

CLOSED, CONMAG

**U.S. District Court
Northern District of Iowa (Cedar Rapids)
CIVIL DOCKET FOR CASE #: 1:91-cv-00191-JAJ**

Hershberger v. Scaletta, et al
Assigned to: Chief Mag Judge John A Jarvey
Demand: \$0
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 08/02/1991
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff**Jeffrey Hershberger**

represented by **Philip B Mears**
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**ECF
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LEAD ATTORNEY
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Plaintiff**Kenneth Wheeler**

represented by **Philip B Mears**
(See above for address)
LEAD ATTORNEY
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Plaintiff**Thomas Sherwood**

represented by **Philip B Mears**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Steven Schakel**

represented by **Philip B Mears**
(See above for address)
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V.

Intervenor Plaintiff**Scott P Olmstead**

represented by **Philip B Mears**
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Intervenor Plaintiff

Thomas Rayer

represented by **Philip B Mears**
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LEAD ATTORNEY
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Intervenor Plaintiff

Ernest Alan Douglas

represented by **Philip B Mears**
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V.

Defendant

Fred Scaletta

represented by **Kristin W Ensign**
Department of Justice
Hoover State Office Building
Second Floor
**ECF
Des Moines, IA 50319
515 281 3687
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Defendant

John A Thalacker

represented by **Kristin W Ensign**
(See above for address)
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Defendant

Larry Brimeyer

represented by **Kristin W Ensign**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Captain Steven Salviati
Sued as Captain Saviati

represented by **Kristin W Ensign**
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Defendant

Lt Kenneth Lewis

represented by **Kristin W Ensign**

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Date Filed	#	Docket Text
06/24/1991	1	APPLICATION TO PROCEED in forma pauperis by plaintiff Jeffrey Hershberger frmemp (Entered: 01/21/1993)
07/20/1991	2	STATEMENT of financial status by plaintiff Jeffrey Hershberger frmemp (Entered: 01/21/1993)
08/02/1991	3	ORDER by Chief Mag Judge John A. Jarvey granting motion to proceed in forma pauperis. Clerk to file complaint w/o prepayment of fees. Marshal to serve defts & Ia. Atty. Gen. w/o prepayment of fees. Atty. Gen. to notify court if she lacks consent of defts to appear in their behalf. Defts to ans/plead w/in 45 days(Sep. 16,1991) (cc: all counsel) frmemp (Entered: 01/21/1993)
08/02/1991	4	COMPLAINT (Summons(es) w/notice,consents,LR16 and reports to USM for svc) frmemp (Entered: 01/21/1993)
08/07/1991	5	MOTION by plaintiff Jeffrey Hershberger to amend complaint , and to proceed in forma pauperis by new party plths. assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
08/16/1991	6	RETURN OF SERVICE executed upon defendant Fred Scaletta, defendant John A Thalacker, defendant Larry Brimeyer, defendant Steven Salviati, defendant Kenneth Lewis answer due on Sep. 16, 1991 frmemp (Entered: 01/21/1993)
08/26/1991	7	ORDER by Chief Mag Judge John A. Jarvey granting motion to amend complaint [5-1] (cc: all counsel) frmemp (Entered: 01/21/1993)
08/26/1991	8	AMENDED COMPLAINT (Summons(es) w/ notice, consents, LR 16 and Rpt form to USM for svc). [4-1] by plaintiff Jeffrey Hershberger; adding Kenneth Wheeler, Thomas Sherwood, Steven Schakel frmemp (Entered: 01/21/1993)
08/26/1991	9	MOTION by defendant Kenneth Wheeler to proceed in forma pauperis assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
08/26/1991	10	MOTION by defendant Thomas Sherwood to proceed in forma pauperis assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
08/26/1991	11	MOTION by defendant Steven Schakel to proceed in forma pauperis assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
09/18/1991	12	ANSWER by defendants frmemp (Entered: 01/21/1993)

09/20/1991	13	ORDER: C of D Jan. 20, 1992; dispositive motions Feb. 20, 1992(cc: all counsel) frmemp (Entered: 01/21/1993)
09/25/1991	14	RESISTANCE to Answer & Affirmative Defenses by plaintiff Jeffrey Hershberger, plaintiff Kenneth Wheeler, plaintiff Thomas Sherwood, plaintiff Schakel frmemp (Entered: 01/21/1993)
09/25/1991	15	MOTION by plaintiff Jeffrey Hershberger, plaintiff Kenneth Wheeler, plaintiff Thomas Sherwood, plaintiff Steven Schakel for preliminary injunction , for temporary restraining order assigned to Chief Judge Michael J. Melloy frmemp Modified on 01/21/1993 (Entered: 01/21/1993)
09/25/1991	16	BRIEF in support of Mot. for P.I. &/or TRO by plaintiff Jeffrey Hershberger, plaintiff Kenneth Wheeler, plaintiff Thomas Sherwood, plaintiff Schakel frmemp (Entered: 01/21/1993)
09/26/1991	17	ORDER by Chief Mag Judge John A. Jarvey: Pltfs. S. Schakel, T. Sherwood & K. Wheeler are allowed to proceed inform a pauperis. Clerk to send 08/26/91 amended complaint, J09/18/91 answer & court's 09/20/91 order to each pltf.(cc: all counsel)i frmemp (Entered: 01/21/1993)
10/09/1991	18	RESISTANCE by defendants to motion for preliminary injunction [15-1], to motion for temporary restraining order [15-2] frmemp (Entered: 01/21/1993)
10/10/1991	19	REPORT to the court by plaintiff Jeffrey Hershberger, plaintiff Kenneth Wheeler, plaintiff Thomas Sherwood, plaintiff Steven Schakel frmemp (Entered: 01/21/1993)
10/11/1991	20	ORDER by Judge David R. Hansen: Clerk to apt. counsel for pltfs pursuant to IOLTA; denying motion for preliminary injunction [15-1], denying motion for temporary restraining order [15-2] (cc: all counsel) frmemp (Entered: 01/21/1993)
10/28/1991	21	ATTORNEY APPEARANCE for plaintiff Jeffrey Hershberger, plaintiff Kenneth Wheeler, plaintiff Thomas Sherwood, plaintiff Steven Schakel by Philip B Mears frmemp (Entered: 01/21/1993)
01/07/1992	22	MOTION by plaintiff Jeffrey Hershberger, plaintiff Kenneth Wheeler, plaintiff Thomas Sherwood, plaintiff Steven Schakel to expend Library Funds assigned to Chief Judge Michael J. Melloy frmemp (Entered: 01/21/1993)
01/21/1992	23	MOTION by plaintiff to extend deadlines for disc. & dispositive motions assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
02/25/1992	24	ORDER by Chief Mag Judge John A. Jarvey granting motion to extend deadlines for disc. & dispositive motions [23-1] ; Discovery ddl Apr. 1, 1992 ; Motion filing ddl May 1, 1992 (cc: all counsel) frmemp (Entered: 01/21/1993)

04/09/1992	25	MOTION by plaintiffs to extend discovery assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
04/17/1992	26	ORDER by Chief Mag Judge John A. Jarvey granting motion to extend discovery [25-1] ; Discovery ddl May 1, 1992 (cc: all counsel) frmemp (Entered: 01/21/1993)
05/07/1992	27	MOTION by plaintiffs to extend discovery assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
05/18/1992	28	ORDER by Chief Mag Judge John A. Jarvey ; Telephone Status hearing June 3, 1992 at 9:00 a.m. (cc: all counsel) frmemp (Entered: 01/21/1993)
06/01/1992	29	MOTION to intervene by Scott Olmstead; Thomas Rayer; & Ernest Douglas assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
06/04/1992	30	SCHEDULING ORDER Chief Mag Judge John A. Jarvey ; motion filing ddl Oct. 1,1992 ; Discovery Sep. 1,1992 (cc: all counsel) frmemp (Entered: 01/21/1993)
06/05/1992	31	RESISTANCE by defendants to motion to intervene by Scott Olmstead; Thomas Rayer; & Ernest Douglas [29-1] frmemp (Entered: 01/21/1993)
06/10/1992	32	ORDER by Chief Mag Judge John A. Jarvey granting motion to intervene by Scott Olmstead; Thomas Rayer; & Ernest Douglas [29-1] (cc: all counsel) frmemp (Entered: 01/21/1993)
07/17/1992	33	MOTION by plaintiffs, intervenor plaintiffs to amend & substitute complaint assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)
08/05/1992	34	ORDER by Chief Mag Judge John A. Jarvey granting motion to amend & substitute complaint [33-1] (cc: all counsel) frmemp (Entered: 01/21/1993)
08/05/1992	35	AMENDED & SUBSTITUTED COMPLAINT frmemp (Entered: 01/21/1993)
08/18/1992	36	ANSWER by defendant to [35-1] frmemp (Entered: 01/21/1993)
10/09/1992	37	ORDER by Chief Mag Judge John A. Jarvey ; Pretrial order ddl Nov. 30, 1992 (cc: all counsel) frmemp (Entered: 01/21/1993)
10/28/1992	38	ORDER by Chief Judge Michael J. Melloy: Pltf. to file document w/Court indicating whether request to expend Library Funds, filed 01/07/92, remains a viable motion. Pleading due w/in 15 days(Nov. 12, 1992) (cc: all counsel) frmemp (Entered: 01/21/1993)
11/13/1992	39	STATEMENT re: Library Fund Motion by plaintiffs, intervenor plaintiffs in support of [22-1] frmemp (Entered: 01/21/1993)
12/01/1992	40	MOTION by plaintiffs, intervenor plaintiffs to extend time to submit Proposed PFTO assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 01/21/1993)

12/30/1992	41	FINAL PRE-TRIAL ORDER by Chief Mag Judge John A. Jarvey : Settl. Feb. 1, 1993. Court Trial Feb. 25, 1993 at 10:00 a.m., at IMR. Trial briefs due by Feb. 17, 1993 (cc: all counsel) frmemp (Entered: 01/21/1993)
12/30/1992	42	ORDER by Chief Judge Michael J. Melloy Case referred to Chief Mag Judge John A. Jarvey for Report & Recommendation (cc: all counsel) frmemp (Entered: 01/21/1993)
12/30/1992	43	ORDER by Chief Judge Michael J. Melloy granting motion to expend Library Funds. Clerk to issue check from Library Fund in amt. of \$300.50 to Mears Law office (cc: all counsel) frmemp (Entered: 01/21/1993)
12/30/1992	44	ORDER by Chief Mag Judge John A. Jarvey granting motion to extend time to submit Proposed PFTO. Pltf's. proposed FPTO submitted 12/3/92 is deemed timely. (cc: all counsel) frmemp (Entered: 01/21/1993)
01/11/1993	45	ORDER by Chief Mag Judge John A. Jarvey Court Trial RESET March 8, 1993 at 10:00 a.m. at IMR (cc: all counsel) frmemp (Entered: 01/21/1993)
02/04/1993	46	ORDER by Chief Mag Judge John A. Jarvey ; Trial Reset for 3/9/93 at 9:00 a.m., IMR, and will continue on that date until completed. (cc: all counsel) frmemp (Entered: 02/04/1993)
02/18/1993	47	MOTION by defendants to extend time to file trial brief assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 02/18/1993)
02/25/1993	48	ORDER by Chief Mag Judge John A. Jarvey granting motion to extend time to file trial brief [47-1]Defts to file trial brief by Feb 27, 1993 (cc: all counsel) frmemp (Entered: 02/28/1993)
03/02/1993	49	PRE-TRIAL BRIEF FILED by defendants frmemp (Entered: 03/05/1993)
03/03/1993	50	PRE-TRIAL BRIEF FILED by plaintiffs frmemp (Entered: 03/05/1993)
03/10/1993	51	CLERK'S COURT MINUTES from Ct Trial hld 3/9/93 - Ruling Reserved frmemp (Entered: 03/10/1993)
03/10/1993	52	EXHIBIT/WITNESS list from Ct Trial hld 3/9/93 frmemp (Entered: 03/10/1993)
03/25/1993	53	MOTION by defendants, to extend time to file post-trial brief assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 03/26/1993)
03/30/1993	54	ORDER by Chief Mag Judge John A. Jarvey granting motion to extend time to file post-trial brief [53-1]; Defts. shall have to Apr. 7, 1993 to file post-trial brief (cc: all counsel) frmemp (Entered: 03/30/1993)
04/09/1993	55	POST TRIAL BRIEF FILED by defendants frmemp (Entered: 04/13/1993)
05/03/1993	56	POST TRIAL BRIEF FILED by plaintiff frmemp (Entered: 05/04/1993)

06/25/1993	57	ORDER by Chief Judge Michael J. Melloy upon consent of parties, this case transferred to Chief Mag Judge John A. Jarvey for final disposition (cc: all counsel) frmemp (Entered: 06/25/1993)
10/04/1993	58	ORDER by Chief Mag Judge John A. Jarvey: ct. finds in favor of pltfs Douglas & Olmstead on claim of denial of access to cts as a result of IMR policy on legal mail. Deft Thalacker is enjoined from (1) denying free postage to indigent inmates for legal purposes, (2) charging inmates 50 cents per month for having a negative balance in their acct as the result of purchasing legal postage, (3) forbidding inmates to exceed \$7.50 total indebtedness for legal postage under the present standard called "exceptional need". Deft Thalacker is ordered to provide indigent inmates weekly w/at least one free stamped envelope, or such other larger number o free stamped envelopes as is deemed appropriate by prison officials, for use for legal mail. The ct finds in favor of defts on pltfs' claim of denial of rights of familial privacy as a result of the IMR policy on personal mail. The ct finds in favor of defts on pltfs' claims of violation of their 8th or 14th amendment rights as a result of the IMR exercise yard policy. The clerk shall enter jdmt in favor of pltfs Douglas & Olmstead & against deft Thalacker in his official capacity as warden of the IMR on the claim noted in paragraphs 1 & 2 above. The clerk shall enter jdmt in favor of the defts on all other claims by pltfs Douglas & Olmstead and in favor of all defts against all claims of all other pltfs. (cc: all counsel) frmemp (Entered: 10/05/1993)
10/04/1993	59	JUDGMENT: dismissing case (cc: all counsel) frmemp Modified on 10/14/1993 (Entered: 10/05/1993)
10/04/1993	60	JUDGMENT: (cc: all counsel) frmemp (Entered: 10/05/1993)
10/12/1993	61	MOTION by plaintiffs for reconsideration of ct's order & jdmt of 10/4/93 assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 10/13/1993)
10/25/1993	62	RESISTANCE by defendants to motion for reconsideration of ct's order & jdmt of 10/4/93 [61-1] frmemp (Entered: 10/25/1993)
10/29/1993	63	ORDER by Chief Mag Judge John A. Jarvey setting hearing on motion for reconsideration of ct's order & jdmt of 10/4/93 [61-1] for 11/3/93 at a time convenient to parties; Parties are responsible for placing the call; Pltf. ordered to supplement the Mot. for Reconsideration w/in 3 days of receipt of this order by stating rule under which the ot. is brought (cc: all counsel) frmemp (Entered: 10/29/1993)
11/03/1993	64	SUPPLEMENT by plaintiffs re motion for reconsideration of ct's order & jdmt of 10/4/93 [61-1] frmemp (Entered: 11/03/1993)
11/05/1993	65	ORDER by Chief Mag Judge John A. Jarvey denying motion for reconsideration of ct's order & jdmt of 10/4/93 [61-1]. Time for filing an appeal extended to 11/15/93 before 5:00 p.m. No further extensions will be granted. (cc: all counsel) frmemp (Entered: 11/08/1993)
11/12/1993	66	NOTICE OF APPEAL by defendant John A Thalacker from Dist. Court

		decision [58-1] (cc: all counsel) w/dkt sheet 8th CCA w/dkt sheets, Order Judgment frmemp (Entered: 11/12/1993)
11/12/1993	67	RECEIVED re [66-1] fee in amount of \$ 105.00 (Receipt # 95438) frmemp (Entered: 11/12/1993)
11/15/1993	68	MOTION by plaintiff to defer the question of atty fees & costs assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 11/15/1993)
11/15/1993	69	NOTICE OF APPEAL by plaintiffs from Dist. Court decision [60-1], [59-2], [58-1] (cc: all counsel) w/dkt sheet 8th CCA w/dkt sheets, Order Judgment frmemp (Entered: 11/15/1993)
11/17/1993	70	ORDER by Chief Mag Judge John A. Jarvey granting motion to defer the question of atty fees & costs [68-1]. This matter may be brought before the court upon the resolution of the appeals to the 8th Cir Ct of Appeals. (cc: all counsel) frmemp (Entered: 11/17/1993)
12/02/1993	71	MOTION by plaintiff Jeffrey Hershberger, intervenor plaintiff Scott P Olmstead, intervenor plaintiff Thomas Rayer to prepare transcript at Govt. expense assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 12/02/1993)
12/03/1993	72	MOTION by defendant John A Thalacker to correct Notice of Appeal assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 12/06/1993)
12/08/1993	73	TRANSCRIPT of trial held on 3/9/93 frmemp (Entered: 12/08/1993)
12/15/1993	74	ORDER by Chief Mag Judge John A. Jarvey denying motion to correct Notice of Appeal [72-1], as it appears that FRCP 60(a) requires such application to be made to the appellate court. Deft to pay \$633.00 to Ctrptr for his copy of the transcript. Pltfs shall pay \$158.25 for their copy of the transcript. Upon filing the cross-appellants' appellate brief, a copy of said brief shall be delivered to this court. The pltfs may then re-urge this motion and the ct will determine whether the transcript was necessary to promote important litigation interests. Until then, pltfs' 12/2/93 motion to prepare a transcript at government's expense [71-1] is denied. (cc: all counsel) frmemp (Entered: 12/15/1993)
12/22/1993	75	MOTION by plaintiffs for reconsideration of Ct/s 12/15/93 order assigned to Chief Mag Judge John A. Jarvey frmemp (Entered: 12/23/1993)
01/11/1994	76	ORDER by Chief Mag Judge John A. Jarvey granting motion for reconsideration of Ct/s 12/15/93 order [75-1]; it is ordered that payment of costs of \$158.25 for pltfs' copy of the transcript in this matter be pd pursuant to 28 USC 753(f). (cc: all counsel) frmemp (Entered: 01/11/1994)
11/03/1994	77	CERTIFIED COPY of Order/Opinion from Circuit Ct affirming the decision of the District Court on appeal [69-1], affirming the decision of the District Court on appeal [66-1] frmemp (Entered: 11/08/1994)

11/08/1994	78	CERTIFIED COPY of judgment from USCA (cc: all counsel) frmemp (Entered: 11/08/1994)
11/30/1994	79	NOTICE of Intention to Dispose of Trial Exhibits on 12/12/94. CMA frmemp (Entered: 12/01/1994)
12/14/1994	80	STATEMENT of destruction of trial exhibits on December 14, 1994. CMA frmemp (Entered: 12/14/1994)

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