KeyCite Yellow Flag - Negative Treatment
Amended by Shango v. Jurich, N.D.Ill., June 27, 1989
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United States District Court, N.D. Illinois, Eastern Division.

SHANGO, (Cleve Heidelberg, Jr.), et al., Plaintiffs,
v.
Mary JURICH, et al., Defendants.
James L. SIMS, Plaintiff,
v.
Mary JURICH, et al., Defendants.
Steve NICHOLS, et al., Plaintiffs,
v.
Mary JURICH, et al., Defendants.

Nos. 74 C 3598, 76 C 3068, 76 C 3379, 77 C 103, 75 C 3388 and 76 C 3600. | July 18, 1988.

Opinion

MEMORANDUM OPINION AND ORDER

WILLIAMS, District Judge.

***1** This civil-rights litigation, brought by inmates at the Stateville Correctional Center ("Stateville") in Joliet, Illinois, consists of four consolidated cases and two related, but formally unconsolidated cases.[1] The central issue raised in these cases concerns conditions and practices at Stateville which allegedly deprived the plaintiffs of their constitutional right of access to the courts in violation of 42 U.S.C. § 1983. Certain individual plaintiffs raise separate § 1983 claims for damages and other relief unrelated to the right-of-access issue. The court will address those various claims individually.

I

Constitutional Right of Access to the Courts

A. ***Preliminary Statement of the Case***[2]
1. *The Prison*

Stateville is an Illinois maximum-security prison operated by the Illinois Department of Corrections. The prison, located in Joliet, Illinois, houses over 2300 inmates, the vast majority of whom are incarcerated for murder or other Class X felonies.[3] Stateville employs approximately 1000 personnel to run the facility.

Upon arriving at Stateville, inmates are confined to an orientation center for approximately one or two weeks where they are classified by prison officials according to such factors as aggressiveness, criminal history, homosexuality, and behavior-adjustment history. After orientation, the prison officials at Stateville classify the inmates and then assign them to one of five cellhouses, identified by the letters B through F. Prior to 1982, the general-inmate population was housed in Cellhouses C, D, and F. Inmates who were under investigation or in disciplinary segregation were housed in Cellhouse B–West. Finally, Cellhouse E contained inmates in safekeeping or protective custody. In addition to these cellhouses, Stateville also maintains a medium-security dormitory, a hospital for inmates in general custody and a detention hospital for inmates in restrictive custody.

In April 1982, the Department of Corrections changed the cellhouse assignments because of physical alterations to the institution. Since 1985, the general inmate-population has been housed in Cellhouses B–East, B–West, E, F and G. Inmates in protective custody are now housed, in part, with inmates from the general population in Cellhouse H. The segregation and orientation units are now contained in Cellhouse I.

Each cellhouse operates essentially as its own miniprison within the institution. For security and administrative reasons, the prison officials keep inmates in one cellhouse from coming into contact with inmates from other cellhouses. Consequently, Stateville offers certain activities and services to each of the cellhouses at times different from that of other cellhouses.

For security reasons, Stateville strictly controls inmate movement. When a large group of inmates moves from one place to another, such as the dining hall to their cells, the inmates are in line and are escorted by security guards. When an individual inmate wants to move from one place of the institution to another, the inmate must make an advanced request for a pass. Stateville does not permit inmates held in special custody, such as segregation or protective custody, to move independently throughout the institution by pass; instead the inmates in special custody must be escorted by security guards. Finally, based on the prison policy that the respective cellhouses must participate in certain activities at separate times, an inmate is normally prohibited from engaging in an activity at a particular time if the inmate's cellhouse is not then scheduled for that activity.

The prison officials also conduct periodic inmate-counts.

During these scheduled counts, the prison halts all inmate movement until each inmate is accounted for. Moreover, Stateville during these counts places the entire institution or individual cellhouses on lockdown to allow security personnel to conduct searches for contraband in inmate cells or other areas of the institution. Likewise, during periods of prison disturbances, such as escapes or assaults, prison officials may place the entire institution or individual cellhouses on lockdown until the disturbance has been quelled. Of course when the prison officials halt all inmate movement inmates are not permitted to engage in many of the activities or programs normally offered by Stateville.

***2** 2. *The Law Library*

Prior to October, 1977, Stateville, through the Bur Oak Regional Library System,[4] operated essentially two law libraries within the institution; one for inmates in the general population and one in Cellhouse B for inmates confined to special custody. The court will discuss the conditions and practices of the respective libraries separately.

The law library accessible to the general population was originally contained within a room which measured approximately 22 feet by 32 feet and could seat approximately 18 inmates at any one time. During the period from January 1, 1974 to September, 1977, the legal materials in this library did not meet the minimum standards established by the American Association of Law Libraries ("AALL") in the publication *Recommended Collections For Prison and Other Institutional Law Libraries*. In September 1977, however, Stateville improved the library's quality so as to satisfy the standards set by the AALL in that publication.

In addition to its collection of legal materials, Stateville provides inmates using the law library with limited quantities of writing materials as well as free envelopes and postage for legal mail. Prior to July 1980, inmates received, on request, five sheets of writing paper on each visit. Approximately five typewriters were available to the inmates, but the inmates often complained that these typewriters were inoperative.

The library also provides the inmates with photocopying services on a limited basis. Prior to April 1977, photocopying was available for approximately one hour a day, but only the librarian could operate the photocopying machine. Between April and September 1977, inmates were allotted ten pages of free photocopying of legal materials per month. Once an inmate exhausted his allotment, Stateville permitted no further photocopying even if the inmate was willing to pay for it. The librarian determined which documents were legal documents and therefore could be photocopied. The inmates complain that the librarian, Mary Jurich, abused her discretion in this regard by refusing to allow them to photocopy acceptable legal documents. Jurich, however, disputes this charge.

To obtain the services offered by the law library, inmates have to attend the library during the time period designated for their particular cellhouse. The warden establishes the law library hours and can change those hours at any time so long as the library service gives its approval. From 1974 until March 1977, each of the general-population cellhouses were scheduled to use the law library for four hours each week. The law library was closed on evenings, weekends and holidays.

In April 1977, the law library schedule was expanded to five hours per week for each of the three general-population cellhouses. The library, however, continued to remain closed on evenings, weekends and holidays. During the periods when the law library is closed, inmates cannot remove any of the legal materials. Rather, an inmate must either photocopy the material to the extent his monthly allotment allows or return to the library during his next scheduled session to retrieve that material again.

***3** Because of the separation of cellhouses, inmates involved in litigation but not assigned to the same cellhouse cannot consult with and assist each other unless one of them is granted additional library time and it overlaps with the other party's scheduled time. An inmate needing to consult with an inmate witness from a different cellhouse has the same problem.

An inmate's access to the law library is also restricted by Stateville's institutional practices and procedures for inmate movement. During periods of prison lockdowns and shakedowns, Stateville denies inmates library access. Partly because of these lockdowns and shakedowns, the law library was closed for 106 days in 1974, 66 days in 1975, 38 days in 1976, and 111 days in 1977 excluding weekends and holidays. Additional reasons advanced for these unscheduled closings include shortages of guards, library administration, and construction. During these unscheduled closings of the law library, inmates were not provided with any alternative access to legal materials.

Prior to the filing of the instant lawsuits, trips to the library and other prison activities were made in accordance with a call-ticket system. Under this system, an inmate wishing to use the law library signed a register in the library or filled out a request slip. On the day an inmate's cellhouse was scheduled for library use, the inmate received a call-ticket allowing him to leave his cell and travel to the library. An inmate wishing to use the library who had not received a call-ticket was not permitted to wait in his cell for a late ticket. Rather, that inmate was required to go to his work assignment where at times he never received the requested call-ticket for

that day. Furthermore, the inmate had to wait until his particular cellhouse was again scheduled for library time and then request another call-ticket.

Inmates are not permitted to use the law library until after the cellhouse receives its meal and the inmate count is finalized. Thus, if the morning or noon meals are extended beyond schedule or the inmate count is off, an inmate requesting to use the library may not actually arrive there until over a half an hour after the library has opened. The net effect of this delay, of course, is a reduction in the inmate's library time.

Since April 1977, a general population inmate can obtain additional library-time by submitting to the librarian a written request explaining the inmate's loss of library time. If the librarian denies the request, the inmate can appeal the denial to the Assistant Warden for Program Services who can either approve or deny the request. An inmate granted additional library-time can use the library at times when inmates in safe-keeping are not scheduled to use it.

Stateville does not provide lawyers or paralegals to assist the inmates in their use of the library facilities. Instead the inmates, most of whom have never completed high school,[5] must rely on a staff librarian and a system of resident legal-clerks obtained from the inmate population. Prior to 1978, Stateville employed approximately four resident legal-clerks to assist the inmates during scheduled library-hours. Two of the four had not received any formal training in legal research nor were they required to pass any test of their knowledge in the law or legal research methods. Rather, their training was limited to informal discussions with the other two clerks. The legal clerks spend considerable portions of their time performing such administrative tasks as inventory, shelving books and logging in inmates. These administrative tasks reduce the time the resident clerks can spend assisting other inmates with their legal problems.

***4** In addition to the resident legal-clerks, Stateville also has an unknown number of self-proclaimed "jailhouse lawyers" who assist other inmates with legal problems. The jailhouse lawyers, who for various reasons are familiar with law and court procedure, are not formally recognized by the prison administration. Accordingly, the jailhouse lawyers are not allowed any access to the law library on a schedule that is different from that of the other residents in their cellhouse, nor are they permitted to assist inmates in the cellhouse unless they are in adjoining cells. As a result, an inmate may only obtain access to those jailhouse lawyers who happen to be located in the inmate's own cellhouse and are signed up to use the library during the inmate's scheduled time. While in the library, inmates and jailhouse lawyers may converse with each other, co-litigants or witnesses, so long as the conversations do not disturb other inmates using the law library. Since no areas are set aside in the library for such meetings, this requirement is oftentimes difficult to satisfy given the relatively small size of the room.

Prior to 1977, special-custody inmates confined to Cellhouse B did not have access to the general population's law library or to jailhouse lawyers. Instead, special-custody inmates were limited to using a separate legal-collection maintained in their cellhouse. This special-custody library consisted mostly of paper-bound advance sheets received from the prison library after those sheets had been replaced by a permanent hardbound volume. As a consequence, the legal collection in Cellhouse B at any one time did not contain materials from the previous six months. Furthermore, the collection did not contain any volumes of the Federal Digest. Certain volumes of the Illinois Revised Statutes, the Illinois Reports, the Illinois Digest, and Shepard's Citations were also missing. In December 1976, inmates in protective custody were moved to Cellhouse E where they could not use either the law library or the Cellhouse B collection. In March 1977, the law library schedule was expanded to allow the protective-custody inmates use of the law library for five hours each week.

The special-custody library facilities in Cellhouse B consisted of five locked study-cells and a cell for the one resident legal-clerk assigned to the cellhouse. Use of the legal collection was on a first-come, first-served basis and was limited to only five inmates at one time out of approximately 400. When an inmate was brought to the collection, he was locked in one of the five study-cells and had to request the resident legal-clerk to retrieve materials for him. The inmates themselves had no direct access to these materials. If the particular material requested by the inmate was missing, a copy could be obtained from the law library used by the general population to the extent that the inmate's photocopying allotment permitted.

***5** As with the inmates in general custody, inmates in Cellhouse B received free writing-materials in limited quantities. Prior to March 1977, an inmate using the Cellhouse B collection received three sheets of typing paper for use on one of the cellhouse's four typewriters. Between March and October 1977, the policy was changed to give an inmate five sheets of bond typing-paper and 10 sheets of onionskin paper.

Prior to July 8, 1977, special-custody inmates could use the Cellhouse B collection from approximately 9:00 a.m. to 11:00 a.m. and from noon to 2:00 p.m. Monday through Friday or for a total of 4 hours each weekday. Between August and October 1977, the study cells were open seven days a week for four hours each day.

Inmates confined in Stateville's regular hospital or

detention hospital are housed separately from the other prison cellhouses. Prior to January 1977, inmates in the hospitals had no access to the law library, nor did the hospitals contain their own legal collections. Similarly, incoming inmates confined to the orientation center at Stateville had no access to the law library or to jailhouse lawyers. Beginning in January 1977, residents confined to the hospitals for an extended period of time were entitled to receive legal forms and a limited amount of photocopying. Since April 1977, access to the law library has been available only to those patients who can be moved to the law library. The time those patients can spend in the library is limited to five hours per week.

3. *History of the Litigation*

Beginning in 1974, the inmates at Stateville began bringing a series of legal actions challenging the conditions of the law library facilities at the institution. Of these, the central case is *Shango v. Jurich,* No. 74 C 3598. In that case, the plaintiffs Shango[6] and Clarence E. Wilson filed a complaint in 1974 seeking declaratory and injunctive relief pursuant to § 1983 against certain individuals at Stateville and Bur Oak.[7] In Count I, the plaintiffs allege that the defendants conspired to and did deprive plaintiffs, under color of state law, of their rights to access to the courts by restricting the plaintiffs' use of the law library facilities. Specifically, the plaintiffs complain that the existing library schedule and practices unreasonably restrict their use of the facilities, writing materials and photocopying equipment. Additionally, the plaintiffs allege that the defendants restrict their actual use of the library by closing the library during hours it is scheduled to be open, requiring call-tickets, and prohibiting any use of the library by inmates confined in special-custody, the orientation center and the hospitals. The plaintiffs further allege in this count that the defendants unreasonably prevented co-litigants and witnesses from meeting in the library. Count II makes the general allegation that the defendants have unlawfully restricted the inmates' access to jailhouse lawyers and those other persons trained in legal research.

In Count III, the plaintiffs sought an accounting under state law of certain state-funds allocated to Stateville for the prison law library facilities. On December 7, 1977, however, Judge Flaum of this district dismissed this count for lack of pendent jurisdiction, finding that the novel questions raised by Count III are more appropriate for the state courts to resolve. On October 5, 1977 Judge Flaum dismissed all claims requesting injunctive relief from Mary Jurich since she was no longer an employee at Stateville. Finally, two similar actions, entitled *Shango v. Sielaff,* No. 74 C 3599 and *Wilson v. Jurich,* 75 C 285 were dismissed without prejudice since their claims were fully encompassed within the allegations contained in the complaint already discussed.

***6** In *Henderson v. Brierton,* No. 76 C 3068, the plaintiffs Sylvester Henderson, John DuBose, Chris Heflin and Elbert Hunter also filed a § 1983 action charging certain officials at Stateville with infringing the plaintiffs' constitutional right of access to the courts.[8] Specifically, the plaintiffs complain about the inadequacy of the law library hours, their inability to obtain access to the law library under existing procedures, their inability to obtain access to photocopying, and the inadequacy of the legal collection maintained in Cellhouse B. For relief, these plaintiffs seek an injunction.

Cosentino v. Brierton, No. 76 C 3379, is an action brought by Stateville inmates James M. Cosentino and James E. Bell charging David Brierton and Sgt. William Johnson with denial of the plaintiffs' right of access to the courts. Specifically, the plaintiffs in *Cosentino* allege that the defendants have denied requests to use the law library thereby hindering inmates in segregation from obtaining access to the law library, and that the inmate access to jailhouse lawyers or other trained legal assistance is inadequate. These plaintiffs also seek injunctive relief.

Finally, in *Green v. Rowe,* No. 77 C 103, the plaintiff Tyreen Green alleges similar burdens on access and also requests injunctive relief. Green was released from Stateville subsequent to the filing of his suit.

On December 7, 1977, Judge Flaum consolidated *Henderson v. Brierton, Cosentino v. Brierton,* and *Green v. Rowe* with *Shango v. Jurich* for purposes of discovery and trial. On December 7, 1977, Judge Flaum, pursuant to Fed.R.Civ.P. 23(c)(1), certified as a class all inmates in the Stateville Correctional Center. Judge Flaum designated Shango and Wilson as representatives of the class.

The plaintiffs in the two related cases seek monetary damages; consequently those cases were not consolidated with *Shango v. Jurich.* In *Nichols v. Kapture,* No. 74 C 3600, the plaintiffs filed a complaint against Robert Kapture and Mary Jurich charging them with violating the plaintiffs' alleged right to meet in the law library with co-litigants or jailhouse lawyers.[9] In *Sims v. Jurich,* No. 75 C 3388, the plaintiff James Sims filed his complaint against the defendants in their individual and official capacities and charges them with wrongfully discharging him from his position as resident legal-clerk.[10] Additionally, Sims seeks declaratory and injunctive relief identical to that sought by the class.

4. *Subsequent Changes Implemented by Stateville*

***7** Subsequent to the filing of these actions, Stateville changed the library facilities and the institution's procedures in significant ways. The greatest changes were moving the library to a new facility and eliminating the Cellhouse B collection. The new facility increased the

floor space to approximately 3880 square feet and can seat about 80 to 100 persons. Inmates in special custody no longer use a separate library but now utilize study cells or cages located within the law library itself. The new law library originally contained 11 study cells measuring 7 feet by 10 feet. In early 1981, however, the prison decreased the number of study cells to 9.

The library's legal collection has also been expanded to satisfy the AALL standards. In 1978, the library transferred a number of frequently used legal-volumes from the open shelves to closed stacks kept behind the circulation desk. These materials included Smith–Hurd Illinois Revised Statutes Annotated, the Illinois Civil Practice Act, and the Illinois Supreme Court Rules. To obtain access to these materials, inmates must request the assistance of the resident library-clerk stationed at the desk. The plaintiffs argue that this arrangement has resulted in wasted time while inmates wait for the clerks to attend to their needs and, in some cases, complete refusal by the clerks inmates' requests to use the books. The defendants dispute this claim.

Stateville also expanded the scheduled availability of the law library. In 1979, Stateville increased the law library schedule to approximately 10 or 11 hours every weekday. The library, however, remained closed on weekends and holidays. Each of the five cellhouses containing inmates in general custody are now scheduled to use the law library on one designated day a week.

Inmates confined to protective custody or safekeeping are now in Cellhouse H[11] and can use the law library study cells for approximately three hours each weekday on a rotating basis between the three galleries in the cellhouse. Similarly, inmates confined to segregation or investigation units are now in Cellhouse I[12] and can use the library study-cells for approximately three hours each weekday.

Inmates confined to the orientation unit and to the hospitals still do not have regularly scheduled access to the law library or to jailhouse lawyers. But if these inmates can verify a court-imposed deadline, the prison provides them with limited access to the law library.

Stateville now permits access to the law library pursuant to a "call line" rather than the previous call-ticket system. To attend the library during their scheduled period, an inmate in general custody sends a request to the library or places his name on a sign-up sheet. From these requests, a call-sheet is prepared and sent to the cellhouse where a guard removes the inmates from their cells and forms a line for movement to the library. The plaintiffs argue that this system does not assure that inmates will go to the law library when requested because the requests are frequently not honored or a library call-line is simply not formed. When formed, the plaintiffs claim that the cell lines are formed late when going to the library and formed early before the library session has ended, thereby reducing the inmates actual library time. Additionally, the inmates complain that the call lines also conflict with the meal schedules. When such conflicts occur, the inmate is often left to choose between his meal or the library. The defendants, on the other hand, argue that the call line system is a fair and practical means of assuring an inmate's access to the library while addressing the security needs of the prison.

Notwithstanding the increase in the scheduled library-hours, the plaintiffs complain that their actual access to the library remains inhibited due to numerous unscheduled-closings. Moreover, the plaintiffs argue that when the library is scheduled to be open, the inmates rarely receive all of the library time scheduled for their cellhouse because of late arrivals or early departures of the call lines. The defendants respond that their system for providing additional library time for the inmates cures any alleged disruption in the library schedule.

***8** Another significant change instituted by Stateville since the institution of this litigation pertains to the training of the resident legal-clerks. Beginning in November, 1978, Bur Oak initiated a policy of providing 15 hours of legal training to inmates who wanted to become legal clerks. This training is provided by other legal clerks. To qualify as a legal clerk, inmates are required to possess a high-school diploma, take the training classes and pass a legal-skills test administered by Bur Oak. Prior to 1984, as compensation for their services, Bur Oak paid the resident legal-clerks a salary ranging from $72 to $160 per month, depending on the clerks degree of experience and skill. Additionally, Bur Oak provided the resident legal-clerks with some of the fringe benefits which it made available to non-resident employees, such as vacation pay, sick pay, and education leave.

Stateville also changed its method of providing writing materials and photocopying services to inmates using the library. The new system is designed to provide indigent inmates with free writing-materials and photocopying. The Department of Corrections defines an indigent inmate as one who does not receive the $10 monthly allowance provided by the Department and who does not have funds in his prison trust-account. All inmates, except those in disciplinary segregation, receive the $10 monthly allowance. Moreover, all inmates, regardless of indigency, are provided with 300 pages of free photocopying each year pursuant to a policy adopted by Bur Oak in 1978. Inmates are also permitted to purchase copies in excess of the 300–page limit by paying the actual cost per copy. Indigent residents can receive free copies in excess of the 300–page limit if they can show they need additional copies to satisfy court orders.

5. *The Consent Decree*

On August 28, 1981, Judge Shadur entered a Consent Decree which dealt with certain aspects of the law library at Stateville.[13] Pursuant to the terms of the Consent Decree, the defendants in the consolidated actions agreed to maintain a law library at Stateville capable of seating 100 residents. Bur Oak agreed to maintain the legal collection in the law library at a level that conforms to the standards set by the AALL. The Consent Decree further provides that inmates must have access to writing materials and typewriters and be given free postage for all legal mail. With respect to photocopying services, Bur Oak agreed to continue its policy of providing each inmate at Stateville with 300 pages of free photocopying a year for legal materials. Copies in excess of this limit could be purchased by the inmate. The Department of Corrections, however, did not agree to the photocopying provision, and subsequently ended the policy of providing free photocopies to inmates.

Finally, the defendants agreed to provide an adequate number of resident legal-clerks and appropriate support staff to assist inmates with their legal matters. The Consent Decree continues the requirement that resident legal-clerks take and pass a legal training program approved by Bur Oak and possess a high school diploma or its equivalent. Notwithstanding this provision of the Consent Decree, the plaintiffs maintain that the existing legal-training program does not provide the necessary training for the resident legal-clerks to assist the inmates with their legal problems. Moreover, the plaintiffs argue that the number of legal clerks is inadequate to assist all the inmates at Stateville who request legal assistance.

***9** On November 5, 1982, the parties filed cross motions for summary judgment on the outstanding issues raised in Counts I and II of the second amended complaint which were not specifically resolved by the Consent Decree. Specifically, those issues included 1) whether the defendants have denied the plaintiffs access to the courts by failing to allow them adequate use of the Stateville law library, 2) whether the defendants have denied the plaintiffs access to the courts by failing to provide them with the unencumbered use of the law library materials and facilities necessary to assert their legal rights, and 3) whether the defendants have denied the plaintiffs access to the courts by preventing inmates from meeting with their co-litigants or witnesses. In support of their respective motions, the parties submitted voluminous factual materials dealing exclusively with individual aspects of the library system and individual episodes of alleged service inadequacies.

In an opinion dated May 20, 1983, Judge Shadur denied the parties' cross motions for summary judgment. Addressing the plaintiffs' arguments first, Judge Shadur found that the parties' uncontested factual submissions only provided essential background for determining whether Stateville inmates as a class have been denied their right of access to the courts. In Judge Shadur's view, the plaintiffs had translated the right of access to the courts into a collection of specific rights to specific services. Judge Shadur found, however, that these individual ingredients in Stateville's library services did not themselves establish that Stateville's library plan, evaluated as a whole, denied the plaintiffs their constitutional right of access to the courts. Rather, Judge Shadur found that that question could only be answered by the real world *results* of the library system. As for the defendants' motion, Judge Shadur found that the defendants had submitted no evidence concerning the plaintiffs' ability to pursue legal actions, claims, or defenses. Drawing all reasonable inferences in favor of the plaintiffs, Judge Shadur found that due to a restrictive definition of indigency many of the class members were being deprived of the ability to obtain basic materials necessary to conduct litigation. As a result, Judge Shadur denied both motions.

In October 1984, certain inmates at Stateville wrote the court and claimed that the Department of Corrections and Bur Oak had violated certain terms and conditions of the Consent Decree. In his Motion for Enforcement of the Consent Decree, inmate Joe Woods claimed that (1) Bur Oak had not maintained the quality of the library legal-collection, (2) the Department was not providing inmates with free envelopes and postage for mailing legal documents, (3) the Department, rather than Bur Oak, would be responsible for compensating inmate library clerks, and (4) Bur Oak had not provided legal-training programs for legal clerks since 1982. Pursuant to this court's request, the parties' respective counsel conducted an investigation into these allegations and submitted their joint report as to their findings.

***10** With regard to the legal collection, the parties agree that Bur Oak was unable to renew its subscriptions to a number of publications present in the library in 1981 because of a shortage of funds. The parties, however, disagree regarding the impact that this loss has had on the quality of the legal collection. The plaintiffs maintain that as a consequence the legal collection has fallen below AALL standards. Moreover, the plaintiffs argue that many of the books in the library are missing pages or their pocket parts and are not all in a useable condition. The defendants respond that notwithstanding the shortage the collection still exceeds AALL standards. The defendants further submit that although several subscriptions have not been renewed, the inmates have no need for the information contained in those sources. Finally, although the defendants concede that some books or pages are missing, they believe this does not diminish the quality of the library because the information is usually contained in parallel sources or in a brief bank maintained by the library.

The parties further dispute whether inmates are being charged for sending legal mail. In August 1984, the Department of Corrections adopted a rule that permitted inmates to mail, at state expense, the equivalent of three one-ounce, first-class letters a week. Indigent inmates, however, were permitted to send "reasonable" amounts of legal mail at state expense. In October 1984, Stateville advised its inmates that the rule was inapplicable to Stateville and that the inmates would be reimbursed any funds expended for legal mail. The plaintiffs dispute this and further contend that some inmates continue to be charged for their legal mail.

Since the entry of the Consent Decree, the Department of Corrections has adopted a new statewide policy pertaining to the compensation received by resident legal-clerks. On November 1, 1984, the Department began to compensate the inmate library-clerks who had previously been paid by Bur Oak. The resident library-clerks are now considered to be inmates with work assignments rather than employees of the library system. Consequently, the pay scale for clerks now ranges from $20 to $45 a month, down from the $72 to $160 previously paid by Bur Oak. Additionally, the Department prohibits the library systems from providing any additional compensation or fringe benefits to the clerks. Finally, the Department's administrative directive on inmate compensation requires an inmate to work at least four hours during the day before the inmate can receive any compensation. The defendants contend that this change in the rate of compensation does not violate the terms of the Consent Decree. The Consent Decree, the defendants argue, only requires them to provide a sufficient number of resident legal-clerks; it does not provide for their compensation. They further contend that the same number of legal clerks continue to assist inmates in the library as did before the salary change. The plaintiffs dispute this and contend that there has been a decline in the number of resident legal-clerks since the decrease in salaries, with some clerks resigning and others no longer working a full day.

Finally, the parties continue to dispute the issue of whether the resident legal-clerks receive adequate training. The plaintiffs maintain that the training sessions are inadequate and the tests meaningless. The defendants contend that the training sessions are very comprehensive and are available to both legal clerks as well as the inmate population.

***11** Such was the status of this decade-long dispute when the case went to trial in September, 1985. The following shall constitute this court's finding of facts and conclusions of law for all pending matters relating to the plaintiffs' access to legal materials and assistance at Stateville.

B. ***Findings of Fact***

The Legal Collection

1. The court first finds that the legal collection maintained at the Stateville law library satisfies the minimum standards recommended by the AALL and adopted by the American Correctional Association/American Library Association. *See* Plaintiffs Exhibit ("PX") 145; Defendants Exhibit ("DX") 3, 20. The legal collection includes all essential state and federal statutes and reporters as well as a variety of secondary authorities and practice guides.

2. Bur Oak discontinued a number of Stateville's subscriptions to legal publications due to a shortage of funds. Those publications include:

1. Bankruptcy Forms;

2. Bankruptcy Service;

3. Bankruptcy Code, Rules and Forms;

4. Handling of Consumer Credit Cases;

5. Illinois Bar Journal;

6. The Bar Register;

7. City of Chicago Municipal Ordinance Book; and

8. The Justice Assistance News

See PX 145.

3. Some of the volumes from Stateville's existing legal collection are missing and pages are torn from many of the other volumes. But for a number of reasons the court does not find this problem to be as pervasive as the plaintiffs claim. First, the evidence submitted by the defendants on this issue is more reliable. The plaintiffs' evidence is based on notations of missing volumes made by the plaintiff James Newsome from memory while Newsome was incarcerated at the Metropolitan Correctional Center in Chicago, Illinois. The defendants' evidence is based on a list prepared directly from a physical audit of the prison collection itself on August 26, 1985.[14] Simply put, the court considers the evidence based on the audit to be more reliable than the evidence based on a plaintiff's memory; therefore where the evidence differed the court credited the audit.

4. Second, although the legal collection suffers from some infirmities caused by missing or defaced books, Stateville has made a good faith effort to provide the inmates with the legal materials they have requested. In making this

finding, the court relies in part on the fact that the library contains many parallel sources which supplement the primary source materials. Additionally, the library maintains a brief bank where the library stores copies of oft-used materials. The library makes the materials in the brief bank available to the inmates upon request. Stateville also is a member of an inter-library loan program which enables inmates to obtain legal materials from other prisons or university libraries if that particular material is not in the Stateville collection. The court, based on the testimony of Chief Librarian Shelby Richardson (which the court credited), finds that legal materials can usually be obtained through the inter-library loan program within a week from the date of the request.

5. Third, the plaintiffs testified at length about the delays and inconvenience associated with obtaining legal materials from behind the reference desk or from the resident legal-clerks. But the plaintiffs presented no evidence (such as a court order) to demonstrate a nexus between claimed delays and the dismissal by a court of any claims, defenses, or appeals.

Access to the Law Library

***12** 6. The court finds that, as of September 1985, the following law-library schedule was in effect at Stateville:

Hours (Monday thru Friday)

8:00 a.m. to 11:00 a.m.

12:00 p.m. to 4:00 p.m.

5:00 p.m. to 8:30 p.m.

General inmate population:

Monday Unit B–East

Tuesday Unit G and H (General population inmates only)

Wednesday Unit F

Thursday Unit E

Friday Unit B–West

Protective Custody:

Monday thru Friday 12:00 p.m. to 3:00 p.m.

Segregation and Investigation:

Monday thru Friday 8:00 a.m. to 11:00 a.m.

See DX 8, 32.

7. Notwithstanding the established schedule, no complete records are in evidence that would enable this court to determine with any certainty the number of days the law library has actually been open for inmate use, the number of inmates who have requested and used the library and study cells on a daily basis, or the exact times the inmates typically arrive and depart from the library and study cells. *See* PX 147, 149, 150, 151; DX 28.

8. From the records that have been maintained by Stateville, the court finds that inmates often arrive at the library between 15 to 45 minutes after their session is scheduled to begin. These delays were the result of the slow formation of the library call-lines and delays associated with the serving of the inmates' meals. Similarly, the inmates often return to their cellhouses between 15 to 30 minutes before their session is scheduled to end. But based on the testimony of Superintendent Gilberto Romero, which was corroborated by Superintendent Wheaton, the court further finds that Stateville occasionally allows inmates to stay in the library after the scheduled end to their session so that the inmates can complete their work. *See also* PX 147, 148.

9. Based on the testimony of Superintendent Thomas Morris, the court finds that inmates can obtain additional library time upon request if they verify a litigation deadline as falling within thirty days. Stateville considers a court order to be the most appropriate document for verifying a litigation deadline.

10. Inmates confined to protective custody are only permitted to use the study cells located in the law library during their scheduled library periods. Seven study cells are operational for use by protective-custody inmates, one additional cell is used by the resident legal-clerks and one cell is not in use.

11. The inmates in each of the three galleries in protective custody are given access to the study cells on a rotating basis. On every third day, the first seven inmates in a designated gallery who want to use the library can do so so long as there is no lockdown or other institutional closing in effect at that time. In the event one of the first seven inmates does not go to the law library, two alternative protective-custody inmates who have completed library request forms are selected. Finally, protective-custody inmates can obtain additional library time if they verify a court deadline as falling within thirty days.

12. Inmates confined to the segregation units are also only given access to study cells in the law library. As with the inmates in protective custody, the segregated inmates gain access to the study cells on a first-come, first-served

basis. If a segregated inmate verifies a litigation deadline, Stateville gives the inmate three consecutive days in the library at the next available date.

***13** 13. Because of the limited number of study cells located in the library, the inmates from the protective-custody and segregation units occasionally experience delays ranging from two days to one month in obtaining access to the law library. *See* PX 134. The length of the delay depends upon the availability of the seven study cells.

14. Inmates using the study cells have no direct access to the library stacks. Rather, the resident legal-clerks must assist those inmates if the inmates are to obtain books, writing materials or photocopying. To obtain any of these materials, an inmate must complete a request slip and submit it to a resident legal-clerk. The clerk, in turn, picks up the request slip from the inmate and retrieves the materials for him.

15. In addition to their regularly scheduled library sessions, inmates confined to the segregation and protective-custody units may obtain legal services from certain resident legal-clerks who are granted one month detail passes to visit the inmates in special custody. Those legal-clerks have access to the inmates from 7:00 a.m. to 3:00 p.m. seven days a week.

16. Although inmates confined to the orientation unit and hospitals are not given direct access to the law library on a regular basis, the court finds that resident legal-clerks visit those inmates for approximately two hours each weekday. The clerks are able to provide such inmates with any legal forms or copies of other legal materials which they may request. Additionally, if inmates in the orientation unit verify a litigation deadline, Stateville allows them to use the law library for approximately two hours on any given weekday. *See* DX 32.

17. Although the plaintiffs have presented some evidence supporting their contention that requests to use the library have occasionally been ignored or rejected, the court finds this evidence to be severely dated. *See* PX 125, 127, 129, 131, 135. The absence of any recent evidence coupled with the testimony of certain defendants leads this court to find that the refusal to honor requests to use the library is no longer a pervasive practice. Although the plaintiff Sylvester Henderson testified that Stateville ignored his requests to use the library, the library logs indicate that Henderson in fact had used the library approximately 15 times between April and August, 1985. (Henderson, PX 147, 150). Likewise, these records indicate that other inmates repeatedly used the law library during this same period.

18. Moreover, notwithstanding the occasional delays and inconveniences associated with the inmates requests to obtain access to the law library, the court finds no evidence to demonstrate that these inconveniences and delays affected the inmates' ability to file lawsuits. The large number of cases originating in Stateville clearly lends support to this finding. For instance, during the period between January 1984 and April 1985, Stateville inmates filed approximately 210 civil-rights cases in this district alone. DX 44, 45. Indeed, inmate Joe Woods testified to filing approximately five habeas-corpus petitions per month since April, 1985. Similarly, Henderson testified to filing at least ten claims, including habeas-corpus petitions and civil-rights actions, while he was incarcerated at Stateville. Finally, Shango admitted to having filed an average of one to two § 1983 actions per week during his stay at Stateville.

19. Additionally, the court finds no evidence to show that the occasional delays or other inconveniences resulted in the inability of inmates to pursue pending lawsuits. Although some of the plaintiffs testified that the delays had caused the dismissal of several pending actions, there is nothing in the present record to support these conclusory statements. Indeed, the plaintiffs did not even introduce a single court-order which demonstrated that an action had been dismissed for want of prosecution or other reasons relating to a delay. Moreover, the credibility of the plaintiffs' claim of inconvenience is further damaged by the fact that inmates at Stateville have filed very few grievances relating to the law library. From January to May, 1985 only 3 out of a total of 501 grievances concerned the law library. Similarly, in 1984, the inmates filed 1,125 grievances, only 4 of which related to the law library.

Co–Litigants

***14** 20. The court finds that inmates may meet together in the law library if they verify the fact that they are co-litigants. Co-litigants who do not reside in the same cellhouse must first request and obtain special permission to meet in the law library together. To obtain such permission, the litigants must first verify a court-imposed deadline. There are, however, no provisions for *potential* co-litigants from different cellhouses to meet before their lawsuit has actually been filed.

21. Although the plaintiffs James Sims and Henderson claimed that Stateville ignored their requests to meet on a common litigation matter, they presented no evidence to suggest that they were in any way harmed by the defendants' failure to honor such requests.

22. Shango and Sims also testified that they were unable to meet in the law library to discuss this and other actions in which they are co-litigants. Again, no evidence

suggests that any harm arose from their failure to confer together on those legal matters.

23. The testimony of Ronald Stansberry was the only evidence presented to this court in which specific harm originally arose from his failure to meet with his co-litigant, Jerome Marshall. Stansberry testified that he and Marshall had been tried and convicted together. After notices of appeal were filed, Stansberry's lawyer withdrew as counsel. The Court of Appeals gave Stansberry 45 days to obtain another attorney. Although Stansberry had made several requests to meet with Marshall and Shango, that his requests were not honored. Stansberry further testified that because he had been unable to meet with Marshall or with Shango, his appeal had been dismissed while Marshall's conviction had been reversed.

24. No evidence was offered, however, to support Stansberry's claim that his inability to meet with Marshall caused the dismissal of his appeal. Indeed, Stansberry did not even offer the order dismissing the case. Accordingly, this court does not know the grounds for the dismissal of his appeal. Even if the dismissal was caused by Stansberry's failure to get an attorney, the evidence in the record indicates that Stansberry had access to numerous legal organizations which provide legal services to Stateville inmates. There is no explanation in the record as to why Stansberry failed to contact any of these organizations. Nor is there any evidence that Stansberry had even sought assistance in obtaining an extension of time from the Court of Appeals. Rather his testimony related only to his inability to meet with Marshall and Shango and obtain a copy of his trial transcript. Accordingly, the court finds that the plaintiffs failed to establish a nexus between Stansberry's inability to meet with Marshall and the dismissal of Stansberry's appeal.

Photocopying

25. The court finds that inmates at Stateville are permitted to photocopy a maximum of 300 pages of legal materials without charge per year. Although Bur Oak at one time permitted the purchase of additional copies in excess of the 300–page limit, the Consent Decree does not bind Stateville to this policy, nor is the evidence conclusive as to whether Corn Belt has, in fact, continued this policy. The court, however, credits Richardson's testimony and finds that an inmate rarely exceeds the 300–page limit.

***15** 26. Inmates using the study cells or those confined in the hospital do not have direct access to the photocopying machines. Instead, those inmates must obtain copies from resident legal-clerks who visit the study cells or the hospital. Inmates in orientation are provided access to photocopying machines upon verification of a court deadline.

27. Although Stateville provides photocopying machines to serve the inmates, these machines frequently are damaged due to heavy use and Corn Belt's inability to make the necessary repairs due to budget constraints. Addressing these problems, Richardson credibly testified that money was slated in the new budget to make the necessary repairs.

28. Notwithstanding the condition of the photocopying machines, there was no evidence offered that any inmate had been unable to file any legal document with a court because he was unable to obtain photocopies or lacked the requisite number of copies.

Typewriters and Writing Materials

29. Stateville provides the inmates with a total of approximately eight working typewriters. Of those eight typewriters, five are used primarily by the resident legal-clerks who assist inmates with their typing needs when time permits. The three remaining typewriters are reserved for individual inmates using the law library and study cells. The typewriters are often unusable or in other stages of disrepair.

30. Although certain plaintiffs testified that the number of machines in working condition is insufficient to serve all the inmates, the record is devoid of any evidence regarding the number of inmates who have been deprived of the use of typewriters at any given time. Moreover, the court finds no evidence suggests that any court has refused to accept any pleading or other document prepared by an inmate because it was not typed.

31. Free writing materials such as paper and pens are provided to inmates classified as indigent. Inmates are "indigent" if they do not receive the $10 monthly allowance provided by the Department of Corrections or do not have any funds in their prison trust-accounts. Inmates who do not meet the definition of "indigent" must purchase writing materials from the Stateville commissary.

32. On occasion, the prison commissary runs out of stock of some of the writing materials. *See* PX 132. The court, however, finds the evidence too sparse to conclude that this is a pervasive problem at Stateville. No evidence demonstrates that any inmate was unable to gain access to a court or had a pending case dismissed because he was unable to obtain writing materials.

Legal Mail

33. In August, 1984, the Department of Corrections implemented a new regulation regarding outgoing mail that was made applicable to all prison institutions within the Department's jurisdiction. The new rule, promulgated pursuant to § 525.130 of ¶ 525B of the Department of Corrections Rules, permits inmates to mail, at state expense, the equivalent of three one-ounce, first-class letters each week. The Rule further provides:

***16** Committed persons shall be permitted to send additional letters if they have sufficient funds in their trust accounts and attach signed money vouchers to cover the postage. Committed persons with insufficient funds in their trust accounts shall be permitted to send reasonable amounts of legal mail at State expense.

According to the new rule, inmates with money in their trust accounts are unable to mail, at state expense, legal mail that amounts to more than the equivalent of three one-ounce, first-class letters each week. *See* PX 135.

34. Stateville enforced the new rule from August 1984 through October 1984. The parties agree that during this time period, Stateville did not provide free postage for the legal mail of residents who had funds in their trust accounts.

35. Since October, 1984, however, Stateville has discontinued enforcing this new rule because the rule is at odds with Paragraph B(2) of the Consent Decree.

36. Based on the testimony of Mary Johnson, Stateville's Trust Fund clerk, the court finds that Stateville reimbursed a total of $137.70 to the 71 inmates who had been charged for legal mail during the period in which the new Department of Corrections mail rule was enforced. *See* DX la-e. This testimony was corroborated by the ledgers themselves which reflect inmate reimbursements for postage. *See* DX la-e. Although the ledgers do not distinguish between legal and other mail, the plaintiffs presented no evidence to rebut Johnson's corroborated testimony.

Staffing

37. The court finds that Stateville, through the Corn Belt Library System, maintains an integrated system of resident legal-clerks and civilian staff persons to help deliver library services to the inmate population. *See* DX 80.

38. The civilian staff is presently comprised of Chief Librarian Shelby Richardson, Assistant Chief Librarian Maria Saldona, Assistant Librarian Robert Washington, and Assistant Librarian Rosetta Flowers. *See* DX 80.

39. As chief librarian, Richardson is responsible for developing and coordinating the library programs and activities at Stateville. Specifically, Richardson's administrative duties include the preparation of the library budget, the ordering of materials and supplies, the supervision of civilian and inmate training and work assignments, and the preparation of the inmate payroll. *See* DX 2A.

40. The court finds that no civilian employee working at the law library has received professional legal training. The now-vacant law librarian position had been filled for approximately a two-to-three month period by Edward Lee, a law-school graduate. While Lee was employed at the law library, he was responsible for supervising work in the library's legal clinic and also offered assistance to inmates using the library. Additionally, Lee taught courses in criminal law to the inmates. *See* DX 81. Lee left Stateville in May 1985 after passing the bar exam. The court, based on the credited testimony of Richardson and Morris, finds that Corn Belt has made good faith efforts to fill Lee's position with a person possessing his qualifications.

41. The resident legal-clerks are classified into three groups: legal reference clerks, legal advocates and legal assistants. *See* DX 80.

***17** 42. The chief legal reference clerk is Newsome. Newsome and two other legal reference clerks are responsible for issuing legal forms to inmates, updating the legal collection, and assisting inmates in locating legal books, materials, or authorities.

43. The legal assistants help inmates with the preparation of grievances and other simple legal matters. Additionally, the legal assistants are provided with detail passes which permit them to visit the satellite areas of the prison, such as the special-custody units, the hospital, and the orientation units so that they can provide those inmates with legal forms, copies of cases, other legal materials, and other legal assistance. As of September, 1985, there were three legal assistants employed at the law library. *See* DX 80.

44. The legal advocates have the responsibility for assisting inmates with complex legal questions. Such responsibilities include but are not limited to the preparation of habeas-corpus petitions and assisting in the preparation of appeals. There are three legal advocates. *See* DX 80.

45. The Department of Corrections' new compensation plan for the clerks was not designed solely for Stateville, but instead was a state-wide change made for the purpose

of equalizing inmate compensation levels throughout the prison system. This change merely placed inmates working in the law library on the same salary level as other inmates performing similar job assignments. *See* DX 137. There is no evidence of bad faith or wrongful motive on the part of Stateville regarding the change in pay scales for resident legal-clerks. Nor is there any evidence that the decrease in the level of compensation paid to resident legal-clerks has had an adverse effect on the availability of legal clerks working in the law library at Stateville or the quality of the services offered. At the time of trial, there were ten inmates holding various legal clerk positions in the law library. *See* DX 80. Despite the change in compensation levels, there are approximately ten inmates training to assume positions in the law library. *See id.* Obviously the position of resident legal-clerk remains attractive to at least some inmates.

Training

47. In order to be a resident legal-clerk, an inmate must possess the equivalent of a high school education and undergo a comprehensive training program which is conducted by both the civilian staff and previously trained clerks.

48. The legal training program consists of classes taught for periods averaging four to six months with classes generally meeting every day for one and a half to two hours. *See* DX 81, 82. The courses consist primarily of comprehensive instructions in the fields of civil procedure and criminal law, as well as English and Spanish classes. *See id.*

49. Clerks are given a legal skills test which is used to evaluate their understanding of the courses. *See* DX 83. This test covers such areas as legal citations, definitions of common legal terms, procedural rules, as well as the Rules and Regulations of the Illinois Department of Corrections. *See id.*

50. Although Newsome criticized the adequacy and frequency of the legal training program, his testimony was frequently impeached; therefore, the court gave his testimony little weight. In this regard, most telling was Newsome's October 26, 1984 letter to Judge Shadur where he requested relief from the Department's change in the legal clerk's salary. In support of his argument that the salary level should not be reduced, Newsome emphasized that the prerequisites for employment at the Stateville library are more stringent than that of other institutions. Such prerequisites, according to Newsome, included the requirement of a high school diploma and the successful completion of a legal skills test. Additionally, Newsome stressed that the legal clerks are "obligated" to attend and graduate from a Bur Oak approved training program. This training, argued Newsome, "armed individual staff members with more skills to work with." The letter further stated that the "work performed [by resident legal-clerks] far exceeds the mandatory research that is normally the forte of prison law clerks." *See* DX 94.

Jailhouse Lawyers

***18** 51. Although Stateville does nothing to facilitate the use of jailhouse lawyers, it does not act to prevent inmates from discussing their legal problems with jailhouse lawyers while using the law library. The only restrictions placed on the inmates' ability to confer with jailhouse lawyers is that the meetings are confined to the library and cannot disturb other inmates using the library. Additionally, since jailhouse lawyers are not given any greater library privileges than those afforded other inmates, jailhouse lawyers generally can confer only with inmates residing in the jailhouse lawyer's own cellhouse.

52. Notwithstanding the above restrictions, the court finds that the jailhouse lawyers' ability to assist inmates with their legal problems or questions has not been hindered significantly. In support of this finding, the court notes that the plaintiff Shango, a self-proclaimed jailhouse lawyer, testified to the fact that he had filed two to three civil-rights complaints a week and had assisted inmates with approximately two to three hundred grievances. Such statements demonstrate the jailhouse lawyer's ability to assist inmates with legal problems notwithstanding the restrictions imposed by Stateville.

C. *Conclusions of Law*

The Law Library

The plaintiffs' main claim is that the defendants have deprived the class members of their right of access to the courts in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.[15] The plaintiffs also contend that the defendants has also breached the Consent Decree.

The seminal case on the right of access is *Bounds v. Smith,* 430 U.S. 817 (1977). In *Bounds,* the Supreme Court stated that "it is now established beyond doubt that prisoners have a constitutional right of access to the courts" and that the states have "affirmative obligations" to assure such access.[16] *Bounds v. Smith,* 430 U.S. 817, 821–24 (1977). To satisfy their constitutional obligation,

states must adopt remedial measures to ensure that the right of access to the courts is "adequate, effective and meaningful." *Id.* at 822. Moreover, the states bear the burden of demonstrating the adequacy of the means they have chosen. *Caldwell v. Miller,* 790 F.2d 589, 606 (7th Cir.1986); *Campbell v. Miller,* 787 F.2d 217, 226 (7th Cir.1986), *cert. denied,* 107 S.Ct. 673 (1986). In *Bounds,* the Supreme Court specifically extended the constitutional right of access to the courts by requiring states to assist inmates in the preparation and filing of meaningful legal papers including habeas-corpus petitions and filings related to civil-rights actions. *Bounds,* 430 U.S. at 828 n. 17. *Bounds* did not mandate that any one form of assistance be made available; regardless of whether a prison has a law library, trained legal assistance, a combination or some other form of assistance, the inquiry is whether as a whole the system satisfies constitutional standards. *Id.* at 830–32; *Gometz v. Henman,* 807 F.2d 113, 116 (7th Cir.1986).

Stateville has no established program for providing inmates with trained legal assistance.[17] Consequently, this court's focus mostly will be on the adequacy and availability of the law library; the court will, however, consider the legal-clerk program when the court determines whether Stateville's plan, evaluated as a whole, is sufficient to ensure that all inmates have meaningful access to the courts as required by *Bounds*.

***19** If the issue is the adequacy of a law library alone, the Supreme Court in *Bounds* suggested that an inmate should have sufficient resources at his disposal to allow him to research such issues as jurisdiction, venue, standing, exhaustion of remedies, and the types of relief available. *Bounds,* 430 U.S. at 825. More importantly, an inmate should be able to research "what the law is in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action." *Ibid. Accord Campbell,* 787 F.2d at 226 n. 15.

Based on Findings Nos. 1–5, the court concludes that the legal collection at Stateville satisfies the requirements of *Bounds* and its progeny. The diverse legal collection of statutes, reporters, and practice guides are more than ample to provide the inmates with the tools necessary to research the law and determine what facts are necessary to support a cause of action. Having satisfied the constitutional threshold, Stateville has another hurdle to overcome. Stateville assumed an additional obligation under the terms of the Consent Decree, which, in relevant part, provides:

A. *Facilities*

(1) * * *

(2) [Bur Oak] will maintain the legal collection in the law library at least at its present level of quality and at a level that conforms to the standards set by the American Correctional Association/American Library Association. Defendants will file with the court an inventory of the legal reporters and other material in the library collection as of November 1, 1980. All legal reporters will be updated on a periodic basis. Volumes that are destroyed or defaced will be replaced by Bur Oak.

Although the court found that Stateville discontinued several legal publications, the court concludes that this does not amount to a violation of the Consent Decree. In support of ths conclusion, the court notes that the AALL standards do not require a prison law library to stock bankruptcy materials, law journals, or such other material discontinued by Stateville. Rather the AALL standards focus only on those legal materials that are essential for inmates to challenge the conditions of their confinement and pursue post-conviction remedies. The law library presently contains those materials. *See* DX 20. The court further concludes that the Consent Decree has not been violated simply because some volumes from the legal collection are presently missing and others are defaced. Given Stateville's good faith efforts to assure the availability of legal materials through adequate, alternative channels, *see* Finding No. 4, Stateville has been able to maintain the quality of its legal collection at an acceptable level within the terms of the Consent Decree.[18]

Because of the adequacy of the library, if the inmates are granted adequate access to the law library they, in turn, are considered to have adequate access to the courts. *See Hossman v. Spradlin,* 812 F.2d 1019, 1021 (7th Cir.1987). The Seventh Circuit has interpreted the *Bounds* guarantee of "meaningful" access as requiring prisoners to receive that "quantum of access to prison libraries—not total or unlimited access—which will enable them to reseach the law and determine what facts may be necessary to state a cause of action." *Hossman,* 812 F.2d at 1021 (citing *Campbell,* 787 F.2d at 226 n. 15). In determining what quantum of access is constitutionally adequate, this court must weigh the extent to which the inmates' right of access is burdened by a particular prison regulation or practice against the legitimate security and administrative interests of the state prison officials. *Procunier v. Martinex,* 416 U.S. 396, 420 (1977); *Campbell,* 787 F.2d at 226. The court must give appropriate deference to the expertise and discretionary authority of the correctional oficials to operate the penal institution when the court performs the balancing of interests. *Procunier v. Martinez,* 416 U.S. at 420. Prison officials need to regulate the time, manner, and place in which library facilities are used. *Hossman,* 812 F.2d at 1021 n. 1. Consequently, "where 'meaningful' access to the courts is not denied as the result of inconvenience or even highly restrictive regulations governing the use of a prison law library, no constitutional guarantee to court access is violated." *Hossman,* 812 F.2d at 1021 (footnote omitted).

Prison officials may not, however, simply parrot assertions of "discipline and security" to support overly restrictive policies which unduly infringe upon the prisoners' fundamental rights. *Cleavinger v. Saxner,* 474 U.S. 193, 207 (1985). In short, this court's "deference to the administrative expertise and discretionary authority of correctional officials must be schooled, not absolute." *Campbell,* 787 F.2d at 227, n. 17.

***20** Specifically elaborating on the foregoing, the Seventh Circuit requires the prisoner to show actual harm or prejudice arising from the prison's restrictive policies in order for his claim to survive. *Howland v. Kilquist,* 833 F.2d 639, 642–43 (7th Cir.1987). As the Seventh Circuit specifically stated in *Hossman v. Spradlin,* 812 F.2d 1019, 1021–22 n. 2 (7th Cir.1987):

... in order to proceed to trial and survive a motion for summary judgment, a plaintiff should be required, no matter how minimally, to allege some quantum of detriment caused by the challenged conduct of state officials resulting in the interruption and/or delay of plaintiff's pending or contemplated litigation.

Accord Howland, 833 F.2d at 642–643 (citing *Hossman*); *Campbell v. Miller,* 787 F.2d at 229.

The court's discussion of the inmates' access to the law library begins with the general-inmate population. Current regulations indicate that inmates in a particular cellhouse are scheduled to use the law library for approximately 10½ hours on one designated weekday. The plaintiffs concede that the schedule is constitutionally adequate if followed, but argue that various circumstances, such as unscheduled library closings, late formations of the call-lines, meal conflicts, and denial of library requests have not allowed them to utilize their scheduled library time. The plaintiffs submit that it is these circumstances which represent constitutional denials of their right to access to the courts. This argument suggests that inmates have a right to some minimum amount of time in the law library.

But so long as the plaintiffs have "meaningful access" as defined by *Bounds,* they are not entitled to a specific number of hours in the law library. In fact in *Bounds* the Court found that a full day's work in the library (including transportation to and from the library) every three or four weeks satisfied the standard for meaningful access. *Bounds,* 430 U.S. at 819, 832–33. *See also Campbell,* 787 F.2d at 227 (7th Cir.1986) (eight-day delay did not infringe right of access). Only if the class members demonstrate that they have somehow been prejudiced by not being able to utilize the library under the existing practices do they establish violation.[19]

***21** Based on the court's findings and the record as a whole, there is no evidence to suggest that inmates in the general population have been actually prejudiced by Stateville's existing practices and regulations. The mere fact that some inmates may suffer delays and other inconveniences in obtaining access to the law library due to late formations of the call lines, the late serving of meals, or even the occasional refusal to honor library call requests does not amount to a constitutional violation requiring relief on a class-wide scale. *See Hossman,* 812 F.2d at 1021 (inmate's claim that he was prevented from gaining access to the law library on six separate occasions failed to establish infringement of right of access). Accordingly, the court concludes that Stateville's access plan for inmates in the general population is constitutionally sufficient.

The issue of inmates confined to the respective segregation and protective-custody units presents a more difficult question. These inmates, unlike those in the general population, are not given the direct access to the law library which would allow them the opportunity to browse the stacks. Rather, these inmates may only use the limited quantity of study cells located within the library facility and must obtain access to the legal collection through the conduit of the resident legal-clerks. The question is whether this study-cell arrangement satisfies the constitutional mandate of meaningful access to the courts for the special-custody inmates.

At the outset, this court notes that inmates confined to the segregation unit at Stateville are there because they pose a threat to other inmates and the orderly operation of the prison. Because of the security status of these prisoners, the state is justified in adopting reasonable policies that restrict their direct access to legal materials. In *Campbell v. Miller,* 787 F.2d 217 (7th Cir.1986), *cert. denied,* 107 S.Ct. 673 (1983), inmates confined to a segregation unit did not have direct access to the prison's main library. To obtain legal materials, the inmates had to request the books by giving an exact cite to inmate clerks who, in turn, retrieved the materials for them. Moreover, the inmates could only have two volumes in their cells for a twenty-four hour period. The inmates based their requests on citations from basic reference materials available in the cellhouse. Notwithstanding these inconveniences and the delays associated with the exact-cite system, the Seventh Circuit held that the system did not infringe the inmates' right of access to the courts since the restrictions implicated legitimate security and disciplinary concerns. *Campbell,* 787 F.2d at 227–28.

Similarly, in *Caldwell v. Miller,* 790 F.2d 589 (7th Cir.1986), inmates confined to the segregation unit were not permitted direct access to the main law library. Rather, they were restricted to the "basic library" which contained rudimentary reference materials. Based on the use of these reference materials, inmates could then request legal materials from the main library by giving exact cites to inmate clerks who in turn retrieved the

materials. In upholding this system, the court stated:

***22** Restrictions on direct access to legal materials may be justified in light of legitimate security considerations. As we noted at the outset, Marion presents unique disciplinary and security considerations.... Because we find that the direct-access restrictions do not render Caldwell's access to the courts, as a general matter, unmeaningful, and that these restrictions are supported by legitimate security considerations, we will defer to the judgment of Marion officials in adopting the procedures they have.

Caldwell, 790 F.2d at 606 (citations omitted).

Based on the foregoing the court concludes that the system of study cells is constitutionally permissible for high risk inmates so long as there is some provision whereby those inmates may obtain the legal materials they require. The court further concludes that the study-cell arrangement at Stateville is adequate for a number of reasons. First, the study cells are located in the library itself just several feet from the legal collection. *See* DX 6B, 6D. Accordingly, inmates immediately obtain legal materials by simply requesting it from one of several resident legal-clerks working at the law library. Second, inmates using the study cells are provided research assistance from the legal clerks. Although these clerks are by no means skilled attorneys, they do possess sufficient skills to provide the inmates with the proper sources from which to begin their research. By using these initial sources, such as digests, annotated statutes, and encylopedias, inmates can easily follow-up their research during the same library session by simply requesting additional materials from the legal clerks. Finally, although the segregated inmates complain that this reliance on the legal clerks results in delays and inconveniences, the court finds nothing in the record which conclusively demonstrates that Stateville's plan pertaining to the use of the study cells has caused actual prejudice to an inmate's ability to file or pursue legal actions. Since the Stateville plan is less restrictive than the plans sanctioned by the Seventh Circuit in *Campbell* and *Caldwell,* the court defers to the expertise and judgment of the Stateville officials.

Judge Moran's decision in *Walters v. Thompson,* 615 F.Supp. 330 (N.D.Ill.1985) is distinguishable. In that case, a class action was brought on behalf of all inmates confined to the segregation units of the Illinois maximum security institutions, including Stateville. The plaintiff class sought a mandatory injunction requiring the Department of Corrections to establish comprehensive training programs for inmate clerks together with lawyers independent from the institution to supervise those clerks. Although the action was on behalf of all inmates confined to Illinois segregation units, the case was based on a record involving only the Menard and Joliet Correctional Centers.

In addressing the practices at Menard, Judge Moran found that the use of study-cells located within the library provided segregation inmates with a form of access to the law library. *Walters,* 615 F.Supp. at 337. He, however, further concluded that the inmates' access to the library was insignificant since library visits for segregated inmates averaged only one hour in length and were very infrequent (approximately six visits per year). *Ibid.* Moreover, no group of legal clerks, inmate or otherwise, existed to assist segregated inmates. *Id.* at 337. Based on those findings, Judge Moran concluded that segregation inmates at Menard demonstrated a likelihood of success on their claim. *Id.* at 538–40.

***23** As for Joliet, Judge Moran found that the inmates were not permitted direct access to the prison law library.[20] Instead, inmate clerks visited the segregation unit no more than three times a week (frequently less), interviewed the inmates, reviewed legal documents and took requests for legal materials. The clerks then conducted research for the inmates and delivered the materials during the next scheduled session. *Id.* at 336. Judge Moran concluded that the research efforts of these segregated inmates was hindered by their sole reliance on ill-trained inmate clerks for advice and assistance, by the extremely cumbersome nature of the runner system, and by the limited amount of materials they could obtain from the library due to photocopy limits. *Id.* at 339. Accordingly, he concluded that the inmates' had a reasonable likelihood of success on their claim that the Joliet plan was unconstitutional. *Id.* at 340. Judge Moran, however, refused to issue the requested injunction since the record, based only on the practices at Menard and Joliet, was too incomplete for the court to determine with assurance that segregated prisoners in *all* maximum security institutions were being denied meaningful access to the courts. *Id.* at 342.

The practices at Menard and Joliet are different from those in Stateville in important respects. Unlike Menard, segregated inmates at Stateville are scheduled to use the law library for approximately three hours each weekday morning. Because the study cells are located in the library itself, the inmates do not suffer the inconvenience and delays associated with the cumbersome runner system at Joliet. In addition to obtaining direct access to the law library through the use of study cells, segregated inmates at Stateville are also visited every week in their cellhouse by trained legal clerks.

In addressing the adequacy of Stateville's plan as it pertains to the protective custody inmates, this court is mindful of Judge Shadur's decision in the case of *Williams v. Lane,* 646 F.Supp. 1379 (N.D.Ill.1986), a case litigated simultaneously with this action. In *Williams,* Judge Shadur found that Stateville had "unreasonably

deprived the [protective custody inmates] of meaningful access to the courts by denying them adequate opportunities to use the library and adequate assistance from persons trained in the law." *Id.,* 646 F.Supp. at 1407. In support of this conclusion, Judge Shadur stated that Stateville had used the claim of security as a pretext to restrict protective-custody inmates to the study cells, had forced the inmates to request relevant materials in advance, and had required them to rely on inmate clerks. According to Judge Shadur, this, in effect, both deprived the protective-custody inmates of opportunities equivalent to those afforded to the general-population inmates and violated the constitutional standard of meaningful access. *Ibid.*

An examination of the *Williams* decision reveals that this case is markedly different from the one presented before Judge Shadur. In *Williams,* protective-custody inmates were challenging the denial of services and programs equivalent to those afforded to the general population inmates. Such programs and services included religious services, library programs, vocational and educational programs, and job opportunities. *Williams v. Lane,* 646 F.Supp. 1379, 1406 (N.D.Ill.1986). Here the issue is simply whether all inmates at Stateville, including protective-custody inmates, are provided with meaningful access to the courts. In this regard, this court does not have to determine the constitutionality of the conditions of confinement of the inmates in protective custody, but instead needs to focus only on the adequacy of Stateville's plan of court access.

***24** Based on the record presented, this court concludes that Stateville's plan, evaluated as a whole, provides protective-custody inmates with meaningful access to the courts. Most significantly, there is no evidence showing that the use of the study-cells has substantially impaired the protective-custody inmates' ability to obtain access to the courts. The mere fact that these inmates must wait their turn to use the study-cells does not amount to a constitutional deprivation. *See Hossman,* 812 F.2d at 1021 n. 1. Even though several plaintiffs testified that they were unable to gain access to the law library on any particular day, no evidence was offered to show that that inability resulted in an adverse legal judgment.

The constitutionality of the plan for the inmates confined to the orientation unit and hospital remains. Stateville has no existing plan for providing regular library access to those two categories of inmates. The absence of any established access plan, however, does not give the plaintiffs an automatic victory. For indeed, the duration of these inmates' confinement is considerably less than that of inmates in the general prison population or to special custody. At Stateville the inmates in the orientation units are confined there for a maximum of two weeks. Upon release, the library facilities become available to them in a manner which depends upon whether they are put in the general population cellhouses or the special-custody cellhouses. Inmates confined to the hospital are also there on a temporary basis (barring any major medical complications) and may fully utilize the prison library upon their release. Given the short period of confinement, the court concludes that these inmates suffer no danger of losing valid claims because of Stateville's policy with respect to them. *Cf. Morrow v. Harinell,* 768 F.2d 619, 624 (5th Cir.1985) (there is no easy test to apply when determining how lengthy a stay has to be before the right of access is triggered). In addition, inmates confined to either the orientation unit or the hospital are not totally isolated from the library or the courts. Inmates in the orientation unit who can verify a litigation deadline are permitted to visit the library for a short period of time on a day allotted for them. Moreover, inmates in both the orientation unit and the hospitals are visited periodically by resident legal-clerks who provide them with legal forms and other assistance. Since again there is no evidence demonstrating actual harm resulting from Stateville's policies, this court concludes that there has been no constitutional violation.

In summary, the court concludes there is no evidence that any inmate at Stateville has not been provided with meaningful access to the courts as defined in *Bounds* and its progeny. The absence of any proof of harm or prejudice to the inmates demonstrates the reasonableness of Stateville's policies and regulations. The inmates' testimony pertaining to delays and inconveniences in obtaining access to the law library or to its legal collection is insufficient to overcome the legitimate security concerns of the institution.

***25** Although Stateville is under no constitutional obligation to provide trained legal assistants, it voluntarily assumed such an obligation under the Consent Decree. Based on this court's findings, the court concludes that the defendants have satisfied their obligations under the Consent Decree of providing inmates with a sufficient number of adequately trained legal-clerks to assist the inmates with their legal needs.

This court's findings demonstrate that inmates can seek further assistance from jailhouse lawyers. Any constitutional right to receive assistance from other prisoners is necessarily conditioned upon a showing that no adequate alternative means of access to the courts is available without the help of a jailhouse lawyer. *Kunzelman v. Thompson,* 799 F.2d 1172, 1179 (7th Cir.1986); *Buise v. Hudkins,* 584 F.2d 223, 228 (7th Cir.1978). Since this opinion makes clear that inmates at Stateville have been provided with meaningful access to the courts through an adequate law library and access plan, the plaintiffs have not carried their burden of establishing an additional right to assistance from jailhouse lawyers.[21]

The plaintiffs claim that Stateville is required to permit co-plaintiffs in civil suits or co-defendants in criminal appeals to meet with one another or with their witnesses in prison to discuss litigation strategy. The plaintiffs have not cited any authority, nor has the court found any, which stands for the proposition that inmates have a constitutional right to meet with their co-litigants while in prison. An inmate does not have the right to be confined in any one prison. *See Olim v. Wakinekona.* 461 U.S. 238, 244 (1983). If an inmate can be transferred to a different prison at any time, any where, it follow that there is no right to be confined with any particular inmate, including co-litigants.

Access to Supplies and Services

The plaintiffs also challenge the adequacy of defendants' policy of providing them access to supplies and services necessary to the preparation of legal papers. *Bounds* noted that as a component of the states' obligation to ensure meaningful access to the courts, "indigent inmates must be provided at state expense with paper and pens to draft legal documents, with notarial services to authenticate them, and with stamps to mail them." *Bounds,* 430 U.S. at 824–25. The touchstone here, however, is the word "indigent." If an inmate does possess sufficient funds to purchase his own writing materials, there is no reason why the state must be obligated to furnish such supplies at no cost to these inmates and thereby burden its own budget. Accordingly, this court concludes that Stateville's plan of providing writing materials only to indigent inmates does not, in and of itself, amount to a constitutional violation. Rather, to establish a constitutional violation, the plaintiffs are required to show that the application of this policy has actually impeded their access to the courts. *Howland,* 833 F.2d at 642–43 (7th Cir.1987). This court has found that the inmates have made no such showing. *See* Finding Nos. 29–32. Moreover, the few instances where the commissary had been out of supplies does not establish a need. Finally, the plaintiffs failed to establish that Stateville's policies harmed them in any way. Consequently, the plaintiffs cannot prevail on this claim.

The plaintiffs further complain about the adequacy of Stateville's photocopying services. Here again, however, the plaintiffs cannot prevail on their claim unless they demonstrate that the denial of the services prevented them from exercising their constitutional right of access to the courts. *Jones v. Franzen,* 697 F.2d 801, 803 (7th Cir.1983). The record is completely devoid of any evidence showing that an inmate was unable to file any legal document with a court because he lacked the requisite number of copies.

***26** Nor does the court find that the defendants have violated the Consent Decree with respect to their obligations to provide photocopying services to the inmates. Although Stateville never bound itself to the provision of providing a maximum of three hundred pages of free photocopying to the inmates each year, the findings of the court demonstrate that this policy has been adhered to since Bur Oak terminated its services. Moreover, notwithstanding the evidence that the photocopying machines are frequently broken, there is nothing to indicate to this court that the defendants failed to have it repaired as soon as was reasonably possible. This was all that the Consent Decree required of them.

Finally, the court concludes based on the factual record before it that the defendants have cured any breaches of the Consent Decree that might have occurred due to the Department of Corrections' implementation of the new mail-rule. Although the plaintiffs argue that the rule, as written, still remains applicable to Stateville, the fact of the matter is that Stateville has not applied the rule. Besides, the Seventh Circuit determined that the new mail-rule is constitutional. *Gaines v. Lee,* 790 F.2d 1299, 1308 (7th Cir.1986).

One final matter remains to be resolved with respect to the library case. As this court has found, Stateville failed to maintain full and complete records and logs reflecting library use by inmates. *See* Finding No. 7. This finding, however, does not alter the court's conclusion that inmates are, as a matter of law and fact, being provided meaningful access to the courts. This conclusion is based on the records that were actually maintained by Stateville together with all the other evidence introduced by the parties at trial. Nevertheless, the Consent Decree requires the defendants to keep an adequate accounting of library use, and the plaintiffs have the right to receive such an accounting. Accordingly, an appropriate order will be entered to this effect.

CONCLUSION

At the time these actions were initiated, it was questionable whether inmates at Stateville were provided with meaningful access to the courts. During the course of the litigation, however, Stateville made many significant changes in its library plan that radically improved the inmates' ability to gain meaningful access to the courts.

Although the present system is not perfect, it is constitutional and generally in compliance with the Consent Decree. The court consequently enters judgment on behalf of the defendants with regard to all law-library claims made by the plaintiffs with the exception of one, i.e., the plaintiff's claim that the system complies with the

Consent Decree's requirement of an adequate accounting of library use. On the latter claim, the court finds for the plaintiffs on the issue of liability and will order further briefing on the issue of what relief is appropriate.

II

Termination of Resident Legal Clerks

In *Shango v. Jurich,* 74 C 3598, the plaintiff Shango charges that defendant Mary Jurich wrongfully discharged him from his work assignment as a resident legal-clerk at the Stateville law library. Specifically, Shango claims his termination was in retaliation for the lawsuits he had filed against Jurich and other prison officials in general. Similarly, in *Sims v. Jurich,* 75 C 3388, the plaintiff James L. Sims claims that defendant Arthur Moen, with the help of Jurich and others,[22] terminated his work assignment at the Stateville law library because he had assisted inmates with numerous suits and grievances against the institution. Both Sims and Shango assert that their respective terminations were without just cause and in violation of their respective rights to due process. The following shall constitute this court's findings of fact and conclusions of law for purposes of these two individual claims.

A. ***Findings of Fact***

***27** 1. Prior to November 1974, Shango was assigned by prison officials to work as a resident legal-clerk at the Stateville law library. The duties identified with this position included assisting inmates with legal matters and the performance of various administrative functions. These latter duties included doing an inventory of books, shelving books, completing inmate library call tickets, clean-up and assisting the librarian.

2. Prior to July 1975, plaintiff Sims was assigned to work at the Stateville law library and assumed duties generally like those performed by Shango as noted in Finding # 1.

3. Both Shango and Sims received approximately $20.00 per month as compensation for their services as resident legal-clerks.

4. While conducting their work assignments, Shango and Sims were supervised by the law librarian, Mary Jurich. Jurich was an employee of the Burr Oak Library System until January 3, 1977. Jurich's duties as the law librarian included approving photocopying requests, supervising the day-to-day work assignments of the resident legal-clerks, and generally overseeing the total operation of the law library. DX 2a.

5. Defendant Arthur Moen acted as an assistant librarian at Stateville from April 23, 1975 until December 1976. Moen was also employed by Burr Oak and performed essentially the same duties and supervisory functions as Jurich.

6. Jurich, on numerous occasions, required Shango to sweep the floors of the law library, to empty waste baskets, and to assist her in enforcing the library's rules and regulations. Jurich strictly enforced the requirement that inmates remove their jackets and coats when using the library. According to Jurich, she devised this rule to prevent the widespread theft of library materials that were frequently smuggled out of the library in an inmate's clothing.

7. On November 1, 1974, Shango filed a grievance with George Stampar, the assistant to the Warden, complaining that Jurich had made unreasonable demands upon him while he performed his work assignments in the law library. Specifically, Shango claimed that Jurich demanded that he inform her about inmates who had sought out Shango's assistance in filing suits against her. Additionally, Shango complained that Jurich ordered him to enforce library rules and regulations by ordering other inmates to remove jackets and coats. Shango claimed that it was not his job to give orders to other inmates and to do so would subject him to physical harm.

8. On November 4, 1974, Jurich wrote defendant Allyn Sielaff, a member of the Stateville Assignment Committee, and requested that Shango, among others, be removed from his assignment as a resident legal-clerk. Jurich herself had no authority to terminate these resident legal-clerks from their library positions. The reasons advanced by Jurich for requesting the inmates' termination included insubordination, open defiance of her orders, and their failure to perform work assignments.

***28** 9. On or about November 6 or 7, 1974, the exact date being unknown, Shango appeared before the Assignment Committee and was informed that his work assignment in the law library was immediately terminated. This termination was based on the complaint made against Shango by Jurich. At no time was Shango given an opportunity to rebut the charges made against him.

10. Although Shango's termination occurred just five or six days after he had filed his grievance against Jurich, the court finds there was substantial evidence to support Jurich's complaints against Shango. Although his job did not entail giving orders to other inmates, Shango himself participated in defying the library rules and encouraged others to do likewise.

11. The court further credits Jurich's testimony that Shango was often hostile toward Jurich and frequently defied her orders to clean the library and follow her other orders. The court made its credibility determination in part on the basis of the arrogant attitude exhibited by Shango during the course of this trial and his implied aversion toward physical labor such as sweeping and picking up behind inmates. Such insubordination towards Jurich was clearly exhibited by Shango long before he filed the grievance against Jurich. Jurich's testimony was corroborated by a nun who described the carnival-like atmosphere in the library with the resident legal-clerks participating in loud, boisterous conversations between themselves and with other inmates.

12. Notwithstanding Shango's termination as a resident legal-clerk, the library logs, together with his own testimony, demonstrate that Shango frequently visited the law library after his termination and assisted inmates with their legal matters as a jailhouse lawyer.

13. In November, 1975, plaintiff Sims was discharged from his resident legal-clerk assignment by the Assignment Committee. This termination was based on a complaint made by Arthur Moen. As grounds for Sims' termination, Moen testified that Sims frequently failed to perform duties assigned to him because he did not believe Moen was his supervisor. The court credits Moen's testimony, which was corroborated by Jurich, and finds that Sims would often stare in space when spoken to by Moen, spend time talking to other inmates and fail to complete his assignments.

14. At the time of his discharge, Sims was not given a hearing before the Assignment Committee on the charges against him nor an opportunity to present a defense.

B. ***Conclusions of Law***

Both Shango and Sims were fired due to their insubordination on the job. But Stateville took that disciplinary action[23] without following the procedural standards established by Ill.Rev.Stat. ch. 38, par. 1003–8–7. That statute provides for procedures which must be followed in disciplinary cases involving a change of work more than seven days in duration, and thereby creates a protectible right for inmates against whom the disciplinary sanction is invoked. Ill.Rev.Stat. ch. 38, par. 1003–8–7(e). *Compare Watts v. Morgan,* 572 F.Supp. 1385, 1388 (N.D.Ill.1983) (Hart, J.) Stateville's failure to give Shango and Sims the hearing to which they were entitled constituted a deprivation of their fourteenth amendment right to due process. The court enters judgment on behalf of the plaintiffs in that regard and orders the defendants to give Shango and Sims the requisite hearing within ninety (90) days. If the plaintiffs fail to get their hearing within that time, the court orders Stateville to reinstate Shango and Sims to their former positions as resident legal-clerks.

III

SHANGO'S AMENDED SUPPLEMENTAL COMPLAINT

***29** The final claims requiring resolution by this court are brought by Shango, individually, in the form of his "Amended Supplemental Complaint." Previously, Judge Shadur entered summary judgment on Count IV of the Amended Supplemental Complaint and found that Shango's rights to procedural due process, as enunciated by *Wolff v. McDonnell,* 418 U.S. 539 (1974) were violated with respect to a disciplinary hearing held on July 26, 1980. *See Shango v. Jurich,* 608 F.Supp. 931 (N.D.Ill.1985). Since the procedural aspects surrounding Count IV are now well documented,[24] this court shall only address those salient facts necessary for its resolution of Shango's damage claim under Count IV, his claim for cruel and unusual punishment raised in Count VI, and his claim of harassment and retaliation raised in Count VIII of the Amended Supplemental Complaint.

A. ***Findings of Fact***

1. Shango was convicted of murder and armed robbery and sentenced to a period of imprisonment ranging from 99 to 175 years for the former murder conviction and concurrent sentence of 10 to 14 years for the armed-robbery conviction.

2. Shango was placed in the custody of the Illinois Department of Corrections on January 27, 1971. At the time of trial, he was a resident of the Menard Correctional Center. Previously, he resided primarily at Stateville. Each of these institutions are maximum-security facilities located within the State of Illinois.

3. Shango acted extensively as a resident legal-clerk as well as a jailhouse lawyer while incarcerated at Stateville. Shango assisted numerous inmates with legal matters including the filing of habeas-corpus petitions, civil-rights actions, and prison disciplinary proceedings and grievances.

4. Defendant Gayle Franzen was the Director of the Illinois Department of Corrections during the relevant time period prior to January 21, 1981.

5. Defendant Michael Lane was Acting Director of the

Illinois Department of Corrections from January 21, 1981 to April 29, 1981. Subsequently, Lane became the Director of the Department of Corrections.

***30** 6. Defendant Richard DeRobertis has been the Assistant Deputy Director for Adult Institutions in the Illinois Department of Corrections since November 19, 1983. DeRobertis was the Warden at Stateville from March 26, 1981 until November 1983. Between July 24, 1980 and March 26, 1981, DeRobertis was Acting Warden at Stateville and prior to that was the Assistant Warden for Operations at Stateville.

7. Defendant Ulsey Price is an employee of the Illinois Department of Corrections. Currently, he holds the rank of Captain at Stateville. During the relevant prior for Count IV, defendant Price was a lieutenant assigned to the Internal Affairs Office at Stateville.

8. Defenant Ron A. Fleming during the relevant prior for Count IV was employed by the Illinois Department of Corrections as a casework supervisor assigned to Stateville and served on the prison's Adjustment Committee. The Adjustment Committee is responsible for reviewing Resident Disciplinary Reports issued against inmates for violating prison rules and regulations and for recommending punishments, if any, to the Warden.

9. Defendant Raymond Hall is employed by the Illinois Department of Corrections as a correctional officer. During the relevant period for Count IV, defendant Hall served on the Stateville Adjustment Committee.

Count IV: The July 26, 1980 Disciplinary Hearing

10. On July 14, 1980, Stephen Edwards, an inmate at Stateville, met with Price of the Internal Affairs Office and informed him that Edwards had been a victim of extortion and sexual assaults by other prison inmates, including Shango, during the previous year. Specifically, Edwards claimed that Shango had paid another resident, Dwight Griffin, to force Edwards to have sex with Shango sometime during the month of June, 1980. Edwards also claimed to have seen Shango fire a "zip gun" in December 1978.[25]

11. In response, Price arranged for Edwards to take a polygraph examination and assigned Investigator Alfred Faro to investigate Edward's charged against Shango and the other accused inmates.

12. Edwards took a series of three polygraph examinations, two on July 14 and one on July 15, 1980. The examinations were conducted by Michael Musto, an experienced polygraph examiner. From these examinations, Musto concluded that Edwards was truthful when responding to questions concerning Shango's sexual activity with Edwards and that Shango had paid Griffin to have sex with Edwards during the past year. Musto, however, could not positively conclude that Edwards was truthful when responding to questions concerning the zip gun incident in 1978.

13. Based on the results of the polygraph examination of Edwards, Price issued a Resident Disciplinary Report directed to Shango and the other residents named by Edwards. The Report requested that Shango be placed on investigative status in connection with Price's investigation of Edward's charges of "extortion, sexual assault and trafficking etc" against Shango. PX 25. Accordingly, on July 14, 1980, Shango was removed from the general prison population and placed in the segregation unit pending the final outcome of Price's investigation.

14. In addition to Edwards' polygraph examination, Price obtained Edwards' money vouchers, trust-fund ledgers, and both Edwards' and Griffin's visitor lists and cell assignments. Although the court finds that these documents do not directly implicate Shango in the acts of sexual assault and extortion, the court notes that they do corroborate Edwards' accusations and testimony during trial. For instance, the cellhouse assignments support Edwards' testimony that he and Griffin shared the same cell during the month of June, 1980 at the time he claimed the activity occurred. DX 1. Additionally, the trust-fund ledgers and money vouchers indicate that Edwards had sent money to Griffin's relatives. The money, according to Edwards' testimony, was later given to Griffin. The vouchers do not show that such money was actually paid directly from Edwards to Griffin.

***31** 15. Upon being placed on investigative status, Shango wrote to the Stateville Adjustment Committee denying the charges that he had engaged in any acts of extortion or sexual assualt at the time specifically listed in the report or at any other time.[26] Moreover, Shango demanded an immediate filing of the specific charges against him, that the person making the charges be given a polygraph examination, and an opportunity to take a polygraph examination himself. PX 2. At the time of his demands, Shango was unaware as to Edwards' identity or the fact that Edwards had taken a polygraph examination. Shango later discovered that Edwards was his accuser and that other residents were, likewise, placed on investigative status on the basis of charges similar to the charges against Shango.

16. On July 16, 1980, Shango appeared before the Stateville Adjustment Committee in connection with the Resident Disciplinary Report filed by Price. Although Shango again denied the charges against him, the Committee determined, based on Price's report alone, that

Shango should remain on investigative status.

17. On July 21, 1980, Shango wrote Franzen, the Director of the Illinois Department of Corrections, and complained about his placement in segregation. PX 4. Shango denied having sexual relations with Edwards or engaging in extortion and demanded that both he and Edwards be given a polygraph examination. Shango was still apparently unaware that Edwards had previously taken a polygraph test or of the results of that test.

18. On July 23, 1980, Price interviewed Shango regarding the charges made by Edwards. Price informed Shango that Edwards had taken a polygraph test and that he had tested positively. Price, however, refused to show Shango the test questions or results.

19. On July 24, 1980, Price again met with Shango in the presence of Investigator Faro. Shango continued to deny any involvement in the sexual assault on Edwards. In response, Faro requested that Shango undergo a polygraph examination. Shango, however, refused to submit to such a test unless he was provided with more specific information pertaining to the charge.

20. Shango wrote again to Franzen on July 24, 1980 and demanded that he be removed from investigative status. Shango argued that Edwards could not remember specifics as to the time and date of the event and thus that the investigation would be unsuccessful in proving the charges against him.

***32** 21. Nevertheless, on July 24, 1980, Price prepared and filed a Resident Disciplinary Report charging Shango with two violations of the Department's Administrative Regulation 804. Specifically, the charge stated:

Based on the results of an investigation conducted by the Office of Internal Affairs, and the official results of a polygraph examination, Resident Cleve Heidelberg # CO1521 is being charged, with being in violation of A.R. 804 Rules No. 24 and 28. On July 24, 1980 a copy of a polygraph taken by resident Stephen Edwards indicated, he was telling the truth, when he stated that during the month of June 1980 on at least one occasion you paid another resident to force Edwards to have an unnatural sex act with you. This action was clearly in violation of Rule 24. Engaging with others in or pressuring others to engage in any unnatural sexual activity, and Rule No. 28 violating the general laws of the State or Federal Government to wit: Criminal Law and Procedure 38–11–3. Deviate Sexual Assault. Any person of the age of 14 years and upwards who by force or threat of force, compels any other person to perform or submit to any act of deviate sexual conduct commits Deviate Sexual Assault. Definition 11–2 of "Deviate sexual conduct" for the purpose of this article means any act of Sexual gratification involving the sex organs of one person and the mouth or anus of another. You were given an opportunity to take a polygraph examination of these charges. You Heidelberg CO1521 decline therefore you are so charged.

22. A hearing was conducted before the Stateville Adjustment Committee on July 26, 1980 in connection with the July 25 Disciplinary Report against Shango. Members of the Committee consisted of defendants Fleming and Hall. A third member of the Committee was Lorraine Jones.

23. The Adjustment Committee reviewed Price's report and the results of the polygraph examination. Although Shango was given an opportunity to present witnesses and other evidence in his defense of the charges, he did not do so. Rather, Shango denied the charges and objected to not being provided with more specific information as to when and where the incident occurred.[27]

24. The Adjustment Committee found Shango guilty of the charges contained in the Price report and recommended (1) that Shango be demoted to C grade for one year, (2) that he forfeit one year of statutory good time, and (3) that he spend one year in segregative confinement. The Adjustment Committee based its findings on the results of the polygraph test by Edwards and the fact that Shango had refused to submit to a similar test. The Adjustment Committee's decision was approved by defendant DeRobertis, the Acting Warden at Stateville.

25. In a letter, dated July 26, 1980, Shango appealed the Adjustment Committee's decision to the Stateville Institutional Inquiry Board. As a basis for his appeal, Shango claimed that Price had fabricated the charges because Shango had refused to cooperate as a prison informant. The court finds no merit to these accusations by Shango. In support of this finding, the court notes that Shango had written to Gayle Franzen on July 24 one day after he had been interviewed by Price. This letter, however, contained no mention that Price had attempted to obtain Shango's cooperation as an informant. Rather, Shango simply asserted that Edwards was lying. If Price had, in fact, fabricated the charges in order to obtain Shango's cooperation as an informant, then such a fact most likely would have been mentioned in Shango's July 24 letter to Franzen.

***33** 26. The Institutional Inquiry Board upheld the Adjustment Committee's decision stating that Edwards' accusations were verified by a polygraph and that the trust-fund ledgers indicated that there were exchanges of money from Edwards' trust-fund account into the account of Griffin.

27. Shango pursued a second-level grievance to the Administrative Review Board on September 1, 1980. As a basis for this appeal, Shango claimed that he had not been

given information as to the exact time and date of the sexual assault with Edwards. Shango, however, made no mention that Price had fabricated the charges in order to get Shango's cooperation as an informant.

28. The Administrative Review Board denied Shango's grievance and stated that they were reasonably satisfied that Shango did commit the infractions. As a basis for its decision, the Board noted that Edwards had submitted to and passed the polygraph examination.

29. Based on the testimony and evidence presented at trial, the court finds the Adjustment Committee's findings regarding Shango were accurate. The polygraph results lend credibility to Edwards' testimony that he had been a victim of sexual assault by Shango and others. Although Shango presented some credible evidence that Edwards may have been a homosexual, this does not make it less likely that Shango had pressured Edwards to have sex with him. Moreover, the fact that Shango had previously demanded a polygraph test and then later refused such a test after discovering that Edwards had passed the test tends to discredit Shango's denials of having sex with Edwards. Finally, Shango's fabrication that Price had created the charges to obtain Shango's cooperation as an informant casts doubt on Shango's trial testimony. Accordingly, the court is more inclined to believe Edwards' version of the events than Shango's.

Count VIII: Cruel and Unusual Punishment

30. Between July 14, 1980 and October 30, 1980 Shango was confined to the segregation unit at Stateville.

31. Although Shango claims that his cell was filthy, hot, poorly lit and insect-infected during this entire period of time, the court does not credit his testimony for several reasons. First, although Shango had written numerous letters complaining about his placement in segregation because of Edwards' accusations, he never once mentioned the condition of his cell. For instance, Shango wrote the Adjustment Committee on July 16, 1980, PX 2, Director Franzen on July 21 and 24, 1980, PX 4, 5, Lane on or about July 29, 1980, PX 16, and DeRobertis on August 7 and September 1, 1980, PX 13, 18. None of these letters mentioned the condition of his cell. If such intolerable living conditions did exist, this fact would certainly have been mentioned in at least one of Shango's grievance letters. Secondly, the court credits the testimony of Lt. Tazelaar, the ranking officer in the segregation unit, and finds that Shango did not ever complain to him about any severe problems in his cell. Finally, Lt. Tazelaar and DeRobertis credibly testified that Stateville had made good-faith efforts to control insect and rodent infestation within the institution by using preventive sprays and traps. DeRobertis, however, admits that the segregation unit may have a higher degree of infestation than other inmate residential areas since the segregation inmates generally eat meals in their cells.

32. On October 30, 1980, Shango was transferred to the segregation unit at Menard at the recommendation of DeRobertis. Again, Shango claims that he was subjected to intolerable and uninhabitable living conditions. On November 17, 1980, Shango submitted a grievance to the Menard Institutional Inquiry Board complaining that his cell was often too hot or too cold, that there was standing water on the floor and it was insect infested. Additionally, Shango claimed that he was deprived of personal-hygiene items such as a toothbrush and towels. The Inquiry Board denied the grievance noting that the prison had been found to be in compliance with the standards set by the American Correctional Association.

***34** 33. Other than this one grievance, Shango has not presented this court with evidence to support his allegations of intolerable living conditions at Menard. Although the inspection reports submitted by Shango do reveal occasional unsatisfactory sanitary conditions, they do not lower the conditions to the intolerable level which Shango claims existed in his Menard segregation cell. Indeed, the inspection reports reveal only several instances where there was garbage on the floor of the gallery and blocked drains. Moreover, the court credits the testimony of Sandra McDonough, the health-care administrator at Menard, and finds that although there were occasional problems with rodents and insects, Menard officials had instituted a pest-control program to help curb the problem. Additionally, McDonough credibly testified that Menard was in the process of installing non-breakable, insulated glass windows to help alleviate the previous temperative problems.

34. Finally, although Shango claims to have suffered various injuries as a result of his incarceration in segregation, he has not offered any expert testimony to support this claim. Indeed, there is no medical evidence, other than Shango's own testimony, that his confinement in the segregation unit caused Shango to have high blood pressure, affected his speech and concentration, or gave him arthritis and a heart murmur. Accordingly, in the absence of such medical evidence, the court does not find that Shango has, in fact, suffered any mental or physical disabilities as a direct result of his confinement in segregation.

Count VIII: Retaliation and Harassment

35. Sometime in the spring of 1980, the exact date being unknown, DeRobertis received information from

unidentified inmates at Stateville suggesting that Shango, together with certain other unidentified inmates, were manufacturing and selling "zip guns" within the institution. DeRobertis had no personal knowledge that Shango was actually involved in these activities nor did a search of Shango's cell produce any weapons. Accordingly, DeRobertis concluded that such information was only based on rumors circulating within the institution and, therefore, did not file an investigative report or take any disciplinary action against Shango. Searches of other inmates' cells, however, did produce weapons of the type described by the unidentified informants.

36. The results of Edwards' polygraph examination convinced DeRobertis that Shango was a threat to the institution. According, DeRobertis recommended that Shango be transferred out of Stateville. The transfer was approved by Lane, the Assistant Director of the Department of Corrections, and Shango was transferred to Menard from Stateville on October 30, 1980. Shango was provided with no hearing prior to this transfer nor was he provided with any explanation for the transfer.

***35** 37. On July 13, 1981, Judge Shadur entered a preliminary injunction ordering that Shango be returned to Stateville on the basis that he was not given an adequate opportunity to oppose the transfer. *See Shango v. Jurich,* 521 F.Supp. 1196 (N.D.Ill.1981) (Shadur, J.).[28] Pursuant to this order, Shango was returned to Stateville in August 1981.

38. Upon Shango's return to Stateville, DeRobertis recommended to the Stateville Adjustment Committee that Shango again be transferred to Menard. It was DeRobertis' belief, based on a review of Shango's institutional record, that such a transfer would be in the best interests of both the institution and Shango. A hearing was held before the Stateville Adjustment Committee during which Shango was present. Shango was informed of DeRobertis' reasons for the transfer back to Menard and Shango objected. Notwithstanding these objections, the Committee and Lane both approved the recommendation that Shango be transferred back to Menard. Accordingly, Shango was transferred back to Menard on or about November 6, 1981.

39. The court finds no evidence to support Shango's assertions that his transfer to Menard and the disciplinary proceeding instituted against him by the defendants were in retaliation for Shango's legal activities within the institution. In support of this finding, the court notes that Shango had served as a resident legal-clerk as well as a jailhouse lawyer for approximately ten years before Edwards had accused Shango of sexual assault and the manfacture of weapons. At no time prior to this had the defendants taken any action to curb Shango's legal activities. Moreover, the court credits DeRobertis' testimony and finds that the defendants sincerely believed that the legal assistance provided by certain inmates served to benefit the institution as a whole.

40. Moreover, the court finds the Adjustment Committee which heard Edwards' accusations against Shango only considered the information contained in the July 24, 1980 Resident Disciplinary Report. There is no evidence that it considered or was even aware of Shango's legal activities.

41. Finally, there is no evidence that DeRobertis considered Shango's legal activities when recommending his transfer to Menard. Rather, the court credits DeRobertis' testimony and finds that DeRobertis had a good-faith belief that Shango was engaged in the manufacture and/or selling of homemade weapons on the basis of rumors within the institution which were partially confirmed by Edwards' polygraph examination. However, based on the lack of evidence offered in regard to this subject by the defendants, the court makes no finding as to whether DeRobertis' belief was, in fact, true.

B. *Conclusions of Law*

Count IV: Damages for Violation of Due Process Rights

***36** As previously noted, Judge Shadur found that Shango's rights to procedural due process were violated with respect to the July 26, 1980 Disciplinary Hearing. Specifically, Judge Shadur determined that the defendants had failed to provide Shango with sufficient notice of the charges against him to give Shango the opportunity to prepare an adequate defense. Accordingly, under the principles enunciated in *Wolff v. McDonnell,* 418 U.S. 539 (1974) and its progeny, Judge Shadur found the defendants liable on Count IV of the Amended Supplemental Complaint as a matter of law.

This finding of liability, however, does not necessarily result in damages and injunctive relief for Shango. Rather, this court must now determine, based on the evidence present before it at trial, whether disciplinary action would have been taken against Shango even if the hearing had complied with procedural due process. *Carey v. Piphus,* 435 U.S. 247, 260 (1978); *see also, Shango v. Jurich,* 608 F.Supp. 931, 940 (N.D.Ill.1985) (Shadur, J.). If such disciplinary action would nevertheless have been justified, Shango cannot recover damages, despite the constitutional violation. *Carey v. Piphus,* 435 U.S. at 261–64.

Here, the court conducted a full trial on the charges brought by Edwards against Shango. Based on the evidence marshalled by both parties, the court concludes that the evidence supports the decision reached by the Stateville Adjustment Committee. In reaching this conclusion, the court notes that Edwards appeared more

credible than Shango when testifying on the stand. Additionally, the testimony of Edwards was clearly corroborated by the results of the polygraph examination.

Although plaintiff argues that polygraph results are inadmissible for determining the guilt or innocence of the accused, these arguments are misplaced in the context of a prison disciplinary hearing. Indeed, as pointed out by Judge Leighton in *Lenea v. Illinois Department of Corrections,* 84 C 3905, slip op. (N.D. Oct. 31, 1986), the security and institutional needs of a prison require courts to defer to the disciplinary committee's decision to admit results of a polygraph examination at a hearing. This court is in full agreement with Judge Leighton's opinion. Although Judge Plunkett subsequently determined in the *Lenea* case that a failed polygraph test by the accused could not be the *only* evidence to establish guilt at a prison disciplinary hearing, *see Lenea,* 84 C 3905, slip op. (N.D.Ill. Dec. 22, 1987), this is not the case here. Indeed, the polygraph test was not used to establish Shango's guilt, but rather to establish Edwards' credibility. Since the polygraph results merely corroborated Edwards' accusations against Shango, the court concludes that the evidence supports the Adjustment Committee's findings that Shango had engaged in sexual activity with Edwards. *See, e.g., Zimmerlee v. Keeney,* 831 F.2d 183, 187 (9th Cir.1987). This conclusion is further bolstered by this court's own findings and observations concerning the credibility of the witnesses at trial.

To summarize, Shango did not receive the hearing to which he was entitled, but the court gave him a full-fledged hearing on the matter and determined that the prison acted correctly.[29] Accordingly, the court awards Shango nominal damages of One Dollar ($1.00) arising from the deprivation of his procedural due process rights. Additionally, since the Adjustment Committee's conclusions that Shango had engaged in sexual activities with Edwards are supported by the evidence, the court denies Shango's claim for injunctive relief and thereby declines to order the defendants to expunge the disciplinary violation from his institutional record.

Count IV: Cruel and Unusual Punishment

***37** Shango seeks damages arising from the purportedly cruel and unusual punishment imposed upon him by the individual defendants. As pointed out by the Supreme Court in *Rhodes v. Chapman,* 452 U.S. 337, 346 (1980), there is no static "test" by which courts can determine whether conditions of confinement are cruel and unusual. Rather the eighth amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes,* 452 U.S. at 346 [citing *Trop v. Dulles,* 356 U.S. 86, 101 (1958) (plurality opinion)]. In determining whether certain conditions of confinement have become cruel and unusual, the court must rely on objective factors to the maximum possible extent. *Rummel v. Estelle,* 445 U.S. 263, 274–74 (1980). In order to hold the defendants individually liable, the Seventh Circuit requires that there be a clear showing that the defendant's mistreatment of the prisoner was deliberate. *Duckworth v. Franzen,* 780 F.2d 645, 653 (7th Cir.1985), *cert. denied,* 107 S.Ct. 72 (1986). In *Duckworth,* the court stated:

If the word "punishment" in cases of prisoner mistreatment is to retain a link with normal usage, the infliction of suffering on prisoners can be found to violate the Eighth Amendment only if that infliction is either deliberate, or reckless in the criminal law sense. Gross negligence is not enough.

780 F.2d at 652. Shango must present sufficient evidence to show that the conditions of his confinement violated objective standards of decency and that the defendants' indifference towards Shango's welfare and safety was deliberate.

Based on this court's findings, it is clear that Shango has failed to satisfy either requirement to sustain his eighth amendment claim. There was no evidence presented by Shango to suggest even remotely that the defendants deliberately disregarded the alleged conditions of his segregation cell. Indeed, since Shango never even complained about his cell conditions while at Stateville, there is nothing from which to even infer that the defendants had knowledge of those conditions. Shango's failure to complain, however, sufficiently demonstrates to this court that he had nothing to complain about. Accordingly, judgment shall be entered in favor of the defendants on Count VI of the Amended Supplemental Complaint.

Count VIII: Retaliation and Harassment

In *Shango v. Jurich,* 681 F.2d 1091 (7th Cir.1982) the Seventh Circuit reaffirmed the proposition that a state prison inmate has no liberty interest in remaining in a particular institution. *Shango,* 681 F.2d at 1098. *Accord Meachum v. Fano,* 427 U.S. 215 (1976). Accordingly, prison officials have discretion to transfer an inmate for whatever reason or for no reason at all. *Meachum v. Fano,* 427 U.S. at 228; *Shango,* 681 F.2d at 1098. Here, Shango claims he was transferred to Menard and punished because of his legal activities at Stateville. If Shango was, in fact, transferred because he exercised his fundamental right of access to the courts, Shango would have a claim under Section 1983 even though the transfer would have been proper if taken for different reasons. *Matzker v.*

Herr, 748 F.2d 1142, 1150 (7th Cir.1984); *Buise v. Hudkins,* 584 F.2d 223, 229 (7th Cir.1978).

***38** At trial Shango offered no convincing evidence to demonstrate that he was either punished or transferred to Menard because of his constitutionally protected legal activities. As noted in this court's findings, the defendants' uncontroverted testimony satisfactorily demonstrated that Shango's legal activities were not considered during the disciplinary or transfer hearings. Consequently, judgment shall be entered in favor of the defendants on Count VIII of the Amended Supplemental Complaint.

CONCLUSION

For the reasons given in this opinion, the court enters judgment on behalf of the defendants on all counts in case numbers 74 C 3598, 75 C 3388, 76 C 3068, 76 C 3379, 76 C 3600 and 77 C 103 *with the exception of the following:*

(1) In 74 C 3598, the court finds that Stateville violated the Consent Decree by failing to keep an adequate accounting of library use and reserves ruling on an appropriate remedy.

(2) In 74 C 3598 and 75 C 3388, the court finds that Stateville's failure to give Shango and Sims the hearing to which they were entitled constituted a deprivation of their fourteenth amendment right to due process. The court enters judgment on behalf of Shango and Sims in that regard and orders the defendants to give Shango and Sims the requisite hearing within ninety (90) days. If Shango and Sims fail to get their hearing within that time, the court orders Stateville to reinstate Shango and Sims to their former positions as resident legal-clerks.

(3) In 74 C 3598, the court enters judgment on behalf of Shango on Count IV of the Amended Supplemental Complaint in the amount of One Dollar ($1.00).

The court orders further briefing on the appropriate remedy for the violation of the Consent Decree as follows: (1) plaintiffs' brief due August 1, 1988; (2) defendants' response due August 8, 1988; (3) plaintiffs' reply due August 15, 1988.

Footnotes

1 The consolidated cases are *Shango v. Jurich,* No. 74 C 3598; *Henderson v. Brierton,* No. 76 C 3068; *Cosentino v. Brierton,* No. 76 C 3379; and *Green v. Rowe,* No. 77 C 103. The related actions are *Nichols v. Kapture,* No. 74 C 3600 and *Sims v. Jurich,* No. 75 C 3388.

2 The Advisory Committee Notes to Rule 52 provide that the court "need only make brief, definite, pertinent findings and conclusions upon contested matters; there is no necessity for over-elaboration of detail or particularization of facts." In keeping with the spirit of the Notes, this section is intended to serve as background designed to simplify the factual findings necessary to a resolution of the dispute. Insofar as this section contains factual statements which a party may dispute, those statements constitute the factual findings of this court.

3 Class X felonies are defined in Ill.Rev.Stat. ch. 38, par. 1005–5–3.

4 Pursuant to Ill.Rev.Stat. ch. 38, par. 1003–7–2, the Illinois Department of Corrections hired the Bur Oak Library System to service the public-library needs of the inhabitants of Will, Kankakee, Grundy, and Kendall Counties. While Bur Oak is not strictly speaking a state agency, it receives it funding through the budget of the Secretary of State of Illinois. Bur Oak provided law-library services for Stateville until July 1, 1985 when it was replaced by the Cornbelt Library System.

5 Stateville records indicate that, as of December 31, 1978, only 19% of the inmates had completed four years of high school and 17% had never gone beyond grade school.

6 Shango's legal name is Cleve Heidelberg, Jr. Everyone in the prison community, however, refers to him as Shango and that is the name he prefers to be called by.

7 The original complaint was shortly followed by two amendments. For the purposes of this opinion, this court shall only refer to the second amended complaint filed on April 23, 1976. The persons originally named as defendants in the second amended complaint were the Stateville Librarian Mary Jurich, the Director of the Illinois Department of Corrections Allyn Sielaff, the Stateville Warden David Brierton, the Stateville Assistant Warden Robert Kapture, and the Director of the Bur Oak Library System, Charles DeYoung. Subsequent to the filing of the complaint, certain parties have been replaced pursuant to Federal Rule of Civil Procedure 25(d)(1). The defendant Sielaff has been replaced by Michael Lane who is now the Director of the Department of Corrections. Brierton was replaced by Michael O'Leary as Stateville's Warden. Kapture was replaced by Salvadore Godinez, and James McElhinney has replaced DeYoung as the Director of Bur Oak. The plaintiff Wilson is now deceased.

8 Named as defendants were Mary Jurich, David Brierton (replaced by O'Leary), Robert Kapture (replaced by Godinez), Arthur Wallenstein, who acted as Stateville's Assistant Warden, and Art Moen, Stateville's Assistant Librarian.

9 The plaintiffs at the time this action was filed were Steve Nichols, Marshall McWilliams, Jerome Marshall, Ronald Stansberry, Jesse D. Loden, Robert Cook, Jr. and Shango. On October 16, 1981 the court dismissed Nichols and McWilliams as plaintiffs. As of the date of trial, Marshall had been discharged from Stateville, Stansberry had been released under supervision, Loden and Shango had been transferred to Menard and Cook was deceased.

10 The defendants named in the original complaint were Jurich, Rowe, Brierton, M.P. Shifflet, a correctional officer at Stateville, George Stampar, the Stateville Assistant Warden and the Stateville Assistant Librarian Arthur Moen. The defendants have been succeeded by the current correctional and library officials for purposes of declaratory and injunctive relief only. Jurich, and others remain as defendants in their individual capacities.

11 As of May 1982, there were 190 inmates in Cellhouse H.

12 In 1982, there were a total of 169 inmates confined to this cellhouse.

13 Prior notice of this Consent Decree had been given to members of the class pursuant to Fed.R.Civ.P. 23(e) on July 1, 1981.

14 The audit was anything but perfect. The audit consisted of a visual inspection of the collection but did not include pulling the volumes to determine if pages had been torn out or if the requisite pocket-part was missing. Still, the court considers that audit to be more credible evidence than the memory of Newsome.

15 In addition to the fourteenth amendment, courts have referred to the first amendment and the privilege and immunities clause as sources of the right of access to the courts. *See Green v. Warden, U.S. Penitentiary,* 699 F.2d 364, 369 (7th Cir.1983), *cert. denied,* 461 U.S. 960 (1983).

16 *Bounds* was the culmination of a long series of Supreme Court decisions which addressed various aspects of the right of access question. *See Bounds,* 430 U.S. at 822–25 (cases cited therein).

17 Alone, Stateville's training program for resident legal clerks would not satisfy the *Bounds* test. Indeed, *Bounds* stated that for such a program alone to be sufficient the inmate clerks would have to receive paralegal training *and* be under a lawyer's supervision. *Bounds,* 430 U.S. at 831. *Accord Walters v. Thompson,* 615 F.Supp. 330, 340 (N.D.Ill.1985) (Moran, J.). Although the inmates at Stateville receive some degree of legal training, they do not act under the supervision of an attorney.

18 Although Stateville has adopted several alternative means by which inmates can obtain legal materials, it is clear that the stealing and defacing of the current collection is a problem that must eventually be dealt with in order to prevent future litigation. To help lessen this problem, Stateville could purchase book detectors of the type currently used in most public and university libraries to prevent the theft of materials. Likewise, closer inspection of the inmates materials taken from the law library might reveal stolen cases or other legal materials.

19 Of course, if the state failed to provide inmates with either a library or assistance from persons trained in the law as required by *Bounds,* then there would be no need to demonstrate actual harm or prejudice since such harm would be presumed. *See Walters,* 615 F.Supp. at 338. Such a situation does not exist here since Stateville does provide a law library and resident legal-clerks.

20 The record showed the library at Joliet had specially designed facilities which gave inmates access to case reporters and other legal materials while still isolating them from contact with the regular inmates. *Walters,* 615 F.Supp. at 336. This arrangement is somewhat similar to that of Stateville. Joliet, however, began to dismantle these facilities, but subsequently stopped by agreement until a hearing could be held on the scope of injunctive relief. *Id.* at 336 n. 4.

21 This conclusion is in no way meant to endorse further restrictions on the ability of inmates to obtain assistance from jailhouse lawyers. Indeed, the record in this case demonstrates that jailhouse lawyers contribute greatly to reducing the workload imposed on the resident legal-clerks and thereby furthers the success of Stateville's access plan. Accordingly, this court encourages the use of jailhouse lawyers even though, based on this record, it is not constitutionally mandated.

22 Other defendants include Allyn Sielaff who, at the time of filing, was sued in official capacity as Director of the Illinois Department of Corrections. Sielaff was later succeeded by Charles Rowe and now Michael Lane. David Brierton was also initially sued both individually and in his official capacity as Warden of the Stateville Correctional Center. Brierton has been succeeded by Michael O'Leary as the Warden of Stateville. The Assistant Warden for Operations of the Stateville Correctional Center was likewise sued in both his individual capacity and his official capacity. Finally, defendant M.P. Shifflett, a security officer and a member of the three-person Institutional Assignment Committee at Stateville, was sued both individually and in his capacity as an employee of the Department.

23 Although the court does not have the Stateville disciplinary code before it, the court assumes that insubordination results in disciplinary action.

24 *Shango v. Jurich,* 681 F.2d 1091 (7th Cir.1982). *See Shango v. Jurich,* 521 F.Supp. 1196 (N.D.Ill.1981).

25 A zip gun is a potentially lethal homemade weapon assembled with wire, cans, and other basic household items.

26 On the Disciplinary Report form, Price incorrectly listed the time and date of observation as being "approx. 4:00 p.m., 7/14/80." The form calls for the time and date the alleged conduct occurred, not the time Price himself learned of the conduct.

27 It was with respect to this hearing that Judge Shadur found, as a matter of law, that Shango's rights to due process had been violated. Specifically, Judge Shadur determined that the July 25th Resident Disciplinary Report was constitutionally deficient in that (1) it did not provide advance written notice detailing the time, place and date of the alleged attack on Edwards, (2) it did not disclose the identity of Griffin to whom Shango had allegedly paid the money for the sexual activities and (3) the Adjustment Committee's written statement was flawed for it did not give adequate notice of the evidence relied on for disciplinary action against Shango. Accordingly, Judge Shadur entered summary judgment on the question of liability against the defendants.

28 In a decision dated June 23, 1982, our Court of Appeals reversed the District Court and thereby dissolved the preliminary injunction. *See Shango v. Jurich,* 681 F.2d 1091 (7th Cir.1982).

29 In fact, only *some* evidence is required to support the prison's decision. *See Superintendent, Massachusetts Correctional Inst. at Walpole v. Hill,* 472 U.S. 445, 455–56 (1984). The court here finds that the prison's decision is supported by a preponderance of the evidence. The court further rejects Shango's claim that he did not have adequate notice of the charges against him before the trial. Although Shango did not know the exact date, he was notified that Edwards was his accuser and that the incident allegedly occurred in a specified month.