[Deane R. Brown's federal complaint](http://penbay.org/wrfr/prisonproject/browncomplaint.pdf%22%20%5Ct%20%22_blank)  was dismissed for the following reasons, according to US Magistrate Judge Martha Kravchuk,  in [her 9/3/08 response to MDOC's motion for dismissal](http://penbay.org/wrfr/prisonproject/legal/recdecexhclms.pdf%22%20%5Ct%20%22_blank) :

1.  Brown did not exhaust his administrative remedies first.

2.  Brown's attorney failed to seek out and interview the three "John Does", so all complaints against them were dropped

3.  Brown's attorney failed to respond  to or challenge any of the DOC defendants' "statement of facts", so the court had to assume Brown agreed with them. (!)

"I do not know," Krachuk wrote in [her Recommended Decision on the case](http://penbay.org/wrfr/prisonproject/legal/recdecexhclms.pdf), "what prevented counsel from complying with the local rule by submitting a paragraph by paragraph response to the defendants' statement of fact with record citations to the Brown affidavit and/or generating a statement of additional facts with record citations to the affidavit that would have given the defendants an opportunity to respond to Brown's facts in a reasonable manner....Accordingly, I proceed to analyze the merits of this motion on the basis of the facts set forth by the defendants, treating them as undisputed."

***So the denial was a "process" thing. It was not on the merits of his case,*** which Kravchuk actually agreed with in major parts.

**Excerpts from Kravchuk 's recommended decision** from which the above points are drawn:

Page 3 & 4 "Brown is represented by counsel. In responding to the defendants' motion Brown has file a responsive memorandum (see Doc. No. 42) but no response to the defendants' statement of fact or a statement of additional facts. In his opposition memorandum Brown references his affidavit statements "attesting to and expounding upon the various incidents raised in Defendants’ Motion for Summary Judgment on Unexhausted Claims." (Opp'n Mem. at 2.) I do not know what prevented counsel from complying with the local rule by submitting a paragraph by paragraph response to the
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3
defendants' statement of fact with record citations to the Brown affidavit and/or generating a statement of additional facts with record citations to the affidavit that would have given the defendants an opportunity to respond to Brown's facts in a reasonable manner. Compare See Clarke v. Blais, 473 F. Supp. 2d 124, 128 (D. Me. 2007) (incorporating pro se litigant's affidavit testimony despite non-compliance with Local Rule 56). As it stands, there is no reason to expect these defendants to respond to each paragraph of the Brown affidavit as if it were a statement of fact or to attempt to identify which of the affidavit statements are material to Brown's opposition. Accordingly, I proceed to analyze the merits of this motion on the basis of the facts set forth by the defendants, treating them as undisputed.

Page 6.
"I agree with the defendants that there is a significant problem in the fact that Brown has not responded to their statement of facts or generated his own statement of additional facts to support his assertion that he was frustrated in his efforts to exhaust his remedies."
.....

With respect to what can be described as Brown's principle claims, that of the retaliatory acts of placing him in administrative segregation and transferring him out of state, the defendants argue that he never completed efforts to grieve the segregation determinations and that he never filed an appeal of his transfer...."There have been no appeals filed by Deane Brown of the decision to transfer him to Maryland. (Id. ¶ 6.)"

Page 9 Finally, I recommend that any claims Brown envisioned against the five unnamed "John Does" be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m) for failure to make service.

Page 9-10
**Conclusion**.For the reasons set forth above, I recommend that the Court grant summary judgment to the defendants on Brown's Count I First Amendment claim because he did not exhaust it as required by 42 U.S.C. § 1997e(a), that it dismiss Brown's Count IV Eighth Amendment claim pursuant to 42 U.S.C. § 1997e(c), and that it dismiss without prejudice all claims against the five "John Does" for failure to make service.

"....on Brown's Count II retaliation claims for failure to exhaust, although in a separate opinion on a separate motion for summary judgment, I recommend that Defendants O'Farrell, Merrill, and Magnusson be granted summary judgment on that count for the reasons stated in that companion recommended decision."

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Ron Huber

148 Broadway # 105

Rockland Maine 04841

March 10, 2011, MAILED Called to confirm 3/14/11

My friend Julian Holmes & I had the chance to pring up to Governor LePage by phone postal mail March 5th morning. Julian said he talked about two things: using sand on Maine’s winter roads instead of salt, **and**

On behalf of myself and other friends and families of transferred Maine prisoners, (some held away for 5 years or more) please consider supporting **LD 690 “An Act To Amend the Laws Governing the Transfer of Prisoners to Other States**”. By reforming the Interstate Compact on Corrections, another piece of the bad old days of Maine prison management under the previous governor will get straightened out.

The bill was introduced by Representative Ralph Chapman of Brooksville, who has taken on prison reform as one of his concerns.

The purpose of the Interstate Compact law is clear: Maine prisoners can be sent to other states when: ***“it is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment.”***And vice versa for other states

As you know this can be moving a convicted policeman or prison guard out of state to prevent revenge attacks, or a prisoner considered an informant or otherwise unacceptable, and in danger of deadly attack by other prisoners. Or those that need medical treatment not available in Maine.

**However, using transfers as *long term punishment* is not one of the allowed uses.** It happens anyway. It happens because the decision to transfer Maine prisoners presently does not have to meet any legal standards. Also there is no limit on how long a Maine prisoner can be held out of state. See attached letter by a Maine DOC official as an example of how flimsy the evidence and reason was for shipping one man out from Maine state prison – for being part of a protest against bad conditions in the Maine Supermax. Years later, still no return date!

Governor, **this is a terrible strain on families** – will they ever see their husband, parent or child, uncle, or aunt again? Long distance travel and lodging are costly. Must they move out of Maine, to be close to their loved ones? Claim that Maine supermax isn’t tough enough to hold Maine men is ridiculous. As the guards can tell you, the new warden Patty Barnhart has changed how Supermax is run; morale is better, both sides of the bars; those protests are over.

Once LD 690 is passed the Department of Corrections will have clear legal guidance on shipping Mainers out with or without his or her cooperation. It will better “*provide adequate quarters and care or an appropriate program of rehabilitation or treatment.”*

Ditto for long-time exiled prisoners trying to get back home to Maine. They will allowed to return to Maine state prison as openings allow, subject to those safety standards.

The result: continued prisoner transfers for good reasons, but an end to punitive exile.

Please support this bill, Governor. You will earn the undying gratitude of 100s of Mainers whose families will be reunited (at the prison visiting areas) after being cruelly held apart for years under the existing interstate transfer law.

As you may know, Commissioner Ponte will be meeting on March 15 th  with prison reform activists about this bill and other issues. If you find you support this idea of fixing Maine’s interstate transfer policy, please put in a good word with him about LD 690. If the bill needs some tweaks, he’s the man for it. If you or your staff have any suggestions or want more information about this, I can be reached at 207-691-7485 or by email at coastwatch@gmail.com. I am involved because a friend of mine was shipped out of Maine 5 years ago and we are still trying to get him back. We need to fix this broken process, Governor!

About the attachments. On February 23rd, 2011 I wrote to the 28 transferred prisoners asking them to describe to the Maine Legislature their and their families’ experiences being separated this way and whether they want to come back. Here are copies of several of these letters They will be given to the Maine Legislature when LD 690 comes up, along with the other letters. As you can see, one is in favor of returning; one is against. Also included is the letter from Maine’s interstate compact official to the one in Florida that I referred to earlier. And a copy of the bill LD 690 An Act To Amend the Laws Governing the Transfer of Prisoners to Other States

Sincerely

Ron Huber

148 Broadway, # 105

Rockland Maine 04841

**Attachments:**

LD 690 (1 page)

Letter from prisoner Belanger in Florida (2 pages)

DOC transfer letter about Belanger (1 page)

Letter from prisoner Ruiz in New Jersey (1 page)

List of exiled Mainers as of 1/20/11

What has let the earlier administration’s corrections department do this is the fact that Maine’s interstate compact law at present has no limit on how long Mainers can be sent away from their home state. Even though the law also says that transferred prisoners must be kept safe at Maine standards, repeated letters to the Maine official who oversees transferred Maine prisoners from prisoners their families requesting return due to beatings, stabbings and worse have rarely if ever resulted in a prisoner coming home to Maine. As a result some have been away 6 years or more.

LD 690 fixes that by (1) requiring a court order to involuntarily send a prisoner out of state, and (2) setting the maximum time a Maine prisoner can be kept out at one year, unless the prisoner chooses to keep serving his or her time in an out of state prison or the state gets a court order renewing the exile for another year.

In order to limit the number of these socially destructive interstate transfers, LD 690 also requires the state to get a court order to involuntarily transfer a prisoner out of. The standard right now is too low.

So the bill **LD 690** makes it bother harder to ship prisoners out to other states and easier for exiled prisoners to return to Maine

**Harder** by requiring a court order to ship them out and keep them out , year after year, instead of just asubjective decision by a commissioner.

**Easier** by making return to Maine automatic after one year - unless the prisoner chooses to stay away, and the state convinces a court that this Mainer is too dangerous to be in Maine state prison - not as easy as the subjective system presently in use.

 – they may even be kept out of Maine during their years of probation!

“by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs.

“Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, the officials may direct that the confinement be within an institution within the territory of the other party state, the receiving state to act in that regard solely as agent for the sending state.”

I asked Mr. Holmes to bring that second topic up with you, because a Maine state prisoner from Vinalhaven , Deane Brown, who was a weekly call-in correspondent at my radio station for a year, got shipped out of Maine under the existing law ***five years ago***, for bringing unwanted media attention on the doings of the now-disgraced and fired previous prison warden Jeffrey Merrill. He still can’t get himself returned to Maine to serve the rest of his sentence for leading a burglary ring in the early 1990s.

Mr. Brown is **only one of least two dozen Maine men and women** who have been shipped to prisons as far away as Texas and California during the Baldacci Administration. There may be other Mainers held in other states who Maine DOC no longer keeps record of, considering them to be permanently moved to those other states’ prisons...

Like the rest of them, Brown is routinely and without explanation denied the right to return by a bureaucrat in the Department of Corrections bureaucracy who is a remnant of the bad old system. This refusal to allow prisoners to return breaks up their family units, and virtually ensures that when the prisoner is finally released and comes home he will be a complete stranger to society and will in all likelihood end up back in the corrections system.

**Enclosed are copies of recent letters from two other exiled Mainer prisoners**. One does NOT want to return to Maine. The other very much wants to. He is so desperate he would even settle for any prison in New England, so he at least would be within driving distance for his family (instead of where he is - Florida).

**Since some prisoners are glad to be away,** returning to Maine would be **voluntary** under the new law. Most exiled prisoners however feel they have been punished enough for whatever transgression irked a now-gone warden years earlier. They want to return to serve their time in Maine. With very few exceptions, there are no special reasons for these Maine men and women to be kept isolated this way year after year, beyond simple bureaucratic inertia.

Their wives, children, parents and other family members will be glad to detail to you and Commissioner Ponte what a hideous unending nightmare this is for them.

Because shipping prisoners out of state unwillingly is such a serious “punishment inside of punishment” , the bill **LD 690** makes it bother harder to ship prisoners out to other states and easier for exiled prisoners to return to Maine

**Harder** by requiring a court order to ship them out and keep them out , year after year, instead of just asubjective decision by a commissioner.

**Easier** by making return to Maine automatic after one year - unless the prisoner chooses to stay away, and the state convinces a court that this Mainer is too dangerous to be in Maine state prison - not as easy as the subjective system presently in use.

Re [LD 690](http://www.mainelegislature.org/legis/bills/display_ps.asp?ld=690&PID=1456&snum=125) **An Act To Amend the Laws Governing the Transfer of Prisoners to Other States**

The problem is in both the law and in the interstate transfer office in the Department of Corrections. You have been clearing some deadwood out of agencies. I think that getting the last of the bad old guard out of the department of corrections will make it possible for Mr. Ponte to succeed in his agenda.

I strongly urge you to replace two Department of Corrections officials who empitomize everything that was wrong about the old guard that you and your predecessor have been sweeping out.

Maine’s “Interstate Transfer Administrator” official Theriault and Deputy Commissioner Denise Lord.

 but he, along with the new state prison warden – a former Michigan prison official,

There are about two dozen Mainer prisoners being held in other states' prisons under the **Interstate Compact on Corrections . List enclosed.**

Some of them have been "exiled" for years for only annoying a deputy warden under the previous management. Many of them write claiming abusive treatment, but still the Department won't let them back into Maine state prison

How does Mr Ponte propose to deal with managing inmates held outside of Maine that want to come back and do not pose a threat to the safety of the facility?

He like other prisoners has found that under the current system, the Warden

This included an “exit interview” by a departing state prison guard that detailed institutionalized corruption among those running the Prison and the Maine Department of Corrections.

 For additional details I am sending you this quick background of the inmate exile problem, how the bill LD 690, will straighten out what needs fixing, and

LD 690 is the bill before the Maine legislature that will carry out the needed reforms.

**Under the existing law, even though**

\* Transfers are voluntary or by court order.
\* Return is voluntary after one year, unless kept out by court order.

\* **Much of what was wrong under the previous Corrections Commissioner** and previous  prison warden has been dealt with.

Two things remaining  from those bad old days are

(1) ending the practice of exiling prisoners as punishment, instead limiting it to safety of guards and inmates, and

(2)  returning to Maine those prisoners who were punished  that way by the  Baldacci corrections team, so they can serve their time in Maine. The bill LD 690 will accomplish these two things.

**\* There are good legal reasons to allow for interstate transfers**:
    The  prison guard sentenced for some crime
    The inmate who prevented a bloodbath by tipping off the prison that an escape attempt was imminent.
    The inmate that needs medical treatment only available out of state
    The inmate charged with a crime in another state, sent there to face trial.

\*  **But the Baldacci Administration used interstate transfer as a way to punish prisoners who rocked the boat** in some way.
    This could be anything from **annoying the warden by filing too many grievances**,  or **by  speaking to the media and exposing** actual problems. that put the warden in a bad light.

**They also made it almost impossible to be returned to Maine from exile.** The law says if your treatment is substandard to what prisoners in Maine have, then you are to be sent back.

But no matter how many appeals to be returned, it never happens until years have passed.  How many years are "punishment enough" for irritating a corrupt warden now gone?

**THIS ALSO PUNISHES THE PRISONER'S FAMILY**

**\* Multiple year prison exile completely breaks whatever family ties there still are between prisoner and his family** - They can't afford the lengthy drives or flights to visit.
\* The kids grow up without the weekly or monthly meetings with father or mother as the years roll past.

**So the bill LD 690 would do two things:**
\* Transfers are voluntary or by court order.
\* Return is voluntary after one year, unless kept out by court order.

This will reduce the number of exiled Mainers to only those prisoners who want to be shipped out for their own safety, or who are found by a judge to be better sent outside the Maine prison system.