and the attack that occurred after she returned with Lieutenant Lane. On the other hand, under the Model Penal Code interpretation, the brief time lapse would not have precluded an EED defense.

Regarding prison culture, although Mr. Johnson was denied access to records related to general prison violence on the basis of relevance, in that the records were not necessary for the preparation of his defense, one could argue that such records would have provided information about the prison climate, which in turn, may have provided information relevant to Mr. Johnson's state of mind. Although not mentioned in the decision, the Arkansas prison system has a history of investigations of prisoner mistreatment, including an 18-month Department of Justice investigation resulting in the citation of two Arkansas prisons for unconstitutional conditions (Rigby M: DOJ Investigation: Conditions in Arkansas Prisons Unconstitutional. May 15, 2004. Available at https://www.prisonlegalnews.org/news/2004/may/15/doj-investigation-conditions-ain-rkansas-prisons-unconstitutional. Accessed October 22, 2016). The most recent Department of Justice investigation of the prison system began in 2015 and was, based on inmates' allegations of sexual abuse and harassment by corrections officers in the Arkansas womens' prison (U.S. Department of Justice: Justice Department Announces Investigation into Allegations of Sexual Abuse at the McPherson Women's Prison in Newport, Arkansas. June 11, 2015. Available at https://www.justice.gov/opa/pr/justice-department-announces-investigation-allegations-sexual-abuse-mcpherson-womens-prison. Accessed September 22, 2016).

Another aspect of this case to consider is that Mr. Johnson was already serving time in prison for killing his father. Parricide is rare, and most of those cases involve a child who has been severely abused or has mental illness (Hart JL, Helms JL: Factors of parricide: allowance of the use of battered child syndrome as a defense. Aggress Violent Behav 8: 671–83, 2003). We have limited information about Mr. Johnson's developmental, family, and psychological history. Nonetheless, if Mr. Johnson had been a victim of severe abuse as a child, might prison conditions exacerbate any baseline heightened arousal and hypervigilance? Might the actions of a prison authority figure trigger safety fears rooted in childhood trauma?

The possibility of a prisoner's successful EED claim based on prison environment may raise concerns of opening the floodgates of prisoner litigation. Yet, this case raises a theoretical possibility that perhaps should be considered in the future: could a prison climate of fear and violence, combined with insufficient mental health services be so abhorrent as to give rise to an EED claim? In this case, the court's heat-of-passion interpretation of the relevant Arkansas statute did not require it to address this question.

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Prison Litigation Reform Act: Congressional Statute Not Open to Judicial Discretion

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The Supreme Court Emphasizes the Mandatory Nature of the Exhaustion Requirement of the Prison Litigation Reform Act

In *Ross v. Blake*, 136 S. Ct. 1850 (2016), the U.S. Supreme Court held that a court may not pardon an inmate's failure to exhaust administrative remedies before filing a suit irrespective of any "special circumstances" taken into account. In this case, the U.S. Supreme Court revoked a flawed precedent set by the appeals court; one that permitted deviation from congressional law set forth in the Prison Litigation Reform Act (PLRA) of 1997. The Court's reasoning emphasized that legislation unambiguously allows only one excuse to fail to exhaust administrative remedies; when an administrative remedy is not available for use.

Facts of the Case

Shaidon Blake was serving a life sentence in the custody of the state of Maryland. On June 21, 2007, two corrections officers, James Madigan and Michael Ross, handcuffed Mr. Blake and escorted him to the prison's segregation unit. During the escort, Officer Madigan wrapped a key ring around his fingers and

struck Mr. Blake repeatedly in the face (*Blake v. Maynard*, 2010 U.S. Dist. Lexis 94562 (D. Md. 2010)) and (*Blake v. Maynard*, 2012 U.S. Dist. Lexis 65638 (D. Md. 2012)). Officer Ross did not assault Mr. Blake, but he kept hold of him and made no attempt to protect him from Officer Madigan's assaults. A third guard who witnessed some of the assault called for backup, and responding officers took Mr. Blake to a medical unit. Mr. Blake was later diagnosed with and treated for nerve damage. Witnesses were consistent in reporting that, at no point during the transfer, did Mr. Blake demonstrate resistance.

Mr. Blake then provided a written account of the assaults to a senior corrections officer, Captain Calvin Vincent, who conducted a preliminary investigation and concluded that Officer Madigan had used excessive force. Captain Vincent subsequently referred the incident to the Internal Investigative Unit (IIU), a division of the Maryland Department of Public Safety and Correctional Services charged with investigating criminal violations and serious misconduct of corrections officers. The IIU issued a formal report concluding that Officer Madigan had used excessive force against Mr. Blake. Officer Madigan subsequently resigned. As the IIU lacks authority to remedy a prisoner's complaint or discipline a corrections officer, it did not provide any redress or compensation to Mr. Blake.

In September 2010, Mr. Blake sued Officers Ross and Madigan in federal court for civil rights violations, under 42 U.S.C. § 1983 (2007). Specifically, he sued Officer Madigan for excessive force and Officer Ross for failure to take protective action. Officer Ross subsequently raised an affirmative defense asserting that Mr. Blake had not exhausted the requirement of the PLRA. At the U.S. District Court for the District of Maryland, the jury found Officer Madigan liable and awarded Mr. Blake a $50,000 judgment. Officer Ross claimed, however, that Mr. Blake failed to use the Administrative Remedy Process (ARP) that the state created to address inmate grievances, including complaints about the use of force, and to provide redress and compensation to inmates. Furthermore, Officer Ross claimed that if Mr. Blake had found the ARP to be unavailable, he could have filed a complaint with the Inmate Grievance Office (IGO), an independent entity that has authority to hear grievances and award monetary damages. Officer Ross stated that the ARP and IGO processes are outlined in the inmate handbook, which Mr. Blake received. Mr. Blake informed the court he did not use the ARP because he thought the IIU investigation was a substitute for the ARP. The district court granted Officer Ross's motion to dismiss stating that "the commencement of an internal investigation does not relieve prisoners from the PLRA's exhaustion requirement" (*Ross,* p 1855). Mr. Blake appealed.

The U.S. Court of Appeals for the Fourth Circuit reversed the decision, citing a precedent set in *Giano v. Goord*, 380 F.3d 670 (2d Cir. 2004), that a prisoner's failure to comply with administrative procedural requirements "was justified by his reasonable belief" (*Giano*, p 678) that no further administrative remedies were available and that "there are certain 'special circumstances' in which, though administrative remedies may have been available, the prisoner's failure to comply with administrative procedural requirements may nevertheless have been justified" (*Giano*, p 676). Therefore, the appellate court concluded that the PLRA's "exhaustion requirement is not absolute" (*Ross*, p 1856). Officer Ross appealed, and the U.S. Supreme Court granted *certiorari*.

Ruling and Reasoning

At the Supreme Court, both parties introduced new evidence not previously produced at the district court, a marked departure from usual procedure. Mr. Blake submitted evidence that in Maryland, Department of Correction wardens routinely dismiss ARP grievances when there is a concomitant (parallel) IIU investigation, an observation that could not be refuted (and was in fact supported) by Officer Ross.

Justice Kagan (joined by Justices Roberts, Kennedy, Ginsburg, Alito, and Sotomayor) delivered the opinion of the Court, holding that a court may not pardon an inmate's failure to exhaust administrative remedies before bringing suit under the PLRA, even to take "special circumstances" into account (thereby abrogating *Giano*). The matter was remanded to determine whether the prison grievance process was available to Mr. Blake.

The Court opined that the introduction of "special circumstances" that could excuse an inmate from exhausting the PLRA's requirement was inconsistent with the history and text of the PLRA, as set forth by Congress. Congress enacted the PLRA in 1995 to replace the Civil Rights of Institutionalized Persons Act (CRIPA) (1980–1997), which had proven inadequate at stemming the then-rising tide of prisoner litigation. CRIPA did not require exhaustion unless

the remedies were "plain, speedy, and effective," and satisfied federal minimum standards. In effect, this stance allowed the courts to decide whether exhaustion was appropriate and in "the interest of justice." Ultimately, this opened the door to continued law suits by inmates, thus proving ineffective.

The Court then highlighted the unambiguous language of the PLRA that no action "shall be brought" without the exhaustion of available administrative remedies. Congress intentionally chose the word "shall" to make mandatory exhaustion obligatory and impenetrable to judge-made exceptions. If administrative remedies are unavailable, however, the prisoner cannot be held to the standard mandated by the PLRA. The Court subsequently identified three different circumstances in which administrative remedy may not be available to prisoners, the only exceptions to the mandatory requirement of the PLRA. The first occurs when officers are unable or unwilling to provide any relief to aggrieved inmates. The second occurs when no ordinary prisoner can discern or navigate an administrative mechanism. The third occurs when prison administrators deflect an inmate from utilizing a grievance process through "machination, misrepresentation, or intimidation."

In remanding the case, the Supreme Court enjoined the district court to assess whether any of the aforementioned circumstances were present and at play during Mr. Blake's pursuit for redress of his grievances.

Concurring Opinions

Justice Thomas concurred with the majority opinion but cautioned the Court against admitting new evidence that was not part of the certified record. Justice Breyer, on the other hand, opined that the term "exhausted" as intended by Congress, is not as narrow, as construed in this case, but rather, includes "administrative law's well established exceptions to exhaustion" (*Ross*, p 1862).

Discussion

In the 13 years preceding the establishment of the PLRA in 1997, the volume of prisoner lawsuits increased 10-fold (Jones J, Ciccone RJ: Right to refuse treatment. J Am Acad Psychiatry Law 35:260–62, 2007). Medical treatment, physical security, and physical conditions represent three of the five most common complaints raised in inmates' § 1983 lawsuits (Hanson RA, Daley HWK: Challenging the Conditions of Prisons and Jails: A Report on Section 1983 Litigation. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1994).

The PLRA managed to curtail the number of frivolous *pro se* law suits by requiring inmates to exhaust available administrative remedies before filing a law suit, limiting waivers for the requirement that inmates pay filing fees, and restricting attorney's fees. From 2000 to 2007 the number of federal claims based on deficient prison conditions dropped by 31 percent (Jones and Ciccone, 2007), despite the state and federal prison population's growth by 15 percent from 2000 to 2007 (West H: Prisoners in 2009. Bureau of Justice Statistics, 2010). However, it is conceivable that the implementation of the PLRA has had a disproportionate effect on inmates with mental illness or other disabilities limiting their ability to cope with the exhaustion of available remedies.

In the case reviewed herein, the Supreme Court opined that an administrative remedy that is so confusing that no ordinary prisoner can understand or navigate it is, in effect, not available to the prisoner. This ruling is particularly relevant to prisoners with mental disease or intellectual disability whose mental impairment could strip them of the skills needed to effectively advocate for themselves around concerns for safety in their environment and the treatment of their medical and psychiatric illnesses. Psychiatrists should be alert to these problems and opportunities to help patients access advocacy services for protection of their rights.

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Mental Disorders and Addiction under the Americans with Disabilities Act and Rehabilitation Act

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