1995 WL 646300
Only the Westlaw citation is currently available.
United States District Court, N.D. Indiana, South Bend Division.

Kataza TAIFA, Paul Komyatti, William Sampley, Mark S. Douglas, Aaron Isby, Kevin Sandifer, James E. Shropshire, John Charles Cole, Jr. Preston Gardner, Edward Broadus, James Thompson, Nolan McDandal, Robert Smith, Robert Jenkins, Richard Mumford, Tillman Morris, Michael Hegwood, Terrence Drain, Eric MALONE, Michael Holland, Albert ESTEP, and Roosevelt Williams, Plaintiffs,
v.
Evan BAYH, in his individual and official capacity as Governor of the State of Indiana, James E. Aiken, in his individual and official capacity as Commissioner of the Indiana Department of Correction, Norman G. Owens, in his individual and official capacity as Director of the Classification Division of the Indiana Department of Correction; John Nunn, in his individual and official capacity as Deputy Commissioner of Operations of the Department of Correction, and Charles E. Wright, in his individual and official capacity as Director of the Maximum Control Complex of the Indiana Department of Correction, Defendants.

No. 3:92-cv-0429 AS. | Aug. 22, 1995.

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Opinion

ORDER

ALLEN SHARP, Chief Judge.

***1** In the 1920's when the United States was confronted with loan defaults by numerous European countries which

had been obligated during World War I, President Calvin Coolidge is reported to have stated: "They hired the money, didn't they?" This simplistic view of the world based on a traditional Yankee's concept of a simple agreement simply will not work in the modern world and certainly will not work in modern prisoner litigation. This court has taken the occasion to make an extensive review of the agreed entry that was signed off by Magistrate Judge Pierce, this court and counsel representing class plaintiffs in the State of Indiana in early 1994. It is to the benefit of all concerned that all of the interests in this case have been well represented by highly competent counsel. No criticism of any counsel is here intended. Notwithstanding, the representatives of the State of Indiana in that agreed entry, which is now approximately a year and-a-half in age, obligated the State of Indiana at least contractually to engage in activities with reference to inmates at the Maximum Control Complex in Westville, Indiana which went well beyond obligations imposed under the Constitution of the United States in such cases as *Wolff v. McDonnell,* 418 U.S. 539 (1974), and *Supt., Mass. Corr. Institution at Walpole v. Hill,* 472 U.S. 445 (1985). In the same context, it would appear that a generous reading of *Bounds v. Smith,* 430 U.S. 817 (1977), was adopted also. A very wise district judge in Georgia has with good sense and humor described the evolutionary processes of a certain species of prisoner litigation in *Carter v. Ingalls,* 576 F.Supp. 834 (S.D.Ga. 1983).

Having in the first instance agreed to more than was constitutionally required, the State of Indiana now is engaging in a process of backing and filling and throwing up the inhibitions of the Eleventh Amendment of the Constitution of the United States, as interpreted in *Pennhurst v. Halderman,* 465 U.S. 89 (1984). *See also Estelle v. McGuire,* 502 U.S. 62, 112 S.Ct. 475 (1991). Certainly, there is recent and respectable authority that would encourage the State of Indiana to back off from its pre-existing generosity. An en banc decision by the Seventh Circuit in *Evans v. City of Chicago,* 10 F.3d 474 (7th Cir. 1993), *cert. denied,* 114 S.Ct. 1831 (1994), is an authority which would encourage that process. *See also Sweeton v. Brown,* 27 F.3d 1162 (6th Cir. 1994), an en banc decision by the Sixth Circuit upon which certiorari was denied at 115 S.Ct. 1118 (1995). This court certainly does not give any advisory opinion as to whether aside from the demands of the Constitution of the United States and its limitations on the jurisdiction of this court, these plaintiffs can enforce these generous, state-created promises under principles of contract or other substantive law in the courts of the State of Indiana.

A word needs to be said in addition to the authorities cited in the excellent and comprehensive report and recommendation of Magistrate Judge Pierce filed on July 20, 1995, in regard to *Bounds,* and the cases cited in the report and recommendation at pages 21-26 in *Brooks v. Buscher,* Nos. 94-1797 and 94-1798 (7th Cir. July 23, 1995), the issue of access to law libraries vis-a-vis access to courts under *Bounds* was again re-visited and the authorities cited by the magistrate were again discussed and applied. The factual setting of that case and the reasoning is relevant and revealing here. Of particular note is the following statement:

> ***2** "We emphasize that if a prison does choose to provide a law library, the function of a library assistant is not to act as paralegal or quasi counsel, as they might have to if the prison provided no law library and instead provided assistance as the requisite 'persons trained in the law.'" *See also Campbell,* 787 F.2d at 229 (recognizing distinction). Brooks complains that he lacked legal skills and that Ahler and the law clerks were no help to him because they also lacked legal skills. However, the right to access is not the right to a free legal education. Where the prison provides a library, a prisoner such as Brooks may be largely on his own."

It also should be remembered that the fundamental concerns for prison security which the Supreme Court of the United States enunciated in *Turner v. Safley,* 482 U.S. 78 (1987), and *O'Lone v. Estate of Shabazz,* 482 U.S. 342 (1987), remain alive and well. Certainly, those security concerns have also been recently enunciated in *Keeney v. Heath,* No. 57 F.3d 579 (7th Cir. 1995).

There is little doubt *now* that provisions of the agreed entry and agreement of last year went significantly beyond that which is required under the Constitution of the United States, as most recently interpreted in *Sandin v. Conner,* 515 U.S. 472, 115 S.Ct. 2293 (1995). The magistrate judge is entirely correct in his analysis of *Sandin* at pages 32-34 of his report and recommendation.

The recommendations both as to denial and as to granting embodied in the magistrate judge's report and recommendation are challenged in regard to at least four issues in the objection filed August 14, 1995. The so-called fruit juice issue is a security issue pure and simple, and it is not for this magistrate judge or this court to superimpose its views upon the persons who have responsibility for the day-to-day administration of this maximum control complex. The handbook issue certainly the availability of fruit juices to an inmate population is a highly desirable thing to do if it can be done consistent with security, and that appears to be a major task in this case. The so-called fruit juice issue involves more micromanagement by this court than the due process clause demands. Able counsel for the plaintiffs have argued that the magistrate judge misapplied *Evans* with reference to the en banc majority, but this court and the magistrate judge are of one mind on that subject. This court is not persuaded to go further in regard to sanctions than is recommended by the magistrate judge, and is not

persuaded to assess any fines at this time. The question of attorney fees does not appear to be before this court at this time, and, therefore, will be reserved for appropriate consideration later. The report and recommendation is ADOPTED without exception. IT IS SO ORDERED.

REPORT AND RECOMMENDATION

PIERCE, United States Magistrate Judge.

This case is before the court on plaintiffs' motion to hold the defendants in contempt for failing to abide by the provisions of an Agreed Entry in a class action suit. The suit challenged the assignment of prisoners to, and the conditions of confinement at, the Maximum Control Complex ("MCC") operated by the Indiana Department of Correction ("DOC") in Westville, Indiana. The MCC is a modern maximum security correctional facility which was opened by the DOC in the summer of 1991, and has been the source of much litigation since that time. For the reasons which follow, it is recommended that the plaintiffs' motion to hold defendants in contempt be granted in part and denied in part.

Background

***3** This case was originally filed in the Marion County Superior Court on May 6, 1992, against the Governor of Indiana and various DOC officials. Plaintiffs filed an amended complaint on May 22, 1992. The action was removed, on defendants' motion, to the United States District Court for the Southern District of Indiana on May 29, 1992, and transferred to this court on July 7, 1992. On October 2, 1992, Chief Judge Sharp certified this case as a class action solely for "purposes of injunctive relief," with the class "consisting of all persons who, as of May 4, 1992, and thereafter in the future, are confined or will be confined in the Maximum Control Complex in Westville, Indiana." Plaintiffs' state law claims were remanded to state court on December 4, 1992.

After extensive settlement negotiations and two hearings before the undersigned at the MCC, the parties entered into an Agreed Entry which was ultimately approved by Chief Judge Sharp on February 15, 1994. On September 13, 1994, the plaintiffs moved to hold the defendants in contempt for failing to comply with certain provisions of the Agreed Entry. The plaintiffs' supporting memorandum identified 23 separate alleged violations. The parties agreed on remedies for several of these alleged violations prior to a contempt hearing held before the undersigned on April 6, 1995, at the MCC. Several more were remedied before the plaintiffs submitted their post-trial brief. The contempt motion before the court is now limited to seven alleged violations of the Agreed Entry which the court has consolidated into the six issues listed below. Plaintiffs have asked the court to enforce the Agreed Entry and sanction the defendants for disregarding it. They further request that the court impose a per diem monetary sanction upon defendants to coerce their compliance with the terms of the Agreed Entry.

Issues

1. *Conduct Adjustment Board Hearings.* Have defendants violated ¶ IX(1) of the Agreed Entry by not allowing MCC prisoners to be represented by lay advocates of their choice at Conduct Adjustment Board ("CAB") hearings?

2. *Law Clerks for Prisoners with Special Needs.* Have the defendants violated ¶ VI(6) of the Agreed Entry by failing to provide prisoners with special needs with prisoner lay advocates or law student clerks?

3. *Law Library Visits and Specific Cite Requirements for Legal Materials for Prisoners in Disciplinary Segregation.* Have the defendants violated ¶ IX(1) of the Agreed Entry by failing to allow prisoners on disciplinary segregation to visit law libraries, and violated ¶ VI(1) of the Agreed Entry by requiring specific cites before providing these prisoners with legal materials?

4. *Free Issue of the Handbook.* Have the defendants violated ¶ III(P)(4)(c) of the Agreed Entry by failing to provide prisoners with a free copy of the prisoner's Handbook?

5. *Classification.* Have the defendants violated ¶¶ I(A) and II(G) by holding a prisoner at the MCC who did not meet the criteria set forth in the Agreed Entry and by failing to give him sufficient notice of the reasons for his transfer to the MCC?

***4** 6. *Fruit Juices on Commissary.* Have the defendants violated ¶ III(B)(2) of the Agreed Entry by failing to make continuing, reasonable efforts to make fruit juices available through the prison commissary?

Contempt Standard and Interpretation of Consent Decree

To succeed on a motion for civil contempt, a party must prove by clear and convincing evidence that the opposing party violated a court order. *Goluba v. School District of*

Ripon, 45 F.3d 1035, 1037 (7th Cir. 1995); *Stotler and Co. v. Able,* 870 F.2d 1158, 1163 (7th Cir. 1989). A district court "must be able to point to a decree from the court 'which sets forth in specific detail an unequivocal command' which the party in contempt violated." *Goluba,* 45 F.3d at 1037 (quoting *Stotler,* 870 F.2d at 1163) (citations omitted). A district court does not ordinarily have to find that the violation was "willful" and may find a party in civil contempt if that party "has not been 'reasonably diligent and energetic in attempting to accomplish what was ordered."' *Id.*

A consent decree such as that found in the Agreed Entry here

> no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected and be enforceable as a judicial decree that is subject to the rules generally applicable to other judgments and decrees.

Kindred v. Duckworth, 9 F.3d 638, 641 (7th Cir. 1993) (citing *Rufo v. Inmates of Sutliff County Jail,* 112 S.Ct. 748, 757, 116 L.Ed.2d 867 (1992)).

> Consent decrees often embody outcomes that reach beyond basic constitutional protections. *See Rufo,* ––– U.S. at %BF–––, 112 S.Ct. at 762 ('we have no doubt that, to save themselves the time, expense, and inevitable risk of litigation... petitioners could settle the dispute over the proper remedy for the constitutional violations that had been found by undertaking to do more than the Constitution itself requires...'); *see also Langton v. Johnston,* 928 F.2d 1206, 1217-18 (1st Cir. 1991). Indeed, it is a rare case when a consent decree establishes only the bare minimum required by the Constitution. Often, it is precisely because parties are unsure of the current posture of the law that they are willing to compromise their positions. *See Rufo,* ––– U.S. at %BF–––, 112 S.Ct. at 762-63 (quoting from *Plyler v. Evatt,* 924 F.2d 1321, 1327 (4th Cir. 1991) (such decrees 'would make necessary ... a constitutional decision every time an effort was made either to enforce or modify the decree by judicial action')).

Kindred, 9 F.3d at 641-42 (footnote omitted).

Ordinarily, "the scope of the consent decree must be discerned within its four corners, not by reference to what might satisfy the purposes of one of the parties to it." *Goluba,* 45 F.3d at 1038 (quoting *United States v. Armour & Co.,* 402 U.S. 673, 682 (1971)). Where a portion of the consent decree is facially ambiguous and that ambiguity cannot be resolved on the basis of the decree's language alone, the court will "look at the evil which the decree was designed to rectify." *Goluba,* 45 F.3d at 1038 (quoting *Armour,* 402 U.S. at 686 (Douglas J., dissenting)). Accordingly, interpreting the decree requires an understanding of the context in which the decree was entered. *Id.* at 1038; *see also Alliance to End Repression v. City of Chicago,* 742 F.2d 1007, 1013 (7th Cir. 1984) (en banc) ("[C]ontext, in the broadest sense, is the key to understanding language.").

Agreed Entry, Stipulated Facts, Hearing Testimony, and Analysis

Lay Advocates at Conduct Adjustment Board Hearings

***5** The parties agree that the Agreed Entry provides that prisoners shall have lay advocates at CAB hearings. They disagree, however, as to who these lay advocates should be and what role they are to play.

Paragraph IX(1) of the Agreed Entry states:

> All discipline, including Conduct Adjustment Board hearings, shall be consistent with Ind. Code 11-11-5-1 *et seq.* (attached). This does not entitle prisoners to utilize the Court's contempt powers to challenge CAB convictions on a case by case basis. The contempt power shall be available to enforce this provision on a class-wide basis.

IND. CODE § 11-11-5-5(a)(7), which is expressly adopted by and attached to the Agreed Entry, states that prisoners facing disciplinary hearings are entitled to:

> Have advice and representation by a lay advocate of his choice, if that lay advocate is available in the institution at the time for the hearing, in those hearings based upon a charge of institutional misconduct when the department determines he lacks the competency to understand the issues involved or to participate in the hearing, or when the punishment may be that specified in:
>
> (A) Section 3(5) [IC 11-11-5-3(5)] of this chapter if the restitution is more than two hundred collars ($200);
>
> (B) Section 3(8) [IC 11-11-5-3(8)] of this chapter if the segregation is for more than fifteen (15) days; or

> (C) Section 3(6), 3(9), or 3(10) [IC 11-11-5-3(6), IC 11-11-5-3(9), or IC 11-11-5-3-(10)] of this chapter.

The question before the court is whether the defendants have met the requirements of this statute.

In the Prehearing Order, the parties stipulated that in CAB hearings at the MCC:

> [t]he lay advocates assigned to assist inmates charged with disciplinary infractions are MCC staff members, not fellow inmates, and the inmate does not have his choice of who will serve as his lay advocate. They do not provide investigative services or argue the case on the inmate's behalf. Inmates charged with disciplinary offenses may, when informed of the charge by a screening officer, request that witnesses be asked to provide written witness statements. It is MCC's policy that the screening officer then notifies the witness(es) and gives an opportunity to provide a written statement for the CAB's consideration.

(Prehearing Order ¶ F(5), at p. 7.)

Prisoner testimony at the contempt hearing buttresses this stipulation. Paul Komyatti, Jr., stated that when he requested a lay advocate, Correctional Counselor Wilson made himself available in that position. Wilson did not provide Komyatti with any assistance before the hearing, and appeared at the hearing as an "observer." (Transcript of Contempt Hearing at p. 31.) Under examination by plaintiffs' counsel, Mr. Komyatti testified:

> Q. [W]as Mr. Wilson the lay advocate of your choice?
>
> A. No. We have no choice of lay advocates at MCC.
>
> Q. What did Mr. Wilson do at the hearing?
>
> A. He showed up.
>
> Q. Did he say anything?
>
> ***6** A. This is referring to one specific instance, but it would be a generalization of every hearing. The last time I was at a disciplinary hearing he showed up and I asked him questions concerning his role as a 'lay advocate.' He informed me that his role was strictly to observe whether or not my due process rights were fulfilled. And when I asked him if he knew what a due process right was I received no reply.
>
> Q. Based on what you understand advocacy to mean, did he advocate for you in any way?
>
> A. No, he did not.
>
> Q. Was he otherwise passive during the course of that proceeding?
>
> A. Yes, he was.

Mr. Komyatti further stated that in subsequent disciplinary proceedings, he never had the lay advocate of his choice, and that the lay advocates who were assigned to him never argued a case for him, made an opening statement, interrogated a witness, made a final statement, assisted him in formulating written materials that could be submitted to the CAB, or discussed any strategy or research matters with him. (Tr. 32-33.)

Prisoner Anthony Walls provided similar testimony. He stated that though he had requested lay advocates, he never received the one of his choice. (Tr. 61-62.) According to Walls, there are two counselors at the MCC and prisoners are assigned whichever counselor is not their own as the lay advocate for their CAB hearings. (Tr. 62.) He also stated:

> I've been told that the MCC lay advocates are not complying by -- they're not bound to comply by the DOC definition of a lay advocate in the handbook manual. It's a difference. And they do not assist you. They are not obligated to assist you in any type of defense during the hearing.
>
> They say that they're there to witness the hearing and make sure that your rights ain't violated. But as far as gathering any information, or witness statements, in your behalf to the CAB chairman, none of that takes place.

(Tr. 61-62.) None of the lay advocates assigned to Walls made an objection at a CAB hearing or advised him on how to proceed with his case. (Tr. 63.)

On May 31, 1995, the MCC Superintendent issued an administrative directive designed to "assure that offender's State rights are observed regarding the provision of a lay advocate in disciplinary hearings as provided by Indiana Code 11-11-5-5." The new directive states that:

> A. The superintendent shall create a list of no less than five (5) staff members approved to be used as lay advocates.
>
> B. Each offender will be allowed, at the time of screening, to select from the approved list of lay

advocates the staff member that he wishes to act as his lay advocate. NOTE: Staff will not be expected to forfeit scheduled or regular days off to fulfill their duties as lay advocate. Same will suffice for grounds for a continuance.

C. Staff designated as lay advocates, hearing officers, and screening officers will receive training regarding the role of lay advocates.

D. Staff who have been requested as lay advocates shall be allowed at least one (1) meeting with the charged offender prior to the disciplinary hearing. The meeting(s) should convene with the charged offender as soon as possible upon notification to the lay advocate of the pending hearing. Supervisory staff will be responsible to make this time available to the staff member.

***7** E. Lay advocates will aid an offender in preparing his defense when requested by the offender, and will NOT be responsible for soliciting statements from staff. Securing witness statements is the responsibility of the Screening Officer per the ADPP.

F. The offender shall be primarily responsible for the delivery of his own defense. The lay advocate shall present to the hearing officer any procedural, due process, or other types of violations that he or she may recognize whether or not requested to intervene by the offender.

G. The lay advocate's duties terminate at the conclusion of the hearing.

The plaintiffs concede that lay advocates are not required as a matter of due process. *Wolff v. McDonnell,* 418 U.S. 539 (1974); *Miller v. Duckworth,* 963 F.2d 1002 (7th Cir. 1992). They argue, however, that the defendants violated the Agreed Entry by denying prisoners subject to disciplinary action the right to "have advice and representation by a lay advocate of [their] choice" as required by IND. CODE § 11-11-5-5(a)(7). They further argue that the defendants are in violation of the Agreed Entry because "the staff lay advocates do not perform any functions which are traditionally expected from an advocate." (Post-Trial Brief at p. 10.)

The defendants respond by stating that it is necessary that lay advocates be staff members because other inmates are not "available" as required by the statute. The MCC has a closed population and allowing inmates to meet with and assist other inmates is strictly forbidden for security reasons. Further, defendants state that the statute does not define the role of "lay advocate," and does not require that inmates be supplied with advocates who act in the same way an attorney does in a criminal trial.

The defendants' most fundamental argument on this issue, however, is that this court lacks jurisdiction to enforce the lay advocate provision of the Agreed Entry because, pursuant to the Eleventh Amendment, it may not enjoin state officials to conform their conduct to state law. *Pennhurst State School and Hospital v. Halderman,* 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984). The defendants, citing *Saahir v. Estelle,* 47 F.3d 758 (5th Cir. 1995), argue that this jurisdictional bar remains in place even where state officials agree in a federal consent decree to follow state law. This court must agree.

In *Saahir,* a prisoner had entered into a settlement agreement with prison officials allowing him to own, use, and possess a cassette tape player and tapes for listening purposes only. The agreement provided that "[t]he plaintiff shall order the tapes he desires through the Texas Department of Corrections' Islamic Chaplain, who will facilitate and administer the order and delivery of tapes to plaintiff." *Id.* at 760. The district court entered a consent decree approving and incorporating the settlement agreement and dismissed the case. *Id.* Saahir later brought a motion for civil contempt against the defendants alleging that they had violated the settlement agreement by confiscating 39 of his non-religious tapes. The district court granted his motion and required prison officials to return the tapes or reimburse him.

***8** The Court of Appeals, however, reversed holding that the district court did not have jurisdiction because Saahir's contempt motion did not involve any federal interest. The court cited its earlier decision in *Lelsz v. Kavanagh,* 807 F.2d 1243 (5th Cir.), *cert. dismissed,* 483 U.S. 1057 (1987), in support of this ruling. In *Lelsz,* the court held that it lacked jurisdiction to enforce a consent decree against the state to the extent that the relief ordered in the decree was based on state law. 807 F.2d at 1246-47. It stated that it did not have jurisdiction to enforce the consent decree beyond the guarantees contained in the Constitution because the only legitimate basis for federal court intervention consistent with the Eleventh Amendment was the vindication of federal rights. *Id.* at 1252.

Saahir had attempted to distinguish *Lelsz* by arguing that the consent decree entered in his case was based on federal law. He noted that his complaint did not have any basis in state law, but rested instead on 42 U.S.C. § 1983. According to Saahir, the defendants agreed to settle those federal claims against them by agreeing to allow him any musical tapes he desired. He further argued this was a vindication of a federal right because it had been given to him in exchange for his dropping a suit based on a federal right.

The Fifth Circuit disagreed:

What the defendants agreed to give as a remedy ... does

> not have any effect on the jurisdictional limits of a federal court. Although 'a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial,' *Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland,* 478 U.S. 501, 525, 106 S.Ct. 3063, 3077, 92 L.Ed.2d 405 (1986), the federal court 'must fall back on its inherent jurisdiction' when it 'issue[s] its own, different order enforcing ... the decree,' *Lelsz,* 807 F.2d at 1252.

47 F.3d at 761.

While at least one appellate court has strongly disagreed with the rationale announced in *Lelsz* and *Saahir*[1], the Seventh Circuit adopted a similar position in *Evans v. City of Chicago,* 10 F.3d 474 (7th Cir. 1993) (*in banc*), *cert. denied,* 194 S.Ct. 1831, 128 L.Ed.2d 460 (1994). In *Evans,* the City had settled a suit brought by judgment creditors challenging its delay in payment of tort judgments through a consent decree. The City later challenged the injunction entered as part of that decree, and the Seventh Circuit met *in banc* "to consider whether a district court should require a unit of state or local government to abide by a consent decree that does not serve any federal interest. The answer is No...." 10 F.3d at 475. It later elaborated by stating:

> [E]ntry and continued enforcement of a consent decree regulating the operation of a governmental body depend on the existence of a substantial claim under federal law. Unless there is such a claim, the consent decree is no more than a contract, whose enforcement cannot be supported by the diversity jurisdiction and that has in court no more force than it would have outside of court.

***9** *Id.* at 480. *See also Sweeton v. Brown,* 27 F.3d 1162 (6th Cir. 1994) (*in banc*) (finding no basis in federal law to support continuance of injunction entered as part of consent decree in prisoner suit), *cert. denied sub nom., Sweeton v. McGinnis,* 115 S.Ct. 1118, 130 L.Ed.2d 1082 (1995).

In the present case, the plaintiffs have conceded that they cannot make a claim that prisoners are entitled to lay advocates under federal law. It is true that the defendants adopted the state lay advocate procedures as part of the remedy to the plaintiff's § 1983 claim, but "[w]hat the defendants agreed to give as a remedy does not have any affect on the jurisdiction limits of a federal court." *Saahir,* 47 F.3d at 761. Because the Agreed Entry's provision on lay advocates is based solely on state law, this court does not have jurisdiction and RECOMMENDS that the plaintiffs' contempt motion be DENIED.

Law Clerks for Prisoners with Special Needs

Under the Agreed Entry:

> With respect to any prisoner who is functionally illiterate or has an intellectual[,] mental or physical disability which would substantially impair the prisoner's ability to conduct legal research, prepare legal documents, or correspond with the court, the DOC shall allow such prisoner to be assisted by inmate law clerks or outside paralegals or law students at DOC option.

(Agreed Entry at ¶ VI(6).) In an effort to implement this provision, the defendants agreed on July 29, 1994 to

> *immediately* contact Professor Vandercoy at Valparaiso Law School to arrange for law student clerks to help MCC prisoners who are functionally illiterate or have intellectual mental or physical disabilities which would substantially impair the prisoners' ability to conduct legal research, prepare legal documents, or correspond with the court.

(Parties' First Implementation Agreement ¶ 32, at p. 6.) (Emphasis supplied.) The plaintiffs argue that the defendants have failed to satisfy this provision of the Agreed Entry, and did not abide by the Implementation Agreement in a timely manner.

In the Prehearing Order, the parties stipulated that "[t]he only inmate currently at MCC with any type of 'special need' is an inmate who is legally blind, Allen Clark." (Prehearing Order ¶ F(4), at p. 6.) At the hearing, Clark testified that in order to read he puts a magnifying glass with a light on it on a book and then holds the book up to his face. (Tr. 91.) It takes him about 10 or 15 minutes to read a page. (*Id.*) Clark has never been allowed to have a prisoner law clerk assist him with his legal matters nor has he had an outside paralegal or law student to assist him. (Tr. 90.) The MCC has never provided anybody to help Clark prepare legal documents, correspond with the court or to do legal research. (Tr. 95.) A prison paralegal has helped him get legal materials and has sometimes given him legal materials in large print. (Tr. 92.) She has not, however, ever read anything aloud to him. (*Id.*)

***10** Offender Komyatti helped Clark file a habeas corpus

claim by preparing it and then having Clark rewrite it. (Tr. 94.) Clark and Komyatti were disciplined for Komyatti's actions, and Komyatti has not offered Clark assistance again. (*Id.*)

The prison paralegal, Sharon Hawk, confirmed much of Clark's account in her own testimony. She stated that she sees him every time he is scheduled for the library, which is around two hours a week. (Tr. 269, 271.) She helps him in accessing materials by enlarging everything she photocopies for him. (*Id.*) Hawk has read letters to Clark, but has never read a case to him. (Tr. 271.) She has never read any of the materials aloud to Clark that he could not read himself. (*Id.*) Hawk enlarges cases for Clark to a scale of "[p]robably 120 [[[percent]." (Tr. 270.) She does not enlarge them into big, bold letters, but enlarges it from a page in a federal reporter to an 8 ½ x 11 page.[2]

Clark and Hawk have had frequent discussions about Clark's desire for Komyatti to help him with his habeas corpus case. (Tr. 273.) Hawk has never gone to the administration and told them of Clark's requests, nor has she tried to do work on the habeas corpus case for him. (*Id.*) She has, however, helped Clark communicate with a clerk at the General Services Complex ("GSC") at the Westville Correctional Center which abuts the MCC. The GSC clerk tells Clark exactly what to write on each line. (*Id.*) Hawk takes material over to the Westville law library where the clerk works on it and sends it back to her. Hawk then she speaks with Clark about it. (Tr. 274.) Hawk has not tried to arrange for an inmate clerk at the MCC to work with Clark, nor has she tried to arrange for an outside paralegal or outside law clerk to work with Clark. (*Id.*) In fact, despite their statement in the First Implementation Agreement that they would "immediately" contact Professor Vandercoy at the Valparaiso Law School to arrange for law student clerks to help MCC prisoners with specials needs, defendants did not do so until March 31, 1995 (Tr. 279-80), 245 days after the implementation agreement and only 6 days before the contempt hearing.

The court finds that the efforts by Hawk and other DOC officials to arrange for assistance for Clark, and the limited accommodations which have been made for him in the form of enlarged copies are insufficient to satisfy ¶ VI(6) of the Agreed Entry. Under that paragraph, the defendants are required to "allow ... prisoners [with intellectual, mental or physical disabilities] to be assisted by inmate law clerks or outside paralegals or law students at DOC option." The evidence at the pre-trial hearing shows, however, that when another inmate (Komyatti) assisted Clark in filing a habeas corpus claim, both were disciplined. (Tr. 94.) The only effort to arrange for law student clerks took place 245 days after the defendants promised to do so in the First Implementation Agreement. Such a delay does not fall within the definition of "immediately."

> ***11** Without interval of time, without delay, straightway, or without any delay or lapse of time. *Drumbar v. Jeddo-Highland Coal Co.,* 155 Pa.Super. 57, 37 A.2d 25, 27. When used in contract is usually construed to mean 'within a reasonable time having due regard to the nature of the circumstances of the case', although strictly, it means 'not deferred by any period of time'. *Integrated, Inc. v. Alec Fergusson Elec. Contractors,* 250 C.A.2d 287, 58 Cal. Rptr. 503, 508, 509,. The words 'immediately' and 'forthwith' have generally the same meaning. They are stronger than the expression 'within a reasonable time' and imply prompt, vigorous action without any delay. *Alsam Holding Co. v. Consolidated Taxpayers' Mut. Ins. Co.,* 4 N.Y.S.2d 498, 505, 167 Misc. 732.

Black's Law Dictionary 750 (6th ed. 1990).

The fact that the DOC may now be in compliance with the Implementation Agreement because it has contacted Professor Vandercoy does not present a defense to a contempt citation. *Ex Parte Jefferson County Department of Human Resources,* 555 So.2d 1075 (Ala. Civ. App. 1989), *cert. denied,* 555 So.2d 1077 (Ala. 1990).

> We find it clear that the trial court could have concluded that 110 days was not 'immediately' and that the Department was not in compliance with the August 1988 court order. Further, we find that it is within the court's power to find the Department in contempt for failing to comply with the court's order and its action was not penal in nature, but was intended to compel compliance with its orders in the future.

Id. at 1076.

In the present case, the DOC waited for more than a year after Judge Sharp approved the Agreed Entry on February 15, 1994, 245 days after its representatives signed the Implementation Agreement on July 29, 1994, and 6 months after the plaintiffs filed their contempt motion on September 13, 1994, before it made any attempt at finding law students to assist prisoners such as Clark with special needs. The DOC has not tried to find an inmate clerk at the MCC to assist Clark, and it has disciplined Komyatti when he provided such assistance. Accordingly, the court concludes that the defendants have failed to comply with the Agreed Entry's requirement that prisoners with special needs be allowed assistance or law students, and that defendants did not "immediately" remedy this deficiency as required by the Implementation Agreement. It RECOMMENDS that the plaintiffs' contempt motion be GRANTED with respect to the provision of law clerks

for prisoners with special needs.

The Bar on Law Library Visits and the Requirement that Prisoners in Disciplinary Segregation Provide Exact Case Cites

Plaintiffs allege that the defendants have violated two portions of the Agreed Entry by forbidding prisoners on disciplinary segregation from visiting the MCC's satellite law libraries and requiring that they provide exact cites for any requested materials. First, they argue that defendants have violated ¶ IX(1) of the Agreed Entry -- which is quoted above in the discussion on CAB hearings -- by limiting their access to legal research materials in violation of IND. CODE § 11-11-5-4(5). That statute provides: "The department may not impose the following as disciplinary action: ... access to personal legal papers and legal research materials." Second, the plaintiffs allege that the defendants violated ¶ VI(1) of the Agreed Entry, which states that prisoners "be provided legal access which is adequate and sufficient as defined by state and applicable case law," by requiring prisoners on disciplinary segregation to provide specific cites before they may receive legal materials.

***12** The parties stipulated in the Prehearing Order that "[i]nmates who have received disciplinary segregation sentences after arriving at MCC are not permitted to leave their cells to visit the satellite law libraries." (Prehearing Order at ¶ F(3), at p. 6.) This stipulation was supported by testimony from several prisoners at the hearing. For example, Walls testified that when he was in disciplinary segregation, he was not allowed to go to the law library. (Tr. 59.) He was allowed to request legal materials, but had to do so by providing a specific case cite or requesting a specific legal form. (Tr. 59-60.) He stated that prisoners cannot get books while they are in disciplinary segregation. (Tr. 60.) When he asked for books, he was told that "they don't do that but maybe I could write Mr. [Michael] Scott [the administrative assistant at the MCC] and get his approval for this." (*Id.*) Walls never pursued this because he was soon moved back to his regular cell. (*Id.*)

Walls did send a note to Hawk, the MCC paralegal, telling her the area of law on which he wanted information. She wrote him back saying that if he had specific case citations she would get them for him. (Tr. 67-68.) She did not offer to copy pages from one of the legal digests or other legal books. (Tr. 68.) Walls did not ask specifically for these:

> What I asked her was very broad. I'm am amateur litigant and I asked for assistance in an area. She gave me some cases and sent me a form. And that was about it. If I have any cases, any cases within them cases, she would be able to make copies of them cases, I couldn't get any books and I couldn't go to the law library because of my segregation status.

(*Id.* at p. 68.)

Prisoner Nicholas Broadus offered similar testimony. He stated that when he was in disciplinary segregation, he could not go to the law library and "had to fuss with Sharon Hawk to get legal materials." (Tr. 133.) He was required to give exact cites, and could not get books with a hard cover, including digests. (*Id.*)

> I would ask Sharon Hawk if I could have some forms or summaries or a legal book. She would ask me what would I need them for. She sent me legal work about a week ago, and I couldn't get it unless I told her what I needed it for and showed her proof that I filed whatever I filed.

(Tr. 134.)

Broadus also testified that Hawk told him she could not do legal research or prepare legal materials for him because it was against the policy of the institution. (Tr. 133) Despite these limitations, Broadus has been able to file several law suits, but testified that he did not prepare them himself. Instead, other prisoners prepared the cases, "cadillacked" them to him and he copied them. (*Id.*)[3]

Hawk also testified about the limits on library access placed on prisoners in disciplinary segregation. She stated that offenders on disciplinary segregation are not allowed to go to the satellite law libraries. (Tr. 257.) Because of this, she provides extra services for those offenders that she would not provide to other offenders.

> ***13** A. We have several editions of books. Offenders on segregation aren't allowed to have hardback books in their cells. There are numerous reference books that I have taken the hardcovers off of so that the offenders can have them in their cell.
>
> Q. And then you deliver those books to the cell of the offender who is in disciplinary segregation?
>
> A. I either deliver it or have an officer deliver it, or I put it in their mail.
>
> Q. Do you ever meet with the offenders who are on disciplinary segregation, to discuss their legal requests?

A. Yes, I do.

Q. How frequently do you meet with offenders on disciplinary segregation?

A. I'm probably up there at least three times a week.

(Tr. 258.)

The supply of books with covers removed that can be given to prisoners on disciplinary segregation includes the two volumes of *The Rights of Prisoners, Criminal Law* by Scott and *How to Find the Law.* (*Id.*) However, the covers of the digests, encyclopedias, *Indiana Practice,* reporters, USCA, Indiana Code, and the Federal Supplement do not have their covers removed and are not available to prisoners in disciplinary segregation. (Tr. 265-66.) Newer paperback and pamphlet editions of the Federal Supplement, Federal Reporter and Supreme Court rulings are available to disciplinary segregation inmates, but older hard-bound volumes are not. (Tr. 266-67.) If there is a hardback book from which an offender on disciplinary segregation needs materials, Hawk copies the pages requested and sends them to the prisoner. She testified that she never told either Walls or Broadus while they were on disciplinary segregation that they could only get cases with exact citations. (Tr. 278.)

When inmates on disciplinary segregation want the digests, Hawk copies the index of the digests and asks them to indicate what topic they are interested in. (Tr. 267.) It usually takes her two or three days to fulfill such a request. After the prisoners look at the index, they send another message indicating which section they would like to examine. (Tr. 268.) Again, it takes Hawk two to three days to respond. (*Id.*) The same process is used if prisoners want another section and when they want to look at a part of the Indiana Code. Hawk testified that it can take a prisoner up to one week to get from the index of the digests to a code section, in contrast to a person in a satellite law library who can get that access immediately. (Tr. 268.) She acknowledged that obtaining access to legal information is "a little more time consuming" for prisoners on disciplinary segregation, but stated that she did not believe legal information was any less available to offenders on segregation than to other prisoners. (Tr. 269.)

Hawk does not assist prisoners on disciplinary segregation, write briefs or memoranda. She explains to prisoners that she is not an attorney and cannot do attorney work per her paralegal certificate of training and her job description at the MCC. "I'm not allowed to give legal advice or do legal work." (Tr. 269-70.) When a prisoner needs help in drafting a document, Hawk finds a format for the type of document involved and copies it so that the prisoners have something to use as a guide. She has read through a prisoner's draft of a legal document three times in the last two or three years and made suggestions. (Tr. 270.)

***14** According to the Seventh Circuit,

> An inmate's access to the courts is the most fundamental of his rights; 'all other rights of an inmate are illusory without it, being entirely dependent for their existence on the whim or caprice of the prison warden.' *Adams v. Carlson,* 488 F.2d 619, 630 (7th Cir. 1973). To prove a violation of this crucial right, an inmate must meet both prongs of a two-part test. *See DeMallory v. Cullen,* 855 F.2d 442, 448 (7th Cir. 1988). Under the first prong, the inmate must show that prison officials failed 'to assist in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.' *Bounds v. Smith,* 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977); *Martin v. Davies,* 917 F.2d 336, 338 (7th Cir. 1990), *cert. denied,* 501 U.S. 1208, 111 S.Ct. 2805, 115 L.Ed.2d 978 (1991). To meet the second prong, the prisoner must generally show 'some quantum of detriment caused by the delay of the plaintiff's pending or contemplated litigation.' *Shango v. Jurich,* 965 F.2d 289 (7th Cir. 1992). We however waive this showing of detriment where the prisoner alleges a direct, substantial and continuous, rather than a 'minor and indirect,' limit on legal materials. *DeMallory v. Cullen,* 855 F.2d 442, 448-49 (7th Cir. 1988).

Jenkins v. Lane, 977 F.2d 266, 268 (7th Cir. 1992). *See also Alston v. DeBruyn,* 13 F.3d 1036, 1040-41 (7th Cir. 1994).

A prisoner's right of access, however, is not unconditional. The constitutionally relevant benchmark is meaningful, not total or unlimited access. *Williams v. Lane,* 851 F.2d 867, 878 (7th Cir.), *cert. denied sub nom., Lane v. Williams,* 488 U.S. 1047 (1989); *Martin v. Tyson,* 845 F.2d 1451, 1456 (7th Cir.), *cert. denied,* 488 U.S. 863 (1988). Restrictions on this access will not be unconstitutional interference when justified by security concerns, which prison officials bear the burden of proving. *Williams,* 851 F.2d at 878. Because of the practical difficulties involved in doing research without free access to a library, however, courts tend to give close scrutiny to such "remote control" arrangements. *Watson v. Norris,* 729 F.Supp. 581, 585 (M.D. Tenn. 1989); *Griffin v. Couglin,* 743 F.Supp. 1006, 1021 (N.D.N.Y. 1990).

The Seventh Circuit has had the opportunity to address the sufficiency of "exact cite" or "paging" systems on several occasions. In *Corgain v. Miller,* 708 F.2d 1241 (7th Cir. 1983), the court held that an exact cite system at the United States Penitentiary at Marion, Illinois, was constitutionally inadequate. Under that system, prisoners

could obtain copies of necessary material only by written request accompanied by precise citations. The Seventh Circuit found:

> The magistrate correctly concluded that the law library system at USP-Marion, without state law materials or supplemental legal aid, was inadequate. He aptly characterized the ... requirement for precise citations for photocopying as a 'Catch 22' because the inmate could obtain precise citations only if he could refer to state law materials.

***15** *Id.* at 1250. The Seventh Circuit did, however, approve plans submitted by prison officials to remedy the inadequate access by providing inmates either with "starter" libraries, in which the inmates themselves could do preliminary research, or with lists of legal services offices which provided assistance to inmates.

In *Campbell v. Miller,* 787 F.2d 217 (7th Cir.), *cert. denied,* 479 U.S. 1019 (1986), the court upheld a modified exact cite system utilized for prisoners housed in the Control Unit at USP-Marion. Prisoners housed in the Control Unit could not use the main law library in Marion, but could request up to two specific law books from the main library at a time. Depending on the demand for a particular volume, prisoners might receive requested materials within 24 hours or might wait as much as a week. *Id.* at 225. In addition, there was a smaller law library in the Control Unit which prisoners could use directly. The Control Unit library did not contain case materials, and because only one inmate could use the library at a time, prisoners sometimes had to wait up to eight days before being allowed access. *Id.*

The Seventh Circuit found that this access, though limited, was constitutionally sufficient based on the facts presented. It noted:

> Marion is the only level-six maximum security institution in the federal penitentiary system, and the Control Unit houses those inmates who are too great a security risk to be allowed in the general population. The security concerns addressed by the exact-cite paging system are unique, and again we cannot find that Marion officials have exaggerated their response to these concerns or that this restriction is irrational.

Id. at 228. The court distinguished *Corgain* by noting that prisoners had access to reference materials from which to derive the citations to state cases. Moreover, the plaintiff had

> neither challenged the sufficiency of the reference materials available in the Control Unit library, to which he has direct access, nor alleged that the amount of time he is allowed to spend in the unit library is inadequate to conduct meaningful legal research.

Id. at 229.

Prisoners at Marion did challenge the sufficiency of smaller "basic libraries" in *Caldwell v. Miller,* 790 F.2d 589 (7th Cir. 1986). The Seventh Circuit found that the district court had erred in granting summary judgment for the defendant warden because factual issues remained regarding this issue. It noted, however, that an exact-cite system may be permissible if it is "supplemented by adequate reference materials in the basic library." *Id.* at 607.

In *Williams,* however, the Seventh Circuit found that limitations on library access placed on prisoners in protective custody violated their right of access to the courts. When an inmate on protective custody status wanted to go to the library, he was locked alone in one of seven special security cages; cellmates, co-litigants, or co-defendants could share a cage. 851 F.2d at 874. Inmates could not leave the cages, however, and depended on a library clerk to retrieve materials for them. Quoting from the district court's decision, the Seventh Circuit held that the library services provided to the protective custody inmates were inadequate because

> ***16** [e]ven if an inmate were attuned to the nuances of legal meaning, the limitations imposed by defendants would convert a possible work of minutes into a need to spend hours -- and, moreover, hours to which no plaintiff could gain access.

Id. at 879 (quoting 646 F.Supp. 1379, 1389 (N.D. Ill. 1987)).

Similarly, in *DeMallory v. Cullen,* 855 F.2d 442 (7th Cir. 1988), the court held that inmates in a Wisconsin prison's Adjustment Center (a maximum security unit within the prison separating certain inmates from general population inmates because of alleged involvement in disturbances at the prison) had stated a claim for denial of access rights.

Prisoners in the Adjustment Center could not go to the prison library or confer personally with inmate paralegals. They could check out books from the library by written requests and consult paralegals by correspondence. *Id.* at 446.

After discussing *Corgain, Campbell,* and *Caldwell,* the Seventh Circuit found that this arrangement denied the plaintiff his right to access to the courts. It noted:

> DeMallory ... had no access to law libraries -- even 'starter' or 'basic' libraries. Unlike the control unit in *Campbell,* the Adjustment Center library lacks the primary resources to allow DeMallory or other inmates to adequately begin their initial legal research or to formulate tentative theories. Moreover, because the district court was unable to appoint an attorney to represent him, DeMallory had to proceed without counsel. DeMallory's meaningful access to the courts, therefore, rested solely on written correspondence with inmate paralegals for assistance on his Eighth Amendment claim. Dependence on untrained inmate paralegals as an alternative to library access does not provide constitutionally sufficient access to the courts. 'Rather when inmates have no access to a law library they must be provided with assistance by trained, skilled, and independent legal personnel.' *Walters v. Thompson,* 615 F.Supp. 330, 340 (N.D. Ill. 1985).

Id. at 447 (footnotes omitted).

The court finds that this case is more like *DeMallory* and *Williams* than *Campbell* and *Caldwell.* As in *DeMallory,* inmates on disciplinary segregation at the MCC have no access to law libraries -- even "starter" or "basic" libraries. *See* Prehearing Order at ¶ F(3), at p. 6 ("[i]nmates who have received disciplinary segregation sentences after arriving at MCC are not permitted to leave their cells to visit the satellite law libraries."). *See also* Tr. 59, 133, 257. While the MCC does make certain reference books and digests available to prisoners (Tr. 265-68), the process of getting from these references to specific cases can be time consuming, converting the "possible work of minutes into a need to spend hours." *Williams,* 851 F.2d at 879. In fact, Hawk testified that it can take a prisoner up to one week to get from the index of the digests to a code section, in contrast to a person in a satellite law library who can get that access immediately. (Tr. 268.)

***17** This testimony is in accord with a frequently-quoted passage from *Williams v. Leeke,* 584 F.2d 1336, 1339 (4th Cir. 1978), *cert. denied,* 442 U.S. 911 (1979):

> Simply providing a prisoner with books in his cell, if he requests them, gives a prisoner no meaningful chance to explore the legal remedies that he might have. Legal research often requires browsing through various materials in search of inspiration; tentative theories may have to be abandoned in the course of research in the fact of unfamiliar adverse precedent. New theories may occur as a result of chance discovery of an obscure or forgotten case. Certainly a prisoner, unversed in the law and the methods of legal research, will need more time or more assistance than the trained lawyer exploring his case. It is unrealistic to expect a prisoner to know in advance exactly what materials he needs to consult.[4]

Given the lack of access to even satellite law libraries and week-long delays in research caused by the paging system, the court holds that library access for prisoners in disciplinary segregation is not "adequate and sufficient as defined by statute and applicable case law." Accordingly, the defendants are in violation of ¶ II(1) of the Agreed Entry, and the court RECOMMENDS that the plaintiffs' motion be GRANTED on this issue.

Free Issue of the Handbook

Paragraph III(T)(4)(c) of the Agreed Entry states that "[t]he MCC shall provide each prisoner with a free issue of the prisoner's handbook or like material, and any revisions and amended issues as they are published." The parties disagree on the meaning of the word "provide" in this context, with plaintiffs claiming the defendants have violated the Agreed Entry because -- though each inmate is issued a copy of the Handbook upon arrival at the MCC -- the Handbook remains the property of the MCC.

The parties have stipulated:

> Defendants furnish a copy of the MCC Handbook to every inmate upon arrival at MCC. Defendants do not charge the inmate for the Handbook. The Handbook remains the property of MCC, it must be retained by the inmate at MCC, and is expected to be returned by the inmate when the inmate leaves. The inmates are told not to damage or deface the Handbook and can be subject to disciplinary action for damaging or defacing the Handbook. Inmates are permitted, at their own expense, to make

copies of the Handbook.

(Prehearing Order ¶ F(2) at p. 6.)

The plaintiffs claim that the fact that the Handbooks remain the property of the MCC and prisoners can be disciplined for damaging or defacing them means that the inmates have not truly been "provided" with a copy of the Handbook. According to the plaintiffs:

> In the Agreed Entry, the parties have used the word 'provide' to mean 'give.' *See e.g.,* Agreed Entry ¶ III(C)(2), at 13 ('MCC, at its expense, shall *provide* each prisoner with sufficient amount or quantity of soap, toothbrush, toothpaste, and deodorant') (emphasis added); ¶ III(C)(2), at 13 ('[s]ufficient amount or quantity of body lotion, shampoo, and Q-tips will be *provided* to all prisoners, upon request, at DOC's expense') (emphasis added); ¶ III(J)(2), at 22 ('[p]risoners shall be *provided* three meals a day') (emphasis added); ¶ III(J)(3), at 22 ('MCC will provide two extra beverage items per day with meals to each prisoner'); ¶ III(J)(3), at 22-23 ('[c]offee will be *provided* in the morning') (emphasis added); ¶ III(J)(5), at 23 ('[s]alt shall be *provided* prisoners at meals') (emphasis added). Undoubtedly, the Agreed Entry does not mandate Defendants to 'provide' soap, toothpaste, body lotion, shampoo, meals, beverages, coffee, and salt (to name a few) to prisoners, just to have the prisoners return the same items to Defendants.

***18** (Plaintiff's Post-Trial Brief at pp. 13-14.)

The court's own review of the Agreed Entry, however, shows that the meaning of "provide" is not as clear-cut as the plaintiffs suggest. For example, ¶ III(M)(1) states that "[p]risoners shall be provided extra blankets upon request, not to exceed three blankets in all." There is nothing in this statement which suggests that prisoners are "given" the blankets -- or the beds they are placed on -- and do not have to return them. Similarly, the requirement in ¶ VI requiring that prisoners "be provided legal access which is adequate and sufficient as defined by statute and applicable case law," including the maintaining of basic legal research materials in the satellite law libraries, cannot be interpreted to mean that prisoners are "given" these legal materials and have no duty to return them.[5] Given this ambiguity, the court will "look at the evil which the [Agreed Entry] was designed to rectify." *Goluba,* 45 F.3d at 1038.

In the present case, the evil sought to be remedied by requiring that prisoners be "provided" copies of the Handbook is to prevent prisoners being subjected to disciplinary proceedings without having full knowledge of the MCC's rules and regulations. Some courts have held that the failure to provide incoming inmates with current copies of disciplinary rules and regulations violates their due process rights. *Hamilton v. Love,* 358 F.Supp. 338 (E.D. Ark. 1973); *Moore v. Janing,* 427 F.Supp. 567 (D. Neb. 1976); *but see Russell v. Oliver,* 392 F.Supp. 470 (W.D. Va. 1975) (failure to post disciplinary rules is not per se constitutional violation without showing of prejudice), *vacated in part on other grounds,* 552 F.2d 115 (4th Cir. 1977).

In *Hamilton,* as in the present case, the defendant prison officials had agreed to provide incoming prisoners with a printed copy of all rules and regulations regarding prisoner conduct and privileges. 358 F.Supp. at 345. Unlike this case, however, they did not consistently do so, citing a "litter" problem. *Id.* at 346. The court found this unpersuasive, but also stated that it had made clear "that the defendants' employees can take up the copies of such rules after they have served their purpose." *Id.*

There is nothing in the Agreed Entry which prevents the defendants here from doing the same. "Furnishing" prisoners with a copy of the Handbook -- even though it remains DOC property -- for their use while incarcerated at the MCC addresses the evil sought to be remedied by the Agreed Entry. The DOC can "provide" prisoners Handbooks for their use during their incarceration at the MCC and require that they be returned undamaged -- the same way that it can provide prisoners with blankets and law books for their use. Nothing in the Agreed Entry suggests that the defendants need to "give" the inmates Handbooks in such a way as to confer ownership on a permanent basis, and the defendants cannot be held in contempt for failing to do so. Accordingly, the court RECOMMENDS that the plaintiffs' contempt motion be DENIED with respect to the provision of inmate handbooks.

Classification of Prisoners Under the Criteria of the Agreed Entry

***19** Paragraph I(A) of the Agreed Entry provides:

> The following criteria are to be applied when considering an individual prisoner for assignment to the MCC. The prisoner shall be:
>
> 1. A committed or court ordered male adult.
>
> 2. An individual with a proven and/or documented history of at least one of the following criteria during the current period of incarceration:
>
> (a) Escapes with attempts to cause physical harm to staff, other prisoners, and/or the public at large, or to cause serious destruction to the physical plant.

(b) Assaultive behavior against staff and/or prisoners causing serious bodily injury and/or death.

(c) Rioting or inciting to riot or violence causing the serious disruption of the orderly management of a facility or unit.

(d) Intensive involvement in violent gang activities.

(e) Aggressive sexual conduct and/or rape.

In addition, ¶ I(B)(1) of the Agreed Entry requires that "the referring facility head must notify the prisoner in writing of the reasons he is being considered for assignment to the MCC." The plaintiffs allege that defendants should be held in contempt because a prisoner transferred to the MCC after the approval of the Agreed Entry was not given notice of the reason for his transfer.

The plaintiffs claim that John Thomas has been misclassified and wrongfully confined at the MCC because he does not meet the classification criteria and was not given proper notice of the reasons for his transfer to the MCC.[6] He was transferred to the MCC on March 1, 1994, after the Agreed Entry was approved. (Tr. 115-16.)

The Classification Hearing Report authorizing Thomas' transfer to the MCC set forth following reasons for the action:

(1) offender is being recommended for MCC;

(2) new C.D. required during process; and

(3) currently Level 4 due to score.

(Plaintiff's Exhibit 21.) Thomas did not believe his transfer was justified, and on November 17, 1994, made a formal request for interview to MacMillan asking for documentation as to why he was transferred to the MCC from the ISP. (Tr. 118.) He received a response later that day, which stated only "Confidential section of packet." (Tr. 120.) Thomas testified that he did not know why he was transferred to the MCC. (*Id.*)

Jim Csenar, a Classification Analyst in the DOC's Central Office, testified that the reasons for Thomas' transfer were outlined in a memorandum he wrote to Owens on February 4, 1994. In that memo, Csenar listed the following summary of Thomas' violations of prison rules: three physical assaults; one fighting; eight disorderly conducts; one possession of a deadly weapon; one possession of a device capable of being a weapon; and one attempted homicide. (Tr. 184.) The attempted homicide involved Thomas' stabbing another offender seven times upon his head, neck and abdomen regions. Csenar believed Thomas fit the criteria of the Agreed Entry for assaultive behavior against staff or prisoners causing serious bodily injury and violent behavior which causes serious disruption of the orderly management of a facility or unit. (*Id.*)

***20** Thomas admits that he was convicted by the CAB of attempted homicide of a prisoner arising out of a February, 1993, stabbing incident and that he also pleaded guilty to a criminal charge of criminal recklessness, a Class A misdemeanor, arising out of the incident. (Tr. 121, 123.) He also admits that between February, 1993, and his transfer to the MCC on March 1, 1994, he was found guilty of possessing a device capable of being used as a weapon when prison officials found a rope in his cell. (Tr. 121, 123, 124.)

In *Hewitt v. Helms,* 459 U.S. 460, 466 (1983), the Supreme Court noted that liberty interests protected by the Fourteenth Amendment may arise from only two sources -- the Due Process Clause itself and the laws of the states. It then held that the Due Process Clause itself did not give prisoners a liberty interest in remaining in the general prison population. *Id.* at 468. It further held, however, that prisoners could find a liberty interest in state law where a prison regulation went beyond mere procedural guidelines and used mandatory language in connection with specified substantive predicates to govern official decisionmaking. *Id.* at 471-72. *See also Kentucky Department of Corrections v. Thompson,* 490 U.S. 454, 462-63 (1989).

The Court, however, recently abandoned the *Hewitt* approach which looked for state-created liberty interests within prison regulations. *Sandin v. Conner,* 63 U.S.L.W. 4601, 1995 WL 360217 (June 19, 1995). The Court noted:

> *Hewitt* has produced at least two undesirable effects. First, it creates disincentives for states to codify prison management procedures in the interest of uniform treatment. Prison administrators need be concerned with the safety of the staff and inmate population. Ensuring that welfare often leads prison administrators to curb the discretion of staff on the front line who daily encounter prisoners hostile to the authoritarian structure of the prison environment. Such guidelines are not set forth solely to benefit the prisoner. They also aspire to instruct subordinate employees how to exercise discretion vested by the State in the warden, and to confine the authority of prison personnel in order to avoid widely different treatment of similar incidents. The approach embraced by *Hewitt* discourages this desirable development: States may avoid creation of 'liberty' interests by having scarcely any regulations, or by conferring standardless discretion on correctional personnel.
>
> Second, the *Hewitt* approach has led to the involvement of federal courts in the day-to-day management of

> prisons, often squandering judicial resources with little offsetting benefit to anyone. In doing so, it has run counter to the view expressed in several of our cases that federal courts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment.

1995 WL 360217 at *6 (cites omitted).

The Court then stated:

> In light of the above discussion, we believe that the search for a negative implication from mandatory language in prisoner regulations has strayed from the real concerns undergirding the liberty protected by the Due Process Clause. The time has come to return to the due process principles we believe were correctly established and applied in *Wolff* [*v. McDonnell,* 418 U.S. 539 (1974)] and *Meachum* [*v. Fano,* 427 U.S. 215 (1976)]. Following *Wolff,* we recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such unexpected manner as to give rise to protection by the Due Process Clause of its own force, *see e.g., Vitek* [*v. Jones*], 445 U.S. [[[480], 493, 100 S.Ct. at 1263-64 [(1980)] (transfer to mental hospital); *Washington* [*v. Harper*], 494 U.S. [210], 221-222, 110 S.Ct. [1028], 1036-1037 [(1990)] (involuntary administration of psychotropic drugs), nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

***21** *Id.* (footnote omitted).

Turning to the case before it -- in which Conner alleged that prison officials had deprived him of due process when an adjustment committee refused to allow him to present witnesses during a disciplinary hearing and then sentenced him to segregation for misconduct -- the court held:

> This case, though concededly punitive, does not present a dramatic departure from the basic conditions of Conner's indeterminate sentence. Although Conner points to dicta in cases implying that solitary confinement automatically triggers due process protection, this Court has not had the opportunity to address in an argued case the question whether disciplinary confinement of inmates itself implicates constitutional liberty interests. We hold that Conner's discipline in segregated confinement did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest. The record shows that, at the time of Conner's punishment, disciplinary segregation, with insignificant exceptions, mirrored those conditions imposed upon inmates in administrative segregation and protective custody.

Id. at *7 (cites omitted).

In the present case, the plaintiffs have offered no evidence that Thomas' incarceration at the MCC presented the type of atypical, significant deprivation in which a state might conceivably create a liberty interest. While the "regime to which [Thomas] was subjected as a result of" his transfer to the MCC is undoubtedly harsher than that found in other Indiana prisons, it is "within the range of confinement to be normally expected" for prisoners held by the DOC. *Id.* at *8. Accordingly, the court RECOMMENDS that the plaintiffs' motion that the defendants be held in contempt be DENIED.

Availability of Fruit Juices on Commissary

Under the Agreed Entry, the MCC is required to "make a continuing reasonable effort to provide fruit juices on commissary if they are available in containers which meet the security concerns of the MCC." (Agreed Entry ¶ III(B)(2), at p. 12.) The defendants, citing concerns that the juices' packaging could be made into a weapon, are not yet providing them on the commissary and the plaintiffs now challenge the "reasonableness" of their effort.

According to Komyatti, he has made a number of requests

and filed grievances asking for administrative relief to have juices available on the commissary. (Tr. 5.) Scott, MacMillan, and other MCC personnel have told him that because the juice would come in a container which includes foil, they could not be made available to prisoners at the MCC. (*Id.*)

Komyatti testified, however, that other items at the MCC contain foil packaging, including juices with their meals four to five days a week. That juice is delivered in a hardened plastic container which has a foil covering. (*Id.;* Plaintiffs' Ex. 2) Other items containing foil are also included with meals: Komyatti identified two other exhibits as being foil from the inside of Corn Pops and Sugar Smacks cereal boxes. (Tr. 6-7; Plaintiffs' Exs. 3 and 4.) In rebuttal testimony, Komyatti noted that there were items available on commissary that had foil packaging, including potato chip bags and candy bar wrappers. (Tr. 281-82.)

***22** Komyatti made prison officials aware of the foil in other food packages when he sent Scott a letter regarding the juice and included foil packaging out of either the Corn Pops or Sugar Smacks. (Tr. 9.) In response to that letter, Scott wrote back on October 14, 1994, that

> the foil matter is a question of 'gauge.' The gauge of foil used in drink boxes is felt to be heavy enough to pose a more legitimate security concern than the lower gauges of foil such as contained in packs of cereal or instant coffee.

(Tr. 9-10; Plaintiffs' Ex. 6.)

Scott elaborated on his response in his testimony at the contempt hearing. He stated, "It's our feeling that it's possible to make a weapon out of the material that they're [the juice boxes] constructed from, and that would pose a security concern." (Tr. 221.) He noted that he had personally contacted a number of grocers in the area in an effort to determine if fruit juice was available in a container that would not be a security concern. (Tr. 220.) He was informed that drink box packaging is pretty standard and it would be unlikely that he would find drink boxes without foil. (*Id.*)

Scott also testified about the items containing foil which are brought with the prisoners' meals. He stated that prisoners are expected to turn in the plastic fruit juice cups covered with foil with their tray after a meal. These juice cups are not available on commissary, and would not be an acceptable item for offenders to keep in their cells because "[t]hose plastic cups can very easily be turned into a weapon. The cups can be torn or broken, which leaves a sharp edge, and cut skin." (Tr. 223.) They could also be jabbed in someone's eye. (*Id.*)

The plaintiffs offered the deposition testimony of Karl E. Muszar, Jr., a professional engineer, on the question of the "gauge of the foil in juice containers and other packaging. Muszar analyzed the foil contained in the packaging produced by the plaintiffs at the contempt hearing as well as packaging from fruit juice boxes which he bought on the open market. He testified that in the metallurgical business, gauge is a term that is used to describe a number which represents the thickness of a metallic material. (Deposition of Karl E. Muszar at p. 8.) His examination of the materials showed that the aluminum foil on these items ranged in thickness from 1/1000 of an inch to 7.5/10,000 of an inch.

The foil cover from the juice cups provided with prisoners' meals measured 1/1000 to 1.5/1000 of an inch. (Plaintiffs' Ex. 2; Muszar Dep. at p. 8.) The Corn Pops package and material from the other cereal package both measured 5/10,000 of an inch. (Plaintiffs' Exs. 3 and 4; Muszar Dep. at pp. 8-9.) And, the Hi-C and Juicy Juice packages purchased by Muszar in the open market measured from 5/10,000 to 7.5/10,000 of an inch. (Plaintiffs' Exs. 26 and 28; Muszar Dep. at p. 9.) Muszar testified that "there is no gauge number which goes down to the thickness range of the aluminum foil materials I have measured here." (Muszar Dep. at p. 19.)

***23** Muszar's testimony on cross-examination and further direct examination, however, revealed that he believed that the juice boxes he had purchased in the open market and the foil material Mr. Komyatti identified as coming from the juice cup cover and cereal boxes could possibly inflict injury.

> Q. I just want to ask you, if I took this exhibit, and particularly the corner of Exhibit 25, and poked you in the eye with it, do you think the effect on your eye would be negligible? Do you think that that might cause some damage?
>
> A. I think it would probably cause injury if you used the pointed corner of it.
>
> MR. UHL: That's all I have.
>
> DIRECT EXAMINATION CONTINUING,
>
> QUESTIONS BY MR. KASHANI:
>
> Q. Can you also make something out of Exhibit 2 or 3 or 4 to make the same kind of injury?
>
> A. Oh, I think very definitely you could, especially Exhibit No. 2.
>
> Q. How about if you fold Exhibit No. 3 a couple of times over?

> A. You wouldn't even have to fold that exhibit because it's already -- you can just take the corner of it and you could inflict probably the same kind of an injury.
>
> Exhibit No. 4 would have to be folded over, but you could make a pointed device out of that one, too.

(Muszar Dep. at pp. 22-23.)

Given the plaintiffs' expert's own testimony, the court finds that the MCC does have valid security concerns about the juice boxes' potential use as a weapon. The fact that other items which are provided to prisoners with their meals are expected to be returned does nothing to diminish the credibility of this concern. Unlike those items, juice boxes bought from the commissary could remain in the prisoners' cells. Moreover, this court

> should be cautious about disparaging disciplinary and security concerns expressed by the correctional authorities. American jails are not safe places, and judges should not go out of their way to make them less safe. As long as the concerns expressed by correctional authorities are plausible, and the burden that a challenged regulation of jail or prison security places on protected rights a light or moderate one, the courts should not interfere.

Keeney v. Heath, 57 F.3d 579, 1995 WL 358065 at *2 (7th Cir. June 15, 1995).

Here, the concerns expressed by the defendants are plausible and the burden on the plaintiffs light. Several courts have barred prisoners from having items in their cells or on their persons which have a much greater constitutional significance than juice boxes. *See Hall v. Bellmon,* 935 F.2d 1106, 1113 (10th Cir. 1991) (rejecting First Amendment claim by Native-American who claimed that prison policy used to bar him from wearing a bear tooth necklace and medicine bag around his neck due to security concerns impinged on his religious freedom); *Friend v. Kolodzieczak,* 923 F.2d 126 (9th Cir. 1991) (holding that prison regulation prohibiting inmates from possessing rosaries and scapulars in their cells did not violate First Amendment).

***24** All that is required in the Agreed Entry is that the MCC "make continuing reasonable effort to provide fruit juices on commissary if they are available in containers which meet the security concerns of the MCC." Scott's testimony that he contacted a number of grocers in an effort to determine if fruit juice was available in a container that would not be a security concern demonstrates that such effort has been made thus far. Accordingly, it is RECOMMENDED that plaintiffs' motion for contempt be DENIED.

Contempt Sanctions

Among the plaintiffs' prayers for relief is a request that the defendants be fined for their failure to abide by the Agreed Entry. The court finds that such sanctions are not necessary at this time.

The Seventh Circuit has held:

> [J]udicial sanctions in civil contempt proceedings may, in the proper case, be employed for either or both of two purposes: to coerce defendant into compliance with the court's order, and to compensate the complainant for losses sustained.

Thompson v. Cleland, 782 F.2d 719, 721 (7th Cir. 1986) (quoting *United States v. United Mine Workers,* 330 U.S. 258, 303-04 (1947)). Where compensation is intended, a fine may be imposed payable to the complainant. *Connolly v. J.T. Ventures,* 851 F.2d 930, 932 (7th Cir. 1988) (citing *United Mine Workers,* 330 U.S. at 304). A trial court "has a great deal more latitude in enforcing its own decrees in a contempt proceeding." *Ferrell v. Pierce,* 785 F.2d 1372, 1383 (7th Cir. 1986). And, a district court may award attorney's fees related to a civil contempt proceeding. *BPS Guard Services, Inc. v. International Union of United Plant Guard Workers of America,* 45 F.3d 205, 211 (7th Cir. 1995).

In the present case, the plaintiffs have not identified any losses sustained as a result of the contempt. Accordingly, the court may only consider if it should impose sanctions to coerce defendants' compliance with the Agreed Entry. As the plaintiffs have helpfully pointed out, in recent years federal courts have not hesitated to exercise the power of contempt to coerce prison and jail officials to comply with court orders.[7] The court, however, finds that such sanctions are not yet necessary to coerce the defendants into compliance. Unlike many of the cases cited by the plaintiffs, there have not been prior orders putting defendants on notice as to prescribed conduct and penalties,[8] nor repeated delays in implementing the provisions of a consent decree.[9] Instead, the court notes that defendants have been willing to compromise on a number of the issues identified in the plaintiffs' initial contempt motion -- settling 16 out of 23 alleged violations. Given this, the court cannot find that the defendants have displayed recalcitrance making it necessary to impose monetary sanctions in order to coerce

compliance with the Agreed Entry. Accordingly, it is RECOMMENDED that plaintiff's motion for contempt sanctions be DENIED.

Conclusion

***25** Based on the foregoing reasons, it is RECOMMENDED that the plaintiffs' motion for contempt with regard to lay advocates at CAB hearings, free copies of the Handbook, classification, and juice boxes on commissary be DENIED, and that plaintiffs' motion with regard to law clerks for prisoners with special needs and law library visits and specific cite requirements for prisoners in disciplinary segregation be GRANTED.

ANY OBJECTIONS to this report and recommendation must be filed with the Clerk of courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See *Thomas v. Arn,* 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Lockert v. Faulkner,* 843 F.2d 1015 (7th Cir. 1988); *Video Views, Inc. v. Studio 21 Ltd.,* 797 F.2d 538 (7th Cir. 1986).

Dated this 20th day of July, 1995.

> They may obtain law books only by a book paging system, a substantial disadvantage. First, inmates must know initially which volumes they need. However, it may take several requests for case digests before they target relevant case citations.
>
> > Second, unavoidable and lengthy delays are inherent in such a system. The process of ordering and returning books, compounded by hindrances in obtaining shepardizing results, drastically prolongs legal research.

Footnotes

1 The court in *Kozlowski v. Coughlin,* 871 F.2d 241, 244 (2nd Cir. 1989) stated that it found the *Lelsz* decision to be "untenable. If a federal district court can validly enter a consent decree, it can surely enforce that decree."

2 Plaintiffs have helpfully pointed out in their Brief that a typical Federal Reporter page is 7 x 10.25 inches, yielding an area of 71.75 square inches. (Plaintiffs' Post-Trial Brief at p. 4 n. 4.) When enlarged to an 8 1/2 x 11 page, which has an area of 93.50 square inches, the total magnification is 130 percent.

3 According to Broadus, "cadillacking" means placing a piece of string on the end of the piece of paper and sliding it from one cell to another. (Tr. 135.) Legal papers are commonly cadillacked between cells at the MCC. (*Id.*)

4 Similar language is found in *Tillery v. Owens,* 719 F.Supp. 1256 (W.D. Pa. 1989). In *Tillery,* the court held that "restrictive housing" inmates who could not visit the law library were denied access to the courts.

> *Id.* at 1282. *See also Abdul-Akbar v. Watson,* 775 F.Supp. 735 (D. Del. 1991) (holding that legal services provided to inmates in a Maximum Security Unit ("MSU") were inadequate where MSU inmates were allowed into a satellite library only one at a time, and visits were limited to one visit per day and one hour per visit; prisoners at times had to wait a week or more to visit the MSU library); *Peterkin v. Jeffes,* 855 F.2d 1021, 1038 n. 22 (3rd Cir. 1988) ("[p]aging systems ... as the sole legal assistance furnished to inmates, have been rejected consistently by other courts of appeals") (citing cases); *Canell v. Bradshaw,* 840 F.Supp. 1382, 1389 (D. Or. 1993) ("By 1993, no reasonable public official would have believed a paging system was by itself sufficient to protect an inmate's fundamental constitutional right of access to the courts.") (citing cases); *Griffin,* 743 F.Supp. at 1024 (holding that book request system for prisoners on protected custody did not provide them with meaningful, adequate access to the courts: "PC inmates are not able to browse through materials in order to compare legal theories and formulate ideas. This is a constitutionally impermissible situation....").

5 Indeed, the court notes that neither of the dictionaries it consulted defines providing as "giving." Instead, provide is defined as "[t]o make, procure or furnish for future use, prepare. To supply; to afford; to contribute." *Black's Law Dictionary* 1224 (6th ed. 1990). *See also The American Heritage Dictionary* 996 (2d college ed. 1976): "1. To furnish; supply. 2. To make ready; prepare. 3. To make available; afford. 4. To set down as a stipulation."

6 Plaintiffs also argue in their Post-Trial Brief that two inmates transferred to the MCC before the Agreed Entry was signed -- Steven Lee and Tracey Jones -- did not meet the classification criteria, and should be reclassified and transferred to another prison. The argument regarding Lee is now moot because he was released from the MCC on July 10, 1995, and this court rejected the argument concerning Jones on July 5, 1995, in response to the plaintiffs' motion for an expedited ruling.

7 *Inmates of Allegheny County Jail v. Wecht,* 901 F.2d 1191 (3d Cir. 1990) *Morales Feliciano v. Parole Bd.,* 887 F.2d 1 (1st Cir. 1989), *cert. denied sub nom., Hernandez Colon v. Morales Feliciano,* 494 U.S. 1046 (1990); *Balla v. Idaho State Bd. of Corrections,* 869 F.2d 461 (9th Cir. 1989); *Twelve John Does v. District of Columbia,* 855 F.2d 874 (D.C. Cir. 1988); *Badgley v.*

Santacroce, 800 F.2d 33 (2d Cir. 1986), *cert. denied sub nom., Santacroce v. Badgley,* 479 U.S. 1067 (1987); *Benjamin v. Sielaff,* 752 F.Supp. 140 (S.D.N.Y. 1990); *Fambro v. Fulton County, Ga.,* 713 F.Supp. 1426 (N.D. Ga. 1989); *Albro v. Onondaga County, N.Y.,* 681 F.Supp. 991 (N.D.N.Y. 1988); *United States v. State of Michigan,* 680 F.Supp. 928, 1047-1054 (W.D. Mich. 1987) *Tate v. Frey,* 673 F.Supp. 880 (W.D. Ky. 1987); *Ruiz v. McCotter,* 661 F.Supp. 112 (S.D. Tex. 1986); *Jackson v. Whitman,* 642 F.Supp. 816 (W.D. La. 1986); *Mobile County Jail Inmates v. Purvis,* 581 F.Supp. 222 (S.D. Ala. 1984); *Miller v. Carson,* 550 F.Supp. 543 (M.D. Fla. 1982).

8 *See e.g., Inmates of the Allen County Jail,* 901 F.2d at 1199-1200.

9 *See e.g., Feliciano,* 697 F.Supp. at 30-31.