

Note: This Permanent Injunction was included as Appendix A to the 9th Circuit Opinion dated 12/27/1994.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

FLETCHER CASEY, JR., et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. SAMUEL A. LEWIS, Director Arizona Department of Corrections, et al., Defendants. CHARLES L. ARNOLD, guardian ad litem on behalf of H.B., Plaintiff, v. SAMUEL LEWIS, Director; MARY VERMEER, Deputy Warden, Santa Maria - Perryville; DAVID FERNANDEZ, M.D., Arizona Department of Corrections, in their official capacities, Defendants.

NO. CIV 90-0054-PHX-CAM (Lead)

NO. CIV 91 1808-PHX-CAM (Consolidated)

PERMANENT INJUNCTION: ACCESS TO THE COURTS ISSUES

INTRODUCTION

The recommended permanent injunction with commentary is enclosed. Plaintiffs and defendants seek a quick decision based on the present inputs. Neither side requests an evidentiary hearing or argument before the Court.

Following extensive fact-finding, a proposed permanent injunction was filed on July 12, 1993. The parties were given opportunity to submit comments on any proposed changes (as compared to the Gluth language), or to re-emphasize previously requested modifications. The comments were due July 30, 1993.

Plaintiffs' response is attached (App. "A"). On July 27, defendants informed the Special Master that ADOC personnel were still circulating the proposed order for comment. After reiterating that the instant response was not intended for new objections to the Gluth language, the Special Master granted an extension to August 13.

Defendants' response is attached (App. "B"). As noted in plaintiffs' motion to dismiss (App's. "C", "E"), and recognized by the Court (App. "F"), most of the specific requests involve matters that should have been investigated and resolved during the appropriate January-to-June period. Additionally, the requests rely on conclusory and unsupported allegations.

After receipt, the Special Master told the parties that proper consideration of these requests required a re-opening of the investigation to enable all involved to adequately assess their validity. Plaintiffs and defendants opposed this delay. They were also aware of the possibility of modifications after implementation based on demonstrated need.

Defendants' counsel contended that given the steps triggered by previous requests, including the numerous trips to ADOC facilities and discussions with personnel, the Special Master should be in position to quickly evaluate the new requests. However, not only is a more complete picture necessary, but the available information indicates that defendants' present conclusions are not supported by the known facts.

For example, the collected data apparently demonstrates that: the majority of facility yards do not close for all prisoner activity by 8:30 p.m.; photocopies cost less than five cents per page; one trained librarian for every three law libraries is inadequate; any vandalism of library books is not primarily attributable to access to the stacks; and it is possible to allow the required weekly meetings with Legal Assistants, the daily exchange of materials for persons denied library access, and brief messages from attorneys.

The Special Master has always responded to demonstrated security problems. However, such labels in defendants' submission are not consistent with ADOC practices. As one example, even at CB6, a maximum security unit that includes death row, prisoners have been given advance notice of their scheduled library visits and permitted to continue to use typewriters with "memory", including those provided in the library.

The Special Master's first-hand knowledge proves that defendants' assertions of impossibility with regard to finding librarians with para-legal degrees are baseless. Even brief contact with local schools, for example, by the Special Master's office produced qualified applicants; defendants chose not to follow up. Given the low salary, it is predictable that persons with a para-legal degree requiring two years after high school are more readily available than those whose library science degree required five or six years.

The Order. The requirements in the enclosed Order repeat or closely track those in the July 12 submission. Questions raised by the parties resulted in some language changes to more accurately reflect the intent. A few additions clarified understandings of the Gluth parties that were not incorporated in that final injunction. These include the limited ability to assign a law librarian to a second facility (recently requested in Gluth by defendants), and the basic prohibition on the use of uniquely onerous conditions to "chill" prisoner access (see, I.A. and commentary).

Finally, language concerning disclosure of information received from a prisoner by a Legal Assistant has been omitted pending review and suggestions from the parties. Recent decisions indicate a potential conflict between the Gluth formulation and fundamental state due process rights. [E.g., *State v. Melendez*, 172 Ariz. 68, 834 P.2d 154 (1992) (Sup. Ct. of Ariz., en banc)].

ORDER

The Arizona Department of Corrections (ADOC) shall provide meaningful access to the Courts for all present and future prisoners. The practices and procedures set out below will achieve this constitutional mandate. They concern those areas raised by or necessarily implicated in this litigation and incorporate approaches utilized by ADOC administrators.

I. THE LAW LIBRARIES

With the exception of the existing Aspen DWI and Flamenco Units at ASPC - Phoenix, the Papago DWI and Maricopa Units at ASPC - Douglas, and the Picacho Unit at ASPC - Florence, each ADOC facility with a population or capacity of 150 or more shall contain a fully equipped law library. Each library shall have sufficient seating capacity and be open for sufficient periods to enable adequate research and compliance with this Order.

A. ACCESS

ADOC prisoners in all housing areas and custody levels shall be provided regular and comparable visits to the law library. This opportunity may be postponed on an individual basis because of the prisoner's documented inability to use the law library without creating a threat to safety or security, or a physical condition if determined by medical personnel to prevent library use. Upon request, a prisoner will be permitted a minimum of ten hours of actual law library use each week; additional time shall be allowed if necessary to meet a filing or other legal deadline.

Law library access shall not be reduced or discouraged by unnecessarily onerous conditions or retaliatory practices. Prisoner access to the law library shall be on terms equivalent to those for participation in other congregate activities at the facility such as classes, jobs and meals, and shall not occasion unique hardships including, but not limited to, regular strip searches of library users and automatic disciplinary write-ups for missed library visits.

B. SCHEDULE

1. Library Hours

a. Facilities that do not require advance requests for a library turn-out:

The law library shall be open for prisoner use at least 50 hours each week. This schedule shall involve hours between 7:00 a.m. and 10:00 p.m., and include at least four hours each week night between 5:00 p.m. and 10:00 p.m., and at least five hours between 7:00 a.m. and 10:00 p.m. on Saturday and on Sunday.

b. Facilities that require advance requests for a library turn-out:

The law library shall be open for prisoner use at least 60 hours each week if the facility population and capacity are less than 400, for at least 70 hours each week if either is between 400 and 700 and neither over 700, and at least 80 hours per week if either is over 700. These schedules shall involve hours between 7:00 a.m. and 10:00 p.m., and include at least four hours each week night between 5:00 p.m. and 10:00 p.m., and at least eight hours between 7:00 a.m. and 10:00 p.m. on Saturday and on Sunday.

2. Prisoner Use

In all facilities, each visit or turnout must provide the prisoner a minimum of two hours of actual library use. Facilities that do not require advance requests shall provide sufficient library periods that are free of conflicts for all prisoners to have this opportunity; these facilities do not have to change the scheduled closing time for late arrivals. Every prisoner will sign the log book at the law library to indicate the time of arrival at and departure from the library; copies of the log book pages shall be maintained for the Special Master.

If more than one reading room is utilized, a prisoner may choose which room to sit in, provided that the rooms are not reserved for different custody levels and no other documented security considerations exist. This choice is subject to the need to maintain comparable numbers in each room, although a prisoner shall be allowed to sit with any prisoner providing legal help even if not a "Legal Assistant".

3. Notice

At least one week prior to the end of each month ADOC shall make known to all prisoners (a) the law library schedule of hours and turnouts for the next month, and (b) the specific schedule of important activities at the facility for the next month, including visiting hours, classes, religious services, and field turnouts for each housing area; this is not required for those items whose schedule (days and hours) remains the same in the upcoming month.

Within two months of entry of this Order, for each facility ADOC shall provide the Special Master (a) the weekly law library schedule and, if applicable, the specific turnouts or sessions for different custody levels or housing areas, (b) the names of the security and civilian employees assigned to the law library with their specific hours, (c) the names of the prisoner law clerks with their specific hours, (d) the names of the prisoner Legal Assistants, and (e) the schedule of ongoing activities that might conflict with law library access, including work assignments, classes, recreation, religious services, commissary, visiting and meals.

C. ADVANCE REQUEST PROCEDURE

When advance requests are used, prisoners shall be responsible for selecting their law library turnouts and for depositing their requests directly in the appropriate receptacle; this requires that ADOC provide timely and adequate information, forms, and access to receptacles.

The first library turnout requested by a prisoner must be at least three days after the day the form is deposited; this shall be less if necessary to meet a legal deadline. The week referred to in I (A) begins the day of the first scheduled turnout, and at least ten hours of library use shall be permitted during this seven-day period.

Defendants shall provide adequate notification to prisoners of the above procedures and timetables, including posting in each cell block. The Special Master, in consultation with plaintiffs and defendants, shall analyze the library and turnout schedules, including those periods regularly revealing below average attendance, and ascertain whether any alterations are required for adequate access.

1. Forms

ADOC shall develop law library turnout and legal assistance request forms and have them regularly available in the housing areas and law library for distribution to prisoners. The law library form should minimally include space for the date submitted and for the selection of specific library turnouts and alternates for up to two weeks, and to detail any filing or other legal deadline. Any such deadline should be verified by relevant documentation possessed by the prisoner, or by a description of this information and explanation of why it is not available.

2. Receptacles

ADOC shall maintain secure, tamper-resistant receptacles for law library and other legal assistance requests from prisoners. These receptacles must be easily accessible to prisoners in all housing areas and custody levels on a daily basis.

D. ADVANCE RESPONSE PROCEDURE

Law Library staff or clerks shall collect the prisoner law library and other legal assistance forms from each deposit point at least once every day. ADOC must develop procedures for scheduling law library turnouts that provide adequate notice and access for all eligible prisoners with preference for those with filing or other legal deadlines, and that insure compliance with this Order. This minimally requires that law libraries requiring advance scheduling be equipped with a computer that is regularly and primarily used for this purpose.

Denial of a particular turnout may be based on a lack of available library space for that period, or on a finding that the requesting prisoner and a prisoner previously scheduled for that period cannot be together in the library without creating a serious threat to safety or security. If a denial occurs, the prisoner shall be given preference on the remaining requests or a timely opportunity to make additional requests if necessary to meeting the weekly ten-hour minimum requirement.

A prisoner shall be provided written notification of his or her scheduled law library turnouts and of any denied with the reason for the denial, and given the opportunity to make additional requests if necessary. This notice must reach the prisoner at least 24 hours before the time of the first requested turnout whether this was granted or denied. Copies of the names or total number of prisoners scheduled for each turnout, and of the number or percent of those who attended, will be kept at the law library for collection by the Special Master, as will copies of turnout denials.

E. LAW CLERKS

ADOC shall provide a sufficient number of law library prisoner law clerks to permit adequate assistance for prisoners using the library and for those ineligible for such use, including Spanish-speaking prisoners in both categories. This assistance includes providing elementary information about the content and purpose of the books and materials in the library, and about researching specified issues and locating relevant decisions, statutes, regulations and forms. In order to adequately perform this basic function, law clerks must successfully complete the legal research course, described in II (D) below, either prior to beginning work or the first time it is available.

In contrast to Legal Assistants, law clerks shall provide guidance to all eligible prisoners, although such guidance is limited in scope and does not extend to the preparation of legal documents for others.

For each session or turnout, at least two law clerks per reading room shall be assigned to provide the court-ordered research assistance in the room and, if applicable, book retrieval for that room. Prisoners with research experience and ability shall be solicited and favored for the law clerk positions by the relevant institutional committees and administrators.

F. RESEARCH GUIDE

The Special Master will oversee the preparation of an introductory guide to the use of the law library in Spanish and English, with brief explanations of the contents and use of the available resources and elementary research assistance on the most common legal issues. Plaintiffs and defendants will review the proposed introductory guide and have an opportunity to comment. After final approval by the Special Master, this guide shall be printed by defendants and made available to all requesting prisoners while attending the law library.

G. LIBRARIAN

ADOC shall provide at least one full-time professionally trained librarian at each law library with adequate secretarial support for the librarian and law library. A law librarian may be assigned to a second facility provided that the population in that facility is less than 200. Subject to identified security needs, the librarian will be responsible for the policies and procedures in the law library and for insuring adequate prisoner access to the courts.

The librarian must possess a library science degree, law degree or paralegal degree. Preference shall be given to applicants with a law or paralegal degree, and each ADOC complex shall minimally employ at least one such librarian. The Special Master will work with ADOC on securing applicants, including contacting para-legal and law schools, and professional organizations. If good faith efforts are unsuccessful, the Court or Special Master may permit the hiring of an applicant with the required graduate library science degree.

H. CONDUCT

If bathroom facilities are available, prisoners may be required to remain in the law library for a full turnout period; this may not be done for those attending solely for supplies or for notary or copy services. After being warned when possible, a prisoner may be restrained and removed from the library if he or she continues to create a threat to safety or security or to directly interfere with others' use of the library. Within 48 hours of removal, the prisoner must be provided written notice of the reasons and factual basis for this decision, with a copy held for the Special Master. A prisoner cannot adequately use the law library under restraint, including handcuffs and shackles. While in the library, non-intrusive actions, including reasonable conversations with prisoners or staff, writing, and sitting quietly, are permitted.

I. "CHECK-OUT" SYSTEM

Prisoners in minimum and medium security facilities shall be permitted direct access to the stacks when using the law library. All prisoners in a particular maximum security institution (level 5 and above) may be denied direct access if ADOC documents vandalism or losses resulting from such access in that institution. Prisoners attending the law library shall be provided at their expense copies of limited portions of available legal materials, including cases, laws and forms, for use in the housing area; indigent prisoners shall be provided at defendants' expense any such copies required for submission to a court or agency.

If prisoners are denied direct access to the stacks ADOC must act to allow adequate research. At a minimum, upon a single check-out request for more than one book, a clerk or employee shall retrieve at least two books for the prisoner; this does not affect the practice permitting prisoner use of more than two books at a time while in the reading room.

J. NOISE LEVEL

ADOC shall take all necessary steps, and correct any structural or acoustical problems, to reduce an unacceptably high noise level in any law library. At a minimum, totally enclosed reading rooms shall not be utilized. If necessary, chain or wire material may be installed in windows separating the reading room and stack and control areas, provided that this does not interfere with the sound-flow or sight-line. Such material should not inhibit normal conversation through the window between a prisoner in the reading room and an assisting law clerk or employee, nor make it difficult to read book titles and covers of other materials.

K. PAGING SYSTEM

Individual prisoners who are not able or permitted to visit the law library must be allowed regular and timely access to necessary books and materials. This minimally requires daily exchanges between such prisoners and law library representatives of an adequate amount for research purposes of requested books and materials, or copies, including cases, statutes, annotations, regulations, forms, secondary sources, and research guides. Every prisoner shall be provided a copy of the research guide required by I (F) and request forms, and be visited by a law clerk or Legal Assistant or employee with legal research experience, within 24 hours of being restricted.

L. INVENTORY

ADOC shall adequately maintain up-to-date collections in each law library of the materials and resources required by *Wilkinson v. MacDougall*, CIV 81-1397 (Jan 5, 1984); Arizona Reporters are optional. With the approval of the Court or Special Master, defendants may use clearly equivalent publications including, but not limited to, the United States Code Service (for United States Code Annotated), Lawyers Editions (for Supreme Court Reporters), Federal Procedure Lawyers Edition (for Federal Practice and Procedure), and American Jurisprudence (for Corpus Juris).

In addition, each library shall adequately maintain (a) a full and up-to-date set of Pacific Reporters and Digests, (b) sufficient latest editions of at least three self-help or litigation manuals

that assist prisoners on relevant substantive and procedural issues, (c) basic, up-to-date materials and forms in the areas of immigration practice and post-conviction remedies, and (d) a recent Arizona Bar Directory. The Special Master shall assist in identifying the specific materials, and approve these before use by ADOC.

II. THE LEGAL ASSISTANCE PROGRAM

Meaningful access to the courts requires direct assistance for prisoners who, because of language factors or lack of access to the law library, or for other reasons, are unable to perform adequate legal research and writing. In the absence of a program providing such prisoners with lawyers or paralegals, ADOC must maintain a sufficient number of at least minimally trained prisoner Legal Assistants at each facility, and not set institutional limits on such persons.

A. SELECTION

A prisoner shall become a Legal Assistant by agreeing to abide by the procedures governing Legal Assistants, and by taking the legal research course. It shall not be necessary for prisoners to take the course prior to being approved as a Legal Assistant or beginning work. Such persons must have some legal research training, experience, or ability, and, after selection, must successfully complete the full course including the live component when first available. Applicants are eligible for the full course if (a) they have a high school or GED diploma, or (b) pass a basic literacy skills test to the satisfaction of the instructor, or (c) are presently on an institutional Legal Assistant list. Absent relevant new factors, transferred Legal Assistants shall be continued in that status.

An otherwise eligible prisoner may be denied Legal Assistant status, or removed as a Legal Assistant, because of documented prison behavior indicating that he or she would create a threat to safety or security in that position; such action may not be based solely on a particular custody level or housing area, or on irrelevant infractions. A prisoner must be provided written notification of this decision, with the reasons and specific acts involved and permitted an opportunity to appeal; the notice and response shall be provided to the Special Master.

B. NUMBER

ADOC shall act to insure an adequate minimum number of Legal Assistants for each institution and custody level; there is no maximum. Particular steps must be taken to locate and train bilingual prisoners to be Legal Assistants. This minimally requires that schedules and notices relating to all institutional legal services and programs be made available in Spanish and English.

C. RETENTION

A Legal Assistant must demonstrate at least minimal competence after one year, and thereafter upon the receipt of complaints about his or her legal work. This demonstration should be done by submitting sufficient recent legal writings and litigation materials to the legal research instructor for review, and/or by completing assigned exercises for evaluation. A determination by the instructor to remove a prisoner found not minimally competent from the Legal Assistant list must

be made in writing with specific reasons and examples, and the relevant work products attached; this shall be provided to the Special Master. Such a prisoner should be reinstated upon compliance with the requirements of II (A) above.

D. RESEARCH COURSE

ADOC shall offer a videotaped legal research course for all prisoners, with an additional live component for prisoner law clerks and Legal Assistants, and applicants.

1. Video Component

The video will be 30-40 hours long with a primary focus on the fundamentals of legal research and writing, including use of the books and materials available in the law libraries. Doctrinal areas of most concern to prisoners should be covered, including 42 U.S.C. Section 1983 and other major civil rights laws; prison practices, including disciplinary and classification measures; relevant tort and civil law, including immigration and family issues, and relevant areas of criminal procedure, including appeals, collateral attacks, and time computations.

The entire video will be available for viewing by prisoners at least once in any six month period. Particular sessions (up to six hours) shall be available for viewing at least once in any three month period for a requesting prisoner. ADOC shall develop mechanisms for the required viewing in each facility, and submit these plans to the Special Master.

The video shall be prepared by persons selected and supervised by the Special Master. It will be funded by ADOC and used in all ADOC facilities. The taped materials shall be reviewed and updated as needed, but at least once every three years.

2. Live Component

Shortly after viewing the taped course, prisoner law clerks and Legal Assistants, and applicants, shall be offered an additional twenty hours of live instruction. This opportunity shall be available at least once in a six month period. The instructors shall be lawyers, law students or trained paralegals with demonstrated experience and ability in teaching and evaluating legal research and writing; the proposed syllabus and schedule, and instructor's experience shall be reviewed by the Special Master for each live offering.

The live portion shall include sessions in a facility law library, with written exercises required and returned with comments. Based on a student's performance in class and on assignments, the instructor shall determine whether the prisoner is minimally competent to assist others. This determination shall be made in writing and provided to the prisoner and to the Special Master.

E. RESPONSIBILITIES

A Legal Assistant should not undertake or continue to assist another prisoner if, because of workload, inexperience, conflict of interest, or any other factor, he or she cannot do so in an effective and timely manner; any such factor may serve as the basis for denying a prisoner's

request for assistance. On occasion, a Legal Assistant should be prepared to respond to an institutional request to assist another prisoner or to assess the viability of a legal claim.

F. OPERATING PROCEDURES

1. Selecting a Legal Assistant

An updated complete list of Legal Assistants must be regularly available in the law library and housing areas, with all relevant instructions about the Legal Assistant Program including the selection process; this process shall not require disclosure of the requesting prisoner's legal concerns. An agreement between a prisoner seeking assistance and a Legal Assistant will be reported to and recorded in the law library. An ADOC denial because of mistake or ineligibility, or upon finding that these two prisoners cannot be together without creating a serious threat to safety or security, and the opportunity for an alternate selection, shall be provided to the prisoner and to the Legal Assistant within 72 hours of the report to the library; a copy will be held for the Special Master.

A prisoner who is unable to reach agreement with a Legal Assistant or requires a replacement, may seek institutional intervention by filing a request form in the appropriate receptacles. Upon receipt, ADOC shall act to secure the requested assistance in a timely fashion. The institution will be relieved of this responsibility in a particular matter if two Legal Assistants independently conclude after adequate review that the prisoner's claim is not viable nor capable of redress by formal legal processes; such responses shall be provided to the Special Master.

2. Meetings

A prisoner shall request a meeting with a Legal Assistant by use of a legal assistance form and receptacle. Legal Assistants may initiate such meetings in the same manner. Provided that other applicable requirements are met, including access equivalent to I (C)(3), ADOC may utilize an alternative method of requesting a meeting when the sole purpose is preparation for a disciplinary hearing. ADOC must arrange a meeting that occurs within 72 hours of a request and notify the prisoner and Legal Assistant in writing of the time and place at least 24 hours prior to the meeting. An imminent legal deadline, including a pending disciplinary hearing, noted on a request requires an expedited meeting occurring within 24 hours of the request by a prisoner or Legal Assistant; II(F)(2) does not otherwise apply to assistance provided solely for a pending disciplinary matter.

ADOC must allow a prisoner to meet at least three hours each week at reasonable times and under reasonable conditions with his or her Legal Assistant; additional time shall be permitted to meet a filing or other legal deadline. Such meetings may occur during law library turnouts; a request by a prisoner or Legal Assistant to have both persons scheduled for a particular turnout shall be given preference. If the library is not requested or available, another location allowing the necessary privacy should be utilized.

A non-contact meeting may be used by ADOC if there is a finding that this is required because of documented security problems attributable to these two prisoners, or if either is in a fully

segregated status. The reasons for the non-contact shall be provided to the prisoners in the required meeting notice, and to the Special Master. Any such non-contact meeting shall permit discussion in normal tones, and allow both participants clear sight of each other and of each others legal papers.

Meetings between a prisoner and his or her Legal Assistant shall not be recorded or listened to. A prisoner shall not be given Legal Assistant status nor assigned to provide legal assistance with the objective of providing information to institutional personnel.

3. Library Time

ADOC shall provide Legal Assistant with additional time in the law library commensurate with their obligations to assist other prisoners. In addition to his or her own hours, a Legal Assistant shall be permitted an additional two hours of library use per week for each prisoner registered as assisting; this may be done at times when the library is not open for general use. The additional hours scheduled for a Legal Assistant may be subtracted from the weekly minimum of the prisoner being assisted.

4. Supplies and Services

A Legal Assistant may possess and utilize the legal supplies and services available to a prisoner he or she is registered as assisting solely for purposes relating to this assistance. If this prisoner is indigent, the Legal Assistant will be permitted those free legal supplies and services that are provided to indigent prisoners. These supplies and services must first be requested by the indigent prisoner for delivery to the Legal Assistant.

G. OTHER PRISONER ASSISTANCE

Nothing contained herein shall reduce a prisoner's opportunity to consult with any accessible prisoner about a legal matter, nor prohibit any prisoner, consistent with institutional requirements, from providing assistance on legal concerns, including court-related matters and institutional proceedings.

H. OUTSIDE LEGAL CONTACTS

Nothing herein reduces defendants' obligation to facilitate confidential and privileged contacts between prisoners and outside lawyers, authorized paralegals, legal organizations, governmental agencies and courts, through regular visits and adequate use of telephone and mails.

I. TELEPHONE CALLS

Prisoners shall be allowed a weekly minimum of three twenty-minute calls to: (1) an attorney, (2) a designated attorney representative, or (3) a legal organization; additional calls will be permitted in an emergency. ADOC shall install a sufficient number of telephones in each facility to enable these calls during usual business hours. The calls will not be recorded or listened to, and the location of the telephones must permit private conversations.

ADOC may install systems to verify the number called and time used but, absent documented abuse, shall not deny a call to any persons in one of the above three categories nor seek any information about the call. A prisoner may choose to pay for a call or make it collect. Calls that are not completed because of technical problems, or a failure to answer or refusal to accept, do not count. Brief incoming telephone messages involving legal deadlines or other necessary information from an attorney or representative shall be timely delivered to a prisoner.

III. LEGAL SERVICES AND SUPPLIES

Meaningful access to the courts requires the availability of basic services and supplies needed for research and writing, and for the preparation and delivery of acceptable court papers.

A. NOTARY SERVICE

ADOC must provide notary service for legal papers and court-related documents within 24 hours of a request by a prisoner; this period shall be less if necessary to meet a legal deadline. Absent a legal deadline, this service is not required on weekends or legal holidays. The request may be made in person during a law library turnout or by use of a legal assistance receptacle.

B. PHOTOCOPYING

ADOC must provide the necessary copies of eligible legal papers and court-related documents within 48 hours of a request by a prisoner; this period shall be less if necessary to meet a legal deadline. The request may be made in person during a law library turnout or by use of a legal assistance receptacle. ADOC may charge a reasonable rate for this service, up to five cents per page.

Eligible legal papers and documents include petitions, complaints, answers, motions, affidavits, exhibits, memoranda and briefs, including attachments and appendices, and material needed for discovery and investigation, including interrogatories and freedom of information requests. ADOC shall advise staff that prisoner legal materials are confidential and may not be read; a clearly visible sign indicating this shall be posted on or next to every copy machine used for legal materials. Each facility shall have such a machine.

C. TYPEWRITERS

Prisoners may possess typewriters and necessary accessories; storage memory is permitted but programming capacity may be denied. ADOC shall provide an adequate number of functioning typewriters in each law library for prisoner use in the preparation of legal papers. This minimally requires a one-to-five ratio of electric typewriters-to-law library capacity; such typewriters must be covered by a service contract or other professional repair system used at the facility.

D. SUPPLIES

Every facility shall have sufficient quantities of basic legal supplies regularly available for purchase by prisoners. Such supplies minimally include pens, pencils, legal pads, typing paper,

typewriter ribbons, ko-rec-type or equivalent, file folders, regular size and manila envelopes, postage and brief covers and binders. A reasonable price may be charged for these items, within the departmental guideline of a ten percent above cost maximum mark-up. The prices of all items, legal or otherwise, available for purchase must be publicized prior to ordering by prisoners. Subject to usual security and search procedures, prisoners may receive any basic legal supplies, books, and materials by delivery or mail from outside persons, organizations or businesses.

IV. INDIGENT PRISONERS

A. ELIGIBILITY

Subject to the requirements contained herein, a prisoner shall be provided basic legal supplies and services at ADOC expense if: (a) he or she has less than \$46.00 in the prison account on the date of the request, and (b) there have been less than \$46.00 in total deposits to this account in the 28-day period ending on the date of the request. A prisoner who meets (a) but not (b) shall be provided those specific supplies and services required to meet an imminent and documented legal deadline, and a written statement of the costs of these. If this occurs, ADOC may, with written notice to the prisoner, debit the prisoner's account whenever and to the extent that the balance exceeds \$46.00 until the cost of the emergency item is repaid.

ADOC shall regularly adjust the above cut-off figure in order to adequately insure a prisoner's access to basic legal supplies and services without sacrificing basic hygiene needs. This adjustment shall occur at least every 24 months beginning the date of the entry of this Order. It shall minimally be the percent change in the U.S. Consumer Price Index for the previous 24 months multiplied by the existing cut-off figure. The resulting new cut-off figure shall be rounded to the nearest fifty-cents.

B. SUPPLIES AND SERVICES

1. Supplies

Upon request, the following supplies shall be provided to eligible prisoners; the numbers in parentheses indicate the minimum amount of the item that must be provided for one week: pens (1), pencils (1), typing paper (10 sheets), legal pad (1), file folders (1) and regular envelopes (4). Brief covers and bindings, manila envelopes, and additional amounts of the above supplies shall be provided if necessary to meet a court deadline or requirement. Upon request, an eligible prisoner possessing a typewriter shall also be provided one suitable typewriter ribbon and one ko-rec-type or equivalent each week.

ADOC may require that the requesting prisoner check the specific items needed for legal research or preparation of legal papers during the next week. Pursuant to Section II (F)(4), the prisoner should indicate which, if any, of the supplies should be delivered directly to his or her Legal Assistant.

2. Postage

Postage shall be provided for all legal mail for eligible prisoners. Legal mail includes letters and documents sent to a court, to an attorney, to a legal agency or organization, or to a pro se opposing party.

C. PHOTOCOPYING

Eligible prisoners shall be provided the necessary copies of legal papers and court related documents as described in Section III (B). A prisoner shall minimally be provided with the number of copies of a document required by the Court, plus one copy for the opposing party and one for his or her records.

D. REQUEST PROCEDURE

The request procedures and forms shall comply with the applicable requirements of Section I (C). The request may be delivered in person during a law library turnout or placed in the appropriate receptacle. The prisoner should indicate that to his or her knowledge the eligibility requirements are met and which supplies and services are required.

E. RESPONSE PROCEDURE

Law library staff or clerks shall collect the prisoner request forms from each deposit point at least once each day. ADOC shall deliver the requested supplies or services to an eligible prisoner or designated Legal Assistant within 48 hours of the request; this period shall be less if necessary to meet a legal deadline. A prisoner shall be provided written notification of a denial of all or part of his or her request, with the specific reasons, within 48 hours of the request; a copy will be held for the Special Master. The 48 hour periods do not include weekends or legal holidays.

V. IMPLEMENTATION

A. NOTICE

Plaintiffs may transmit this Order and Commentary to members of the plaintiff class by mail or bulk delivery of copies to the ADOC and may provide ADOC with additional copies that will be kept on reserve in each law library and made available to prisoners during library turnouts. Plaintiffs or the Special Master may provide ADOC with a summary of this Order which shall be made regularly available in the law library and housing areas.

B. SPECIAL MASTER

All orders concerning the powers, payment and responsibilities of the Special Master, Professor Daniel J. Pochoda, are herein incorporated. Above references to the Special Master include his authorized representatives and Assistant Special Master Jane Bliss.

COMMENTARY

I. THE LAW LIBRARIES

Defendants' proposal that existing institutions without law libraries should not be required to build them is reasonable; the significant costs involved are not justified by need. Although not requested, the Proposed Order ("PO") allows ADOC to operate facilities without law libraries if the population is less than 150. Prisoners in the above prisons must get all of the required opportunities (10 hours per week in a law library, timely copies and supplies, legal assistance, etc.). Pending implementation and additional facts, specific size and seating requirements or ratios have not been included. Defendants agreed to address the clearly inadequate library at Santa Rita, ASPC - Tucson (minimum 22 capacity required).

A. & B. ACCESS & SCHEDULE

The PO adopts Defendants' proposal to reduce the total number of weekly library hours in facilities that do not require advance scheduling for turnouts. Thus, such facilities are only required to maintain a 50 hour per week schedule, as compared to the minimum 84 hours per week at Central Unit; the 50 hours are needed to meet the goal and mandates of the PO.

The PO includes some evening and weekend hours as done now in several facilities (e.g., Gila, Mohave at Douglas). These periods are necessary since most jobs keep prisoners occupied during weekdays (until 3:00 p.m., with dinner at 4:00 p.m.).

The PO also reduces the total time requirements in most facilities that, as Central Unit, require advance scheduling. This was done on the initiative of the Special Master based on an assessment of lesser-capacity institutions (Central Unit housed more than 800).

In every facility -- absent emergencies -- the library must be actually open and available for prisoner use during the "scheduled" hours. Such use cannot depend on the availability of a particular employee or prisoner clerk (any more than scheduled meals or visiting hours are).

As agreed when formulating the Gluth remedy, law library use cannot subject prisoners to unnecessarily onerous or retaliatory practices, including intrusive searches of all visitors or clerks and disciplinary write-ups for any failures to attend; These are occurring in some facilities. Such practices are not used at the maximum security Central Unit or in most facilities. They are generally not required for other congregate activities (classes, jobs, meals, etc.). Unexpected events or suspected threats may require strip searches, and disciplinary action may be necessary if schedules are regularly ignored without explanation. At the Central Unit, reasonable explanations for missed turnouts include scheduling conflict, miscommunication, illness and employee error.

The PO adopts Defendants' proposal to except the SMU -- and on the Special Master's initiative other facilities -- from the Gluth turnout minimums. This is subject to receiving the actual schedules in each prison and determining their adequacies for all custody levels and housing areas.

C. ADVANCE RESPONSE PROCEDURE

The PO adopts Defendants' proposal to only mandate computers in libraries requiring advanced scheduling.

G. LIBRARIAN

This mandate remains the same as Gluth with a "preference" for applicants with a law or paralegal degree. This is necessitated by Defendants' failure to hire any such persons, despite their recognized value. In fact, in its April 1991 Order, the Court specifically noted the need for such expertise and that such persons would reduce total costs to Defendants by their ability to teach the required research courses and to monitor the work of Legal Assistants.

I. "CHECK-OUT" SYSTEM

As was the case in Gluth, the PO permits use of a "check-out" system in maximum security facilities. It adopts Defendants' more practical position that this system can -- with the necessary showing -- be instituted prison-wide, and not only on the person-by-person basis proposed by Plaintiffs. At this time, a check-out system may be used at the Central Unit, CB6 and Special Management Unit facilities.

Direct access to the stacks is required in lesser-security prisons, although reasonable measures may be taken (e.g., limit the numbers in the stacks, assign a clerk to observe and assist). Direct access facilitates adequate research and, given the limited experience of most prisoners, may on occasion be a significant factor. The primary cause of vandalism is addressed by allowing copies of portions of the books and materials available in the library, including cases, laws and forms, for use in the housing area (at the prisoners' expense).

L. INVENTORY

This addition is required by the Court's September 13, 1992 Findings and Conclusions; it closely follows these Findings and Plaintiffs' proposal. Additional costs attributable to Pacific Reporters are offset by making the Arizona Reporters optional and generally by allowing clearly equivalent (competing) publications.

II. THE LEGAL ASSISTANCE PROGRAM

D. RESEARCH COURSE

This is an effort to reduce the obligations on and costs to Defendants while still providing the previously adjudicated 60 - hour course (at least for law clerks and Legal Assistants). Thus, the PO provides that most of the 60 hours will consist of video taped sessions and that the great majority of prisoners would be limited to these sessions. While there would necessarily be dollar-costs required to prepare this lengthy and difficult tape, it is primarily a one-time expenditure and represents significant savings from the twice-a-year, 60 hour live Gluth model.

An effective course for clerks and Assistants requires a live component, including hands-on training in a law library and feedback on written exercises. This component is greatly reduced (to

20 hours) and should allow for Complex-wide offerings. As noted, use of full-time librarians with law or paralegal degrees would result in little additional or ongoing costs because of this requirement. ADOC should require that other librarians and library staff take the full course.

F. 1. SELECTING A LEGAL ASSISTANT

The PO incorporates Defendants' proposal that Legal Assistant requests may be denied based on a finding about a security problem.

2. MEETINGS

The PO incorporates Defendants' request that contact visits may be denied because of security problems. As with library visits, unsupported blanket denials are not permitted (e.g., for an entire facility). There was no showing of necessity in all the prisons listed, and contact visits are used at the maximum security Central Unit. There was no explanation of why prisoners can have "contact" for some purposes but not others (prisoners whose actions/status require complete separation meet the specific showing required by the PO). Courts have recognized that proper -- and legal -- remedial provisions are often not themselves "constitutional rights".

I. TELEPHONE CALLS

This is required by the Court's Findings and Conclusions. The specifics follow these Findings and Defendants' proposal, with a three call minimum (versus two).

III. LEGAL SERVICES AND SUPPLIES

A. NOTARY SERVICE

The Defendants' request regarding weekends and holidays is incorporated.

B. PHOTOCOPYING

The sign is required by the Court's Findings.

IV. INDIGENT PRISONERS

E. RESPONSE PROCEDURE

The PO adopts Defendants' proposal to include legal holidays.

DATED this 8 day of October, 1993.

C.A. Muecke
U.S. District Judge