

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

AUG 21 1981

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

ROBERT E. BULLINGTON, et al.,)
)
 Plaintiffs,)
)
vs.)
)
WARDEN MORELAND, et al.,)
)
 Defendants.)

Cause No. 79-650-C(2)

DEFENDANTS' OBJECTIONS TO REVIEW AND
RECOMMENDATION OF MAGISTRATE

Come now Defendants by and through their attorneys of record,
and state that they have no objection to the U. S. Magistrate's
Review and Recommendation dated July 23, 1981, except in the
following particulars:

OVERCROWDING

The recommendations set forth in the Magistrate's Review and
Recommendation have been implemented as of August 3, 1981. As a
matter of law, the County Jail facility is not overcrowded by
excess population so as to be violative of the Eighth or
Fourteenth Amendments.

The conditions at the County Jail facility, as modified do
not constitute a violation of Plaintiffs' civil rights. The
County Jail facility conditions do not involve wanton or
unnecessary infliction of pain. See Rhodes v. Chapman, ___, U.S.
___, ___, S.Ct. ___, ___ LEd 2 ___, 41 CCHS.Ct.Bull. p.B3183. That
Court noted at B3184,:

"To the extent that such (jail) conditions are
restrictive and even harsh, they are part of the
penalty that the criminal offenders pay for their
offenses against society."

LIBRARY

The Magistrate's Review and Recommendation regarding the
County Jail facility library are contrary to law and the evidence
herein, and should be set aside. The investigating Magistrate has

recommended that Defendants furnish inmates a library which comports with the requirements set out in Tyler v. Satz, No. 77-918-C(1) (E.D.Mo., 1978).

All inmates and pretrial detainees who are indigent have a statutory right to have representation and defense provided by counsel pursuant to Section 600.010 et seq., RSMo., 1978 as amended, 41 VAMS 1980 p.p. 25-27.

The Eighth Circuit Court of Appeals in Noorland v. Ciccone, 489 F2d. 642 (8th Cir., 1973) considering the issue of an inmate's rights to an adequate law library, held that:

"...Under Johnson v. Avery [393 U.S. 483, 89 S.Ct. 747 2LEd. 718 (1969)]...the Government need not furnish every means of access to the Courts. It need only provide some opportunity for a prisoner to gain equal access to the Courts. Thus, if the public defender program at the Medical Center is effectual, the Government has met its burden under Johnson v. Avery regardless of any concomitant right to represent oneself in habeas proceedings. See Adam v. United States 317 U.S. 269, 279, 63 S.Ct. 236, 87 LEd. 268. ..."

The Supreme Court in Bounds v. Smith, 430 U.S. 817, 52 LEd.2d 72 (1977) addressed the question of whether a state has an affirmative federal, constitutional duty to furnish prison inmates with extensive law libraries or alternatively, to provide inmates with professional or quasi-professional legal assistance. That Court held that adequate law libraries are only one constitutionally acceptable method to assure meaningful access to the Courts. Bounds supra. at 1499. The Court further noted the use of full time staff attorneys as part of the public defender's office not only result in more efficient and skillful handling of prisoners' cases, but avoid the disciplinary problem associated with writ writers. Bounds supra. at 1500.

Therefore, it is clear that the St. Louis County and the State of Missouri, through the State mandated public defender system available to the County Jail facility inmates, has met the constitutional requirements for providing inmates meaningful access to the Courts.

WHEREFORE, Defendants move this Court to set aside the findings of fact and conclusions of law contained in the investigating Magistrate's Report and Recommendation as they relate to the "Library" and for the Court to take such action on the objection and response of Defendants to "Overcrowding" as may be proper.

THOMAS W. WEHRLE
St. Louis County Counselor

By Donald J. Weyerich
Donald J. Weyerich #20191
Spec. Assistant County Counselor
County Government Center
Clayton, Missouri 63105
889-2042

Attorneys for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing instrument was mailed this 24th day of August, 1981, to Mr. James L. Thomas, 906 Olive Street, Suite 605, St. Louis, Missouri 63101; Mr. John P. Emde, 611 Olive Street, Suite 1950, St. Louis, Missouri 63101; and Mr. Eugene K. Buckley, Evans & Dixon, 314 North Broadway, St. Louis, Missouri 63102 by U. S. Mail, Postage Prepaid.

Donald J. Weyerich