



PC-CO-005-006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 77-K-1093

FIDEL RAMOS, et al.,

Plaintiffs,

vs.

RICHARD LAMM, et al.,

Defendants.

FILED *Jim 10/1/86*
United States District Court
District of Colorado
James R. [Signature] Clerk
By [Signature] Deputy Clerk

CONSENT ORDER

Being fully informed as to the underlying facts and legal claims of plaintiffs and defendants, the court enters this order upon the consent of the parties.

1. This consent order is intended to compromise and resolve all issues with respect to access to the courts for inmates in this case. Nothing in this order shall constitute an admission or evidence on the level of services to which the prisoners are constitutionally entitled.

2. This order shall apply to all prisoners who are presently incarcerated, or who will become incarcerated during the duration of this consent order, at any one of the three correctional facilities presently known as the Centennial Correctional Facility, the Shadow Mountain Correctional Facility, and the Colorado Territorial Correctional Facility (including the Diagnostic Unit), all located in Canon City, Colorado, described collectively as the "three facilities" and referred to individually as "CCF," "SMCF" and "CTCF" respectively.

3. The defendants agree to provide access to the courts for members of the plaintiff class pursuant to the legal access plan filed on November 29, 1985 (a copy of which is attached hereto as appendix A), as clarified in a document attached hereto as appendix B.

4. It is understood that the legal access plan contem-

plates the maintenance of certain records and the preparation of summaries of factual information concerning the operation of the plan. The defendants agree: to allow plaintiffs' representative to review, upon reasonable notice, requests for access and assistance, photocopying requests, daily access rosters, access librarian and inmate law clerk monitor logs, and evaluations of inmate law clerk job performance; to provide to plaintiffs' representative an inventory of legal materials at the Ramos law libraries within 30 days of the entry of this consent order and another inventory during the month of January 1987; and to provide to plaintiffs' representative, within a reasonable time after compilation, copies of monthly summaries containing facts pertaining to the number of inmates requesting access to the libraries, the number of inmates accessed, the number of inmates who either refused or were refused access to the libraries, the number of photocopies provided, and the consulting, reviewing, and training activities of the access attorney.

5. In the event a dispute arises as to the meaning or enforcement of this agreement, counsel for the parties shall meet in an attempt to resolve the dispute. If the parties are unable to resolve the dispute, either party may apply to the court for an order interpreting or enforcing this consent order.

6. This consent order, and defendant's obligations hereunder, shall terminate, and the case shall be deemed closed, on February 7, 1987, unless the plaintiffs demonstrate by a preponderance of evidence that defendants have failed to substantially comply with constitutional requirements of providing access to the courts for members of the plaintiff class.

DATED this 10th day of January 1986.

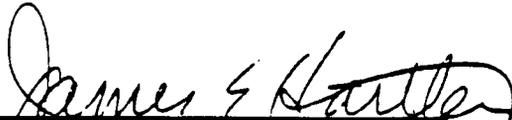
BY THE COURT:

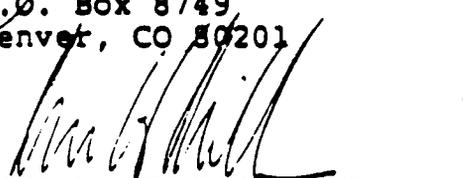


JOHN L. KANE, JR.
United States District Judge

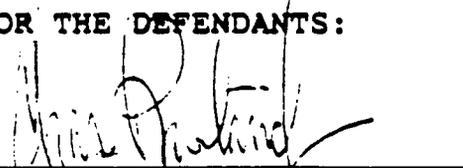
APPROVED FOR THE PLAINTIFFS:

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LEGAL ACCESS PLAN

INTRODUCTION

The following legal access plan is submitted by the defendants for the court's consideration. It supersedes the plan which was filed in this case in November of 1984.

OVERVIEW

Inmates have a constitutional right to meaningful access to the courts with respect to habeas corpus and civil rights claims. Bounds v. Smith, 430 U.S. 817 (1977). This right "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing /them/ with adequate law libraries or adequate assistance from persons trained in the law." Id. at 828.

The concern here, of course, is providing access to the courts for inmates who have been unable to obtain representation from an attorney.^{1/} In Ramos v. Lamm, 485 F. Supp. 122, 165-67 (D. Colo. 1979), aff'd 639 F.2d 559, 582-85 (10th Cir. 1980), it was determined that this type of inmate had not been provided by the defendants with adequate access to the courts. In an effort to rectify the problem, the Department of Corrections provided

inmates. The department also decided to seek the services of an attorney licensed in the State of Colorado to assist in the operation of its legal access program.

In November 1984, the department filed with this court a revised legal access plan. Under the November 1984 plan, adequate law libraries were to be maintained; trained inmate librarian-law clerks were to be available to assist inmates; a legal access librarian was to keep the libraries open and to provide additional assistance to inmates; an attorney licensed to practice law in Colorado was to be responsible for selecting and training librarian-law clerks, for providing legal advice in limited circumstances, and for assisting in the overall operation of the legal access program; and the department's legal affairs officer was to be responsible for the operation of the legal access program.

In the spring of 1985, the Colorado General Assembly increased funding for legal access for prisoners from \$90,000 for fiscal year 1984-85 to \$220,255 for the fiscal year 1985-86. See 1984 Colo. Sess. Laws at 118; 1985 Colo. Sess. Laws at 1406. The legislature's primary intent was that the department obtain more personnel to assist inmates in obtaining access to the courts. As a result of the increase in funding, two additional legal access librarians are to be employed in the Ramos facility law libraries.

Under the current plan, as under the February and November 1984 plans, day to day access to libraries or to library personnel will be triggered by the submission of a written request. General population inmates will be allowed physical access to the libraries and to the legal resources therein. Inmates in the Diagnostic Unit at Territorial Correctional Facility, in medical care, and in administrative segregation, will meet with librarian-law clerks, who will then either retrieve specifically requested legal materials or research and prepare pleadings for those inmates. Inmates who are subject to court imposed deadlines or applicable statutes of limitations, as well as inmates who are working on habeas corpus or civil rights claims, will be given priority in access to the libraries.

The philosophy underlying the two prior plans and this revised plan remains the same: Inmates are to be permitted access to legal materials adequate to allow them to present federal habeas corpus and civil rights claims in court. The system is premised, wherever practicable, upon the idea of self-help on the part of the inmates. They are to do their own research and prepare their own legal documents. Librarian law-clerks and legal

access librarians are available to assist them in locating and using legal resource materials. The librarian law clerks and legal access librarians will provide research and/or document preparation assistance, however, only for those inmates who either: (a) lack sufficient intellectual capacity to comprehend the materials or their use; or (b) are not allowed physical access to the law libraries.^{2/} The legal access attorney is available, upon request, to review and assist in the preparation of pro se pleadings and pleadings prepared by or with the assistance of the librarian-law clerks and/or the legal access librarians.

Under the current legal access plan, the department official responsible for the operation of the legal access program is no longer the legal affairs officer, but the director of public affairs. At this time, the public affairs director is Herman Abeyta.

COMPONENTS OF THE LEGAL ACCESS PLAN

A. Law libraries

Law libraries have been established in each of the Pamos correctional facilities. The Centennial Law Library is comprised of one large and one small room. The large room houses legal resource materials, desks and typewriters, while the smaller room, which consists of a secure steel cage, houses a xerox machine. The Shadow Mountain Law Library is currently located in a trailer unit. The Territorial Law Library, which is located in an L-shaped room, has, besides legal resource materials, a long and a short table, a typewriter, and three chairs. Plans for a new law library are currently included in the plans to renovate cellhouses 1 and 7 of Territorial's Correctional Facility.

Centennial's and Territorial's law libraries are to be kept open, whenever practicable, at least 5 hours a day Monday through Friday; Shadow Mountain's law library is kept open, whenever practicable, 6 hours a day, Monday through Friday. Partial inventories of the materials located in these libraries are attached hereto as exhibits 1 through 3. The American Association of Law Libraries' 1980 revised edition of "Recommended Collections for Prisons and Other Institutional Law Libraries," as well as a list of suggested materials which was compiled in 1983 by a member of the attorney general office are also attached hereto as exhibits 4 and 5 for this court's consideration.^{3/}

terials, but with audio tapes as well. (A list of the written materials is compiled and attached hereto as exhibit 6.) Eight written exercises, a midterm examination, and a final examination are provided for each course. The performance of the librarian-law clerks in these courses will be evaluated by Messrs. Sheppard and Battey. In order to maintain the position of librarian-law clerk, an inmate will have to complete a course every six months with a grade of C or better. Librarian-law clerks who are unable to satisfy these requirements will be replaced by other motivated inmates, who will, in turn be enrolled in the correspondence program.

C. Legal access librarian

There will be a legal access librarian at each of the three Ramos facilities. These individuals, all of whom are trained paralegals, provide direct supervision and assistance to librarian-law clerks regarding usage of legal resource materials and the selection and preparation of appropriate legal documents. They are responsible for maintaining a sufficient level of legal supplies (pens, paper, typewriters) in each of the law libraries; for transferring copies of requested legal materials from Centennial's law library to the satellite law libraries; for acting as liaison between the inmates and the legal access attorney; and, for developing and maintaining an accurate and efficient system for recording pertinent facts regarding available legal resources and inmate usage of library facilities and personnel. The legal access librarians report to the Department of Corrections' director of public affairs regarding their activities and regarding library materials and personal usage. Communications with inmates, other access librarians, and the access attorney, pertaining to specific inmate cases or complaints, shall remain confidential, however.

Presently, the department has but one legal access librarian, Jeffrey Pubanz. Mr. Pubanz has been a legal access librarian since July 1, 1984; he holds a B.S. degree in criminal justice from Metropolitan State College in Denver, Colorado. While attending Metropolitan State College, Mr. Pubanz took and satisfactorily completed paralegal courses in legal methods, research and writing, civil procedure, litigation, family law, probate, estate, wills and trusts, and law of business organizations. Mr. Pubanz also took two courses in advance field experience for paralegal, had a number of paralegal internships, and was employed as an investigator/paralegal for Richard M. Borchers, cur-

rently an Adams County District Court judge.

Applicants for the other legal access librarian positions have been interviewed, and two individuals have been selected therefor.4/

D. Legal access attorney

To be qualified for this position, the individual must be an attorney licensed to practice law in the State of Colorado. He is responsible for: assisting in the selection of librarian-law clerks; implementing the correspondence program for training the law clerks; providing education and training in the areas of legal research and writing, habeas corpus, and civil rights law for the librarian-law clerks; providing research assistance to eligible inmates in any exceptional circumstance where neither the legal access librarian nor the librarian-law clerks are qualified to do so; reviewing, upon request, petitions for federal habeas corpus and civil rights relief; assisting in the preparation and filing of said petitions; responding, in an advisory fashion, to requests for assistance from individuals who have been convicted in Colorado but are housed in out-of-state facilities; answering inquiries of the public affairs director pertaining to the adequacy of legal resource materials, program procedures and personnel; and, providing reports to the public affairs director regarding the fulfillment of his duties.

This position is currently filled by Bradley Rockwell. Mr. Rockwell obtained a B.A. in philosophy in 1975 from Virginia Commonwealth University and graduated from Gonzaga law school in 1981. He was admitted to the practice of law in the State of Colorado in October 1983, and is also admitted to practice before the federal district court for the District of Colorado. In May 1984, Mr. Rockwell became employed with Pueblo County Legal Services and undertook the representation of indigent residents of Pueblo County. This he did until May 1985, when he resigned from Pueblo County Legal Services and contracted with the Department of Corrections to provide service as an access attorney.

E. Department of Corrections Director of Public Affairs

This individual is responsible for the implementation and

operation of the department's legal access program. As part of his duties he will receive reports from and monitor the activities of the legal access librarians and the legal access attorney.

CONCLUSION

Defendants submit that this plan is in compliance with the constitutional requirements as set forth in Bounds, supra and Ramos, supra. Not only is a source of legal information available to all inmates for the full legal development of federal habeas corpus and civil rights claims, but assistance, in the way of research and preparation of legal documents, is provided to those inmates who possess insufficient intellectual or educational abilities to permit reasonable comprehension of their legal claims. Defendants respectfully request that this court approve the above-mentioned plan.

1/ Inmates who have, or are eligible to have, attorneys to handle their claims, have access to the courts through those attorneys, and are in need of no further assistance from the department.

2/ Inmates seeking research and/or document preparation assistance must apply for such to the legal access librarians and, if necessary, permit said librarians and the legal access attorney to review department records pertaining to their capacity for self-help. Matters for those inmates who are determined to be incapable of doing research and/or preparing their own legal documents will be assigned to librarian-law clerks and monitored by the legal access librarians.

3/ Both exhibits list materials exceeding that which would be required in a constitutionally adequate law library collection. See e.g., Watson v. Olsen, 660 F.2d 358 (8th Cir. 1981).

4/ The delay in implementing the legislative mandate to obtain more personnel for the access program was primarily due to the time the parties took in attempting to reach a settlement agreement on legal access.

Respectfully submitted,

FOR THE ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within LEGAL ACCESS PLAN upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado this 29th day of November 1985, addressed as follows:

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