

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

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NATIONAL LAWYERS GUILD, INC. :
and CENTER FOR CONSTITUTIONAL :
RIGHTS :

Plaintiffs,

vs.

GENE M. JOHNSON, JOHN M. JABE, :
SAMUEL PRUETT, R.W. JAMISON, :
LARRY COLLINS, BARBARA :
GENTRY, LINDA LEATHERWOOD, :
and RITA BIBBINS, :

Defendants.

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**COMPLAINT
AND JURY DEMAND**

Civil Action No. 3:10cv_____

INTRODUCTION

1. This is an action challenging a decision by officials of the Virginia Department of Corrections (“VDOC”) to ban a publication, the Jailhouse Lawyer’s Handbook (“JLH”), co-authored and co-published by Plaintiffs, even though the publication contains legal information that does not implicate legitimate security concerns.
2. In addition, Defendants failed to notify Plaintiffs of the proposed censorship or give them an opportunity to be heard.
3. Finally, the policy and practices of Defendants does not provide for timely and adequate notice and a meaningful opportunity for a publisher to provide comments before a final decision to disapprove a publication from entry into the Virginia prison system. The aforesaid policies and practices deprive Plaintiffs and their subscribers of their First and

Fourteenth Amendment rights and serve no neutral, legitimate penological purpose.

JURISDICTION

4. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over this action under 28 U.S.C. §§1331 and 1343(a)(3) and (a)(4) and 28 U.S.C. §§2201 and 2202.

VENUE

5. Venue properly lies in this District pursuant to 28 U.S.C. §§ 1391(b)(2) because the decision to ban the Jailhouse Lawyer’s Handbook arose out of Coffeewood Correctional Center, which institution is located in the Charlottesville Division of the Western District of Virginia.

PARTIES

6. Plaintiff National Lawyers Guild, Inc. (“NLG”), is a non-profit corporation formed in 1937 as the nation's first racially integrated voluntary bar association, with a mandate to advocate for fundamental principles of human and civil rights including the protection of rights guaranteed by the United States Constitution. Since then the Guild has been at the forefront of efforts to develop and ensure respect for the rule of law and basic legal principles.
7. Plaintiff Center for Constitutional Rights (“CCR”), is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

8. Defendant Gene M. Johnson is the Director of the Virginia Department of Corrections. He is responsible for the implementation and enforcement of all VDOC policies and procedures. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.
9. Defendant John M. Jabe is the Deputy Director, Division of Operations, of the Virginia Department of Corrections and has been so at all times relevant to this Complaint. Mr. Jabe is responsible for appointing members of the Publication Review Committee (“PRC”) and hearing appeals from the decisions of the PRC disapproving publications. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.
10. Defendant Larry Collins has been, at times relevant to this Complaint, Chairman of the Publication Review Committee, which is responsible for making final decisions to disapprove publications sent to prisoners within the Virginia Department of Corrections. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.
11. Defendant Barbara Gentry has been, at times relevant to this Complaint, the staff secretary to the Publication Review Committee, which, as noted above, is responsible for making final decisions to disapprove publications sent to prisoners within the Virginia Department of Corrections. At all times relevant to this Complaint, she was acting under color of state law. She is sued in her individual and official capacities.
12. Linda Leatherwood has been, at times relevant to this Complaint, a member of the Publication Review Committee, which as noted above, is responsible for making final

decisions to disapprove publications sent to prisoners within the Virginia Department of Corrections. At all times relevant to this Complaint, she was acting under color of state law. She is sued in her individual and official capacities.

13. Rita Bibbins has been, at times relevant to this Complaint, a member of the Publication Review Committee, which as noted above, is responsible for making final decisions to disapprove publications sent to prisoners within the Virginia Department of Corrections. At all times relevant to this Complaint, she was acting under color of state law. She is sued in her individual and official capacities.

14. Defendant Samuel Pruett has been, at all times relevant to this Complaint, the Warden at Coffeewood Correctional Center. As such he is charged with the responsibility to make or delegate initial decisions to disapprove publications sent to prisoners at that facility. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.

15. Defendant R.W. Jamison is the Operations Officer at Coffeewood Correctional Center. At times relevant to this Complaint, he has been delegated the authority to make initial decisions to disapprove publications sent to prisoners at that facility. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.

FACTS

Defendants' Policies and Practices

16. Defendant Johnson has promulgated and all of the Defendants have implemented VDOC Operating Procedure 803.2, "Incoming Publications" ("OP 803.2").

17. Pursuant to OP 803.2, a prisoner must secure permission from the VDOC Facility Unit head or his or her designee prior to ordering, subscribing to or otherwise receiving a publication.
18. Each permitted publication received at a VDOC facility is reviewed prior to distribution to the prisoner.
19. OP 803.2 contains a list of criteria for disapproving receipt of a publication. Some of the criteria are specific, such as the criteria for disapproving publications with specific sexual content, while other criteria are vague such as “Material whose content could be detrimental to the security, good order, discipline of the facility, or offender rehabilitative efforts or the safety or health of offenders, staff, or others.”
20. The warden at each facility or his or her designee may disapprove a publication.
21. No notice is provided to the publisher that disapproval is being considered and therefore, publishers have no opportunity to be heard or to oppose the proposed ban.
22. If disapproved by the facility, the prisoner to whom the publication is addressed receives notice of disapproval. However, the prisoner is not informed of the reason for the disapproval or the content that prompted the disapproval. No notice is provided to the publisher.
23. Unless waived by the prisoner to whom it is addressed, the disapproved publication is submitted to the Publication Review Committee for final decision.
24. When a publication is disapproved at the facility level, the warden is required to make a record of his/her reasons for disapproving the publication, which record is forwarded to the PRC. At no time is the prisoner or publisher provided with this record.

25. If the PRC makes a final decision to disapprove a publication, only then is the publisher notified. Such notifications include only the page(s) disapproved without specifying the content which prompted the disapproval.
26. The notice merely identifies by number the criterion or criteria upon which the disapproval is based. No information is provided as to how the disapproved material meets the criterion or criteria identified by the Committee.
27. OP 803.2 provides that a publisher may appeal the decision of the PRC to the Deputy Director for Operations.

Defendants' Conduct As to Plaintiffs

28. Plaintiffs National Lawyers Guild and Center for Constitutional Rights co-author and co-publish a book titled "Jailhouse Lawyer's Handbook" ("JLH"). Subtitled "How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison," this is a free resource for prisoners and their family members who wish to learn about legal options to challenge mistreatment in prison and to assist prisoners in conducting pro se litigation regarding their prison conditions.
29. In the fall of 2009, a prisoner at Coffeewood Correctional Center received approval to order the JLH. However, when JLH arrived, Defendant Jamison disapproved possession of the book and forwarded the same to the Publication Review Committee ("PRC") for final review and decision.
30. On or about November 10, 2009, the PRC decided to disapprove the JLH. In doing so, the committee cited the "entire publication" and referred to criterion #12 of Virginia Department of Corrections Operating Procedure 803.2, which provides for disapproval of

“[m]aterial whose content could be detrimental to the security, good order, discipline of the facility, or offender rehabilitative efforts or the safety or health of offenders, staff, or others.”

31. No notice of this action was provided to either Plaintiff.
32. No notice of disapproval of the JLH was provided to Plaintiffs and therefore no appeal of the decision of the Publication Review Committee was possible.
33. Plaintiffs are currently working on an update of the Jailhouse Lawyer’s Handbook and expect to publish the same by September, 2010.
34. Plaintiffs also author and publish other publications that may be of interest to prisoners.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Censorship of Constitutionally Protected Speech)

35. Plaintiffs reallege and incorporate by reference paragraphs 1-34 herein.
36. Defendants have banned the Jailhouse Lawyer’s Handbook, without penological justification, in violation of Plaintiffs’ rights protected by the First Amendment to the United States Constitution.
37. As a direct and proximate result of the aforesaid conduct of Defendants, Plaintiffs have suffered financial and other injury.

SECOND CAUSE OF ACTION

(Lack of Notice to Plaintiffs)

38. Plaintiffs reallege and incorporate by reference paragraphs 1-37 herein.
39. Neither Plaintiff received notice of the banning of the Jailhouse Lawyer’s Handbook nor was given an opportunity to be heard concerning that censorship, all in violation of the

First and Fourteenth Amendments to the United States Constitution.

40. As a direct and proximate result of the aforesaid conduct of Defendants, Plaintiffs have suffered financial and other injury.

THIRD CAUSE OF ACTION
(Lack of Timely and Adequate Notice Under VDOC Rules)

41. Plaintiff realleges and incorporates by reference paragraphs 1-40 herein.
42. While a subscribing prisoner is given notice that the facility has disapproved the publication, he or she is not informed of the reason for the disapproval or the content that prompted the disapproval. Prisoners have no right to provide any information to the PRC.
43. Pursuant to Operating Procedure 803.2, no notification is provided to the publisher that its publication has been disapproved until after a final decision has been made by the PRC.
44. Moreover, if the PRC upholds the disapproval decision of the facility, notices, when sent to publishers, do not specify the content upon which the disapproval decision was made nor does the notice state how that content violates the identified criterion or criteria. Thus, while a publisher has the right to appeal disapproval decisions of the PRC to the Deputy Director of Operations, the lack of information provided to the publisher deprives publishers of their right to be heard.
45. The failure to provide timely notification and adequate reasons for disapproval decisions, without penological justification, violates Plaintiffs' First Amendment and due process rights.

46. As a direct and proximate result of the conduct of Defendants, Plaintiffs have suffered injury.

WHEREFORE, Plaintiffs request the following relief:

- a. Declaratory judgment that banning the Jailhouse Lawyer's Handbook from the Virginia Department of Correction violates Plaintiffs' First Amendment rights;
- b. Declaratory judgment that the failure to provide notice to Plaintiffs of the censorship of the JLH violates the First and Fourteenth Amendments to the United States Constitution;
- c. Declaratory judgment that the failure to provide timely and adequate notice of decisions to disapprove a publication and the failure to provide publishers with timely and adequate opportunity to be heard violates the First Amendment and Fourteenth Amendments;
- d. Preliminary and permanent injunction requiring Defendants make available a copy of the Jailhouse Lawyer's Handbook to all prisoners who had requested the same, but were denied due to the actions of the Publication Review Committee;
- e. Preliminary and permanent injunction requiring Defendants to allow any prisoner of the Commonwealth of Virginia to obtain and possess a copy of the Jailhouse Lawyer's Handbook;
- f. Preliminary and permanent injunction requiring Defendants to notify Plaintiffs of any proposed censorship or ban of their publications by providing notice of the specific content at issue and how that content may violate one of the criteria of OP 803.2 or any of its successors;
- g. Preliminary and permanent injunction requiring Defendants to provide Plaintiffs with a

meaningful opportunity to provide input prior to the censorship, banning or disapproval of one of their publications;

- h. Preliminary and permanent injunction directing that members of the Publications Review Committee consider any and all information submitted to it by Plaintiffs prior to deciding whether to uphold a facility decision to disapprove or ban a publication;
- i. Awarding Plaintiffs nominal, compensatory and punitive damages;
- j. Awarding attorney's fees and costs to Plaintiffs;
- k. Awarding such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted,
NATIONAL LAWYERS GUILD, INC. and
CENTER FOR CONSTITUTIONAL RIGHTS
By Counsel

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