

## Lawyer Won Improved Conditions on Louisiana Death Row



Bird Marella's Mitchell Kamin

Excessive heat at a prison qualifies as “cruel and unusual punishment” under the Eighth Amendment, a federal judge said in a groundbreaking ruling last month. U.S. District Judge Brian A Jackson ordered Louisiana’s Department of Corrections to deliver a plan by Feb. 17 to maintain a heat index of no higher than 88 degrees on death row at the Louisiana State Penitentiary in Angola. According to the opinion, temperatures on the prisons various tiers exceeded 100 degrees for multiple days each summer.

Mitchell Kamin, co-managing partner at Los Angeles-based Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg, who worked with Promise of Justice Initiative in New Orleans in representing the inmates pro bono, talked to The National Law Journal about the case. His remarks have been edited for length and clarity.

A spokeswoman for the Department of Corrections did not return a call for comment.

**NLJ:** What kinds of effects were the heat conditions having on inmates?

**Kamin:** One of our clients was asked how it feels in the summer time and he said, “When I wake up, it feels like a sauna, and by the afternoon it feels like an oven.” These guys would do whatever they could within their means during the 23 hours a day they were locked in their cells to cool themselves down. They’d wrap themselves in wet towels. They’re allowed one shower a day, but they couldn’t control the temperature, and often it was a hot, steamy shower.

The evidence we presented at trial also established this heat presented grave health risks for our clients. They all suffer from various conditions, including hypertension. And evidence from our experts established that these heat conditions created a severe risk of heat exhaustion, heat stroke and death.

**NLJ:** What precedence is there in finding that excessive heat constituted “cruel and unusual punishment”?

**Kamin:** The basic principle that extreme heat or cold can constitute cruel and unusual punishment is well established in the Fifth Circuits and other circuits, but prior cases didn’t have as detailed evidence about the impact of the heat. We are hopeful this can serve as a template for courts addressing these issues in the Fifth Circuit and other circumstances.

**NLJ:** What at trial do you think convinced the judge of your argument?

**Kamin:** Each of our clients testified and told the judge of their experience living in these conditions. We had excellent experts who talked about the health risks. The judge indicated in his ruling that he did not find the testimony by some of the wardens credible. He imposed sanctions against the defendants because of some of their conduct that seems to have been designed to affect temperature readings that the court ordered from the outset of this case.

**NLJ:** What are the sanctions over specifically?

**Kamin:** There are really two issues: One is basic discovery sanctions, where the defendants did not comply with the obligation to provide full, accurate information within the time frame set by the court. More serious and unique issues arose when we discovered that, notwithstanding the court’s order that the temperature equipment should be left alone so it could provide accurate information to the court, the defendants installed awnings on one of the death row tiers—awnings that were designed to keep out the sun and drive down the temperature. And also, they had potentially sprayed down the walls of the facility to cool it down. They took steps that had potential to manipulate the data, and the judge was quite unhappy about that, and rightly so.

[An attorney representing defense counsel facing sanctions, S. Brooke Barnett, a partner at the Long Law Firm in Baton Rouge, did not respond to a request for comment.]

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