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United States District Court, E.D. Tennessee,
Northern Division.

Steven PICKLE and Terry Bradley, Plaintiffs,
v.
D.W. HARRIS and Sammie Carson, Defendants.

Civ. No. 3-85-801. | Feb. 28, 1986.

Opinion

REPORT AND RECOMMENDATION

ROBERT P. MURRIAN, United States Magistrate.

*1 This matter was referred to the undersigned pursuant to an Order of Reference entered and filed on September 27, 1985 [Court File No. 10]. An evidentiary hearing was conducted at Brushy Mountain Penitentiary (BMP)¹ pursuant to 28 U.S.C. § 636(b)(1)(B) on December 20, 1985, and on January 16, 1986. The proceedings were stenographically recorded. The undersigned heard testimony from ten witnesses. The plaintiffs proceeded *pro se* and defendants were represented by attorneys from the office of the Attorney General of the State of Tennessee. With the consent of the parties, the undersigned viewed conditions in D-Block in the company of plaintiff Bradley, defense counsel and corrections officers after the hearing was concluded on January 16.

The issues have been narrowed in this case to one: are the plaintiffs being denied access to the courts as guaranteed them by the due process clause of the Fourteenth Amendment, United States Constitution, by virtue of conditions existing in D-Block at BMP? Injunctive relief is the relief sought.²

I. Findings of Fact

1. BMP is operated by the Tennessee Department of Corrections (TDOC) and currently houses about 250 inmates. D-Block is one of four sections or "blocks" of the prison. It was recently renovated and reopened on July 19, 1985. D-Block is a modern, maximum security facility. It is a separate building within the walls of the prison. It houses inmates who are considered to be the most unruly in the State of Tennessee. There are a total of

32 cells in D-Block on four walks (or rows of cells) on two levels. Presently there are 25 inmates in D-Block and each is housed in a single cell.

2. Security is heavy in D-Block. Prison authorities have a legitimate concern regarding the smuggling of contraband (like weapons and drugs) into D-Block and about the potential for violence. No D-Block inmate is allowed physical contact with another inmate except to get a haircut periodically. They exercise for an hour per day alone in one of six outdoor pens which are adjacent to D-Block. Anytime a D-Block inmate is moved out of his cell, it takes three officers. The inmate is handcuffed behind his back while locked in his cell, the officers get off the walk, and then he leaves his cell when the "slam" is opened. He is frisk searched at the corridor door at the end of the walk and then he is escorted by two officers to his destination. Exhibit 9. Normally, inmates in D-Block spend almost 23 hours per day in their cells. The cells have a toilet and sink combination and a bunk. There are no shelves and no stool or chair. Television sets and stereo equipment are allowed and are suspended from vents with makeshift ropes made from torn sheets. Physical access to a prison law library space by D-Block inmates would seriously undercut the defendants' ability to maintain the needed high level of security in D-Block. Exhibit 13 is a law book that was found on the shelves of the main law library. It had been gutted in order to make a receptacle for contraband.

*2 3. Incarceration in D-Block is considered administrative segregation. An administrative review board is responsible for reviewing each inmate's situation periodically and making recommendations to the warden regarding whether or not an inmate should return to the general prison population. Inmates can spend long periods of time in administrative segregation. Plaintiff Pickle testified that he had been in "lockup" 4 years and that he had 136 years left to serve on his present sentences.

4. The strict security measures have apparently been successful. For example, hacksaw blades were discovered concealed in plaintiff Pickle's tennis shoes when he was transferred to D-Block. Ex. 3 (7/26 entry). The cells are "shaken down" each time an inmate goes outside to exercise and little contraband has been found.

5. TDOC Administrative Policies and Procedures, § 509.03 (effective May 1, 1985) pertains to legal libraries in all Tennessee prison facilities. It provides, in pertinent part, as follows:

A. Each facility shall make law books available in a suitable location for access by inmates. Library staff at the facility shall monitor the use and borrowing of such books/documents. Hardcover books on legal matters shall be maintained only within the library. Copies may be made of legal documents requested by inmates if the inmate pays for duplications at the rate of 16 cents per page. Indigent inmates shall be limited to no more than 10 free copies per week.

B. Law books shall be up-to-date and include, at a minimum, Tennessee state and federal constitutions, state statutes and decisions, procedural rules and decisions and related commentaries, federal case law materials, court rules and practices, treatises and legal periodicals and indexes. The TDOC staff attorneys shall be responsible for appointing and recommending law library content.

C. Law library access shall be open to all inmates, even those in administrative or punitive segregation or otherwise restricted. Inmates in segregation shall be provided with no more than three law library documents at any one time. Library staff will check documents out to inmates who are precluded physically from going to the library themselves. A complete listing of library contents must be circulated to segregated inmates. Further, a complete list of inmates and free-world persons available to aid segregated inmates in filing legal documents shall be circulated among and available to segregated inmates. Adequate provisions shall be made for consultation with segregated inmates on legal matters. (See Policy # 504.01) in such work shall be limited to housing area and certain library hours.

G. The law library shall provide a photocopy service in compliance with Policy # 501.02.

H. Law books requested by inmates that are not available at the facilities law library shall be borrowed by law library staff from university libraries through inter-library loans. Facility library staff shall be responsible for the care and transportation of such materials.

*3 I. Facilities shall restrict/limit personally-owned law books from inmate cells when space availability is a problem (See Policy # 504.01)³

Ex. 5. The Warden at BMP, D.W. Harris, promulgated Post Orders for D-Block on August 1, 1985, which provided in pertinent part as follows:

o. *Phone Calls*: Inmates assigned to this unit will be allowed to make one phone call each calender [sic] month on the portable phone provided within the unit.

NOTE: THE PHONE WILL BE TAKEN TO THE INMATE'S CELL.

p. *Access to Library*: Inmates assigned to D Block will be allowed access to the Law Library located in the unit. Any inmate wishing books from the Library, will notify the assigned counselor who will deliver the requested book(s) to the inmate's cell. Books are checked out for a reasonable period of time and the counselor will be responsible for making sure the books are returned to the library.

s. *Access to Inmate Legal Helpers*: Any inmate assigned to this unit may request that he confer with an approved inmate legal helper by writing to the unit officer in charge. The officer in charge will schedule the meeting and notify the inmate and the helper of the time and date. The inmate will be brought to the Visiting Gallery, following the procedures set forth in Section F, Inmate Movement, and then the helper will be brought into D Block, strip searched, and then placed in the visitor side of the Visiting Gallery. The two will be allowed to confer in private for a reasonable time, then the helper will leave the unit before the inmate is taken back to this cell as per Section F, Inmate Movement.

Exhibit 4.

6. The Visiting Gallery referred to is located near the entrance to D-Block. Photographs of it are Exhibits 8 and 10 in the record. Inmates from D-Block are locked in the side depicted on Exhibit 10. Their visitor is then brought into the "free world" side. They may communicate by using the telephone provided. The telephone installed originally was defective but it was replaced the new one works properly. No physical contact is allowed. The parties can see each other through a heavy glass window. If an attorney or inmate legal helper (ILH) is visiting, legal papers may be passed back and forth by a corrections officer. The officer checks the papers for contraband but does not read them. The officers do not

eavesdrop intentionally on conversations, but they are often around the hallway adjacent to the Visiting Gallery. Also, the control room is located across the hall from the Visiting Gallery. The control room is a station where officers watch closed circuit television monitors which show D-Block and the adjacent exercise pens. Sometimes the control room door is ajar and conversations in the Visiting Gallery could be overheard. Under the present circumstances, an inmate cannot be assured that his conversations with the ILH or his "free-world" attorney will not be overheard by officers. This has a chilling effect on such conferences.

*4 7. Steve Jacks (Jacks) is the prison counselor assigned to D-Block. If the inmates in D-Block want legal materials, they must go through Jacks. He has other duties, too. He is a classification team member and he serves on the parole board. His regular hours in D-Block are 8 A.M. to 4 P.M. on Tuesday and Friday. Lt. James Fowler, the officer directly responsible for security in D-Block, testified that Jacks is supposed to check in on each inmate on Tuesdays and Fridays. Plaintiff Bradley testified that Jacks does not visit the inmates two times per week and that the inmates have trouble getting books and legal supplies. Jacks keeps a log which lists every contact he has with inmates in D-Block. It reveals that during the period July 23, 1985 to December 17, 1985 (21 weeks), he made contact with Bradley 49 times. Ex. 3. This, of course means that Jacks was in contact with Bradley more than two times per week on the average. According to the records, Bradley asked for legal materials 6 times and Jacks provided them on 7 occasions.⁴ Bradley filed a grievance against Jacks on August 29, 1985, because Bradley felt like he was not getting law books quickly enough. Jacks' log also reveals that he contacted plaintiff Pickle 43 times during the 21 weeks and Pickle asked for and was supplied legal materials by Jacks on 4 occasions. Ex. 3, 11.

I find that the logs kept by Jacks are a reliable record of the contacts between him and the inmates whose names appear in the logs for the period of time indicated.

8. Jacks was off from work over Christmas for some 9 days due to the holidays and a family emergency. David Newberry, who is in charge of counselors, testified that a counselor should have been assigned to cover D-Block in Jacks' absence. A Mr. Doughty should have made the assignment according to Newberry. Doughty did not testify and Newberry really was not aware whether a counselor covered for Jacks or not, except that he did know that a counselor named Bean had put through a phone call for inmate Benny Wallace.

9. The preponderance of the evidence shows that Jacks' counseling duties were not looked after very well during his absence over the Christmas holidays and in early January. Ex. 1, 7 and 12. Necessarily then, D-Block

inmates had no adequate, effective and meaningful access to the D-Block library for about two weeks beginning around December 20, 1985. This violated TDOC Policies and Procedures, § 509.03 and also Warden Harris' Post Orders (e.g., D-Block inmates are to be allowed "access" to the law library). Without a counselor to deliver books from the law library in D-Block, the library is effectively closed and inmates are denied access to it.

10. The absence of a counselor for most of the two week period had other ramifications also. Without access to a counselor, an inmate cannot arrange a phone call to or from his "free world" attorney if he has one. Such calls may only be arranged through a counselor. This also impairs an inmate's right to access to the courts. I realize that most communication with attorneys can be done by mail. But sometimes where a deadline may be involved, for example, telephone communication with an attorney may be important.

*5 11. Exhibit 2 is a reasonably accurate inventory of the legal materials presently available in the D-Block law library. This inventory of legal materials, if properly maintained and managed with respect to usage, is adequate for the legal needs of inmates in D-Block. The ILH who advises D-Block inmates has physical access to the BMP main law library but not the D-Block law library.

12. The denial of physical access to the law library and the limitation of two legal books per cell at any one time is reasonable so long as inmates are able to check out books on a fairly frequent basis. More than two books per cell would result in a fire hazard. Also, if an inmate gets destructive, only two books will be damaged. However, the present situation is such that inmates are sometimes unable to obtain books on a fairly frequent and reliable basis. For example, a counselor may not be available and also law books stay in some inmates' cells for long periods of time, thereby rendering them unavailable to other inmates. There is no established policy whereby books are checked out on a schedule. No record is kept of who has what book. The present situation of providing law books substantially impairs an inmate's right to access to the courts.

13. Wayne Davidson (Davidson) is the ILH for D-Block inmates at the present time. He is their only source of legal help for "free world" court problems unless the inmates can afford a private attorney. He testified that being an ILH was a paid, full-time job and he spends 40 to 50 percent of his time with inmates in D-Block. He is an inmate with no formal legal training. He is a high school graduate with one year of business college. He works for Clinton E. Neal (Neal), a TDOC employee who serves as a teacher and librarian. Neal has given Davidson the authority to visit D-Block inmates whenever he is called to do so, even on weekends. He may not use the

D-Block law library but he has access to the BMP main law library. He is not allowed to take legal materials into the visitors gallery although the inmate whom he is visiting may do so. Of course, he may use the main law library to research points brought up during the conferences and then return to talk to an inmate in D-Block. He is allowed to make notes during such conferences. His effectiveness is somewhat impaired because he is not told what is available in the D-Block law library.

14. Inmates must request an ILH visit through Lt. Fowler. He testified that he has never disapproved such a request. See Ex. 15. There are 2 or 3 illiterate inmates in D-Block but they have no difficulty scheduling ILH visits. Although Neal testified that as far as he knew Davidson could write writs and petitions for illiterate inmates, it is not at all clear to the undersigned that Davidson is doing so or that he is authorized to do so. He testified that he can assist illiterate inmates but cannot file suit for them. Plaintiff Pickle testified that the ILHs have told him that they cannot type or file legal materials for him.

*6 15. Inmates are allowed one 30 minute phone call per month to their friends and family at state expense. Collect phone calls to "free world" attorneys can be arranged through a counselor like Jacks (if one is available). The counselor dials the attorney's number to make sure it is a call to an attorney and checks to see if the attorney will accept the charges. Jacks testified that in all but one instance the attorney would not accept the charges and gave instructions for the inmate to put the communication in the mail. Attorneys may arrange with BMP officials to call inmates and the telephone will be provided to an inmate in his cell.

16. A portable telephone was used in D-Block at first but there were technical problems. A regular telephone with a long cord is now used. The cord is long enough that inmates can talk on the telephone at the back of their cells and obtain adequate privacy. Giving inmates access to a common phone in D-Block is not allowed for the reasons that violence can result over phone usage and also because no contact between inmates is allowed for security purposes. Often, the noise level on D-Block is high, but this does not substantially impair telephone usage as it now exists.

17. The following complaints of the plaintiffs do not significantly impair their right to access to the courts: no desk or writing area in cells or Visiting Gallery, no shelves in cell areas on which to put legal materials, the manner in which the plaintiffs are handcuffed when they are moved to and from their cells, no "safe" storage space for legal materials in cells, the configuration of the Visiting Gallery (except for its lack of privacy), denial of the right to meet with the ILH in a law library, not allowing the ILH to bring legal materials to the Visiting

Gallery, not allowing the ILH access to the D-Block law library, lack of a copier in the law library, the fact that the mail does not run on Saturday at BMP, and the lack of telephones in exercise pens.

18. The Tennessee Legislature has recently appropriated money which allowed hiring of two more counselors at BMP. One, Joyce Phillips, will be assigned D-Block and general population caseloads. Clint Neal, the librarian, will have more time available and will assume responsibility for delivery of library services to D-Block. Gil Monroe, Associate Warden for Treatment at BMP, has assigned the following tasks to Neal to be completed by January 30, 1986:

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1. Develop a written procedure for delivery of library services to D-Block (to be signed by the Warden) to include:
 - a. Method for keeping law library current.
 - b. Method of delivery and retrieval of law books and leisure books to D-Block inmates.
 - c. Method of documenting *specific* law books checked out to inmates.
 2. Establish a *written schedule* for your visits to D-Block to accomplish the library related responsibilities.

You may wish to consult with Lt. Fowler regarding schedules, etc. before submitting the above for approval.

*7 Please ensure that all procedures are written in such a way as to ensure compliance with all library policies and the "access to the courts" policy. Advise me in writing of those policy areas that are impossible with which to comply. I recommend the procedures be in the institutional policy format. Captain Carson will likely need to modify the Post Orders.

Exhibit 14 (emphases in original) (Letter dated January 15, 1986, from Warden Monroe to Neal).

II. Conclusions of Law

1. The Court has jurisdiction of the subject matter and the parties to this action. 42 U.S.C. § 1983; 28 U.S.C. § 1343(3).

2. “The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” *Bounds v. Smith*, 430 U.S. 817, 828, 97 S.Ct. 1491, 1498 (1977). The State of Tennessee therefore has two choices in the way it will meet its constitutional obligation to ensure that inmates have access to the courts, viz. a state-provided law library or the assistance of “legally trained personnel.” *Holt v. Pitts*, 702 F.2d 639, 640 (6th Cir.1983). Officials at BMP have chosen the former alternative.

3. The State’s obligation does not end with simply providing a law library in D-Block. That library must provide inmates housed therein with “adequate, effective and meaningful” access to the courts. 430 U.S. at 822, 97 S.Ct. at 1495. For those inmates who have insufficient intellectual or educational abilities to permit reasonable comprehension of their potential legal claims

... provision must be made to allow them to communicate with someone who, after consultation with the legal learning source, is capable of translating their complaints into an understandable presentation. Such a presentation does not have to be refined, but it must be reasonable, straightforward, and an intelligible statement. This goal may be accomplished for the unlearned inmate through an institutional attorney, a free-world person with paralegal training, or an inmate, who through adequate training, experience, and intelligence, is a competent “writ-writer.”

Kendrick v. Bland, 586 F.Supp. 1536, 1549 (W.D.KY.1984), *reversed and remanded with instructions on another ground*, 740 F.2d 432 (6th Cir.1984). When these sources of assistance are met and there are no physical or coercive restraints to prisoner complaints, due process under the Fourteenth Amendment mandating access to the courts is met. *Id.*

4. The State of Tennessee has an identifiable governmental interest in preserving internal order and discipline at its prisons, the maintenance of institutional security against escape or unauthorized entry and the

rehabilitation of prisoners. *Procunier v. Martinez*, 416 U.S. 396, 412, 94 S.Ct. 1800, 1811 (1974). Prison officials must be given wide-ranging deference in the adoption and execution of policies and practices which in their judgment are needed to preserve internal order and discipline and to maintain security in the institution. *Bell v. Wolfish*, 441 U.S. 520, 547, 99 S.Ct. 1861, 1878 (1979). In the absence of substantial evidence in the record to indicate that prison officials have exaggerated their response to these considerations, courts “should ordinarily defer to their expert judgment in such matters.” *Pell v. Procunier*, 417 U.S. 817, 827, 94 S.Ct. 2800, 2806 (1974).

*8 5. In my opinion, the defendant’s decision to deny plaintiffs physical access to a law library is one of those decisions deserving of such deference. The inmates housed in D-Block are thought by prison officials to represent the worse risks in the State with regard to danger to other inmates and to the security of the state’s penal institutions. The decision to deny them contact with any other inmate and with all visitors is based on a reasonable concern that contraband like drugs and weapons may get smuggled into D-Block. Restricted physical access to a prison law library is not a *per se* violation of a prisoner’s right to access to the courts. *Kendrick v. Bland*, 586 F.Supp. at 1550. Under certain circumstances, delivery of legal materials to the cell of a segregated inmate can satisfy the state’s obligation to provide inmates with meaningful access to the courts. *Frazier v. Ward*, 426 F.Supp. 1354, 1370–1371 (N.D.N.Y.1977). In *Frazier* the Court held that inmates in punitive segregation were not denied access to the courts where each could request and receive up to two law books every 48 hours which they could keep overnite. These inmates were not allowed contact with inmate legal advisors. *Frazier* is somewhat distinguishable, however, because in that case inmates had access to legal services attorneys and their stays in punitive segregation would have been for a limited time whereas D-Block inmates may stay there for long periods of time. 426 F.Supp. at 1371.

6. Inmates in segregation need not be afforded the same legal resources as inmates in the general prison population as long as segregated inmates are afforded meaningful access to the courts. *Nadeau v. Helgemoe*, 561 F.2d 411, 417–418 (1st Cir.1977). The defendants’ denial of physical access to the law library in D-Block by D-Block inmates does not violate plaintiffs’ constitutional rights. Furthermore, D-Block inmates are not entitled to maintain a law library in their cells nor are they entitled to typewriters. *Gittlemacker v. Prasse*, 428 F.2d 1, 6–7 (3rd Cir.1970); *Inmates, Washington County Jail v. England*, 516 F.Supp. 132, 140 (E.D.Tenn.1980) *aff’d* 659 F.2d 1081 (6th Cir.1981) (without opinion). Prison regulations which reasonably limit the times, places and manner in which inmates engage in legal research and

preparation of legal papers do not deny access to the courts. See *Gittlemacker v. Prasse*, 428 F.2d at 7.

7. Illiterate and poorly educated prisoners housed in D-Block must be allowed to receive help from “writ-writers” or “jailhouse lawyers” in drafting and filing their pleadings and court documents in the absence of alternatives like assistance from legally trained persons. *Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747 (1969); *Kendrick v. Bland*, 586 F.Supp. at 1549. Reasonable restrictions and restraints may be placed on the methods and manner in which one inmate may help another, however. 393 U.S. at 490. In my opinion, ILHs like Davidson must be allowed to actually prepare pleadings and other court documents for signature and filing by fellow inmates who have legal grievances and who are illiterate or so poorly educated that they cannot do it for themselves. Otherwise, such inmates are denied access to the courts. Of course, inmates may not represent other inmates in court.

*9 8. Based on all of the facts and circumstances, I conclude that the complaints set out in Finding of Fact No. 17 do not result, singly or in combination, in a denial of plaintiffs’ constitutional right to access to the courts. Furthermore, if the conditions set forth in Item 9 below are corrected, denying D-Block inmates physical access to a law library will not violate their constitutional rights.

9. Based on all the facts and circumstances, I conclude that the following conditions in D-Block, singly or in combination, have violated the plaintiffs’ constitutional rights to adequate, effective and meaningful access to the courts: lack of availability of a counselor at times which resulted in an effective closure of D-Block law library for extended periods of time, lack of an established procedure on how often books may be requested and how long books may be kept by an inmate, lack of effective management of the D-Block library itself, lack of privacy when inmates speak to the ILH or “free world” attorneys in the Visiting Gallery, lack of established procedures to ensure privacy of legal communications consistent with security requirements, lack of established procedure to ensure reasonable inmate access to “free world” attorneys by telephone, and no established policy on just what type of assistance an ILH can give to an illiterate or poorly educated D-Block inmate.

10. “Bona fide steps that prison officials have or are taking to correct substandard prison conditions should be considered by the federal court in fashioning relief.” *Kendrick v. Bland*, 740 F.2d 432, 439 (6th Cir.1984). The telephone in the Visiting Gallery did not work at first and it was replaced. The portable telephone did not work and a regular telephone with a long cord was substituted. New counselors have been hired. The librarian has been assigned responsibility for the delivery of library services in D-Block. He is to develop written procedures for

library access in D-Block. All of these steps reflect a positive, good-faith effort to improve D-Block inmates’ access to the courts. It therefore seems reasonable to allow the defendants to attempt to develop an overall strategy for meeting the constitutional requirements in question here.

11. It is therefore recommended that defendants be ordered to file with the Clerk within 30 days revised Post Orders and/or written procedures consistent with the foregoing and which include, at the minimum, treatment of the following:

A. A written schedule specifying when a counselor will be available to take requests for and to deliver legal materials to D-Block inmates (to include a statement of procedures on weekends and holidays);

B. a written guideline for how often law books may be requested and how long they may be kept in a cell;

C. a written system providing information on which law books are checked out to whom;

D. a written procedure for keeping D-Block law library current and for insuring that books are replaced if damaged or lost;

*10 E. a written plan for insuring privacy of conversations between D-Block inmates and ILHs or “free world” attorneys while using the Visiting Gallery;

F. a written policy on handling of legal papers by corrections officers in D-Block such that contraband can be checked for, but such that confidentiality of communication can be maintained;

G. a written policy on D-Block inmates making telephone calls to “free world” attorneys;

H. a written policy on how ILHs may assist illiterate or poorly educated inmates in D-Block in actually drafting petitions, complaints, etc. for signature by the aggrieved inmate and filing;

I. a written plan for keeping the D-Block ILHs informed regarding what legal materials are in inventory in the D-Block law library;

and that defendants be ordered to file therewith a proposed final judgment embodying the defendants’ proposals to eradicate the unconstitutional conditions set forth in Item 9 above and permanently enjoining defendants from denying D-Block inmates their right of access to the courts.⁵

ORDER

THOMAS G. HULL, District Judge.

This is a *pro se* prisoners' civil rights action, 42 U.S.C. § 1983, in which plaintiffs alleged that the conditions existing in D-Block [Maximum Security] at Brushy Mountain Penitentiary violate their due process right to "adequate, effective and meaningful" access to the courts. United States Magistrate Robert P. Murrian conducted an evidentiary hearing at the prison; found that there were certain violations of this right; and recommended that this Court order injunctive relief. The Magistrate would have the defendants file a revised Post Orders and/or written procedures regarding the following:

A. A written schedule specifying when a counselor will be available to take requests for and to deliver legal materials to D-Block inmates (to include a statement of procedures on weekends and holidays);

B. a written guideline for how often law books may be requested and how long they may be kept in a cell;

C. a written system providing information on which law books are checked out to whom;

D. a written procedure for keeping D-Block law library current and for insuring that books are replaced if damaged or lost;

E. a written plan for insuring privacy of conversations between D-Block inmates and ILHs or "free world" attorneys while using the Visiting Gallery;

F. a written policy on handling of legal papers by corrections officers in D-Block such that contraband can be checked for, but such that confidentiality of communication can be maintained;

G. a written policy on D-Block inmates making telephone calls to "free world" attorneys;

H. a written policy on how ILHs may assist illiterate or poorly educated inmates in D-Block in actually drafting petitions, complaints, etc., for signature by the aggrieved inmate and filing; and

I. a written plan for keeping the D-Block ILHs informed regarding what legal materials are in inventory in the D-Block law library.

The Magistrate further recommended that the defendants be ordered to file a proposed final judgment embodying their proposals to eradicate the unconstitutional conditions (set forth in Item 9 of the magistrate's report and recommendation) and permanently enjoining the defendants from denying D-Block inmates their right of access to the courts.

*11 The defendants have excepted to the magistrate's report and recommendation claiming that injunctive relief is not warranted. They argue that neither of the plaintiff's proved actual harm suffered in any of their attempts to have access to the courts.

The Court is of the opinion that this lawsuit was properly treated by the magistrate as a challenge to the constitutionality of the conditions for all D-Block inmates as they now exist. The magistrate's finding that certain conditions are currently unconstitutional is not clearly erroneous. No plaintiff is being awarded damages for any harm suffered. The magistrate has simply evaluated the situation; pinpointed certain problem areas; and invited the defendants to produce new regulations, etc., that would bring about constitutional compliance. The Court finds the magistrate's report and recommendation entirely appropriate under the facts of this case.

Accordingly, the report and recommendation of the United States magistrate is hereby adopted and approved. The defendants are ORDERED to comply with the magistrate's recommended order within thirty (30) days of the date of this order.

Footnotes

¹ Known as the East Tennessee Reception Center until January 1, 1986.

² Originally there was a claim for damages but that was in connection with a claim no longer in the suit. In any event, no proof of damages was offered.

³ The constitutionality of § 509.03 has been upheld. *Scott v. Pellegrin*, No. 82-3526, Order entered July 25, 1985, United States District Court for the Middle District of Tennessee, Hon. John T. Nixon (copy in court file). Its constitutionality is not challenged here. Improper implementation of it is the claim made here.

⁴ Jacks testified that sometimes inmates send him a note asking for legal materials. This could account for why Jacks supplied Bradley with legal materials on more occasions than he was asked according to the logs.

Pickle v. Harris, Not Reported in F.Supp. (1986)

- ⁵ Any objections to this Report and Recommendation must be filed with the Clerk of Court 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, 54 U.S.L.W. 4032 (12-4-85); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).