



PC-SD-001-012

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

WILLIAM R. CODY, Individually)
and on behalf of all other)
persons similarly situated,)
Plaintiff,)

Civ. 80-4039

v.)

DEFENDANTS' REPORT ON
LEGAL ACCESS

CAROLE HILLARD, President of)
the Board of Charities and)
Corrections; FRANK BROST,)
Vice President; TED SPAULDING,)
Member; D.A. GEHLHOFF, Member;)
LYLE SWENSON, Member; JAMES)
SMITH, Executive Secretary;)
HERMAN SOLEM, Warden of the)
South Dakota State Peniten-)
tiary; sued individually and)
in their official capacities,)
Defendants.)

Defendants, by and through their counsel, Roger A. Tellinghuisen, Attorney General, and Mark Smith, Assistant Attorney General, submit the following report on legal access, pursuant to this Court's Order of November 4, 1987. In that Order, the Court has required the South Dakota State Penitentiary to take the following remedial actions concerning legal access:

1. Develop a form for prisoner use in requesting legal services that does not require the prisoner to disclose the reasons for seeking to contact the appointed lawyer.
2. Replace the required volumes missing from the law library.
3. Assure that illiterate prisoners will be provided assistance in preparing briefs.

The Progress Report of December 1, 1987, includes the following concerning access to the courts:

Two attorneys continue to be retained under contract to offer legal advice to indigent inmates at the SDSP and the Springfield facility. These attorneys are authorized to draft pleadings where indigent inmates lack sufficient literacy to prepare pleadings on their own behalf. Legal services provided by these attorneys are concentrated on habeas corpus and civil rights actions other than appeals of conviction.

Pursuant to the Order entered by the Court on 11/4/87, inmates at both the SDSP and the Springfield facility may now request legal services without disclosing the reasons for seeking to contact the attorney. All missing volumes from the law library have had replacement volumes ordered. In the future, if a volume is discovered missing, after a reasonable effort to locate the missing volume has failed, a replacement volume will be ordered.

All inmates are advised during orientation of the method for obtaining legal services. Staff members are trained to aid illiterate inmates in gaining access to legal services. The counseling staff is particularly attuned to address the needs of illiterate inmates, including access to legal services. The attorneys pay special attention to the needs of illiterate inmates and will prepare any necessary briefs for them.

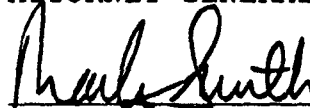
In order to implement these policies, the staff at SDSP have given notice to inmates that they do not need to give a reason on the "kite" to request access to lawyers or the law library. A copy of that notice is attached hereto as Exhibit A. A memorandum to the housing unit supervisors at the SDSP reinforces this notice. A copy of that

memorandum is attached hereto as Exhibit B. A similar policy has been instituted at the Springfield facility. Lynne DeLano, Superintendent at the Springfield Correctional Facility, has issued documents similar to those issued at SDSP. Superintendent DeLano's memorandum and the related notice to the inmates are attached hereto as Exhibits C and D.

Finally, as to legal access by illiterate inmates, it is a standard operating procedure that all inmates are verbally advised during orientation of the method of obtaining legal services. Staff members are trained to aid illiterate inmates in gaining access to legal services. Further, the counseling staff is particularly attuned to address the needs of illiterate inmates, including access to legal services. The contract attorneys are also being made more aware of the particular needs of the illiterate inmates.

Dated this 6th day of January, 1988, at Pierre, South Dakota.

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL



Mark Smith
Assistant Attorney General
State Capitol
Pierre, S.D. 57501-5090

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copies of the Defendants' Report on Legal Access in Cody v. Hillard, et al., Civ. 80-4039, were served upon the Plaintiff herein, by enclosing said copies in envelopes, first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota, on this 6th day of January, 1988, addressed to the following:

Mr. Douglas O Cummings Jr.
Attorney at Law
623 West 11th Street
Sioux Falls, S.D. 57104

Mr. William D. Froke
East River Legal Services
335 North Main Avenue, #300
Sioux Falls, SD 57102

Mr. Billy Jones
Dakota Plains Legal Services
PO Box 727
Mission, SD 57555

Ms. Elizabeth Alexander
ACLU--National Prison Project
1616 P Street Northwest
Washington, D.C. 20036



Mark Smith
Assistant Attorney General



Board of Charities and Corrections

P.O. Box 911
Sioux Falls, South Dakota 57117-0911
Phone: 605/339-6773

STATE PENITENTIARY

NOTICE

NOTICE

NOTICE

NOVEMBER 16, 1987

ACCESS TO LAW LIBRARY - CONTRACT ATTORNEY

Effective immediately, inmates may use a "Kite", stapled or taped shut, to request access to the law library and/or the contract attorney.

These "Kites" will be delivered in the same manner as Request Slips and will not be opened or read by staff other than the addressee.

HS:sl



Board of Charities and Corrections

P.O. Box 911
Sioux Falls, South Dakota 57117-0911
Phone: 605/339-6773

STATE PENITENTIARY

MEMORANDUM

DATE: November 16, 1987
TO: All Housing Unit Supervisors
FROM: Herman S. Solem, Warden
RE: Access To Law Library/Contract Attorney

Effective immediately, inmates have the option of using a "Kite" to request access to the law library and/or the contract attorney.

"Kites" are not to be opened or read by any staff member with the exception of the addressee.

To this end, the enclosed notice shall remain posted on the bulletin board in each housing unit.

November 19, 1987

Exhibit C

To: Housing Units and Counseling Staff
From: Lynne De Lano
Re: Inmate Legal Assistance

SCF contracts with attorney Jim Olson to provide legal assistance for the inmates. He comes to SCF every other week. A notice to the inmates regarding legal assistance should remain permanently posted on the bulletin board in each of the housing units. The inmate need only send a written request (either Kite or M-8) to see the attorney. They do not need to state the reason for their request. The kites/M-8's should be immediately directed to the Superintendent's secretary (Lois).

If an inmate is illiterate, staff should assist the inmate in completing a written request to see the attorney.

Exhibit D

NOTICE

NOTICE

NOTICE

NOVEMBER 19, 1987

RE: LEGAL ASSISTANCE

SCF has contracted with attorney Jim Olson to provide legal assistance to inmates at SCF. Mr. Olson comes to SCF every other week. If you wish to see the attorney, submit a request slip (Kite or M-8 form). You do not need to state the reason or nature of your request on the form. (see sample M-8).

Your appointment will be scheduled with the attorney for his next scheduled day at SCF.

If you have any questions about this procedure, please see a staff member for clarification.

SOUTH DAKOTA PENITENTIARY

REQUEST SLIP

NOV 20 1987
Inmate JOHN DOE No. 10000
Cell No. 402W Works MT
Desires an Audience with ATTORNEY

Give Reason—Private Business Not Sufficient

~~_____~~
~~_____~~
~~_____~~
~~_____~~