

Wilbert D. Baker, #217969/668094A
New Jersey State Prison
P.O. Box 861
Trenton, New Jersey 08625-0861
Movant/*pro se*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Emmitt VALENTINE,
plaintiff,

v.

Howard L. BEYER, et al,
defendants.

Ronald E. LONG, Sr.,
plaintiff,

v.

Howard BEYER, et al.,
defendants.

Civil Actions

CONSOLIDATED CASES

No. 85-4401(REC)

No. 87-5606

Submitted Under Third Circuit Rule 12(6)
March 4, 1988 – Decided June 20, 1988.

—and—

No. 87-1301 (AET)

Decided Jan. 11, 1988

CERTIFIED AS CLASS on October 26, 1993 and
resolved by settlement agreement

**CERTIFICATION OF
WILBERT D. BAKER**

I, Wilbert D. Baker, movant *pro se*, hereby certify as follows:

1. I am the Executive Director of the Inmate Legal Association located at New Jersey State Prison (NJSP), Trenton, N.J., and representative of the class of prisoners effected by the below-mentioned judgments and settlement agreement.

2. I am currently incarcerated at NJSP

3. I make this Certification in support of my motion to Enforce and Modify the Judgments and Settlement Agreement, and ask that defendants be held in contempt of court and

ordered to pay compensatory damages into the account of the Inmate Legal Association for their violations of the judgments and settlement agreement in the above-entitled actions, as well as destruction of corporate property.

4. The Inmate Legal Association (ILA) has been incorporated as a non-profit Legal Aid organization since 1973. For more than thirty years, the ILA has provided free legal assistance to prisoners at NJSP and to others who write for assistance.

5. In 1985, in the wake of prior litigation regarding legal access at NJSP³, *pro se* plaintiff Emmitt Valentine and 84 other prisoners filed suit against defendants Howard Beyer, Administrator of NJSP, and others regarding the lack of legal access in NJSP. (*Valentine v. Beyer*, Docket No. 85-4401(REC)).

6. While the action was pending, defendants attempted to implement proposed changes to the existing legal assistance plan, such as, closing the ILA and merging ILA paralegals with the law library paralegals. Claiming that these changes would interfere with the constitutionally guaranteed right of access to the courts, a class of prisoners sought to enjoin the administration from implementing these changes to the program.

7. On August 7, 1987, the District Court issued findings of fact and conclusions of law upon which a preliminary injunction was issued. The court found the inmates had shown that the new plan did not provide a reasonable alternative to the old plan's provision. (*Valentine v. Beyer*, 850 F.2d 951)

JUDGMENTS AND SETTLEMENT AGREEMENT

8. An Order was entered granting preliminary injunctive relief, enjoining defendants Howard Beyer, *et al.*, from disbanding the ILA or preventing it members from meeting; further

³ In *Johnson v. Hilton*, Civil Action No. 77-59 (D.N.J. Sept. 12, 1978), the inmates at NJSP complained that access to legal materials and notary services was constitutionally deficient. The District Court agreed and ordered the prison Administrator to implement a constitutional legal access plan.

directing defendants to submit a plan remedying the problems caused by eliminating the evening hours of legal access to Protective Custody and Management Control Unit (MCU); and to submit a list of inmates deemed appropriate for consideration for positions as inmate paralegals from which the ILA could choose to restore its numbers to its former strength as of December 1986 (i.e. 25 members) (Ma⁴1 and 2).

9. At present, ILA membership has dwindled to 12 active members.

10. A second suit was filed against Howard Beyer and others by *pro se* plaintiff Ronald Long concerning the lack of legal access for prisoners on the Capital Sentence Unit (CSU). In response to this Court's Order of August 11, 1987, both plaintiffs and defendants submitted legal access plans for CSU.

11. A preliminary injunction was entered by the Court as an amalgam of the plans suggested by both parties which ordered, *inter alia*, that

- a) Two paralegals from the law library and two paralegals from the ILA should be named to service and assist the inmates on the CSU; and
- b) The ILA will be allowed to nominate the two paralegals whom it considers best able to assist CSU inmates, and the Prison Classification Committee must give due deference to the ILA selections (Ma9 ¶1) *Long v. Beyer*, 676 F.Supp. 75⁵

12. At some point in time (date unknown), the above two cases were consolidated, and later certified as a class action on October 26, 1993. In resolution of this consolidated case, parties entered into a settlement agreement (Ma29 – 33).

13. For the purposes of this action, the pertinent parts of the settlement agreement are:

- a) The number of ILA paralegals was increased to 10 full-time positions (Ma31 ¶3);

⁴ "Ma" refers to Movant's appendix attached hereto.

⁵ A copy of the *Valentine* and *Long* decisions is provided in the attached appendix in support of movant's certification, as exhibits Ma61 – 64 & Ma65 – 67, as appended to a letter to the Attorney General.

- b) The Executive Director of the ILA may phone the Administrator or his designee to inform him of any perceived problems that have developed as a result of the legal access plan (Ma31 ¶7);
- c) The number of ILA paralegals permitted to enter the law library was raised to four (Ma31 ¶8);
- d) Nothing in the agreement will alter or amend any policy regarding legal access to CSU (Ma32 ¶11).

11. Over the ensuing years, defendants have slowly eroded the hard-won rights and privileges of the ILA and the class plaintiffs, and have shown a deliberate disregard for the court decisions and settlement agreement. For instance

- a) the ILA currently has seven assigned paralegals and a clerk, as opposed to the ten mandated in the agreement; (Ma31 ¶3) and
- b) the two ILA paralegals whom the ILA appointed to service the CSU were recently transferred to other prisons. Since that time, Baker has requested to have the positions reassigned to other paralegals, but his request was denied by the Administrator in direct violation of the *Long* decision. (Ma34)

12. On numerous occasions, through correspondence and personal interviews, I have attempted to rectify these and the many additional problems mentioned herein with the administration as suggested by the Court, but to no avail.

13. I asked the Director of Education, Thomas Dechan, to approve the two ILA paralegals to be given access to CSU. This request was denied by Dechan on January 11, 2005 (Ma34).

14. Letters were then sent to the Acting Administrator, Ms. Michelle Ricci, via our "liaison," Ms. Deniece Gray, advising her of the legal access issues and violations of the court judgments and agreement, and I sent her copies of the *Valentine* and *Long* decisions, but these too were ignored, or were never forwarded to her by Ms. Gray (Ma35 – 36 & Ma37 – 38⁶).

⁶ The *Valentine* and *Long* decisions have been omitted from the letters to Ms. Ricci, as contained in the enclosed appendix, since they are also attached to the letter to the Attorney General as Ma61 – 64 and Ma65 – 68)

15. Finally, on May 18, 2006 the ILA clerk, John Tell, wrote Ms. Ricci a letter, which he sent to her via institutional mail, addressing ILA functions and needs (Ma39 – 40). Ms. Ricci responded on May 23, 2006, and categorically denied each of our requests (Ma41 – 42).

16. On June 27, 2006, ILA Director James Williams sent a letter was then sent to Attorney General Zulima Farber addressing many of the problems of legal access (Ma43 – 68), but no response was received.

CORPORATE PROPERTY AND REDUCED LEGAL ACCESS FOR ILA PARALEGALS

17. Prior to 2002, the ILA had acquired an extensive law library, sundry office supplies, and equipment, which was held in the ILA offices on the “Balcony” in NJSP. The ILA was moved from the balcony area to the Donald Bourne School approximately 2001.

18. As a result of the move, the ILA Executive Director at the time was told by the Administration that there was no room to store the ILA’s corporate law library, and the books would have to be destroyed. The ILA’s law library, which has now been destroyed, rivaled that of the prison’s law library⁷.

19. With no library of our own, we are now forced to share the already limited resources of the law library, limiting privacy and adding to the inability to maintain confidentiality.

20. Since 2001, Memos have also been issued limiting the number of ILA paralegals in the law library as well as limiting their time in there (Ma72 – 73). These memos came out after the destruction of the ILA law library making the prison law library ILA’s only source of research.

21. Recently, the prison law library has been in the process of converting over to LEXIS NEXIS and has stopped ordering many of the hard-bound books. The LEXIS NEXIS is not “on line,” but a self-contained hard drive, which is updated approximately every three months. The hard drives are hooked into the law library computers only.

⁷ Many of the books in the ILA’s law library were donated by the Honorable Anne E. Thompson, U.S. D.J.

22. I have asked the Director of Education and the Administrator for the ILA to be provided with or be permitted to purchase computers and printers (Ma68 – 71), and that we be permitted to hook up to the LEXIS NEXIS, but the requests were denied (Ma41). The verbal response given for denying the ILA access to the LEXIS NEXIS was that the denial came from “up town” due to our lack of supervision, which makes no sense at all since the ILA’s offices are located exactly 10 feet from the law library, and there are at least five other offices in the immediate area that have computers and printers used by inmates with no more “staff supervision” than the ILA has. The fact is, this is a maximum-security prison, and there is no such thing as “lack of supervision.” Each of our offices have large plate glass window facing the hall ways, and there is an officer’s desk about five feet from our front door.

23. A few years ago, the prison gave the ILA an outdated computer with 2 megabytes of memory and no printer. Just prior to the LEXIS NEXIS hook-up, the law library was ordering West Law books on Compact Disks. ILA paralegals were permitted to sign out the disks to be used on the ILA’s computer. ILA had no less supervision than it does now, yet despite the ILA’s increased work load over that of law library paralegals and clerks, its paralegals are now denied the same access to the legal tools necessary to carry out its responsibilities.

24. The ILA has several Brother Word Processors that are now obsolete and breaking down. Because these word processors are no longer being manufactured, several small companies have bought up the remaining parts and supplies and are now charging several hundreds of dollars to repair a word processor which originally cost under \$200.00. A refurbished machine is now as much as \$600.00. Despite the prohibitive costs, when I was told that the ILA could not get computers and printers, I asked the Administrator if we could purchase replacement word processors. This request was denied.

25. Aside from losing our corporate property in the move from the balcony to the D.B. School, the ILA no longer has access to a phone like we did while on the Balcony, so we can no longer readily contact legal and community services. And contrary to the settlement agreement, the Executive Director of the ILA is no longer permitted to call the Administrator to inform him (or her) of any perceived problems that have developed as a result of the legal access plan. (Ma31 ¶7)

26. For the first time in our existence, the ILA has been told that we must now accept a staff "liaison." The one appointed to us is the Assistant Director of Education, Deniece Gray. As a result of being appointed a liaison, we have lost the ability to have contact with the administrator, in violation of the provision of the settlement agreement (Ma31, ¶7), seriously curtailing our ability to function effectively.

27. While our offices were on the Balcony, we had a phone in our office. Later, it was moved to the officer's booth just down the hall, but we had access to it any time we needed. Once we were moved to the Donald Bourne School area, we had to share the phones used in the law library. At first, this was not a problem as there were three phones: two for the inmates on pass, and one for ILA use. Soon thereafter, this was reduced to two phones, and over the course of the last several months, was reduced to one, for which we are made to wait in line until after all the inmates on passes have completed their calls. By the time passes are finished, there is either no time left to place a call—because the law library staff is closing for the day. If we do have the time to make a call, most law offices and courts are on lunch break or the person is out of the office by the time we are able to use the phones.

28. Furthermore, after a search was conducted throughout the prison in May, 2005, we were missing several other pieces of corporate property (i.e. two fans, two radios, postage stamps, and all our computer and word-processor disks. Moreover, our word-processors were turned upside down and scattered about, which caused damages that have not been repaired. We brought

this to the attention of the Administrator and Director of Education and we were told that the matter would be looked into, and the property replaced. To date, we have heard nothing further regarding our property, and the disks were not returned until several months later, causing numerous delays and missed deadlines in filing papers with the court.

ILA MEMBERSHIP MEETINGS AND CONTINUING LEGAL EDUCATION

29. ILA has been holding membership meetings one night a week for nearly 30 years, and has been holding paralegal classes for nearly as long. These meetings were held at night due to the movement schedules of the prison and the diversity of the membership.

30. The prison, up until this last lock-down in August, 2006, was on an A.M./P.M. schedule. Half the population would go to work in the morning and recreation in the afternoon, and the other half of the population had recreation in the morning and work in the afternoon. The court recognized that an inmate shouldn't have to choose between going to recreation or attending a membership meeting (Ma12, at ¶¶34 &36). Since we have members and paralegal students from both sides of the prison, night movements were considered crucial to our existence.

31. Over the last couple years, the ILA's weekly membership meetings and legal education classes have been severely curtailed by being called out late. As of the past two or three months, ILA has not been able to meet at all.

32. To be considered for membership in the ILA, prospective members must pass a basic research and motion-writing class given by the ILA. These classes are to train and evaluate inmates for consideration of future membership in the ILA. Without these classes, the ILA will not be able to replenish its ranks, thereby acting as a *de facto* shut down of the group. As mentioned above, we are currently down to 12 active members with little prospect of adding new members since we can no longer train prospective members.

33. Membership meetings and continuing legal education classes are also crucial to the ILA's continued existence. At the membership meetings, we are able to distribute work to the associate members who are not classified as paralegals by the prison's Classification Department; discuss corporate business and legal issues; as well as provide continuing legal education to our members, such as Administrative Law, Small Claims, Brief Writing, Habeas Corpus, Post Convictions, etc. It was the ILA paralegal's higher standards of operation that distinguished them from the prison's law library paralegals. Quoting Third Circuit Judge Mansmann:

The law library paralegals perform essentially as assistant law librarians. Their basic functions are to guide inmates in their research, help them locate books and assist in shepardizing cases.

The other group of paralegals are members of the Inmate Legal Association ("ILA"), an incorporated affinity group. The ILA has established an organizational network of inmates who perform legal tasks such as interviewing inmates, researching the law and preparing legal papers. *Valentine v Beyer*, 850 F.2d 951, 953. (Ma62 - 64, quoted from Ma62)

34. District Court Judge Cowan stated in his Opinion that "the court finds that the ILA provides legal services of a much higher quality to the inmates in close custody than the law library paralegals do or could be expected to do." *Valentine v. Beyer*, C.A. 85-4401, Opinion of Judge Robert E. Cowan, USDJ, filed August 1987 (Ma3 - 28, quoted from Ma15).

35. ILA has also lost the ability to submit supplemental passes to the ILA office. In the past, ILA was permitted to submit a list of up to 10 members to come to the office in the evening to conduct corporate business or discuss legal issues. When I requested reinstatement of these passes (Ma40), I was told that members would be permitted to come to the office utilizing regular law library and ILA passes (Ma41). Now this has been reduced to ILA passes only.

36. Since the ILA does not control which inmate or what time inmates are placed on the regular pass list, it is impossible for the ILA to meet with members on any type of meaningful schedule, such as having an executive board meeting. Passes are at the whim of the staff in the

Education Department, and an inmate is lucky if he can get on the pass list once every two weeks.

In addition, inmates on pass in the law library are not permitted to leave that area to go to the ILA offices, or visa versa (Ma72 – 73).

LOCK-DOWNS AND LACK OF LEGAL ACCESS

37. The settlement agreement also provides that

10. Whenever New Jersey State Prison is in a lock-down situation, the administration of New Jersey State Prison will attempt to provide civilians to service the legal needs of the prison population to the extent possible, considering the conditions that may be present during the lock-down and any other responsibilities of the civilian staff as a result of the lock-down. (Ma31 ¶10.)

38. Whenever the prison has been on lock-down for an extended period of time, civilian staff members are usually present for Courtline functions. During this past lock-down, which lasted from August 4, 2006, until approximately September 22, 2006 – when the law library paralegals were permitted to return to work – there were more than 60 inmates who received institutional infractions that were adjudicated before Courtline. Civilian staff was again present, but were wholly ineffective.

39. The civilians employed by the Education Department are not lawyers or paralegals, and are not familiar in the least with Courtline procedures and practice. They do not object to evidence, request to have evidence entered into the record, argue regulations, or request polygraph or confrontation. They also do not file appeals on the inmate's behalf, or even know how to set the record for appeals. Without setting the record, inmates cannot even file the appeals to the administration, let alone to the Appellate Division of the Superior Court, thus denying them meaningful legal access.

40. Civilian staff members were also sent around to the wings near the end of the lock down and they passed out slips to request cases and legal assistance. However, the vast majority of

the requests went unanswered until after the lock-down and passes to the law library had resumed, again denying the prison population any kind of legal access for more than 45 days.

41. Therefore, staff assistance during lock-downs is of no effect, since an untrained legal research staff is insufficient to safeguard an inmate's right of access to the courts.

FEMALE PRISONERS AT NJSP DENIED MEANINGFUL LEGAL ACCESS

42. Since some time after the decision in *Long v. Beyer*, there have been females housed at NJSP for administrative segregation. Their conditions are almost identical to those in *Long*, since they are being denied effective legal access.

43. The female prisoners, who are housed in the 1FF/1GG units, are denied representation by the ILA, and must suffer the ineffective representation of the untrained civilian staff as stated above in paragraphs 38 to 40. This is not only during the lock-downs, but every time they receive institutional infractions.

44. Aside from not being able to effectively represent the females at their Courtline hearings, ILA paralegals are not permitted to interview and assist them concerning other legal issues, such as their criminal cases, civil rights violations, property claims, etc. The civilian staff members are not qualified to provide any meaningful legal access to the females or any other inmates.

45. The females are housed on units very similar to the men in the Management Control Unit (MCU). When the men in MCU receive a charge, instead of being brought to Courtline, Courtline is brought to their wing. The Courtline Hearing Officer, one Corrections Officer and one paralegal from the ILA go to the wing and set up the Courtline area at a table in the day room. The paralegal receives the paperwork from the Hearing Officer and proceeds to the inmate's cell to prepare a defense. The cell door remains closed at all times and they are able to communicate only through the window or the crack along side of the door. After the paralegal has conducted the

initial interview, the Hearing Officer conducts the hearing in front of the cell. At no time is there contact between the inmate in the cell and the paralegal, and they are at all times under the observation of the Hearing Officer, Corrections Officer, and one or two wing officers.

46. Hearings for the females are also held on their wing. The Hearing Officer, Corrections Officer, and a civilian staff member, as counsel substitute, attend the hearing, but as stated above, the civilian staff member is not qualified to provide effective legal representation.

47. In the past, ILA paralegals were asked to prepare appeals for the females, but this was an exercise in futility since there is nothing in the Courtline record from which we can make an argument. I requested that the ILA be permitted to represent the females (Ma35), but the request was denied and I was told that the staff members would represent them only (Ma41 - 42). Since that time, the ILA has refused to enable the Administration's violations of the female's legal access by preparing these frivolous appeals, and it is believed that no appeals have been submitted by staff members since that time, or ever, for that matter.

48. When the original hearings and settlement agreement were entered into, females were not housed at NJSP, and were therefore never contemplated as part of NJSP's legal access plan, or they would have been part of the Close Custody inmates serviced by the ILA.

49. I therefore ask that the Judgments and settlement agreement be modified to include the females housed at NJSP.

ILA MEMBERS DENIED LAW LIBRARY PASSES

50. After this last lock-down was over and the law library was running (approx. Aug. 22nd), the ILA was not permitted to return to work until the afternoon of September 12th. No reason was given for denying us access to our office for more than 20 days.

51. When ILA members attempted to get passes to go to the law library, their requests were ignored. As a result, cases that were shepherded by ILA paralegals were delayed and in some cases missed filing deadlines.

RETALIATION AGAINST ILA PARALEGALS

52. ILA paralegals have been the target of apparent retaliation by prison staff, by transferring or giving false charges in order to remove them from their jobs⁸.

53. I, myself, have been given institutional charges and removed from my job, only later to have the guilty finding reversed and expunged from my record. I have been one of the lucky ones who was able to eventually get his job back, but several past members have now been banned from working in the ILA or refused close custody access, even after having the charges reversed and expunged from their records.

COSTS INCURRED AS A RESULT OF DEFENDANTS' CONTEMPT

54. The administration's systematic denials of our requests to have our word-processors repaired have led to the machines being in such bad shape as to make repairs monetarily unrealistic.

55. The destruction of the ILA's corporate law library is compounded by the defendants' refusal to allow the ILA to have computers with LEXIS NEXIS capabilities. The recent memo disallowing hardcover books (Ma74), now makes it imperative that we be provided with computers and LEXIS NEXIS hard-drives and at least one laser printer in a number sufficient to allow effective operation of the ILA. Since many of our members had personal hard-cover law books in their cells, and will now have to dispose of them, we will not even have those limited resources.

⁸ If the Court requests, I can obtain Certifications from several ILA paralegals who have been given transfers or false charges. In each instance of false charges, the guilty findings were reversed for lack of evidence in the Appellate Division of the NJ Superior Court or on remand to the DOC.

56. Because the ILA provides services to the entire prison population, I ask that any monetary damages be deposited into the ILA's corporate account to be used in furtherance of our charter.

PROOF OF SERVICE

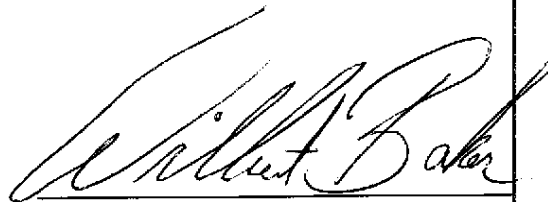
I, Wilber D. Baker do hereby certify that on the date subscribed to below I mailed, via pre paid U.S. First Class Postage, the original and one copy of the enclosed Motion to Enforce and for Contempt to William T. Walsh, Clerk, Clarkson Fisher Federal Bldg. & Courthouse, 402 E. State Street, Trenton, New Jersey 08608. An additional copy was sent to:

To: Attorney General of New Jersey
R.J. Hughes Justice Complex, Law Div.
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625

Ms. Michelle Ricci, Acting Administrator
New Jersey State Prison
P.O. Box 861
Trenton, New Jersey 08625

CERTIFICATION

I hereby certify under penalty of perjury that the above statements made by me are true and correct.



Wilbert D. Baker
Movant/*pro se*

Dated: September 27, 2006