

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

PRISON LEGAL NEWS, a project of the)
HUMAN RIGHTS DEFENSE CENTER,)
)
Plaintiff,)

v.)

Case No. 11-cv-2497 WEB/KGG

)
BOARD OF COMMISSIONERS OF)
SHAWNEE COUNTY, KANSAS, and)
RICHARD C. KLINE, individually and)
in his official capacity as Director of the)
Shawnee County Department of)
Corrections,)
)
Defendants.)

COMPLAINT

COMES NOW Plaintiff, through its undersigned counsel, and for its Complaint against Defendant Richard C. Kline, individually and in his official capacity as Director of the Shawnee County, Kansas, Department of Corrections and against Defendant Shawnee County, Kansas, alleges as follows:

I. INTRODUCTION

1. Plaintiff, Prison Legal News, a project of the Human Rights Defense Center, brings this action to enjoin Defendants’ censorship of its monthly publication and correspondence mailed to prisoners who are held in custody by the Shawnee County Jail, in violation of the First and Fourteenth Amendments. Defendants have adopted and implemented policies that unconstitutionally restrict correspondence to prisoners, which policies on their face prohibit prisoners from receiving any sort of book, magazine or other publication, such as those published by Plaintiff. Defendants’ policies and practices do not afford the sender of the censored mail due process notice and an opportunity to challenge the censorship as required by the Constitution, nor is the challenged policy in any way related to a legitimate penological purpose.

II. JURISDICTION AND VENUE

2. This action arises under the Constitution of the United States and the provisions of 42 U.S.C. § 1983. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a), and pursuant to 42 U.S.C. § 1983.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as the events giving rise to this Complaint occurred in this judicial district and because Defendants reside in this district.

III. PARTIES

4. Plaintiff Prison Legal News (PLN) is a project of the Human Rights Defense Center, a Washington nonprofit corporation with offices in Brattleboro, Vermont. PLN publishes and distributes a monthly journal of corrections news and analysis as well as books about the criminal justice system and legal issues affecting prisoners. Such publications are offered to prisoners, lawyers, courts, libraries, and the public throughout the country.

5. Defendant Shawnee County is a political subdivision of the State of Kansas that may be sued through and in the name of its Board of County Commissioners (hereafter “defendant Board”). Service of process may be made upon the Shawnee County Clerk, Cynthia Beck, 200 SE 7th Street, Room 107, Topeka, Kansas 66603, or the Shawnee County Treasurer, Larry Wilson, Shawnee County Courthouse, 200 SE 7th Street, Room 101, Topeka, Kansas 66603.

6. Defendant Richard C. Kline is the Director of the Shawnee County, Kansas Department of Corrections and is being sued in his individual and official capacities. Defendant Kline is employed by and is an agent of Shawnee County. He is responsible for the operations of the Shawnee County Adult Detention Center (hereafter “Jail”), including the hiring and training of the Jail’s staff members who interpret and implement the Jail’s mail policy for prisoners. Upon information and belief, Director Kline is the final policymaker for the Jail policy governing mail for prisoners.

7. Each of the acts and omissions of persons alleged herein was within the scope of his or

her official duties as employees of Shawnee County. Such acts and omissions by defendants were undertaken under color of state law.

IV. FACTUAL ALLEGATIONS

8. PLN publishes and distributes *Prison Legal News*, a 56 page monthly journal containing corrections news, analysis about prisoners' rights, court rulings, management of prison facilities, excessive force, mail censorship, jail litigation, religious freedom, prison rape, the death penalty and other matters pertaining to prison conditions and the rights of incarcerated individuals. PLN also publishes and distributes books about the criminal justice system and legal issues affecting prisoners. It has approximately 7,000 subscribers worldwide, including a number of subscribers at the Shawnee County Jail. PLN has been published continuously since 1990.

9. PLN engages in core protected political speech and expressive conduct on matters of public concern and is not objectionable on security or other grounds. As an example, the most recent issue of *Prison Legal News*, from August 2011, contains an interview with ex-convict and popular Hollywood actor Danny Trejo, in which Mr. Trejo advises current inmates to pursue education to better their lives. That issue also contains an article entitled "Habeas Hints: Expert Testimony in Habeas Cases," which provides useful information to inmates perhaps wrongfully incarcerated who seek habeas relief, and includes a news article on the Virginia Department of Corrections' recent settlement to improve communications with deaf prisoners.

10. PLN also sells and distributes self-help, non-fiction and reference books to prisoners and others. A brochure sent to inmates at the Shawnee County Jail, and censored by Defendants, advertises for sale such books as *Finding the Right Lawyer*, *10 Insider Secrets to a Winning Job Search*, and *Hepatitis and Liver Disease: What You Need to Know*. No legitimate purpose, penological or otherwise, bars inmates from receiving either the brochure or any such books from Plaintiff.

11. Since at least November 2010, Plaintiff has sent copies of the monthly publication

Prison Legal News, subscription renewal letters, informational brochures and soft-cover books such as *Protecting Your Health and Safety* to a number of individuals confined in the Shawnee County Jail.

12. Defendants have adopted and promulgated a policy that provides in relevant part that “No packages, newspapers, magazines, books ... [are] to be mailed to the facility.”

13. In late 2010 and throughout 2011, PLN sent its publications to prisoners held at the Shawnee County Jail, but, in connection with its established policy, Defendants rejected each publication by using stamp to mark them “Return to Sender” and causing them to be returned to PLN. In some cases, the “Return to Sender” stamp indicated falsely that the inmate recipient was no longer present at the jail.

14. Publications sent by PLN to inmates at the Shawnee County Jail included not only PLN’s monthly magazine but also literature such as *Protecting Your Health and Safety* by Robert Toome, published by the Southern Poverty Law Center, whose advertised description states that it “explains some basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how you can enforce your right to health and safety within the facility, and, if necessary, in court through litigation.” Upon information and belief, there was no legitimate purpose – penological or otherwise – in refusing inmates access to this book.

15. Several inmates filed formal complaints with Shawnee County Jail officials to protest the censorship of their incoming mail. For example, on June 23, 2011, Steven Macomber wrote two complaints, one to “Capt. King” and one to the jail mail room. He wrote in relevant part to Capt. King that, “I received confirmation yesterday that Prison Legal News has sent me reading materials and their monthly publication since March. I’ve never received any of these items weren’t delivered. I believe I have a right to receive these items.” Capt. King’s response was, “These items don’t come to the module. You will get them when you leave our facility.” Less helpfully, the mail room responded to

Mr. Macomber's complaint by stating simply, "Religious material is received from chaplain. Thank You. Mailroom."

16. Similarly, Justin D. Elnicki, a subscriber to *Prison Legal News*, filed a complaint with "Maj. Cole" of the Shawnee County Jail staff on December 15, 2010, stating, "I received a book and a magazine from Prison Legal News, these items were placed in my property. I would like to read them to be informed about the information therein. Could I please have them as I believe I have a 1st Amendment right to read them. Thank you." The jail's response read, in pertinent part, "Books cannot be received here. Thank you."

17. During 2010 and 2011, Plaintiff sent its magazines, books, and other materials to at least forty-five (45) different inmates at the Shawnee County Jail; these materials were uniformly censored and defendants refused to deliver them to the inmate addressees despite the lack of any legitimate security concern which might justify such censorship.

18. In *Prison Legal News, Inc. v. Werholtz*, 02-4054-MLB, 2007 WL 2875113 (D. Kan. Oct. 1, 2007), on remand from *Jacklovich v Simmons*, 392 F.3d 420 (10th Cir. 2004), this Court ordered that Kansas prisons provide publishers with notification of censorship of their publications and an opportunity to appeal the censorship. Defendants in this case should have been on notice of such order but have similarly failed to provide constitutionally adequate due process to Plaintiff.

19. Upon information and belief, Defendants' actions as described above, were done willfully, wantonly, and/or maliciously.

20. Due to the Defendants' actions as described herein, the Plaintiff has suffered damages, including violation of the Plaintiff's constitutional rights, impediment of Plaintiff's ability to disseminate its political message, frustration of Plaintiff's organizational mission, diversion of resources, loss of potential subscribers and customers, an inability to recruit new subscribers and supporters, loss of reputation, costs of printing, handling and mailing costs, costs of staff time, and

other damages to be proven at trial.

21. Due to the defendants' actions, Plaintiff has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

22. Accommodation of the free speech and expression and due process rights of Plaintiff with respect to materials protected by the Constitution and provided to Shawnee County inmates will not have any significant impact on the jail.

V. STATEMENT OF CLAIMS

COUNT I – VIOLATION OF THE FIRST AMENDMENT

23. Plaintiff realleges and reincorporates paragraphs 1 through 22 as though fully set forth herein.

24. Defendants' policy and practice of banning Plaintiff's magazines and publications violates the free speech and expression rights of Plaintiff secured by the First and Fourteenth Amendments to the United States Constitution, as well as Plaintiff's rights of freedom of association and the right to be free of government censorship, as protected by the United States Constitution.

25. Defendants' policy deprives Plaintiff of freedom of the press as secured by the First and Fourteenth Amendments to the United States Constitution.

26. Plaintiff has a constitutionally protected liberty interest in communicating with incarcerated individuals, a right clearly established under existing case law.

27. The acts described above violated Plaintiff's rights under the First Amendment to the United States Constitution and have caused damage to Plaintiff, and, if not enjoined, will continue to cause damage to Plaintiff.

COUNT II – VIOLATION OF THE FOURTEENTH AMENDMENT

28. Plaintiff realleges and reincorporates paragraphs 1 through 22 the preceding allegations as though fully set forth herein.

29. Defendants' policy and practice of banning "Prison Legal News" and books and written materials distributed by Plaintiffs fails to provide Plaintiffs with individualized notice that its publications are being banned or an opportunity to be heard.

30. Plaintiffs have the right under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to receive notice and the opportunity to object when defendants prevent plaintiff's publications from reaching their subscribers.

31. The acts described above violated Plaintiff's rights under the Fourteenth Amendment to the United States Constitution and have caused damages to Plaintiff and will continue to cause damage to Plaintiff.

VI. PRAYER FOR RELIEF

32. WHEREFORE, Plaintiff requests relief as follows:

- a. A declaration that Defendant's policies, practices, and customs violate the Constitution.
- b. Nominal damages for each violation by the Defendants against the Plaintiff's rights.
- c. A preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief.
- d. Compensatory damages in an amount to be proved at trial.
- e. Punitive damages against the individual defendants in their individual capacities.
- f. Costs, including reasonable attorney's fees under 42 U.S.C. § 1988, and under other applicable law.
- g. Prejudgment and post-judgment interest.
- h. Such other and further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff demands trial by jury on all matters so triable in this cause.

PLACE OF TRIAL

Pursuant to D. Kan. Rule 40.2, plaintiff designates Kansas City as the place for trial.

Respectfully submitted,

/s/ Stephen Douglas Bonney
Stephen Douglas Bonney, Ks. Bar #12322
ACLU Foundation of Kansas & Western Missouri
3601 Main Street
Kansas City, MO 64111
Tel. (816) 994-3311
Fax: (816) 756-0136
E-mail: dbonney@aclukswmo.org

/s/Fred Slough
Fred Slough, KSD # 70586
Slough Connealy Irwin & Madden
1627 Main St., Suite 900
Kansas City, MO 64108
(816) 531-2224
(816) 531-2147 (fax)

/s/James D. Jenkins
James D. Jenkins, KSD # 78125
7608 Pennsylvania Avenue
Kansas City, Missouri 64114
Tel. (816) 416-9876
Fax: (816) 474-1578
jjenkins@valancourtbooks.com

/s/Lance Weber
Lance Weber, Ks. Bar #18610
Human Rights Defense Center
PO Box 2420
West Brattleboro, VT 05303
(802) 257-1342
lweber@humanrightsdefensecenter.org

COUNSEL FOR PLAINTIFFS