

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

BOBBIE Y. LANE d/b/a CAGED POTENTIAL,)

Plaintiff,)

v.)

Case No. 12-4219

GEORGE LOMBARDI, in his official capacity)
as Director, Missouri Department of Corrections,)

DAVE DORMIRE, in his official capacity)
as Director, Division of Adult Institutions, and)

MARIANN ATWELL, in her official capacity)
as Director, Division of Offender Rehabilitative)
Services,)

Defendants.)

CLASS-ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Bobbie Y. Lane brings this action to enjoin the censorship of books or other publications mailed to prisoners held in custody by the Missouri Department of Corrections (MODOC) without affording the sender notice of non-delivery and the opportunity to be heard. Defendants have adopted and implemented policies, customs, or practices that censor written materials without affording the sender of the censored mail notice of non-delivery and an opportunity to challenge the censorship as required by the Due Process Clause of the Fourteenth Amendment. The failure to provide due process is not in any way related to a legitimate penological purpose.

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.

4. Venue is proper in the Central Division, 28 U.S.C. § 105(b)(4), because Defendants reside in Cole County and the claim for relief arises from policies, practices, and customs established in Cole County.

PARTIES

5. Plaintiff lives in, and operates a sole proprietorship book publishing and distribution business from, Wyandotte County, Kansas.

6. Defendant George Lombardi is the Director of MODOC and is being sued in his official capacity only. Defendant Lombardi is employed by and is an agent of MODOC and the State of Missouri and maintains his office in Jefferson City, Cole County, Missouri. He is responsible for the operations of MODOC, including adopting, approving, and implementing the policies – including inmate mail policies – applicable to the prisons that MODOC operates throughout the State of Missouri. Upon information and belief, Director Lombardi is the final policymaker for MODOC’s policy governing mail for prisoners.

7. Defendant Dave Dormire is the Director of the Division of Adult Institutions at MODOC and is being sued in his official capacity only. Defendant Dormire is employed by and is an agent of MODOC and the State of Missouri and maintains an office in Jefferson City, Cole County, Missouri. He is responsible for the management of the twenty-one correctional centers in MODOC, including, according to Title 14, Divisions 20, Chapter 1 of the Code of State Reulations, managing, supervising and directing all adult correctional rehabilitative and training activities, providing for the protection, care, discipline, instruction and suitable quartering of all persons in his jurisdiction and operating programs and activities designed to release persons as useful productive and law-abiding citizens. Director Dormire has an integral role in establishing and carrying out MODOC’s policy governing mail for prisoners.

8. Defendant Mariann Atwell is the Director of the Division of Offender Rehabilitative

Services at MODOC and is being sued in her official capacity only. Defendant Atwell is employed by and is an agent of MODOC and the State of Missouri and maintains an office in Jefferson City, Cole County, Missouri. She is responsible for developing and delivering services necessary for offenders to correct their criminal behavior and prepare for successful reintegration into the community, including academic and vocational education and support persons with issues such as literacy and employability to provide a successful transition to the community as law abiding and productive citizens. Director Atwell has an integral role in carrying out MODOC's policy governing information, particularly mail, for prisoners.

FACTUAL ALLEGATIONS

9. Each of the acts and omissions of Defendants alleged herein was within the scope of their official duties as employees of MODOC and the State of Missouri. Such acts and omissions by defendants were undertaken under color of state law.

10. Plaintiff operates a publishing and book distribution business under the name of "Caged Potential." Specifically, plaintiff publishes and distributes a novel entitled *So Far from Paradise* ("the novel"), written by plaintiff's cousin, Sultan Lane, who is incarcerated at a prison operated by MODOC.

11. When an order is placed directly with Caged Potential, plaintiff ships the book(s) to the customer(s) directly using the United States Postal Service or other shipping companies.

12. By publishing and distributing the novel, plaintiff d/b/a Caged Potential is engaged in protected political and literary speech and expressive conduct on matters of public concern.

13. On November 22, 2010, plaintiff sent copies of the novel to seven inmates confined at a prison within the MODOC system.

14. None of the seven inmates to whom plaintiff sent a copy of the novel on November 22, 2010, received the copy of the novel that plaintiff mailed. On information and belief, the mailroom

staff intercepted the copies of the novel and refused to deliver them to the inmate-addressees. There was no legitimate purpose – penological or otherwise – for refusing to deliver the copies of the novel to the inmate-addressees.

15. On December 3, 2010, plaintiff sent a copy of the novel to another inmate at a prison within the MODOC system. On information and belief, the novel was received by the inmate-addressee without delay.

16. On December 15, 2010, plaintiff sent a copy of the novel to an additional inmate at a prison within the MODOC system. On information and belief, the novel was received by the inmate-addressee without delay.

17. After mailing copies of the novel to the seven inmates who did not receive the copies mailed to them by plaintiff, plaintiff never received any notice from MODOC that those mailings had been intercepted and censored by MODOC employees.

18. After mailing copies of the novel to the seven inmates who did not receive the copies plaintiff mailed to them, plaintiff never received any legal process affording an opportunity to challenge the interception and censorship of those mailings by MODOC employees.

19. MODOC's current Offender Mail Procedures, IS13-1.1, took effect on March 9, 2012, and were approved and signed off on by defendants Dormire and Atwell. Those procedures do not require MODOC's employees who are responsible for implementing the Offender Mail Procedures to give publishers or distributors notice of the interception or censorship of written materials mailed to inmates or an opportunity to contest such interception or censorship of such written materials.

20. The failure to provide plaintiff with notice and the opportunity to be heard was in furtherance of the policies, customs, and practices of MODOC not to provide notice or the opportunity to be heard to senders of publications that are intercepted and censored by MODOC officials.

21. As a result of the policy, custom, and practice of failing to provide notice or the

opportunity to be heard to senders of written material that is censored by MODOC officials, plaintiff has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

22. Accommodation of the due process rights of plaintiff with respect to materials protected by the Constitution will not have any significant impact on MODOC's prisons.

PLAINTIFF CLASS ALLEGATIONS

23. The named plaintiff is a member of a class of current and future book publishers, distributors, and authors of written materials who mail books, publications, or other written materials to inmates incarcerated in prisons operated by MODOC.

24. There are questions of law and fact that are common to the Class, including, but not limited to the legal questions of whether defendants' inmate mail policies, customs, and practices impermissibly infringe the class members' rights under the Due Process Clause of the Fourteenth Amendment.

25. The claims of the named plaintiff that defendants' inmate mail policies, customs, and practices impermissibly infringe the class members' rights under the Due Process Clause of the Fourteenth Amendment are typical of the claims of the Class.

26. As a current publisher and distributor of a book of interest to prison inmates, the named plaintiff will fairly and adequately protect the interests of the Class.

27. Defendants' inmate mail policies, practices, and customs require MODOC officials and employees subordinate to defendants to act on grounds generally applicable to the class, thereby making it appropriate for this court to grant injunctive and any corresponding declaratory relief to the Class as a whole.

CLAIM FOR VIOLATION OF DUE PROCESS

28. Plaintiff realleges and reincorporates the preceding allegations as though fully set forth here.

29. Defendants' policy, practice, and custom of banning the books distributed by plaintiff failed to provide plaintiff with individualized notice that its publications were being banned and failed to give plaintiff an opportunity to be heard on the issue of the censorship of plaintiff's book distribution to inmates incarcerated at prisons operated by MODOC.

30. The Due Process Clause of the Fourteenth Amendment to the United States Constitution gives plaintiff the right to receive notice and the opportunity to be heard when defendants or their subordinates prevent plaintiff's books from reaching their intended recipients.

31. The acts described above violated plaintiff's rights under the Fourteenth Amendment to the United States Constitution, have harmed plaintiff, and, unless enjoined, will continue to cause harm to plaintiff.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests relief as follows:

- a. a declaration, pursuant to 42 U.S.C. § 1983, that defendant's policies, practices, and customs violate the Constitution;
- b. a preliminary and permanent injunction preventing defendants, in their official capacities, and their officers, agents, servants, and employees, from continuing to violate the Constitution, and providing other equitable relief;
- c. costs, including reasonable attorney's fees under 42 U.S.C. § 1988, and under other applicable law; and
- d. such other and further relief as the court deems just and equitable.

Respectfully submitted,

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/ Anthony E. Rothert
ANTHONY E. ROTHERT, #44827
GRANT R. DOTY, #60788
AMERICAN CIVIL LIBERTIES UNION OF
EASTERN MISSOURI
454 Whittier Street
St. Louis, Missouri 63108
(314) 652-3114
FAX: (314) 652-3112
tony@aclu-em.org
grant@aclu-em.org

COUNSEL FOR PLAINTIFF