

Black v. Ricketts



PC-AZ-003-011

FILED

DEC 18 1985

RICHARD H. WEARE
UNITED STATES DISTRICT COURT
PORTLAND, OREGON

BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CHARLES BLACK, et al.,

Plaintiffs,

vs.

JAMES D. RICKETTS, et al.,

Defendants.

No. CIV 84-111 PHX CAM

ORDER

Having received and considered the Motion for Approval of Stipulated Partial Settlement Agreement, filed December 6, 1985, the Stipulated Partial Settlement Agreement, attached to said motion and hereinafter entitled exhibit #1, and the Notice to Class of Proposed Partial Settlement, filed February 19, 1985:

1. IT IS ORDERED that the Motion for Approval of Stipulated Partial Settlement Agreement, filed December 6, 1985 is granted. The Stipulated Partial Settlement Agreement, exhibit #1, affixed to this Order is hereby adopted as the Order of this Court.

2. IT IS FURTHER ORDERED that the effective date for purposes of monitoring the Stipulated Partial Settlement Agreement is June 18, 1985.

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Dated this 12 day of December, 1985.



C. A. Muecke
United States District Court Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CHARLES BLACK, et al.,	)	
	)	CIV 84-111 PHX-CAM
Plaintiffs,	)	
	)	STIPULATED PARTIAL
vs.	)	SETTLEMENT AGREEMENT
	)	
JAMES G. RICKETTS, et al.,	)	
	)	
Defendants.	)	
	)	

On May 7, 1984, the plaintiffs in this class action lawsuit filed their amended complaint alleging violations of the United States and Arizona Constitutions and Statutes. The parties agree to the submission of this Stipulated Partial Settlement Agreement to the court for its review and approval.

It is agreed by and between the parties as follows:

1. This agreement is entered into as a Partial Settlement of existing disputes between the plaintiff class and the defendants as to appropriate policies, procedures and practices necessary to operate the Administrative Segregation Unit of the Arizona State Prison in a manner which will satisfy

1 practice by the defendants, it being fully understood that the
2 defendants unequivocally deny that any such acts or practices
3 exist or have occurred.

4 5. In the event any provision of this agreement
5 results in ambiguous interpretation or misunderstanding between
6 the parties, the party complaining of such misunderstanding
7 shall notify the parties by mail. The parties shall have
8 thirty (30) days following receipt of notification to resolve
9 the problem. If the parties are unable to reach agreement
10 within thirty (30) days, the issue shall be submitted to the
11 Court for resolution. The thirty (30) day time limit may be
12 shortened or extended upon agreement of the parties. No
13 attorneys fees or costs shall be awarded for such clarification
14 if resolved without court intervention.

15 In the event any provision of this agreement is held
16 unlawful by a court of competent jurisdiction, all other
17 provisions of this agreement shall remain in effect and only
18 the rights and/or obligations established in the voided portion
19 shall be extinguished.

20 6. The parties agree to retain an independent monitor,
21 who shall be a person acceptable to both parties, to observe
22 and report upon compliance with the terms of this agreement,
23 and to give advice and recommendations to either party upon
24 request. The parties have agreed to the appointment of Alan
25 Breed as monitor. If in the future the parties are unable to
26 agree upon an individual to serve as monitor, each party will

1 defendants' custody for purposes of compliance with the terms
2 of this agreement;

3 c. have the authority to retain experts to evaluate
4 the technical areas of medical-psychiatric care, sanitation,
5 classification and fire safety when such assistance becomes
6 necessary to adequately assess compliance. Local experts will
7 be used when available. The experts' fees and costs will be
8 paid by defendants;

9 d. have unobstructed access to tour and inspect the
10 institutions. Ordinarily the monitor will inform the Director
11 of Corrections of his plans to visit the institutions, but
12 may visit unannounced if necessary.

13 e. not be subject to dismissal except upon agreement
14 of both parties, or by the court upon motion of one of the
15 parties and a showing of good cause.

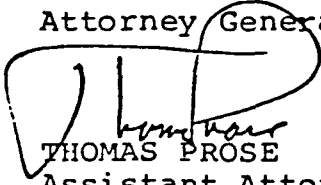
16 7. The monitoring period shall continue for 18 months
17 from the date of the approval by the court of this Stipulated
18 Partial Settlement Agreement. During that time the monitor
19 shall prepare three (3) reports summarizing the monitor's
20 findings and evaluations. Copies of such reports shall be
21 provided to counsel for the parties. The parties shall have
22 thirty (30) days from the date a report is issued to resolve
23 any disputes. After the expiration of those thirty (30) days,
24 either party may initiate court action to resolve a dispute
25 arising from the monitor's report.

26 8. Counsel for plaintiffs will be provided with notice

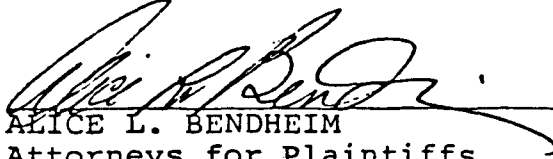
1 Settlement Agreement is the date on which it is approved by
2 this court.

3 DATED this 26th day of October, 1984.

4 ROBERT K. CORBIN
5 Attorney General

6 
7 THOMAS PROSE
8 Assistant Attorney General
9 Attorney for Defendants

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11 CLAUDIA WRIGHT

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13 ALICE L. BENDHEIM
14 Attorneys for Plaintiffs

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1 requested by medical personnel.

2 E. At least one day per week of additional dental
3 coverage, for a total of two days per week, shall be provided.

4 F. Special therapeutic diets, prescribed by appro-
5 priate medical authorities, shall be provided. Diet prescriptions
6 should be specific, complete and rewritten monthly,

7 G. Emergency medical drills shall be conducted on
8 a regular basis. Correctional officers shall have standard
9 first aid training and, minimally, one health trained officer
10 per shift shall be trained in cardiopulmonary resucitation
11 (CPR).

12 H. Each and every contact with an inmate patient
13 by any and all health care staff shall be appropriatedly noted
14 in the inmate's medical record.

15 I. A patient-to-nurse call system shall be installed
16 in the infirmary area.

17 J. In addition to psychiatric coverage, a qualified
18 mental health professional (either a clinically trained
19 psychologist or a psychiatric social worker with clinical
20 training) who meets educational and licensure/certification
21 criteria specified by his/her respective discipline and who
22 is clinically trained in psychopathology shall be assigned to
23 and responsible for providing adequate mental health care and
24 treatment.

25 K. A psychiatric nurse shall make rounds in admin-
26 istrative segregation at least once per week. The mental

1 in the observation area prior to removal from the unit to a
2 more appropriate setting, an appropriate suicide watch shall
3 be employed. If an inmate is overtly suicidal, he shall be
4 immediately evaluated by the mental health professional described
5 in ¶ J above or by a psychiatrist. Prior to this evaluation,
6 the inmate shall be continuously visually observed.

7 II Access to Courts

8 A. Defendants shall comply with Wilkinson v.
9 MacDougall, No. CIV 81-1397 PHX CAM (MS), (January 5, 1984).

10 B. Consistent with security requirements, inmates
11 in administrative segregation shall be allowed to work in
12 the law library with co-defendants or co-plaintiffs in the
13 preparation of their cases.

14 C. Persons confined in administrative segregation
15 shall be allowed reasonable access to the law library.

16 D. Designated administrative segregation inmates
17 may assist other inmates in the preparation of their cases
18 consistent with policy number 302.11 (April 23, 1984).

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JAN 5 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRAD WILKINSON,

Plaintiff,

vs.

ELMS MACQUELL, et al.,

Defendants.

No. CIV 81-1397 PHX CAM (MS)

ORDER

Having received and considered Plaintiff's Motion for Partial Summary Judgment filed April 18, 1983; Defendant's Response to Plaintiff's Motion and Defendant's Cross-Motion for Summary Judgment filed July 22, 1983; Plaintiff's Reply to Defendant's Response and Plaintiff's Response to Defendant's Cross-Motion for Summary Judgment filed September 20, 1983; Defendant's Reply to Plaintiff's Response filed November 4, 1983, Plaintiff's Statement of Facts pursuant to Local Rule 11(i) filed November 16, 1983, Defendant's Statement of Facts pursuant to Local Rule 11(i) filed November 22, 1983; Defendant's Affidavit of Maryanne Majestic filed November 22, 1983; Defendant's Affidavit of William E. Kangas filed November 22, 1983; Plaintiff's Motion to Strike Affidavits In Support of Defendant's Cross-Motion for Summary Judgment filed November 29, 1983; Plaintiff's Opposition to

Defendant's Motion for Summary Judgment on the Issue of Damages filed December 2, 1983; and having heard oral argument on the summary judgment motions on December 5, 1983, this Court finds as follows:

Plaintiff, a prisoner confined at the Arizona State Prison in Florence, filed his Amended Complaint pursuant to 42 U.S.C. §1983 on February 3, 1982, requesting injunctive relief which would require prison officials to provide him with a constitutionally adequate prison law library and monetary damages for injuries caused by an allegedly inadequate law library. In his Motion for Partial Summary Judgment, Plaintiff requests declaratory judgment that the law library has been and still is inadequate, and that the library hours schedule does not provide him with sufficient access to the library, both in violation of Plaintiff's due process and equal protection rights; Plaintiff also requests injunctive relief which would require prison authorities to cease providing him with an inadequate library and to keep the library open for an adequate number of hours, including weekend hours.

Defendant's Cross-Motion for Summary Judgment claims that the prison law library never has been and is not now constitutionally inadequate; that even if this Court finds the law library to have been constitutionally inadequate, Plaintiff's claims for injunctive relief are moot because the library is now adequate; and that Defendant is entitled to summary judgment on the issue of damages because Plaintiff has not shown, by affidavit or otherwise, any injury due to an allegedly inadequate library and/or because Defendant is shielded from damages liability by a "good faith" qualified immunity discussed in Darker v. Nonnan, 651 F.2d 1107 (5th Cir. 1981).

In Bounds v. Smith, 430 U.S. 817, 828 (1977), the Supreme Court held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." "That right is premised on the Due Process Clause and assures inmates of the opportunity to challenge violations of their constitutional rights...and unlawful convictions....The state has the affirmative duty to provide constitutionally adequate access, Bounds v. Smith, 430 U.S. at 929, and bears the burden of demonstrating the adequacy of the chosen method. Buise v. Haskins, 564 F.2d 223, 228 (7th Cir. 1978), cert. denied, 440 U.S. 916, 99 S.Ct. 1234, 59 L.Ed.2d 466 (1979)." Storseth v. Spellman, 654 F.2d 1349, 1352 (9th Cir. 1981) (citations omitted).

In the instant case, Defendant does not claim that it provides any program of assistance from persons trained in the law, the fact that prison officials allow inmate "jailhouse lawyers" to perform legal work for other inmates, see Affidavit of Elizabeth Harmon attached to Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, does not satisfy the State's obligation to provide prisoners with adequate access to the courts, because "jailhouse lawyers" are not "trained in the law." Thus, the State has chosen to fulfill this obligation by providing inmates with a law library, and under Bounds v. Smith, it must be "adequate."

The Supreme Court has never precisely defined what is required to make a prison law library collection "adequate." However, in Bounds v.

Smith, the Court affirmed a district court finding that a certain prison law library collection was constitutionally adequate; that collection adhered to "a list approved as the minimum collection for prison law libraries by the American Correctional Association (ACA), American Bar Association (ABA), and the American Association of Law Libraries...." Bounds v. Smith, 430 U.S. at 819-20 n. 4. Thus, the use of such a list as an aid in determining the adequacy of a particular prison law library collection was implicitly approved by the U.S. Supreme Court.

Attached to Plaintiff's Motion for Partial Summary Judgment is Exhibit 2, which contains a list (see Exhibit 2, page 5) compiled by Dr. Richard Dahl, law librarian at Arizona State University College of Law, and by the American Association of Law Libraries (AALL) Committee on Law Library Services to Prisoners. In addition to serving as Plaintiff's expert witness, Dr. Dahl consulted with an Outside Review Committee¹ which reviewed the library materials at Arizona State Prison, and submitted the list which appears on page 5 of Exhibit 2 as the minimum collection which would provide prisoners with an adequate law library as required by Bounds v. Smith. Affidavit of Dr. Richard Dahl, Exhibit 3 attached to Plaintiff's Motion for Partial Summary Judgment. Because that list was submitted by a qualified expert, adheres to the recommendations of an approved library association, and was apparently used by Defendant in its attempts to improve the library collection subsequent to the filing of Plaintiff's grievance and federal lawsuit (see Exhibit 2 attached to Plaintiff's Motion for Partial Summary Judgment; paragraphs 4 and 5 of Exhibit 1 attached to Defendant's Response to Plaintiff's Motion and Cross-Motion for Summary Judgment),

this Court finds it reasonable to use that list as a basis for determining whether the Arizona State Prison law library was and is constitutionally adequate.

Frankly, the materials submitted by both parties make it very difficult to determine exactly what was contained in the law library at the time Plaintiff filed his federal lawsuit. Defendant admitted in its Amended Answer, however, that "in particular, the United States Code is not kept up to date;" additionally, "many of the books in the prison law library are not kept up to date with current volumes of multi-volume sets, and current supplements and pocket parts." Defendant's Amended Answer, paragraph 6. The United States Code Annotated is probably one of the most basic and fundamental tools in any law library; it is contained in the AALL list submitted by Plaintiff, and several critical titles of it were included in the list approved by the U.S. Supreme Court in Bouris v. Smith. It is also obvious to this Court, from practical experience, common sense, and case law (see e.g., Bouris v. Smith, 430 U.S. at 826 n. 14, Akers v. Lash, 371 F.Supp. 482 (N.D.Ind. 1974), White v. Sullivan, 368 F.Supp. 292; 297 (S.D.Ala. 1973)) that in order for the volumes included on the list and in the library to be useful to inmates and to provide them with meaningful access to the courts, they must be kept in as current a state as is possible. Thus, based on these admissions by Defendant, this Court can find that the prison law library was constitutionally inadequate at the time Plaintiff filed his suit.²

Defendant claims that even if this Court finds that the library was constitutionally inadequate at the time Plaintiff filed this action,

Plaintiff's claims for injunctive relief are now moot because Defendant, between the time the suit was filed and now, has improved the quality of the library to conform to the list suggested by Plaintiff's expert.

Initially, this Court observes that the burden of demonstrating mootness "is a heavy one." See United States v. W. T. Grant, 345 U.S. 629, 632-33 (1953). Further, "as a general rule, 'voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot.'" County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979), quoting United States v. W. T. Grant, supra, at 632. An issue becomes moot only if: "(1) it can be said with assurance that 'there is no reasonable expectation...' that the alleged violation will recur...; and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." County of Los Angeles v. Davis, supra, at 631 (citations omitted).

Preliminarily, this Court finds that the inventories attached to the affidavits of Elizabeth Hanson (Inventory of January, 1983) and of Plaintiff Brad Wilkinson (Inventory of October, 1983) indicate that the present law library collection does substantially comply with the list now being utilized by this Court as the basis for determining constitutional adequacy.³ While this Court commends the State for its voluntary upgrade of the prison law library collection subsequent to the filing of Plaintiff's grievance and federal action, it is entirely reasonable to believe that the inadequate conditions existing in the library at the time the suit was filed could easily recur, as they have so often in the past. This case is clearly distinguishable from Hulson

v. Robinson, 678 F.2d 462 (3d Cir. 1982), upon which Defendant relies for its mootness claim. In Hudson, between the time the plaintiff filed his suit and the court's decision, prison officials structurally remodeled the prison law library in order to cut down on noise and distractions in the library, and to prevent inmates from noisily trooping through the library on their way to classes. The Third Circuit held that this issue was mooted by the prison's remodeling action, such that the district court's injunction preventing the prison from reverting to its practice of routing inmate traffic through the library was improper. The Third Circuit found that there was no reason to believe that the prison would spend additional money to undo all the remodeling it had done.

Maintaining the adequacy and currency of a library, however, cannot be accomplished through a one-shot step like building a wall or changing the structure of a building. Due to their very nature, law books consistently go out of date, become lost, stolen or damaged. Practically speaking, the process of operating a law library requires constant monitoring and updating, and it is apparent that the effort required to maintain the adequacy of the library at issue has not consistently been expended in the past. Thus, the prison's laudable actions do not moot Plaintiff's claim for injunctive relief.

Plaintiff also claims that the library's schedule of available hours deprives him of access to the courts. He particularly complains that, at the time he filed his suit, the library was closed on weekends, and that his full-time prison job prevented him from obtaining a sufficient number of hours during the week. Since the filing of

Plaintiff's federal action, the library has been opened from 7:30 a.m. to 1:00 p.m. on both Saturday and Sunday. Plaintiff states that he is able to use the library approximately fourteen (14) hours per week. Plaintiff's Motion for Partial Summary Judgment, page 12. Even though the Defendant cannot guarantee that the library will continue to be available during weekend hours due to security reasons or lack of available staff, see Affidavit of Elizabeth Harmon, Exhibit 1 attached to Defendant's Response to Plaintiff's Motion and Defendant's Cross-Motion for Summary Judgment, Ms. Harmon has also stated that any closings due to such factors will be temporary. It appears to this Court that the library hours schedule provides Plaintiff with adequate access to the law library. See Jordan v. Johnson, 331 F.Supp. 600 (E.D. Mich. 1974), aff'd, 513 F.2d 631 (6th Cir.), cert. denied, 423 U.S. 851 (1975) (schedule which allowed inmates an average of 11.5 hours per week in the law library held adequate). In this area, "[f]ederal courts do not sit to supervise prisons.... [P]rison officials must be accorded latitude in the administration of prison affairs." Cruz v. Beto, 405 U.S. 319, 321 (1972). It is not clear to this Court that prison authorities have abused the discretion vested in them in handling this matter, and the intervention of the judiciary is thus inappropriate. Jordan v. Johnson, supra.

As to the damages issue, Defendant contends it is immune from damages liability because it is shielded by a "good faith" qualified immunity, which Defendant has alleged as an affirmative defense. Although the issue of the subjective good faith of a public official in making discretionary decisions has been considered to be a question of

fact not suitable for decision by summary judgment, recent Supreme Court language has reduced the need for an evidentiary hearing or trial on this issue by allowing the district court judge to determine whether the law allegedly violated by a defendant was "clearly established at the time an action occurred," such that the official taking the disputed action could be expected to know of it and abide by it. Harlow v. Fitzgerald, ___ U.S. ___, 102 S.Ct. 2727, 2739 (1982).

Defendant, of course, cannot simply claim this immunity. To establish it, "there must be more than a bald assertion by the defendant that the complained-of actions were undertaken pursuant to the performance of his duties and within the scope of his discretionary authority; there must be a showing by a competent summary judgment materials of objective circumstances that would compel that conclusion....Exactly what will suffice to establish such objective circumstances will...vary in proportion to the degree of discretion inherent in the defendant's office." Barker v. Norman, 651 F.2d 1107, 1124-25 (5th Cir. 1981). "When a plaintiff seeks damages under §1983 for a discretionary action by an official such as a prison administrator, who must exercise an exceedingly broad range of discretion in performing his official duties, the official should be entitled to qualified immunity upon a showing that he acted within the scope of his discretionary authority." Douthitt v. Jones, 619 F.2d 527, 534 (5th Cir. 1980).

To demonstrate that it is entitled to immunity from damages liability, Defendant submits the affidavit of Levi Acuna, programs administrator in charge of supervising the library facilities at Arizona

State Prison since 1961.⁴ Mr. Acuna avers that his authority includes provisions of adequate facilities, supplies, equipment and legal materials to the law library, and that he has attempted to comply with court-mandated requirements to ensure that inmates have meaningful access to the courts. Upon consideration of this affidavit and of the relatively slight showing required of this prison administrator Defendant, this Court concludes that Defendant has made a prima facie showing that it is entitled to claim official immunity from damages liability. "If the prima facie showing is not rebutted by the plaintiff, then the defendant is, as a matter of law, entitled to claim official immunity from section 1983...liability." Barker v. Norman, 651 F.2d at 1125. Here, Plaintiff has not come forth with any competent controverting evidence. Thus, Defendant has properly claimed the good faith immunity.

Such immunity is not absolute; it is a qualified immunity, and the burden now shifts to Plaintiff to prove that Defendant's conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, ___ U.S. ___, 102 S.Ct. 2727, 2733 (1982). As previously mentioned by this Court, neither the Supreme Court nor any lower court has ever definitively outlined precise requirements for a constitutionally adequate law library; therefore, this Court would be hard-pressed to find that there was "clearly established law" on this issue, such that Defendant's violation of it was knowing or in bad faith. Thus, in this case, Defendant is shielded from damages liability.

In his Amended Complaint, Plaintiff seeks attorney's fees. Under

42 U.S.C. §1983, this Court has discretion to award a reasonable attorney's fee to the prevailing party in a §1983 action. Although Plaintiff has been successful in a substantial issue in this case, i.e., in establishing that the prison law library was constitutionally inadequate, it appears to this Court that there are several other claims remaining in this case which have yet to be resolved. Plaintiff has apparently moved for summary judgment on his first and second causes of action only. When the parties and this Court dispose of the remaining claims, this Court will entertain Plaintiff's request for attorney's fees.

Based upon the foregoing, this Court concludes:

(1) The admitted failure on the part of Arizona State Prison law library officials to properly maintain the law library collection, i.e., the lack of a complete and current set of United States Code Annotated and the absence of current supplements and pocket parts in many of the books in the prison law library, deprived Plaintiff of his fourteenth amendment due process right of meaningful access to the courts as established in Bounds v. Smith.

(2) The prison library administration has voluntarily upgraded its library collection to substantially comply with a list compiled by the American Association of Law Libraries Committee on Law Library Services to Prisoners, see Exhibit 2, page 5 of Plaintiff's Motion for Partial Summary Judgment, and in such condition is constitutionally adequate.

(3) Because it is reasonable to believe that the condition of the library could again become inadequate, prison officials should be

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ordered to maintain its present collection in as current a state as is possible.

(4) The present schedule of hours at the prison law library does not deprive Plaintiff of his fourteenth amendment due process right of access to the courts.

(5) In this case, Defendant is shielded from damages liability by good faith qualified immunity; at the time Plaintiff filed his complaint, there was no "clearly established law" on the precise contents of an adequate prison law library. Harlow v. Fitzgerald, supra.

(6) Plaintiff's Motion to Strike Affidavits of Maryanne Majestic and William E. Kangas should be denied as moot.

Therefore,

IT IS ORDERED that Plaintiff's Motion for Partial Summary Judgment is granted in part and denied in part. Plaintiff's request for declaratory and injunctive relief regarding the adequacy of the prison law library collection is granted. Plaintiff's request for declaratory and injunctive relief regarding the adequacy of the library hours schedule is denied.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment on the issue of the adequacy of the library is denied. Defendant's Motion for Summary Judgment on the adequacy of the library hours schedule is granted. Defendant's Motion for Summary Judgment on the issue of damages allegedly arising from the inadequate law library is granted.

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IT IS FURTHER ORDERED that Plaintiff's Motion to Strike Affidavits of Maryanne Majestic and William E. Kangas is denied as moot.

IT IS FURTHER ORDERED that Defendant, so long as it chooses to fulfill its Bouris v. Smith, supra, obligation by furnishing a law library to inmates, maintain in its prison law library complete and current editions of at least the following works:

United States Code Annotated
Supreme Court Reporter
Federal Reporter 2d
Federal Supplement
Shepard's U.S. Citations
Shepard's Federal Citations
Rules of Local Federal District Court
Modern Federal Practice Digest
Federal Practice Digest 2d
Arizona Code Annotated
Arizona Reports
Shepard's Arizona Citations
Arizona Appeals Reports
Arizona Law of Evidence (Udall)
Regulations of Arizona State Prison
Federal Practice and Procedure (Wright)
Corpus Juris Secundum
Arizona Digest

DATED this 5 day of January, 1984.

C. A. MUECKE

C. A. Muecke, Chief Judge

FOOTNOTES ATTACHED

FOOTNOTES

1/

[Reference on page 4]

It is interesting to note that the Outside Review Committee requested and received inventories of the prison's law library collection, solicited the recommendation of Dr. Dahl, and recommended the purchase of additional materials to the Arizona Department of Corrections -- all apparently in response to and as a follow-up to Grievance #32325 filed by Plaintiff Wilkinson. See Exhibit 2, pp. 1-4, Plaintiff's Motion for Partial Summary Judgment.

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[Reference on page 5]

The issue of the adequacy of the Arizona State Prison law library is not a new one. With over nineteen years' experience on the federal bench, this Court is keenly aware of (and hereby takes judicial notice of) numerous other complaints and previous litigation regarding the adequacy of that library. A prisoner's right of access to the courts is not a frivolous issue, and this Court believes that some steps must at last be taken to ensure that the State fulfills its constitutional obligation in this area. At oral argument, this Court requested that the parties negotiate and enter into some type of stipulated judgment with respect to the library's adequacy; this procedure has been successfully utilized in previous cases in this District involving Arizona State Prison disciplinary proceedings (Taylor v. State of Arizona, CIV 72-21, August 27, 1972) and prison mail handling regulations (Hook v. State of Arizona, CIV 73-79, October 19, 1973). Counsel for the Defendant refused to take this step. While that decision is certainly within Defendant's rights, the absence of a stipulated judgment and of any other alternative proposal by the State which would fulfill its Bondis obligations requires this Court to make a finding on the adequacy of the law library and to set minimum standards to ensure that inmates' constitutional rights are protected.

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[Reference on page 6]

The only books on Dr. Dahl's AALL list which do not appear on either inventory are (1) Criminal Procedure Under the Federal Rules by Orfield; and (2) Compendium on the Law of Prisoners' Rights by Sensenich. However, both inventories indicate the presence of other books which adequately substitute for the recommended treatises, such as Modern Criminal Procedure, 3d and 4th editions, by Kamisar; Criminal Procedure by Lewis; Complete Manual of Criminal Forms by Bailey and Rothblatt; Legal Rights of the Convicted by Kerper; Standards for Adult Correctional Institutions; Corrections and Prisoners' Rights; and Civil Rights and Civil Liberties Litigation.

4/

[Reference on page 10]

The affidavits of William E. Kangas and Elizabeth Hanson are irrelevant on this issue, since their affidavits reflect that neither individual had responsibility for the library at the time Plaintiff filed his complaint.

ARI: A DEPARTMENT OF CORRECTIONS
INTERNAL MANAGEMENT POLICY

Subject: ACCESS TO COURTS/LEGAL ASSISTANCE		No. 302.11	
Supersedes: ADC Policy #412 July 23, 1980	Distribution: A	OPR: LSA	Effective: April 23, 1984

1.0 POLICY: It is the policy of the Department of Corrections that each inmate shall be afforded the constitutional right of access to the courts for the pursuit of remedies or judicial relief in connection with their conviction, sentence, conditions of confinement, civil legal problems or any other rights protected by constitutional or statutory provision.

2.0 AUTHORITY: A.R.S. 41-1604 Duties and Powers of the Director.

3.0 RESPONSIBILITY: Deputy Directors, Assistant Directors and Chief Executive Officers shall ensure that all employees read, understand, and comply with this policy.

3.1 Complex Administrators and Wardens shall submit procedures for the implementation of this policy to the Assistant Director of Adult Institutions.

4.0 DEFINITIONS:

4.1 Inmate Legal Assistant (Jailhouse Lawyer): Any resident who provides legal assistance to another inmate in researching, preparing and drafting cases or pleadings to be filed in court or in administrative hearings.

4.2 Inmate Law Library Clerks: Inmates who are employed to work in the law library in their unit or institution under direct supervision of law library staff.

4.3 Administrative Hearings: Proceedings conducted by any government agency affecting the legal rights of an inmate. —(For Disciplinary Hearings see the Rules of Discipline.)

5.0 PROCEDURES:

5.1 Inmates may make confidential contact with their attorney of record in proceedings pending in a court of record or with the attorney's authorized representative or investigator by uncensored correspondence, telephone or personal visit by the attorney during regular visiting hours. After hours visits may be authorized when necessary due to special circumstances.

5.2 Inmates may be assisted or represented in disciplinary proceedings by their private attorney, a willing staff member or another inmate. If representation is by another inmate, he must be in the same institution and/or unit.

5.3 Upon approval by the Warden or his designee, inmates may act as inmate legal assistants subject to the following regulations and procedures.

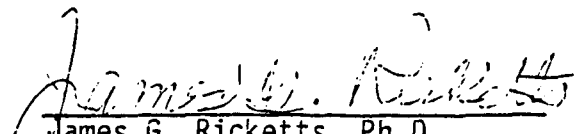
5.3.1 An inmate who is presently acting or wishes to act as an inmate legal assistant shall apply to the Warden or his designee, in writing, indicating his qualifications to act as a legal assistant, to include education and any legal training or experience he possesses. The Warden or his designee shall approve or deny the application.

5.3.2 Inmates acting as inmate legal assistants shall provide the Warden or his designee with a list of those inmates whom they assist, including their names, numbers, and housing locations. Inmates wishing legal assistance may contact the Warden or his designee to determine which inmate legal assistant may be available to assist them. The Warden or his designee may prohibit assistance by a specific legal assistant to any individual inmate if he has reasonable cause to believe that such association may constitute a threat to the safety and security of the institution, the individual inmate, or the orderly operation of the institution.

5.3.3 An inmate acting as an inmate legal assistant shall not charge a fee, request compensation, or collect any form of compensation from another inmate for assisting with legal work.

5.3.4 Inmate legal assistants may only assist inmates in the same institution and/or unit. Inmate law library clerks may provide legal assistance to inmates in different security classifications within the law library in their unit upon approval of the Warden. In the event an inmate legal assistant is transferred to another institution or unit, that inmate legal assistant shall be responsible for returning all legal documents to the inmate(s) he/she is assisting. In the event either an inmate or his inmate legal assistant is transferred to another institution/unit, the inmate may obtain the assistance of another inmate legal assistant in the same institution/unit to complete any legal action in progress at the time of the transfer.

- 5.4 Inmates in the same custody unit may use the law library in that unit to consult with an inmate legal assistant representing or assisting them during the inmate's regular library hours.
- 5.5 Inmate law library clerks in each custody unit shall provide assistance in research and use of the law library facilities to inmates wishing to use the law library. As their workload permits, they may also provide legal assistance to inmates in their unit. Clerks who provide such assistance to inmates in their unit shall notify the Warden in their unit in accordance with 5.3.2 of this policy.
- 5.6 Inmates may work on and store legal materials, books, documents and cases in their cells or sleeping area. Each custody unit, in accordance with existing property policies, shall establish guidelines for the quantity of property which can be stored in each cell or housing area, consistent with fire safety and security requirements.
- 5.7 Inmates shall have access to paper, pens, envelopes, typewriters and other supplies and services related to legal matters as are necessary and consistent with security considerations and orderly operation in their unit.
- 5.8 Inmates shall have access to a law library in each institution/ and/or unit. The population size of the institution or unit may be considered in determining the extensiveness of the collection in an individual law library. Specific materials not available in an individual library may be requested by that library from other law libraries within the Department or from the State Library and Archives and shall be photocopied and made available to the requesting library. Individual copies for inmate use shall be at cost to the inmate. Each library shall provide adequate space and equipment for research, study, writing and typing of legal matters.
- 5.9 This policy does not limit other methods of providing legal assistance to inmates. Other methods need not be provided directly by the Department, but may be provided by outside agencies and may include services provided by lawyers, law students and aides supervised by lawyers, and by paraprofessionals.
- 6.0 IMPLEMENTATION: This policy shall be implemented without change effective immediately.


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Director