylor and other inmates who were not associated with the Bloods, and negligence.

Taylor claims he was assaulted by Bloods members with the acquiescence of corrections officers on May 24 and Nov. 6, 2011. He moved for sanctions for spoliation of all but eight minutes of a three-hour surveillance videotape of the May 24 incident.

The defendants, led by Supervising Warden Arthur Olivari and including seven unnamed corrections officers, claimed they had no duty to preserve three hours of surveillance footage because Taylor did not give them notice of his intent to sue until after the footage was deleted. They also claimed in the alternative that they met whatever obligation they had by preserving eight minutes of footage relevant to their investigation of the assault.

But Patterson disagreed, and precluded Assistant Deputy Warden Jacqueline Bradley from testifying as to what she saw when she observed the now-deleted surveillance footage.

Patterson also granted Taylor's request for an adverse instruction to the jury that would permit, but not require, the jury to presume that the deleted footage would corroborate Taylor's version of events. Finally, the judge granted Taylor's motion for attorney fees and costs associated with making the sanctions motion.

On May 24, Taylor, being held in connection with robbery, was transported from Rikers to the Bronx Criminal Courthouse and placed in a holding cell, Pen B-4, with some 16 or 17 other inmates. In that cell, he said, Bloods member Batise Boyce, in full view of Rikers officers, "viciously punched" him in the face, breaking his jaw and causing him to lose consciousness and fall to the ground, where he was set upon by five or six other inmates associated with the Bloods.

Brantley reviewed footage of the attack on the same day, and copied just two four-minute segments. She said she presumed the rest of the footage was lost during the agency's regular practice of recycling footage every 60 days, according to her deposition.

But Patterson said the duty of DOC to preserve the footage arose within a week of the assault.

"Defendants should have reasonably anticipated that Plaintiff would file a lawsuit against the DOC for failing to protect him in connection with the events that had taken place in Pen B-4 because the DOC has documented that, in the hundreds of other instances where inmates have been injured while in DOC custody, lawsuits by the injured inmates against the agency have invariably ensued," Patterson said, and he quoted from Brantley's deposition.

"Indeed, at the time Brantley reviewed the surveillance footage, she 'knew that inmates get beaten up by other inmates and claim that it was the [DOC]'s fault,'" he said, adding that courts within the Second Circuit "have found that a duty to preserve relevant video footage may attach as soon as the triggering incident occurs and prior to when a claim is filed."

As to the scope of the DOC duty to preserve, the judge said the defendants "should have reasonably known that any evidence depicting Plaintiff's treatment in the Pen B-4 cell would be relevant to his lawsuit."

That evidence should have included all three hours, he said, because not only was it related to how Taylor's jaw was broken, "but it also contained evidence of: (1) the manner in which DOC officers had carried out their duty to protect the cell inmates before and after Plaintiff was injured and (2) the identity of potential witnesses to the assault."

The judge found the defendants negligent, but not grossly negligent, saying there was no evidence that the footage was "willfully deleted."

Nonetheless, he said, "permitting Defendant Brantley to testify about what she observed on the now-deleted surveillance footage would only serve to exacerbate the harm that Plaintiff has suffered through the loss of the surveillance footage."

And an adverse inference instruction is appropriate, Patterson said, because, had the defendants met their obligation to preserve, the footage would have been available "to provide evidence concerning whether DOC officers adequately supervised the holding cell," whether Taylor asked for help, and whether "DOC officers ignored evidence" he was seriously injured.

Instructing the jury on the adverse inference, he said, "will help restore the evidentiary balance."

Katherine Rosenfeld, Jonathan Abady, Zoe Salzman and Jill Maxwell of Emery Celli Brinckerhoff & Abady and Jonathan Chasan and Mary Lynne Werlwas of The Legal Aid Society Prisoners' Rights Project represent Taylor.

Rosenfeld said the second assault on Taylor occurred at Robert N. Davoren Complex on Rikers Island and was motivated by revenge after Blood members learned that Taylor had testified before a grand jury in connection with the first assault.

"Unfortunately, these incidents are very frequent in the jail system," Rosenfeld said. "The judge was troubled by ad hoc video surveillance retention policies at DOC."

Rosenfeld was referring to a footnote in the judge's opinion where Patterson said Brantley was deposed only after the judge found that "no written policy or procedures exist at the [DOC], with respect to the retention and preservation of video recordings of assaults or other similar incidents."

Assistant Corporation Counsel Diep Nguyen argued for the DOC defendants.

Arthur Larkin, senior counsel, in the federal litigation division, said, "Correction officials had no reason to believe that the entire three hours of video should have been preserved. Under the circumstances, we do not believe the sanction was warranted."

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