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TOP LAWYERS OF THE DECADE 2011-2020

Michael W. Bien

Fighting for justice for all

Bien began the last decade with one of the biggest victories of his career, in a case he and a team of veteran California attorneys continue to litigate today.

On May 23, 2011, the U.S. Supreme Court issued a historic opinion in a consolidated longstanding class action that held California violated prisoners' Eighth Amendment rights by failing to provide them with adequate medical care. The 5-4 decision, authored by Justice Anthony M. Kennedy, affirmed a federal three-judge court and ordered the state to expedite the release of tens of thousands of prisoners to reduce extreme overcrowding which, the high court found, caused the civil rights violations. *Plata et al., v. Newsom et al.*, 01-CV-01351-JST.

The decision also took an indirect jab at the Prison Litigation Reform Act of 1996, a controversial law passed during the Clinton administration that restricted prisoners' ability to file lawsuits in federal court. The law also reduced the judiciary's role in monitoring conditions inside state prisons.

"When that passed, people who worked in prisons and jails thought that population caps or prison reduction orders were virtually impossible because the legislation said that this is the remedy of last resort," Bien said.

But with the *Plata* decision, Bien said, the high court established "that there is a path through the courts and through litigation to force an entity to reduce their population. And it showed the direct connection between overcrowding and unconstitutional conditions."

Ten years later, with a global pandemic ravaging the state's prison system, having killed more prisoners in one year than have been executed since the death penalty was reinstated in California in 1976, Bien, in collaboration with attorneys from the Prison Law Office and elsewhere, continues to litigate the case to ensure prisons are meeting local and federal health guidelines.

He and Rosen Bien Galvan & Grunfeld LLP, where he is a name partner have also expanded their civil rights practice to county jails over the course of the last decade, after realizing that many of the inmates released under the *Plata* order would be transferred there, causing further crowding.

"That's led me to work more in areas of criminal justice, such as diversion of people with mental illness and substance abuse," Bien said. "Everything I've learned about how people get into jails, and what happens to them, has really become a focus of some of my criminal justice work."

In 2013, Bien served as co-counsel in a lawsuit against Monterey County and the for profit entity that provides healthcare to its jail, alleging a variety of jail policies and practices failed to keep inmates safe from violence, to deliver medical and mental health care or to provide inmates with assistance required by the Americans with Disabilities Act.

"They had a whole slew of suicides and other deaths that we thought were preventable," Bien said.

Bien said his team wanted to negotiate the case, and the county agreed to hire a team of neutral experts to assess the jail's conditions before litigating the case. He said that's become a model he employs in similar cases.

"Sometimes people are not willing to do it," he said. "But it's a way of streamlining litigation on both sides."



Jana Ašenbrennerová / Special to the Daily Journal

The agreement ended when the county refused to implement the experts' proposed solutions. In 2015, U.S. Magistrate Judge Paul S. Grewal finalized a settlement between the parties, four months after granting plaintiffs' motion for a preliminary injunction requiring sweeping change to the jail. *Jesse Hernandez et al., v. Monterey County*, CV-12-2354-PSG

While Bien's name is commonly associated with these types of cases, he said, "We're not just prison litigators."

"We've developed expertise in that area, and we use it not only in prisons and jails, but also in the community," Bien said.

In September 2020, serving as lead counsel representing the Chinese-American community, Bien secured a major preliminary injunction against the Trump administration's executive order banning the Chinese super-app WeChat in the U.S.

"Fighting against a presidential order issued in furtherance of national security is very difficult," Bien said. "The government introduced classified

evidence that we were not even able to review."

Still, he demonstrated that the government's national security concerns about the app were "speculative, overblown and exaggerated," and that given the circumstances of the pandemic, his clients would have suffered immediate and irreparable harm because of their reliance on the app. *U.S. WeChat Users Alliance et al., v. Donald Trump*, 20-CV-05910-LB.

"I have never experienced such an outpouring of support, and then gratitude when we won, from people all over the world who were so frightened from being cut off from their communication with families and friends, especially during the pandemic," Bien said.

Bien doesn't take the sole credit for his success. Teamwork, Bien said, "is something that's very important to me."

"We would not have succeeded in any of these cases if I had been doing it alone," he said.

— Tyler Piolet