IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-3492

MAJOR TILLERY, VICTOR HASSINE, KENNETH DAVENPORT, WILLIAM GRANDISON, NELSON CHARLES MIKESELL and ELLIS W. MATTHEWS, JR.,

Appellees

v.

DAVID OWENS, JR., in his official capacity as the Commissioner of the Pennsylvania Department of Corrections, GEORGE PETSOCK, in his official capacity as the Superintendent of the State Correctional Institution at Pittsburgh, and ARNOLD SNITZER, M.D., in his official capacity as a member of medical staff of the State Correctional Institution at Pittsburgh,

Appellants.

APPEAL FROM THE ORDER DATED JULY 21, 1992 OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA AT CIVIL ACTION NO. 87-1537

BRIEF OF APPELLANTS, DAVID OWENS AND GEORGE PETSOCK

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction to review the final order of the federal district court pursuant to 28 U.S.C. § 1291. The complaint was based on 42 U.S.C. § 1983. The district court had jurisdiction of the matter pursuant to 28 U.S.C. §§ 1331 and 1343. The district court's order was entered on July 21, 1992, and a notice of appeal was filed on August 11, 1992.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the consent decree and court approved modifications in the prior class action of inmates along with the continuing jurisdiction of the Eastern District Court, precluded the changes effected by the Western District Court?

II. Whether the district court erred by refusing to approve the Commonwealth's plan establishing mini law libraries?

STATEMENT OF THE CASE

This action was filed in 1987, pursuant to 42 U.S.C. § 1983, as a class action of all inmates at the State Correctional Institution at Pittsburgh, challenging the conditions of the confinement and seeking a "comprehensive remedial order to permanently abate the conditions that are causing the violations." (A 29). Appellants, and defendants below, are the Commissioner of Corrections and the Superintendent at the State Correctional Institution at Pittsburgh (SCIP) (the "Commonwealth Officials").[1]

This appeal involves one aspect of the inmates' claim that the conditions at SCIP violated their constitutional rights: the alleged denial of adequate access to the courts caused by the overcrowding of the State Correctional Institution at Pittsburgh. The inmate class alleged, among other things, that the institution's overcrowding "clogged access to the prison's law library," and resulted in "substantial delays in gaining access to the library, a factor that diminishes prisoners' ability to prepare and file legal papers." (A 13-14). The inmate class, in their pretrial statement, described their claims of denial of access to the courts as ones based on the alleged denial of physical access

[1]When originally filed, the complaint named David Owens, Jr., then the Commissioner of Corrections, and George Petsock, then SCIP's Superintendent. Currently, James Lehman is the Commissioner, and Andy Domovich is the Superintendent. Also named as a defendant was Arnold Snitzer, M.D., for the purposes of challenging medical care at SCIP. Robert Casey, Governor of Pennsylvania, was also named as a defendant. The caption of the orders entered by the district court do not include Snitzer or Casey as defendants.

to the law libraries and questioned the paging system. The only two segments of the inmate population identified were: (1) clinic (those housed in the Classification Center) inmates; and (2) RHU (Restrictive Housing Unit) inmates. (A 51-53). Both of these groups of inmates are housed away from the general inmate population.

The RHU inmates dealt with in this appeal are those segregated for a period of time from the general population for disciplinary reasons due to their violation of the rules and regulations of the institution or as the result of other factors necessitating their segregation for security reasons. They are housed in the Restricted Housing Unit, the "RHU".

The case was tried to the district court and in its opinion and order dated August 15, 1989, the court concluded that "the denial of realistic access to the law library and denial of access to legally trained persons to Restrictive Housing Inmates has resulted in a constitutionally inadequate system to ensure meaningful access to the courts." Id. 719 F.Supp. 1283. The district court also found that access to the library was constitutionally inadequate, by virtue of: (1) the limited amount of time in the library given to clinic inmates; and (2) the delays and impracticalities of the book paging system then in place for restrictive housing inmates who were not allowed into the law library. Id. 719 F.Supp. at 1282-83. The court directed the Commonwealth officials to devise a plan to ensure that clinic inmates received a minimum of four hours a week law library time

and that Restrictive Housing Inmates have adequate access to the law library or to legally trained persons. (A 299).

In its order dated August 15, 1989, the district court did not find any inadequacy in the contents of the main law library at SCI-Pittsburgh. The district court did not order the Commonwealth officials to take any action or submit any plan to change the contents of the main law library.

Pursuant to the August 15, 1989 order, the Commonwealth officials submitted a plan proposing the establishment of mini law libraries in the RHU and Clinic to contain the same publications approved for the class of death-sentenced inmates at Pittsburgh in Peterkin v. Jeffes, C.A. No. 83-304 (E.D. Pa), who were also kept in administrative segregation away from the general population. In addition to these mini law libraries ("Peterkin" libraries), the Commonwealth officials' plan would have allowed inmates to page books from the main SCIP library with deliveries made twice a week. Clinic inmates would be able to visit the law library on a rotating basis on Tuesdays and Thursdays with 60 inmates allowed in the library at a time. Six hours per week in the main library would be dedicated to clinic inmates. (A 225-227). The Commonwealth officials expressly continued to reserve their rights to appeal the preliminary findings of unconstitutional conditions identified by the district court and did not waive those rights by filing the plan. (A 223-224).

A hearing regarding the Commonwealth officials' plan for the mini law libraries was held before the district court. SCIP's

librarian testified that, at the present time, the clinic mini law library contained additional case book references not available in the other mini law libraries. Because the clinic at SCIP is to be phased out, those case book references would be transferred to the main law library for use as part of the paging system to support the other mini law libraries. (A 190-192).

The district court rejected the Commonwealth's plan, by its order and opinion dated March 25, 1991, finding that the mini law libraries "are not constitutionally adequate" because their "goal" was "not to be a complete legal research center, but to provide these inmates with tools to obtain access to relevant case law." (A 314). In addition, initially, the district court decided that the collection of law books in both the main library and mini law libraries was deficient, apparently based on an off-the-record communication by the court. The court stated: "After submitting the prison law library book list to our Third Circuit librarian and receiving her input, we have concluded that the dearth of material on Federal and Pennsylvania civil procedure severely restricts the inmates' ability to obtain access to the courts." (A 315-316).

The district court then ordered the Commonwealth officials to purchase for the mini law libraries several volumes of West's Federal Practice Digests, 2rd and 4th Editions, West's Pennsylvania Digest 2d; and several general reference books. The district court also ordered the Commonwealth officials to purchase several books for the main law library. (A 314-318).

The Commonwealth officials moved for reconsideration and

amendment pursuant to Fed.R.Civ.Proc. 52(b) and 59(e). As two of the grounds supporting its motion, they specifically raised: (1) the preclusive effect of the consent decree entered in the ICU v. Shapp litigation, a class action of state inmates presided over by the Eastern District Court of Pennsylvania, which had been entered as an exhibit in the hearing on the inmate class' claims and (2) the binding effect of the court- approved settlement in the class action also before the Eastern District in Peterkin v. Jeffes, which had approved the use and contents of the mini law libraries and the paging system for the class of inmates in segregation who had been sentenced to death. See Defendants' Motion for Reconsideration and Amendment of Judgment, at 2-3. (A 229-230).

By order of April 16, 1991, the district court acknowledged the applicability of the ICU consent decree to the contents of the main law library and the applicability of the Peterkin case to the contents of the mini law library for capitol cases, rescinding its order with regard to the main law library and the mini law library for capitol cases. (A 302-303; 228-231).

By opinion and order dated July 21, 1992, the district court denied the motion for reconsideration, finding that the Peterkin class settlement was not binding on restricted housing or clinic inmates, and that the ICU decree and modifications did not limit its "power to order changes at the SCIP". (A 334). As to the latter point, the district court relied, in part, on the affirmance by this Court in the Commonwealth officials' first appeal of the district court's August 15, 1989 order. It construed the changes

which would be effected at SCI-Pittsburgh in medical staffing and inmate cell searches as orders changing those conditions previously dictated by the ICU litigation, and reasonsed that the alleged affirmance by this Court on appeal apparently negated any recognition of the ICU decree as res judicata. (A 334-335).

The district court also found that it could subject the ICU consent decree to modification even though the ICU decree was not approved by it and the jurisdiction of the Eastern District Court continued. (A 335). For this proposition, the district court relied on: (1) the "significant body of law regarding prison conditions" which had developed over the twelve years since the 1980 order in ICU v. Shapp; and, (2) the inference it drew from the Commonwealth's agreement in Peterkin to expand the content of the mini libraries for death sentenced inmates. The district court inferred that by entering into a settlement for the Peterkin class, the Commonwealth "implicitly recognize[d] that the legal environment surrounding prison reform litigation has changed substantially since 1980 [the date of the ICU agreement], allowing a modification in the original settlement agreement." (A 336).

This appeal followed.

STATEMENT OF THE FACTS

A. Hearings on the Proposed Plans in Tillery.

On October 26, 1990, a hearing was held in the Tillery case at which the Commonwealth officials presented evidence regarding their plan to establish mini law libraries and a paging system for RHU inmates and access to jailhouse lawyers. (A 182-221). The plaintiff class was given the opportunity to introduce evidence in opposition to defendants' plan. They produced no testimony or any other evidence, choosing to present only legal argument. Further, this point was emphasized to the district court. (A 257).

The Commonwealth argued that the Peterkin v. Jeffes settlement established the standard for constitutionally adequate mini law libraries for capital inmates. The Tillery inmate class failed to present any evidence at the hearing that non-population inmates, other than capital inmates, had any greater or different legal needs than those of capital inmates for which Peterkin is the standard. The Commonwealth officials argued that the Peterkin standard, based upon the evidence in this case, was therefore applicable to each of the mini law libraries proposed in their plan. That plan, being constitutionally adequate, should have been approved by the district court, but, as noted, was rejected. (A 252).

By its order dated July 21, 1992, the district court ordered the Commonwealth officials to purchase additional volumes

for the mini law libraries, other than the mini law library in the unit for prisoners awaiting execution. (A 325-327).

B. The ICU v. Shapp Class Action Litigation and Consent Decree.

ICU v. Shapp was a consolidation of four prisoner cases, the first of which was filed on September 15, 1970. The case was brought in the United States District Court for the Eastern District of Pennsylvania, by a class of Pennsylvania prisoners comprised of "all persons who are now or will be incarcerated in the Pennsylvania State Correctional Institutions at Graterford, Dallas, Huntingdon, Muncy, Rockview and Pittsburgh." (A 236-237).

One of the issues raised by the class in ICU was the adequacy of law libraries, including those available to RHU inmates.

By order of the Eastern District Court dated May 11, 1978, the Commonwealth Defendants were ordered to provide an adequate law library in the institutions at Graterford, Dallas, Huntingdon, Muncy, Rockview and Pittsburgh. The order directed that those "libraries must include the material specified in the stipulation entered into between the parties and approved by this Court on December 20, 1977." (A 233-237). The parties had once modified the consent decree, by stipulation, to implement changes governing access of RHU inmates to legal materials. (A 246-249). That stipulation also expressly provided that the ICU inmate class reserved the right to contest in the Eastern District Court by any

appropriate legal proceeding any institutional or system wide pattern of failure or refusal by the Commonwealth defendants to follow the provisions of the stipulation. (A 249).

C. The Peterkin v. Jeffes Class Action.

In Peterkin, a class comprised of all death sentenced inmates confined to "death row" (administrative segregation) at the State Correctional Institutions at Graterford, Huntingdon and Pittsburgh filed suit in the Eastern District and challenged the conditions of their confinement, including their inability to physically visit the law libraries. See Peterkin v. Jeffes, 661 F.Supp. 895, 927 (E.D. Pa 1987). The Peterkin inmates' claims originated with the decision to segregate capital inmates from the general population in 1982. See Id. 661 F.Supp. at 922.

The parties in Peterkin ultimately reached a settlement agreement which was presented to the Eastern District Court. In its order approving the settlement, the district court found that the mini law library adequately met the Supreme Court's main concern in Bounds v. Smith, 430 U.S. 817 (1987), to protect an inmate's "fundamental right of access to the courts." (A 242). Under the settlement, each mini law library would contain the same volumes to provide the class inmates with an overview of their rights with regard to both post-conviction and civil rights proceedings. (A 242). Full copies of decisions could be ordered from the main library with minimal delay. The district court found that the mini law library allowed the class inmates to undertake meaningful legal research and eliminated the inherent limitations of the paging

system previously in place. (A 243). In approving the proposal, the district court noted the "wholehearted recommendation of class counsel, an able advocate with extensive experience in the field of prisoner's rights", and the acknowledgement that even after trial, it was "highly unlikely" that the class would have obtained the relief embodied in the settlement. (A 244).

The contents of the mini law libraries proposed by the Commonwealth officials, here, were identical to the publications approved in Peterkin.

For the Tillery class, the district court rejected the plan of the Commonwealth officials.

STATEMENT OF RELATED CASES AND PROCEEDINGS

This case was previously before this Court at No. 89-3689. The decision on appeal is reported at Tillery v. Owens, 907 F.2d 418 (3d Cir. 1990). This previous appeal was taken from the order of the district court entered on August 15, 1989, as amended on September 8, 1989, and was limited to the order directing the cessation of double celling at the State Correctional Institution at Pittsburgh.

STATEMENT OF THE STANDARD OR SCOPE OF REVIEW

The review of the district court's conclusions of law is plenary. Pullman-Standard v. Swift, 456 U.S. 273, 287 (1982).

ARGUMENT

I. THE CONSENT DECREE AND COURT APPROVED MODIFICATIONS IN THE PRIOR CLASS ACTION OF INMATES ALONG WITH THE CONTINUING JURISDICTION OF THE EASTERN DISTRICT COURT, PRECLUDED THE CHANGES EFFECTED BY THE WESTERN DISTRICT COURT.

The district court, although apparently acknowledging the applicability of the ICU consent decree to the contents of the main law library when it granted a portion of the Commonwealth officials' motion for reconsideration by its order of April 16, 1991 (A 302, 229-228), rejected the application of the ICU consent decree to RHU inmates. The district court did so by assuming jurisdiction over the consent decree that had been entered in the Eastern District and by applying an erroneous legal analysis to support its ability to do so.

A consent decree possesses a dual character. It has "attributes both of contracts and of judicial decrees." United States v. I.T.T. Continental Baking Co., 429 U.S. 223, 236-37 (1975). As a contract, a consent decree embodies the negotiated resolution of the disputes of the parties. As a judicial decree, it evidences the federal court's approval and order that it be enforced. See Fed.R.Civ.P. 54(a); Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2651 (1983 & Supp. 1986). A consent decree, even if negotiated by the parties, stands as a judicial act, and a party violating a consent decree is subject to the powers by which the court protects its judgments including,

most notably, the power of contempt. Delaware Valley Citizens for Clear Air v. Commonwealth of Pennsylvania, 533 F.Supp. 869 (E.D. Pa. 1982), aff'd., 678 F.2d 470 (3d Cir.), cert. denied, 103 S.Ct. 298 (1982). After a consent decree is entered, the federal court in which the decree was entered retains the inherent power to enforce and consider challenges to the settlement. See Fox v. Consolidated Rail Corp., 739 F.2d 929, 932 (3d Cir. 1984) cert. denied, ____ U.S. ____, 105 S.Ct. 962 (1985).

Where, as here, there is a judgment entered on a consent decree and that judgment represents a judicial act, a party or his privy is barred from relitigating issues settled by the decree. See American Equipment Corp. v. Wikomi Manufacturing Co., 630 F.2d 544 (7th Cir. 1980); Safe Flight Instrument Corp., 576 F.2d 1340 (9th Cir. 1978). See Purter v. Heckler, 771 F.2d 682, 690, n. 5 (3d Cir. 1985). A final decision or consent decree precludes the parties or their privies from relitigating issues that were or could have been raised in the prior action, Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981), or through issue preclusion, pursuant to which a decision or consent decree precludes relitigation of the same issue on a different cause of action between the same parties once in court. Montana v. United States, 440 U.S. 147, 153 (1979). Both of these doctrines, as well as the absence of jurisdiction, barred the district court's de novo analysis. Thus, whether one looks to the traditional terminology of res judicata and collateral estoppel, or the more modern terminology of "claim preclusion" and "issue preclusion", the

result is the same. See, United States v. Athlone Industries, Inc., 746 F.2d 977 (3d Cir. 1985).

The general population main law library provides adequate legal material under the ICU consent decree and the court-approved stipulation lists those books and materials required to be in the main law library. This, the district court recognized. (A 302-303, 228-231). Modifications are to be dealt with by the Eastern District Court which possesses the exclusive jurisdiction over the question of the adequacy of the contents of the main law library and RHU legal materials at the State Correctional Institution at Pittsburgh. (A 233-237, 246-249). The district court recognized this regarding the contents of the main law library. If the inmate class was or is now dissatisfied with that decree, it should have presented that claim to the Eastern District Court which retained jurisdiction over those matters. The district court, however, failed to consider the ICU decree under the preceding principles and its error was compounded by its flawed legal analysis.

For example, the district court relied on the decision of the Supreme Court in Rufo v. Inmates of the Suffolk Jail, ___ U.S. ___, 112 S.Ct. 748 (1992), for its power to modify the ICU litigation. That reliance was, however, misplaced. Even if in harmony with Rufo's analysis that the passage of time may justify modification of a consent decree, any proposed modifications should have been presented to the Eastern District Court. The Western District Court did not obtain jurisdiction due to the mere passage of time and its own perceived need for modification. Rufo does not

stand for that proposition. Contrary to the district court's perception, the parties are bound by the matters resolved in the ICU litigation, even if the order is 12 years old.

Nor did the disposition of the appeal of the Commonwealth officials in this case negate the ICU decree. On this point, it is evident that the district court overstates the questions raised in the appeal. The appeal from the initial order entered on August 15, 1989, was based on the district court's order relating to double celling. This Court stated: "We hold merely that the district court did not exceed its broad remedial power in ordering the cessation of double celling in North and South Blocks." Id. 907 F.2d at 431. The appeal did not affirm every aspect of the August 15, 1989 order, nor did it refer to the ICU decree in any part of its decision. Moreover, as of the date of the August 15, 1989 order, the condition subject to change was physical access to the law library, not the contents of the law library. (A 301).

The district court also erred in concluding that the ICU decree could be ignored because the Commonwealth officials settled the Peterkin class action. That conclusion is based upon the district court's inference that the Commonwealth officials somehow intended to waive the ICU decree in Peterkin. That basis for modification of the ICU consent decree is untenable. Settlement of the Peterkin class did not dissolve either the ICU decree or the court-approved stipulation in ICU relating to the contents of the main law library and legal materials for RHU inmates. Simply stated, the Peterkin litigation did not grant the Western District

Court jurisdiction to decide the continuing validity of the ICU decree.

For these reasons, the order of the district court should be reversed.

II. ALTERNATIVELY, THE DISTRICT COURT ERRED BY REFUSING TO APPROVE THE COMMONWEALTH'S PLAN ESTABLISHING MINI LAW LIBRARIES.

In view of the court-approved settlement in Peterkin, the law libraries proposed by the Commonwealth officials were constitutionally adequate and there was no basis to impose any additional requirements. The district court was presented with the Peterkin Consent Order, which it acknowledged controlled mini law libraries for capital inmates. (A 241-245, 315). The issues addressed by the district court in Peterkin before approving the consent decree for capital cases were the same or greater than the issues that any non-population inmate may face at SCIP. The Commonwealth officials presented evidence from the SCIP librarian of the manner in which the paging system would work, the legal materials available to be paged and the contents of the Peterkin library. (A 184-185, 189-194, 225-227). The provision of these mini law libraries at SCIP, in conjunction with the paging system and access to other inmates of the same classification, was constitutionally adequate, complied with the requirements of Bounds v. Smith, 430 U.S. 817 (1987), and should have been approved by the district court. Further, the inmate class presented no evidence from which the district court could have concluded anything to the contrary.

In Tillery v. Owens, 907 F.2d 418, 429 (3d Cir. 1990), this Court noted that the nature of the remedy should be limited to

the scope of the violation and should consider the interests of the state in managing its own institutions consistent with the Constitution.

Thus, once a right is established, the remedy chosen must be tailored to fit the violation.

The Supreme Court has made the point this way: "The controlling principles consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation." Milliken v. Bradley, 418 U.S. 717, 744 (1974) (Milliken I). Equitable remedies in constitutional cases must therefore seek to redress the "condition alleged to offend the Constitution." Milliken v. Bradley, 433 U.S. 267, 280 (1977) (Milliken II). "The remedy chosen must in fact be remedial in nature. That is, the remedy must seek to cure the constitutional violation, to place victims of unconstitutional conduct in `the position they would have occupied in the absence of such conduct.'" Milliken II, 433 U.S. at 280 (quoting Milliken I, 418 U.S. at 746, 94 S.Ct. at 3128). Finally, district courts are to "take into account the interest of state and local authorities in managing their own affairs consistent with the Constitution." Milliken II, 433 U.S. at 281. But in carrying out their remedial task, courts are not to be in the business of running prisons. The cases make it plain that questions of prison administration are to be left to the discretion of prison administrators. See Rhodes v. Chapman, 452 U.S. 337, 349 (1981).

The court's deference extends to the sphere of prison

regulations regarding prisoner access to counsel and legal materials. When justified by legitimate security concerns, policies that restrict an inmate's direct access to law libraries have been upheld by the courts as non-violative of the prisoners' constitutional right of meaningful access to the courts. Campbell v. Miller, 787 F.2d 217, 227 (7th Cir. 1986), cert. denied, 479 U.S. 1019 (1986) (restrictions on direct access resulting in eight day delay were justifiable by security considerations at highest level maximum security prison). Harrington v. Holshouser, 741 F.2d 66, 69 (4th Cir. 1984) (fifteen day delay in gaining access to law library for inmates in disciplinary segregation was permissible).

The seminal case on the constitutional right of access to the courts in the prison setting is Bounds v. Smith, supra. The district court in its original decision relied on Bounds and observed that prison authorities may satisfy the obligation to provide meaningful access in any one of three ways: (1) provide adequate law libraries; (2) provide adequate assistance by legally trained individuals; or (3) a combination of legal assistance and law library. (A 301).

As stated above, the Commonwealth officials presented evidence of the adequacy of the Peterkin libraries, including the findings of the Eastern District that the Peterkin libraries met the standard of Bounds v. Smith. In response to that evidence, the Tillery class failed to present any evidence to contest the position of the Commonwealth officials and did not present any evidence that the needs of other RHU inmates are any different from

those inmates on death row.[2] It is apparent from the record alone that the district court should have approved the plan of the Commonwealth officials regarding mini law libraries since the plaintiffs failed to present any evidence that the needs of the other RHU inmates were any greater than the needs of the capital cases, for which the Peterkin libraries were deemed to be adequate.

The district court's refusal to approve the plan proposed for RHU inmates was in error, and should be reversed.

[2]Apparently the district court, perhaps sensing the absence of an evidentiary basis upon which to reject the Peterkin standard, unilaterally submitted the prison law library booklist to the Third Circuit librarian and, receiving her input, reached conclusions about which materials should be added, apparently to both the main law library and the mini law libraries. (A 315-317). It is clear that it is "impermissible for a trial judge to deliberately set about gathering facts outside the record". Price Bros. Co. v. Philadelphia Gear Corp., 629 F.2d 444, 447 (6th Cir. 1980). It is the position of the Commonwealth officials that this impermissible communication and the district court's apparent reliance upon it requires at least a remand of this matter to the district court, if reversal is not granted.

CONCLUSION

For the foregoing reasons, the order of the district court dated July 21, 1992 should be reversed.

Respectfully submitted,

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CERTIFICATE OF ADMISSION TO THE BAR OF THE THIRD CIRCUIT

I, Gloria A. Tischuk, Deputy Attorney General, hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

Gloria A. Tischuk

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the within **Brief of Appellants, David Owens and George Petsock** was served upon the following via first-class mail on November 9, 1992:

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