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Court of Chancery of Delaware, New Castle County.

MISTER AFRICA X, Plaintiff,
v.
GOVERNOR CASTLE, Richard F. Davis, Robert J. Watson, Hank Risley, Walter Redman, Tom Gulledge, Donald Davis, Tom Carroll, Leo Boyle, Paul Meunier, Charles Cunningham, Jack Stephenson, Geo Dixon, Daniel Boone, Joyce Talley, Bruce Hobler, and Francene Kobus, Defendants.
James Lee ROSS, Plaintiff,
v.
Walter W. REDMAN and Robert J. Watson, Defendants.
MISTER AFRICA X, Plaintiff,
v.
Robert J. WATSON, Stan Taylor and Francene M. Kobus, Defendants.
Cecil BROWNE, Plaintiff,
v.
Governor CASTLE, Robert J. Watson, Hank Risley, Warden Redman, Richard F. Davis, Joyce Talley, Bruce Hobler, Francene Kobus, John Walsh, Chris Zaborowski, Betty Burris, and Tom Gulledge, Defendants.
Jesse NICHOLSON and Richard Irwin, Plaintiffs,
v.
Walter REDMAN, et al., Defendants.
MISTER AFRICA X, Plaintiff,
v.
Robert J. WATSON, Stan Taylor and Francene M. Kobus, Defendants.
George ROBINSON, Plaintiff,
v.
WATSON, et al., Defendants.
Todd M. HALL, Plaintiff,
v.
WATSON, et al., Defendants.
Kenneth GUINN, Plaintiff,
v.
TAYLOR, et al., Defendants.

Civ. A. Nos. 12466, 12547, 12618, 12891, 12928, 12975, 1164-K, 1171-K, 1172-K. | Draft Report Jan. 4, 1994. | Final Report March 9, 1994.

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Opinion

MASTERS REPORT

KIGER, MASTER.

***1** This is a report on a number of issues arising in these cases, all of which have common elements. The parties have filed petitions that are similar, at times identical, in their wording with respect to issues of fair access to the courts and housing conditions at the Maximum Security Unit ("MSU") at the Delaware Correctional Center at Smyrna, Delaware. It is advisable to consolidate these cases with respect to those issues that are common to all, and to treat each case individually to the extent that it presents issues that are not shared with other cases. I realize that there is opposition to consolidation from virtually all the plaintiffs. Nonetheless, I cannot see that anyone's rights are prejudiced in any way by consolidation, whereas the commonality of interests is such that consolidation promotes greater efficiency in handling these cases for all parties as well as the Court. Accordingly, the cases have by separate order been consolidated under New Castle County civil action number 12466.

I

Common Elements

Remarks on points of similarity are appropriate before proceeding to the issues raised by the parties. First of all,

with the exception of Kenneth Guinn, who has been released from prison, all the plaintiffs complain of their treatment as current inmates at MSU. Guinn makes the same complaints, but is no longer able to maintain that they are ongoing as to himself. The nature of the complaints is, by and large, two-fold: that living conditions are not suitable and that access to the courts is impeded by the lack of an adequate law library. The general issue of living conditions has a number of subsidiary issues, among them issues of mail tampering and access to rehabilitation. In light of the fact that there is a great similarity of issues and allegations of fact in all the complaints, and that there are differences as well, I think the clearest way to proceed is to set forth the common elements and then to discuss the status before the Court of each such issue.

II

Specific Issues

1. The law library issues. MSU is a division of the prison at Smyrna that houses prisoners who represent a security risk in the judgment of prison officials. It is a separate building with its own satellite law library. The MSU law library is serviced from the main law library at the central prison complex. According to the plaintiffs,

> Defendants have deliberately and by design denied access to the Courts to inmates incarcerated in the MSU, including the plaintiff. First, prisoners are not permitted to use the law library available to the general prison population. A separate, smaller facility is provided. The smaller MSU law library has not in the past and currently does not include materials sufficient to conduct reasonably effective legal research. Defendants have been aware of this shortcoming but have taken no action to correct the problem despite the affirmative obligation to do so. Further, MSU inmates are not provided with timely access to materials requested from the main prison library by defendant Kobus. Because necessary for legal research are withheld from MSU inmates, they are deprived of meaningful access to courts. Additionally, the paralegal system presently in effect does not adequately assist inmates * since these inmates have been forced to rely solely upon the paralegals for assistance with legal research but these paralegals are unable to effectively provide this assistance because of lack of time. Defendant Kobus is directly responsible for ensuring that adequately trained personnel provide sufficient aid to the inmates. Finally, defendant Kobus has on numerous occasions refused to provide inmates with a copy of the Court's opinion in *Abdul-Akbar* although that very opinion informs prisoners of their right to legal access.

***2** The quoted language is from *Mr. Africa X v. Watson,* civil action 12618, paragraph 19. The asterisk has been inserted in the quotation to show the point after which the quotation contains language not found in the other complaints. Up to that point, all the complaints contain identical language except for Browne v. Castle, 12891, which is substantially the same, and Mr. Africa X v. Watson, 12975, which in addition to this language adds allegations about the inadequacy of a "paging" system in use at the MSU law library. The paging system is a procedure whereby photocopies of materials available at the prison's main law library, such as cases, motions and briefs, can be obtained by MSU inmates free of charge.

The paging system issue indicates that by the time 12975 was filed in May, 1993, the plaintiff in that case, Mr. Africa X, had become aware of a decision of the District Court for Delaware in *Abdul-Akbar v. Watson,* 775 F.Supp. 735 (D.Del.1991), which found the paging system wanting. *Abdul-Akbar* was an action brought pursuant to a section of the Civil Rights Act of 1871, 42 U.S.C. § 1983. The plaintiff in that case charged that the library and legal resource facilities at MSU were constitutionally inadequate to afford him a right of access to the courts.

Some of the plaintiffs before this Court have also raised issues about the value of the paralegal assistance afforded them. This issue was also addressed by the District Court in its opinion.

The problem the plaintiffs encounter in placing reliance on the District Court opinion just referred to is that it has been overruled by the Third Circuit Court of Appeals. *See Abdul-Akbar v. Watson,* CA3, 4 F.3d 195 (1993), a copy of which is enclosed for the convenience of the plaintiffs in this case. The Circuit Court vacated the orders entered

by the District Court and remanded the case with directions to enter judgement for the defendants.

Caution is warranted in evaluating the relevance of the Circuit Court's opinion to the issues in this case. That case was brought in a different court system and involved a plaintiff who is not before this Court. Defendants Watson, Redman, Risley and Hobler in the *Abdul-Akbar* case are, however, before this Court as well.

In addition to the differences in the identities of the parties to the two cases, the federal court action was brought under a law meant to be enforced in the federal courts, not state courts, and sought money damages. The issues addressed by the Circuit Court, however, appear to be extremely close, if not in fact identical, to some of the issues raised in the present state court cases. Finally, there is the consideration that the plaintiffs before this Court have repeatedly pled the District Court opinion as a basis for this Court to hold that the defendants in the cases before it are liable to the plaintiffs. In addition to the plaintiffs' insistence on the relevance of the federal actions to the issues raised in this Court, there is also an important consideration that many of the landmark or otherwise significant cases in the field of prisoners' rights law are federal cases. Hence, the importance attached to those cases by the Circuit Court with jurisdiction over this area of the country, and the interpretations given those cases by the Circuit Court, are important aids to evaluating the relevance of those cases to this proceeding.

***3** On all counts the Circuit Court disagreed with the decision of the District Court with respect to access to the courts. "Access to the courts" is the way the plaintiffs in this case have characterized the issues centering on the library and availability of research materials. This is the same terminology used by the plaintiff in the federal action.

The three aspects of access to the courts that the Circuit Court considered in its opinion are the adequacy of the satellite law library, the paging system and the availability of paralegals. These three elements, which the court referred to as a package of legal resources, were discussed partly as a package and partly as discrete components of the package. The overall treatment, however, was as a package.

One thing that emerges from the Circuit Court's opinion, which had not been brought to my attention formally by any of the parties to these proceedings, is a decision of the District Court that is mentioned by the Circuit Court as bearing on the adequacy of the law library at MSU. The Circuit Court refers to *Hearn v. Redman,* C.A. No. 83-794 (D.Del.1985), in its opinion and notes that the original satellite library at MSU was prescribed by a consent decree in that case that "required that all of the treatises, forms and rules specified in the consent order be made available to MSU inmates as supplements to the then-existing library. It also provided that replacement to these volumes was to be made at the option of the Department of Corrections subject to availability of funds. The terms and condition of access were specified in the consent decree, as was the employment of a librarian and a part-time paralegal (subject to adequate funding)." 4 F.3rd at 198. The consent decree in *Hearn* was fashioned by the District Court along the lines prescribed in *Bounds v. Smith,* 430 U.S. 817 (1977). More will be said of *Bounds* in a moment. In the opinion of the Circuit Court, it was critical to note that the interpretations given *Bounds* have ill-defined the specific limits of the right announced in that case.

Returning to *Hearn* later in its decision, the Circuit Court noted that "Nothing in the district court's findings in the instant case even suggests that the officials here had violated any of the terms of the *Hearn* consent order. Rather, the district court inexplicably considered it 'inexcusable that the defendants simply relied on the consent decree and ignored their constitutional obligations....' " *Id.,* at 204. The Court shortly afterwards remarks that "While the district court in this case may differ from the conclusions reached by its predecessor, we cannot regard the mere difference of opinion as the equivalent of establishing a clear constitutional right. The most that can be inferred from that difference of opinion is that the parameters of *Bounds* were still uncertain at the time of Abdul-Akbar's incarceration in MSU." *Id.* at 205. The Court then goes on to describe in detail the conceptual background against which the *Abdul-Akbar* case was brought:

> ***4** Indeed, if we ourselves were required to independently address the issue of constitutionality on this appeal-an issue which we need not, and do not, decide-we would have been strongly inclined to have held that *Bounds'* minimum requirements had been met in light of the blend of library and legal resources adopted at the MSU, as measured against the standard we have articulated. Our inclination has been informed by the officials' reliance upon, and compliance with, the *Hearn v. Redman* consent decree; the magistrate judge's analysis of this very case, which led her to uphold the constitutionality of MSU's legal resources; Abdul-Akbar's very conspicuous access to the library and legal resources available to MSU inmates, as evidenced by the

> voluminous photocopies he had acquired and the numerous cases he had filed; the substantial security considerations, dictated by the dangers posed by MSU inmates; and the district court's expansive reading of *Bounds.*

Id. Having gone this far, the Circuit Court went on to comment on the difficulty of applying *Bounds* in a given situation:

> We are especially impressed not only with the historically inexact state of the *Bounds* minimum adequacy standard, but with the fact that the district court, the district court's predecessor, the magistrate judge, as well as this very panel have registered conflicting views over the proper application of the *Bounds* standard to the MSU. We would thus be exceedingly hard-pressed to hold that these four defendant officials, who are not as learned in the legal discipline as are those responsible for fashioning constitutional rules, could have been expected to recognize the existence and nature of the constitutional right that the district court held to be clearly established. Indeed, if members of the judiciary cannot reach a clear consensus regarding "[t]he contours of the right" articulated in *Bounds, see Anderson v. Creighton,* 483 U.S. at 640, can we reasonably expect more from those who are required to implement those rights?

Id.

The Circuit Court emphasized the importance on appeal, in its view, of the defendants' compliance with the consent decree in *Hearn*:

> [The magistrate judge's decision to grant summary judgment for the defendants in an earlier phase of *Abdul-Akbar*] was reached in the wake of a 1985 consent decree entered by a federal district court-a consent decree which involved the same maximum security facility that we are concerned with here. That consent decree established an MSU legal access plan designed expressly to satisfy constitutional requirements. *See* Consent Decree in *Hearn v. Redman.* No. 83-794 (D.Del.) (A.555). Among other things, the *Hearn v. Redman* consent decree called for the acquisition of the MSU library holdings listed in Appendix A of the district court's opinion; the 9:00 a.m. to 11:00 a.m. and 1:00 p.m. to 3:00 p.m. visiting hours for the MSU library; the one-inmate-per-visit limitation (subject to security considerations); the full-time librarian for the main library; and the certified part-time paralegal (for at least six hours per week) to assist DCC inmates, *including* MSU inmates.

***5** *Id.,* at 204 (emphasis in original). Having gone over these considerations at some length, it is now appropriate to turn to the Circuit Court's actual holding, which deserves quotation in full:

> In the context of the instant case, we are mindful that the MSU library is not the primary facility at the DCC, but is merely an adjunct to the prison's main library. Hence, the "availability" of legal access at the MSU that commanded the district court's attention and that commands our attention is far different in character than the "availability" which would otherwise be found necessary at a penal institution's sole library facility, as was the case in *Bounds.*
>
> As we can best determine, the standard to be applied is whether the legal resources available to a prisoner will enable him to identify the legal issues he desires to present to the relevant authorities, including the courts, and to make his communications with and presentations to those authorities understood. Thus, in order for segregated prisoners, who do not have access to an institution's main law library, to obtain legal access of "equal caliber" to the main library's resources, *Valentine v. Beyer,* 850 F.2d at 955, there must be some means by which documents and materials, which are not themselves available to the segregated inmates, can be identified by and furnished to such inmates in a timely fashion.
>
> With the availability of basic federal and state indices, citators, digests, self-help manuals and rules of court, along with some degree of paralegal assistance and a "paging system" through which photocopies of materials from an institution's primary facility may be obtained, we are persuaded that even a prisoner in a segregated unit such as the MSU would not be denied legal access to the courts. Nor could the absence from the satellite library of any particular volume or research aid be construed as a barrier to constitutionally required legal access. *See Valentine v. Beyer,* 850 F.2d at 955 ("practices or regulations are invalid [under *Bounds*] if they can be construed as imposing barriers to [legal] access").
>
> By identifying these basic research categories, we do not intend to exclude other categories of treatises,

> digests or other research tools that may be peculiarly appropriate to a particular facility. Nor do we intend that the designated categories that we have suggested cannot vary with the particular institution. The hallmark of an adequate satellite system, which achieves the broad goals of *Bounds* is, in our opinion, whether the mix of paralegal services, copying services and available research materials can provide sufficient information so that a prisoner's claims or defenses can be reasonably and adequately presented. A court's task in applying the teaching of *Bounds* to any penal institution is not to prescribe the maximum requirements of an optimum library and legal resource facility, but only to determine, as best it can, whether the resources provided satisfy the minimum that *Bounds* requires. *We believe that a satellite library of the nature which we have described will afford any prisoner in a segregated unit, such as MSU, sufficient, relevant materials to satisfy his constitutional right of access to the courts.*

***6** *Id.,* at 203-204. (Emphasis supplied.)

To the extent the plaintiffs in the instant cases rely on the District Court's holding in *Abdul-Akbar* to establish that there is a constitutional right to access to the courts that is not being met, the Circuit Court opinion in that same case makes it clear that the holding of the District Court is no longer a valid precedent. Thus, absent some other basis than the District Court holding in *Abdul-Akbar* for maintaining that access to the courts has been denied to them, these cases should be dismissed with respect to this issue for failure to state a cause of action.

Furthermore, inasmuch as the adequacy of the prison library system is a matter that has been before the District Court since at least 1985, when the *Hearn* consent decree was entered, it seems to me that this is an area in which the state courts should decline to act until such time as there is no longer an issue before the District Court as to whether there has been compliance with its previous orders. Were there no adequate remedy in the federal court system, the situation would be different. The *Abdul-Akbar* case demonstrates that there is a viable remedy in that court system. Consequently, unless the plaintiffs can demonstrate that there is a basis for relief by this Court that neither rests upon the *Abdul-Akbar* case nor asks this Court to interfere in matters already properly before the District Court, and that cannot be brought in the District Court, this Court should decline to act.

2. Mail tampering and access to rehabilitation. These issues have been raised by most of the plaintiffs. These subjects were covered in the settlement agreement between the parties in *Birowski et al. v. Redman, et al.,* C.A. No. 12402. The settlement agreement was entered by the parties on February 18, 1992. Pages 2 and 3 thereof set forth the terms of the agreement with respect to "legal mail", as it is referred to there. As I understood the *Birowski* case when it was active, and as I read the settlement agreement, the plaintiffs sued on behalf of themselves with the intention of benefitting all others similarly situated as well as themselves, and the language of the settlement agreement suggests to me that the intention of the parties in entering this agreement was to confer a benefit on all MSU inmates. Therefore, it is necessary for the plaintiffs in this case to state as specifically as possible whether they are complaining that the terms of the *Birowski* settlement are not being honored, or whether they believe that they have causes of action wholly apart from those brought in *Birowski* and covered by the settlement agreement. I point out now, that it is my reading of the complaints in this consolidated action that, to the extent they refer to a mail problem, they are complaining about matters covered by the settlement agreement. If that is the case, the proper way to approach this matter is not to litigate whether there is an independent right to be free of the interference complained of, but whether the plaintiffs have been denied their rights as third party beneficiaries of the settlement agreement.

***7** The same sort of situation exists with respect to the request for rehabilitation. This is also covered by the settlement agreement, at page 4. If anyone believes that he has a problem not covered by the agreement, which is not clear from the pleadings in this case, that is a matter that can be litigated. If the grievance is one covered by the *Birowski* agreement, the issue is whether there has been compliance with the agreement, not whether there is some other right to be enforced. The issue in *Birowski* was whether such a right existed, and given the existence of the settlement agreement, that issue is no longer uppermost, it has been replaced by the possibility of specific enforcement of the contract.

3. General environmental issues. An issue has been raised about the general environment at MSU. This has to do with broken windows, exposed electrical wiring and vermin infestation. Again, the *Birowski* settlement seems to cover this issue, see page 4 thereof. To the extent that the plaintiffs are claiming something different from the situation in *Birowski,* they are entitled to be heard. However, if the issue is enforcement of that agreement, as seems to be the case, that needs to be clarified.

III

Conclusion

In concluding, let me go over again the points I have

made so that there is no misunderstanding. It is my view that to the extent any theory of a constitutional right of access to the courts that was based on the holding of the District Court in *Abdul-Akbar,* that theory has been vitiated by the holding of the Third Circuit Court of Appeals on the appeal of that case. Moreover, given the existence of the *Hearn* consent order, it would appear that the District Court has had the issue of access to the courts before it for a number of years and, therefore, state courts should not interfere so long as there is adequate protection of prisoner rights in the federal court system. If there is another basis for the plaintiffs's claim of denial of access to the court, that may be a basis for relief, but as things now stand, that does not appear to be the case.

As to the issues of interference with the mails, rehabilitation and environmental conditions, those issues appear to be adequately covered by the settlement agreement in the *Birowski* case. Therefore, any complaint with respect to matters covered by that agreement should be litigated in the context of specific enforcement of the agreement or contempt proceedings for failure to comply, rather than as a new lawsuit.

The remaining issue, not discussed herein, is whether impermissible restrictions have been imposed on the plaintiffs with respect to the amount of personal property they are allowed to keep in their cells. The point they make is that the amount allowed is unreasonably small for any prisoner who is actively litigating in the court system because the amount of paperwork, in terms of correspondence, pleadings, and research materials, will far exceed the limitations imposed on prisoners at MSU with respect to their personal property. This issue cannot be addressed at this time in the absence of written arguments by both sides to this controversy, supported by citations to treatises and judicial decisions, where appropriate. It will be addressed after each side has had an opportunity to make written submissions.

ORDER

***8** WHEREAS, a draft report in this matter was issued by Master Richard C. Kiger on January 4, 1994, and the only parties filing exceptions thereto were Plaintiffs Cecil Browne and Mister Africa X, and the draft report was thereafter filed as the final report on March 9, 1994, and the only party filing an exception to the Master's final report was Plaintiff Mister Africa X; and

WHEREAS, the Court has reviewed the Master's final report and the exceptions thereto;

WHEREFORE, the Court approves the Master's final report as follows:

1. *Consolidation.* The Master's order consolidating the above-captioned actions is hereby approved and confirmed, and this action shall proceed hereafter as Consolidated Civil Action No. 12466.

2. *Abdul-Akbar v. Watson Issues.* To the extent any plaintiff in this consolidated proceeding asserts a claim based on the decision of the United States District Court for the District of Delaware in *Abdul-Akbar v. Watson,* 775 F.Supp. 735 (D.Del.1991), those claims are hereby dismissed by virtue of the reversing decision of the Third Circuit Court of Appeals in *Abdul-Akbar v. Watson,* 3rd Cir., 4 F.3d 195 (1993).

3. *Birowski Settlement Issues.*

(a) Each plaintiff shall within sixty (60) days from the date of this Order file with this Court a statement advising the Court whether his claims of alleged interference with the mails, rehabilitation, and environmental conditions (as described more fully in the final report) are the same as or different from the claims disposed of in the *Birowski* settlement agreement. If a plaintiff takes the position that his claims are different from those disposed of by the *Birowski* settlement agreement, that plaintiff shall explain in his statement in what specific respects his claims are different. A plaintiff who does not timely file a statement shall be deemed a beneficiary of the *Birowski* settlement agreement, and as such will bear the burden of demonstrating that that settlement agreement was breached with respect to that plaintiff. In the event that a plaintiff demonstrates that his claim or claims are not disposed of by the *Birowski* settlement agreement, those claims will be treated as new, independent claims.

(b) If a plaintiff files a statement under Paragraph 3(a), the defendants shall file an answering statement within thirty days thereafter, and any affected plaintiff shall be entitled to file a reply statement within thirty days. In all events, each party shall develop a record supporting the facts being relied upon, which record shall initially consist of affidavits. Oral testimony will be allowed if the Court determines that oral testimony is warranted.

4. *Personal Property Issues.* Within ninety (90) days from the entry of this Order, each plaintiff shall file a memorandum of law, supported by affidavits if the plaintiff so desires, explaining in what respects the challenged restrictions concerning what personal property may be maintained in a Maximum Security Unit cell, are unreasonable, unconstitutional, or otherwise improper. Within thirty (30) days of the filing of the plaintiff's memorandum of law, the defendants shall respond by filing an answering memorandum and supporting affidavits. Should the defendants file an answering memorandum, each plaintiff will be entitled to file a reply memorandum in response within thirty (30) days

thereafter.

***9** 5. *Mister Africa X's Exceptions.* With respect to the exceptions filed by Mister Africa X:

a. his objection to consolidation is hereby overruled, because consolidation will not deny him any right that he may have to present his claim individually;

b. his objection that he is entitled to a jury trial is overruled on the basis that there is no right to a jury trial in a court of equity, and that this Court has the power to sever any issues that in its judgment are suitable for a jury trial and to transfer such issues for trial in the Superior Court. *See Saunders v. Saunders,* Del.Supr., 71 A.2d 258 (1950); *Getty Refining & Marketing v. Park Oil, Inc.,* Del.Ch., 385 A.2d 147 (1978).

IT IS SO ORDERED.