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25TH ANNUAL CALIFORNIA LAWYER ATTORNEYS OF THE YEAR

In re: Von Staich on Habeas Corpus

APPELLATE LITIGATION

Strong advocacy for state prison inmates by two court-appointed attorneys led to an unprecedented ruling in October as the coronavirus struck San Quentin hard along with other institutions run by the California Department of Corrections and Rehabilitation.

O'Connell, the assistant director of a non-profit law office set up in 1985 to represent indigent appellants, and staff attorney Braucher persuaded a state appellate panel to protect at-risk inmates by cutting in half San Quentin's population of some 3,500 men behind bars, allowing better physical distancing. The panel also ordered relief for a convicted Orange County murderer, Ivan Von Staich, who unsuccessfully petitioned in pro per a Marin County trial court for habeas corpus relief after he contracted Covid-19.

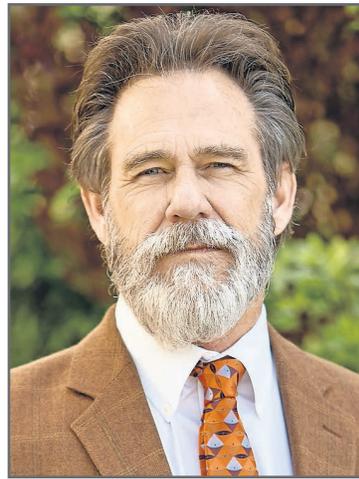
"He was the canary in the mine, sounding the alarm, and he tried to get the prison to do something about what has been an unmitigated disaster. Half of state inmates have been infected," Braucher said. Court officials assigned him and O'Connell to Van Staich's case for his appeal.

Reacting to O'Connell and Braucher's arguments, the 1st District Court of Appeal panel ruled the prison department had treated Von Staich and other inmates with deliberate indifference. "By all accounts, the Co-

Protecting some of the state's most vulnerable leads others to follow suit



J. BRADLEY O'CONNELL



L. RICHARD BRAUCHER

vid-19 outbreak at San Quentin has been the worst epidemiological disaster in California correctional history," wrote Justice J. Anthony Kline for the panel. It ordered Von Staich be released or transferred to another state prison or an outside facility that follows adequate health guidelines. In re: Von Staich on Habeas Corpus, A160122 (1st DCA, op. filed Oct. 20, 2020).

Braucher termed the ruling "brave" and said, "The court has taken a stand for this extremely vulnerable population that has suffered far more than the greater society has during this pandemic." Kline had earlier faulted the state for failing to settle the case outside of normal court procedures and criticized conditions at San Quentin. Braucher has acknowledged the gravity of Von Staich's crimes—he beat and shot to death his ex-girlfriend's husband and shot and beat his ex-girlfriend severely during a break-in at their Santa Ana home in 1983—but contended the convict was

"not presently dangerous" as shown by his more than 30 years in prison with no substantial disciplinary record.

Von Staich was accepted into a residential parole program and was "ready to reenter society," Braucher said, but on his release from prison he was detained by federal authorities on an old warrant and remained in a Fresno federal lockup in late February. "We hope for his release soon," Braucher said. And state prison officials have tied up with further appeals the panel's order to reduce by 50 percent the San Quentin inmate population.

O'Connell said he's concerned that the positive outcome he and Braucher obtained in October has been stalled. "But the court's opinion has been an important contribution to the legal challenges posed by this crisis." In Orange County, for instance, the opinion was cited by a court in ordering changes for inmate safety in the coronavirus-plagued jail system

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J. BRADLEY O'CONNELL,
First District Appellate Project

there. O'Connell and Braucher are continuing to litigate the San Quentin case.

More broadly, O'Connell said, "the crisis caused by the virus has changed the prison reform landscape. In a sense, it came at the right historical time. There has been a sea change in reform over the last decade or two. Highly punitive lock-'em-up initiatives were seen to have gone too far. Now, the virus has demonstrated that overcrowding in correctional facilities across the U.S. is incompatible with our basic notions of fairness and decency, especially when they lead to unacceptable risk of illness and death."

O'Connell called the Von Staich appeal and its broader implications a highly unusual response to unprecedented times. "This is an extraordinary appellate case on the urgency spectrum. The majority of our case load is made up of individual criminal appeals."

O'Connell and Braucher said they continue to hope that correctional officials will take to heart the appellate opinion's admonitions on the urgent need for reduction of prison populations to reduce the risk of further infections and deaths.

— John Roemer