

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

THOMAS DEFUSCO	)	
	)	
v.	)	
	)	C.A. No. 77-0083
BRADFORD E. SOUTHWORTH, et al	)	
	)	
ANTHONY SOUZA and	)	
JAMES SILVIA, et al	)	
	)	
v.	)	C.A. No. 85-0110
	)	
STAFFORD S. QUICK, et al	)	

MEMORANDUM AND ORDER

Ronald R. Lagueux, United States District Judge.

The Court has this day approved the attached Stipulation of Dismissal of these cases. That means that the Consent Judgment entered by Judge Pettine on May 6, 1988, delineating specific procedures for the regulation and composition of the law libraries at the ACI, and providing the means of access for inmates to the law libraries and legal assistance is now vacated. The Department of Corrections, in the place and stead of that Consent Judgment, has promulgated Policy No. 13.03 concerning access to the courts and legal materials. That policy is appended hereto.

This Court wishes to make it clear that said policy will be treated in the same way as the Morris Rules. See Doctor v. Wall,

2001 WL 410737 (D.R.I.); Cugini v. Ventetuolo, 781 F. Supp. 107 (D.R.I. 1992). In other words, this policy has been promulgated by the Department of Corrections under state law and is to be enforced, if at all, by state machinery. No cause of action will lie in this Court for alleged violations of this policy, and the Department of Corrections is free to make changes in this policy from time to time as it sees fit.

In order for this Court to have jurisdiction to hear any matter relating to said policy, the complaint must raise an issue of federal constitutional dimension.

It is so ordered.



Ronald R. Lagueux  
U.S. District Judge  
May 23, 2001

RECEIVED

MAR 20 2001

U.S. DISTRICT COURT  
DISTRICT OF R.I.  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

THOMAS DEFUSCO

:

VS.

:

C.A. No. 77-0083

:

:

BRADFORD E. SOUTHWORTH, et al., :

:

ANTHONY SOUZA AND  
JAMES SILVIA, et al.

:

:

VS.

:

C.A. No. 85-0110

:

:

STAFFORD S. QUICK, et al.

:

STIPULATION OF DISMISSAL

On August 2, 1978, former Chief Judge of the United States District Court for the District of Rhode Island, Raymond Pettine, entered an order concerning inmate access to law libraries and legal materials.<sup>1</sup> This matter was one of fourteen consolidated cases.<sup>2</sup> Thereafter, on January 17, 1979, Judge Pettine entered a further order concerning options for upgrading legal materials at the ACI ("Adult Correctional Institution").<sup>3</sup> On May 6, 1988, the parties entered into a Consent Judgment which delineated specific procedures for the regulation and composition of the law libraries at the ACI, and provided the means of access for inmates to the law libraries and legal assistance.<sup>4</sup> The policy proposed then by the ACI received the Court's approval, and

<sup>1</sup> DeFreitas v. Southworth, C.A. No. 77-009

<sup>2</sup> Souza v. Southworth, et al., C.A. No. 77-0135; DeFreitas v. Laurie, et al., C.A. No. 77-166; DeFreitas v. Southworth, et al. C.A. No. 77-0168; Clark v. Laurie, et al., C.A. No. 77-0170; Souza v. Laurie, et al., C.A. No. 77-0171; Grunberg v. Papa, et al., C.A. No. 77-0199; Silvia v. Laurie, et al., C.A. No. 77-0203; Clark v. Southworth, et al., C.A. No. 77-0229; DeFreitas, et al. v. Southworth et al., C.A. No. 77-0269; Rodi v. Laurie, C.A. No. 78-0147; McParlin v. Moran C.A. No. 78-0310; McParlin v. Moran, C.A. No. 78-323; Defusco v. Southworth, C.A. No. 78-0083

<sup>3</sup> Defusco v. Southworth, C.A. No. 78-0083

<sup>4</sup> Defusco v. Southworth, C.A. No. 78-0083/Souza and Silva, et al. v. Quick et al. C.A. No. 85-0110

that policy has remained essentially unchanged since 1988. These Orders and the Consent Judgment were agreed to in conformity with the U.S. Supreme Court decision in Bounds v. Smith, 430 U.S. 817 (1977). A proposed new policy has been drafted in light of new controlling authority in Lewis v. Casey, 518 U.S. 343 (1996).<sup>5</sup>

The U.S. Supreme Court stated that Bounds “did not create an abstract, free-standing right to a law library or legal assistance.” Casey at 351. Simply, local experimentation is encouraged in various methods to ensure the right of ‘access to the courts’ for inmates to “attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement” in pursuing a “nonfrivolous legal claim.” Id. at 351-353, 355.

Rhode Island Department of Corrections (“RIDOC”) proposed Policy 13.03 establishes a Central Law Library and satellite law libraries in each facility at the ACI and ensures to each inmate reasonable access to said facilities and materials. It outlines the duties of the RIDOC Law Librarians and procedures to follow when responding to inmate requests. It also defines the duties and responsibilities of the inmate law clerks.

This proposed policy has been thoroughly reviewed by the Attorney for the Plaintiff inmate class, Alvin J. Bronstein of Washington, D.C. Attorney Bronstein has discussed the proposed policy with members of the inmate class.

In light of the foregoing, the parties hereby agree and stipulate to the following:

1. RIDOC Policy No. 13.03 “Access to the Courts and Legal Materials” shall hereafter govern inmate access to the courts and legal materials.

---

<sup>5</sup> RIDOC Policy No. 13.03 “Access to the Courts and Legal Materials” (Attached as Exhibit “A”)

2. These lawsuits and all outstanding decrees shall be dismissed after notice to the class.
3. The Plaintiff inmate class is entitled to recover reasonable and necessary attorney's fees, expenses and costs incurred in this case.

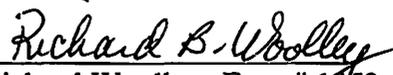
PLAINTIFF INMATE CLASS  
By Its Attorney

DEFENDANTS  
By Their Attorney

SHELDON WHITEHOUSE  
ATTORNEY GENERAL



Alvin J. Bronstein, Esq.  
Attorney at Law  
6618 31<sup>st</sup> Street, NW  
Washington, DC 20015



Richard Woolley, Esq. # 1952  
Deputy Chief - Civil Division  
150 South Main Street  
Providence, RI 02903

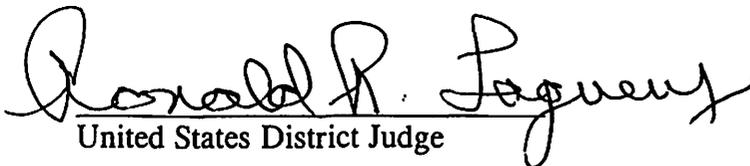


Anthony A. Cipriano, Esq. # 1508  
Chief Legal Counsel  
RI Dept. of Corrections  
40 Howard Avenue  
Cranston, RI 02920

Approved:

~~PER ORDER:~~

Per Order:   
~~PER ORDER:~~

  
United States District Judge

Date: 5/23/01

# EXHIBIT A

## RHODE ISLAND DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE

	POLICY NUMBER: 13.03 DOC	EFFECTIVE DATE: DRAFT; 01/31/01	PAGE 1 OF 8
	REPEALS: 5.06.06	DIRECTOR: <b>RECEIVED</b> MAR 29 2001 U.S. DISTRICT COURT DISTRICT OF RHODE ISLAND	
SECTION: INMATE RIGHTS	SUBJECT: ACCESS TO THE COURTS AND LEGAL MATERIALS		
AUTHORITY: Rhode Island General Laws (RIGL) § 42-56-10(v), Powers of the director			
REFERENCES: : ACA Standard 4264 (access to Law Library); <u>Lewis v. Casey</u> , 518 U.S. 343 (1996); <u>Bounds v. Smith</u> , 430 U.S. 817 (1977); Policy #'s 25.01 DOC, Institutional Library Services; 2.28 DOC, Medical Copay (re: indigent inmates)			
INMATE ACCESS THROUGH LAW LIBRARY?		X YES	

### I. PURPOSE:

To ensure the Rhode Island Department of Corrections (RIDOC) establishes and maintains:

- A. a centralized inmate law library; and
- B. satellite law libraries in each facility (containing basic legal research material).

### II. POLICY:

- A. Central Law Library. The Rhode Island Department of Corrections (RIDOC) provides a central law library with up-to-date constitutional, statutory, case law materials, applicable court rules and practices, as defined by Lewis v. Casey [i.e., criminal law (sentence reduction, clarification, or reconsideration; appeal of conviction; arrest/trial; or post conviction relief) and civil law (conditions of confinement)].
- B. Satellite Law Libraries. In addition, satellite law libraries containing basic legal research material (e.g. Rhode Island laws and court rules; federal court rules;

digests; form books; and select treatises, hornbooks and restatements of the law) and staffed by inmate law clerks are maintained in each facility.

- C. Reasonable access to both the satellite libraries and materials contained in the Central Law Library, as prescribed by operating and security procedures of each facility, and assistance in the use of materials are provided for each inmate.

### III. PROCEDURES:

#### A. Central Law Library

1. The RIDOC recognizes the important role of the law library as a meaningful resource for the inmate population.
2. The Central Law Library contains law books and other legal materials selected according to recognized standards for the formation of legal collections.
3. Duties of the RIDOC Law Librarians

The duties of RIDOC's Law Librarians include, but are not necessarily limited to:

a. Ensuring each satellite law library contains:

- (1) an up-to-date catalog of materials and services available in the Central Law Library;
- (2) an up-to-date collection of basic legal research material;
- (3) up-to-date RIDOC policies and a policy index;
- (4) sample court forms, filing instructions and court addresses;
- (5) copies of indexes and/or table of contents of hornbooks and treatises (major titles) available in the Central Law Library to facilitate more efficient inmate requests for information from the Central Law Library collection;
- (6) subject-appropriate pathfinders / information packs / guides to facilitate more efficient inmate requests for information, i.e., criminal law (sentence reduction, clarification, or

reconsideration; appeal of conviction; arrest/trial; or post-conviction relief) and civil law (conditions of confinement).

- b. Responding to inmate requests.
- (1) A sample RIDOC Law Library Request Form is included as Attachment 1. This form is to be used by inmates whenever they request legal materials from the Law Librarians.  
  
NOTE: Any falsification of information contained on the Law Library Request Form will be cause for discipline up to and including loss of library privileges, punitive segregation, and loss of good time.
  - (2) The Law Librarian considers the following criteria when evaluating requests from inmates:
    - (a) Is the request a matter of criminal law (sentence reduction, clarification, or reconsideration; appeal of conviction; arrest/trial; or post conviction relief) or civil law (conditions of confinement) and consistent with Lewis v. Casey.
      - (1) If so, please see item b.(2)(b) below.
      - (2) If not, the Law Librarian denies the request and notifies the inmate of the denial.
    - (b) Is an attorney representing the inmate on the matter in question?
      - (1) If so, the Law Librarian advises the inmate that his/her attorney is responsible for ensuring the inmate has access to the courts and/or appropriate legal materials.
      - (2) If not, the requested material/information is provided to the inmate.
    - (c) The provisions of paragraphs 3.b.(2)(a) and (b), which provide for denying an inmate's request for law library assistance if the inmate is represented by an attorney, shall not apply if the inmate can demonstrate that s/he has made a significant effort

to receive the desired assistance from the attorney without success. "Significant effort" shall be proven by documented attempts to reach the attorney by mail and telephone, verified by the inmate's Counselor.

- (3) All requests for information require confirmation that the inmate first went to his/her facility's Law Library to find the information (See Attachment 1).
- (4) The Library Correctional Officer (C/O) is required to sign the request form.
  - (a) If a request is not signed, it will be returned to the inmate for appropriate routing.
- (5) All requests received at the Central Law Library will be date-stamped upon receipt and sorted according to type of material requested:
  - (a) Information an inmate clerk can gather: cites from CD-ROM or photocopies from print collection (all clerks' responses must be reviewed by a staff Law Librarian).

Response time: within 10 business days, depending on availability.

- (b) Information a staff Law Librarian must retrieve: Westlaw, Internet, research/reference questions.

Response time: within 10 business days, depending on availability.

NOTE: In demonstrated emergency situations, the Law Librarian will, at his/her discretion, make every effort to fill requests in an expeditious manner.

- (6) Photocopies
  - (a) Inmates may request photocopies from the Central Law Library (via the Law Librarians) and/or the satellite libraries (via the inmate Law Clerks).

- (b) Inmates will be charged five cents (\$0.05) per copied page.
- (c) Signed Money Transfer Slips must accompany requests for photocopies.
- (d) Indigent Inmates – If an inmate has an insufficient balance in his/her account, a charge will nevertheless be placed against the account. Such a charge will result in a negative balance in the inmate's account.
  - (1) When an inmate's account has a negative balance because of such photocopying charges, one-half of all deposits will be used as an offset to the charges until such time as the charges have been paid in full. There are no restrictions on the other half of deposits beyond normal restrictions.

NOTE: Unreasonable (i.e., voluminous or repeat) requests for photocopies from indigent inmates may be denied at the discretion of the Warden or designee (satellite libraries) and/or the Law Librarians (Central Law Library).

(7) Interstate Transfers

NOTE: Generally, requests from inmates who are represented by counsel are not filled by RIDOC's Law Librarians. However, if a Rhode Island inmate who is serving his/her sentence (or a portion thereof) out of state is represented by legal counsel, but is unable to contact his/her attorney in a timely manner, RIDOC's Law Librarian may fill his/her request for information.

- (a) Requests from inmates from other states who are serving their sentences in Rhode Island are forwarded to the sending state's Interstate Compact Administrator for appropriate action. RIDOC's Law Librarian may forward these requests to the sending state, or s/he may return them to the inmates, advising them of the proper procedure to follow.

- (b) Requests from Rhode Island inmates who are serving their sentences in other jurisdictions must be made through the receiving state's Law Librarian or counterpart.
- (1) A signed Money Transfer Slip or a check made out to the General Treasurer, State Of Rhode Island must accompany such requests.
  - (2) RIDOC's Associate Director of Classification/ Interstate Compact Administrator forwards such requests to RIDOC's Law Librarian(s) via RIDOC's Administrator of Educational Services.
  - (3) The Librarian gathers the appropriate information and forwards it to RIDOC's Associate Director of Classification via the Administrator of Educational Services.
  - (4) The Associate Director of Classification forwards the requested information to the inmate via the receiving state's Interstate Compact Administrator.

Duties of the RIDOC Law Librarians -- continued

- c. Ensuring materials maintained on Segregation law carts are current.
- d. Developing Central Law Library Handbook and distributing it to facility law libraries and law clerks (how to use the new library system, how your clerk can help you, materials available, etc.).
- e. Training law clerks in the methods of legal research.

B. Access and Hours - Satellite Law Libraries

Law library hours are posted in all housing units. Scheduling is determined by Wardens or designees for individual facilities. Inmates needing additional time in the law library make such requests in writing to the Warden or designee.

C. Law Library Service (Segregation)

1. Inmates housed in Segregation are not permitted physical access to the law library; however, legal material is available on book carts which are located in every Segregation mod. Use of the cart is by request only. A request is forwarded to the facility Segregation Officer, consistent with the rules and procedures of individual facilities.
2. Also available to inmates housed in Segregation is direct "in person" access to an inmate law clerk. Segregation inmates desiring assistance from an inmate law clerk sign up for an appointment on an appointment sheet/request for interview form provided by the Segregation Officer. The request is forwarded to the inmate law clerk within two (2) days. An inmate law clerk is permitted to enter the Segregation area and assist the Segregation inmate.

D. Inmate Law Clerks

1. The Warden or designee of each facility ensures at least two (2) trained inmate law clerks are hired. The Warden or designee will also maintain a "pool" of trained inmate law clerks to provide coverage.
2. Minimum education and skills: high school diploma or GED; ability to type.
  - a. One should preferably be bilingual.
3. Inmate law clerks shall not perform actual research and preparation of casework for other inmates. This prohibition is intended to prevent the exchange of services for cash, favors, or goods and discourages possession of contraband in the form of another inmate's legal materials.
4. The duties and responsibilities of the satellite law libraries' inmate clerks include, but are not necessarily limited to:
  - a. Maintaining the inventory of material available in the facility, including segregation cart inventories.
  - b. Maintaining RIDOC policies provided by the Central Law Library and providing appropriate access to them.
  - c. Maintaining sample form books, filing instructions and court addresses, provided by the Central Law Library.

- 
- d. Assisting inmates in the process of legal research (i.e., how to use resources in the law library, where to find court procedures and rules, etc.), including inmates in Segregation.
  - e. Photocopying legal material for inmates, consistent with this policy's provisions.
  - f. Assisting inmates to request information from the Central Law Library (by using the Central Law Library inventory, book indices, information packs, proper citation forms, etc.), when needed material is not available in the facility law library.
  - g. Posting the procedure for requesting information from the Central Law Library.
  - h. Shelving new materials received from the Central Law Library and maintaining neatness and order of collection.
  - i. Discarding replaced, old pocket parts and supplements, including Segregation cart materials, under the Law Librarians' supervision.
5. At no time will any inmate law clerk suggest, advise or infer any action which is clearly illegal or contravenes the rules or policies of the RIDOC.
  6. The inmate law clerk is under the supervision of the Law Library Officer and/or the Law Librarian. When not performing their primary duties, inmate law clerks perform routine tasks such as maintaining forms and RIDOC policy books, and performing light housekeeping duties as needed.

