

OCT 20 1997

JAMES R. LARSEN, Clerk
Deputy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONALD D. MacFARLANE,
Plaintiff,
v.
KAY WALTER, et al.,
Defendants.

NO. ^{cy}CS-96-3102-LRS
ORDER ADOPTING REPORT AND
RECOMMENDATION

Magistrate Judge Suko filed a report and recommendation on September 22, 1997 recommending:

1. Defendant Riveland's motion for dismissal for lack of personal participation be denied and defendant Ervin's motion for dismissal for lack of personal participation be granted.

2. Plaintiff's Motion for Summary Judgment regarding violations of his First Amendment rights and Fourteenth Amendment right to procedural due process be granted and Defendant's Motion for Summary Judgment regarding the same be denied in accordance with the ruling in Miniken v. Walter, et al., No. CS-96-407-JLQ.

3. Defendants be permanently enjoined prohibiting delivery of an inmate's paid-for subscription to a profit or nonprofit publication on the sole basis that the publication is mailed via "standard mail," in accordance with the ruling in Miniken v. Walter et al., No. CS-96-407-JLQ.

1 4. Plaintiff be awarded actual damages in addition to costs,
2 with the deadline for submission of plaintiff's affidavit of costs
3 and damages to be set by the referring judge. Plaintiff's actual
4 damages are those suffered as a direct result of defendants'
5 failure to deliver his subscription publications of Prison Legal
6 News and the ACLU's National Prison Project Journal, the
7 publications referenced in his complaint.

8 Having reviewed the report and there being no objections
9 thereto, said report is ADOPTED in its entirety and IT IS ORDERED
10 that plaintiff's complaint is DISMISSED without prejudice.

11 1. Defendant Riveland's motion for dismissal for lack of
12 personal participation be DENIED, and defendant Ervin's motion for
13 dismissal for lack of personal participation be GRANTED.

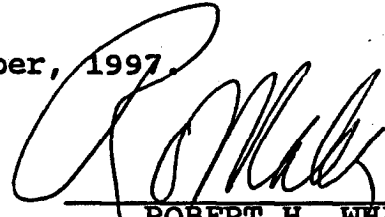
14 2. Plaintiff's Motion for Summary Judgment regarding
15 violations of his First Amendment rights and Fourteenth Amendment
16 right to procedural due process be GRANTED and Defendant's Motion
17 for Summary Judgment regarding the same be DENIED.

18 3. Defendants be PERMANENTLY ENJOINED from prohibiting
19 delivery of an inmate's paid-for subscription to a profit or
20 nonprofit publication on the sole basis that the publication is
21 mailed via "standard mail."

22 4. Plaintiff be AWARDED actual damages in addition to costs,
23 with the deadline for submission of plaintiff's affidavit of costs
24 and damages to be set by the court. Plaintiff's actual damages are
25 those suffered as a direct result of defendants' failure to
26 deliver his subscription publications of Prison Legal News and the
27 ACLU's National Prison Project Journal, the publications
28 referenced in his complaint.

1 The Clerk of the Court shall forward a copy of this order to
2 the plaintiff and counsel for the defendant and shall close the
3 file.

4 DATED this 20 day of October, 1997.



ROBERT H. WHALEY
United States District Judge

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