

IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

JOHN RUST, CHARLES J. PALMER, PETER  
HOCHSTEIN and STEVEN HARPER,

Plaintiffs,

v.

FRANK GUNTER, Individually and as  
Director of Correctional Services;  
CHARLES BLACK, Individually and as  
Warden of Nebraska State Penetentiary;  
CHARLES HOHENSTEIN, Individually and as  
Legal Aide Coordinator; JOHN P. SHAW,  
Individually and as Associate Warden,  
Programs; TERENCE B. CAMPBELL, Indivi-  
dually and as Legal Aide Coordinator;  
JOHN T. EGGERS, Individually and as  
Housing Unit Manager; MARIO PEART,  
Individually and as Unit Administrator;  
HAROLD W. CLARKE, Individually and as  
Associate Warden, Custody; GARY GRAMMER,  
Individually and as Warden of the  
Nebraska State Penetentiary,

Defendants.

CV84-L-712

CONSENT DECREE

This matter came on for trial before this Court on July 7, 1986 with all parties present through their attorneys or personally. Trial continued through July 8, 1986 at which time the parties advised the Court that they had reached a settlement of the issues raised in such action, which settlement would be incorporated within a Consent Decree.

By joint motion filed by the parties on August 1, 1986, the parties have requested entry of a Consent Decree pursuant to the terms and conditions of their settlement agreement and stipulation as filed with the Court.

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Being fully advised of the premises thereto, the Court finds that the joint motion should be granted and that a Consent Decree should be entered in accordance with the settlement agreement and stipulation of the parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Defendants, in their official capacity as employees and officials of the Department of Correctional Services of the State of Nebraska, shall affirmatively permit and allow Plaintiffs and all other prisoners now confined or hereafter confined under sentence of death (hereinafter collectively called "Death Row Inmates") in the Nebraska State Penitentiary, Lincoln, Nebraska (hereinafter "NSP") to have direct physical access to and use of the Law Library at the NSP. At a minimum, said access shall be allowed as follows:

- a) Defendants, in their official capacity, shall allow and permit Plaintiffs and other Death Row Inmates to use said Law Library pursuant to a schedule allowing separate use thereof by all Death Row Inmates. Such schedule shall provide a minimum of Two (2) hours per day on each of at least Five (5) days per each calendar week. Said Two (2) hours shall not include and shall not be diminished by any time necessary to transport Death Row Inmates from their housing unit to the Law Library.
- b) Defendants, in their official capacity, shall allow up to Five (5) Death Row Inmates to use the Law Library at any one time. Defendants may, in their discretion, allow more than Five (5) Death Row Inmates to use the Law Library at any one time.
- c) Defendants, in their official capacity, may station at least One (1) Correctional Officer or Staff Member in the Law Library at all times when Death Row Inmates are present.
- d) Death Row Inmates must request use of the Law Library by submission of an Interview Request Form ("Kite") to Legal Aide Coordinator. Upon receipt

of a Request, the Legal Aide Coordinator shall issue the requesting Death Row Inmate a pass to use, and shall permit the use of, the Law Library at the requested time or at the next available opportunity. Interview Requests will be honored in the order in which they are received, except that if more requests are received for use at a particular time than the number of Death Row Inmates allowed to simultaneously use the Law Library, then priority for use shall be given to the Death Row Inmate who had the least recent use of the Law Library.

- e) Any Death Row Inmate, upon proof of a deadline or due date enforceable at law in any proceeding, or who has an execution date set and not stayed, or for other verified need, may request and shall be allowed a reasonable amount of additional time to use the Law Library by the Legal Aide Coordinator as may be consistent with prison schedules and the good order and security of the institution.
- f) No Death Row Inmate will be allowed to remove any materials from the Law Library, unless he receives the prior written consent therefor from the Legal Aide Coordinator.

2. Defendants, in their official capacity, shall establish, enforce and maintain a schedule for use of the telephone by Death Row Inmates which shall provide at least One (1) call per day of not less than Ten (10) Minutes duration. Defendants shall establish a schedule allowing at least 65 minutes each day for such calls between the hours of 8:30 a.m. to 3:30 p.m. and at least One Hour after 6:00 p.m. Upon a showing of need, the Housing Unit Manager shall allow the inmate to place one or more additional telephone calls at other than scheduled times. For the purposes hereof, a showing of need shall include but not be limited to: a pending execution date; a need to contact attorneys or court officials in connection with a hearing, trial or other

deadline or due date established by the court or by applicable procedural laws or rules within 14 days after the request; or a need arising from an inability to contact an attorney, court official or public official through use of the regular telephone call hereunder.

3. Death Row Inmates shall be entitled to request and receive photocopies of their personal legal materials, legal materials from the NSP Law Library or photocopies from any inter-library loan programs or judicial or executive governmental entities upon payment of any standard fee or charge therefor, provided however, that Defendants, in their official capacity, shall provide Death Row Inmates with photocopies of the following described materials free of charge under the following circumstances:

- a) Death Row Inmates may receive free copies of any document which is or may be required to be filed with any clerk of any court of law in a proceeding to which he is a party in a number sufficient to meet the filing requirements and one copy thereof for retention by the inmate.
- b) Death Row Inmates, so long as they remain assigned to less than 20 days per month of work within the NSP, may receive free photocopies of such legal materials which are not available at the NSP Law Library, upon request to the Legal Aide Coordinator which shall set forth (i) that the request is made in connection with a contemplated or pending action in which the Inmate is or will be a party, (ii) that the Inmate is not then represented by counsel in connection therewith, or that the materials are requested for the purpose of preparing a supplemental brief or pro se motion in an action in a court which will accept such filings; and (iii) that the requested materials are reasonably related to the subject matter of the pending or contemplated action as such subject matter has been disclosed by the Inmate.
- c) Death Row Inmates shall also be entitled to free photocopies for legal purposes in addition to those described above, if such are otherwise made

available to, and upon the same terms as made available to general population inmates at NSP.

4. Defendants, in their official capacity, shall schedule, allow and permit Death Row Inmates access to and use of the exercise yard for Death Row Inmates for a minimum of One (1) one-hour and fifty-one (51) minutes per day, seven (7) days per week, provided that this paragraph shall not bind nor estop either Death Row Inmates or Defendants from additional access to and use of the exercise yard provided for Death Row Inmates.

5. Death Row Inmates shall be allowed at least Forty (40) minutes per day of Dayroom time and at least one visitation per week as is presently enjoyed, provided however, that this paragraph shall not bind nor estop either Plaintiffs from seeking or Defendants from providing additional Dayroom time and visitations.

6. Upon implementation of access to the Law Library under paragraph 1 hereof, the Advance Sheets and other legal materials now kept in the Dayroom on D Gallery, Housing Unit #4, shall be removed.

7. Defendants, in their official capacity, shall provide to Death Row Inmates training in legal research, analysis and writing on a periodic basis. Such classes shall be offered at least once every Six (6) calendar months

and shall be taught by person(s) trained in the law, holding a Juris Doctorate Degree or equivalent.

8. The foregoing Agreement and the terms hereof shall apply to Plaintiffs so long as they remain in special custody status solely by reason of the nature of their sentence.

9. The terms of paragraphs 1 through 8 hereof shall be implemented and shall become effective and binding upon all parties hereto on August 1, 1986.

10. Pursuant to the stipulation and settlement agreement of the parties, there is hereby awarded to Plaintiffs and their attorneys, attorneys fees of \$41,758.75 and costs of \$5,279.13, based upon the further stipulation of the parties that the same are reasonable and necessary fees and expenses incurred in connection with this action and the Plaintiffs are prevailing parties, all within the meaning of 28 U.S.C., §1988. Such award is hereby entered as a judgment as against Defendants, in their official capacity, and shall be presented to the State of Nebraska pursuant to Neb. Rev. Stat., §25-1806 (Reissue 1985).

11. This Decree is entered as a final judgment to this action and as to all issues raised therein, except that all issues pertaining to provision of access to the courts to inmates confined in the Adjustment Center which shall be dismissed as moot. This Decree shall constitute a permanent injunction against Defendants, in their official capacity, and their successors, and the Court shall retain jurisdiction

for enforcement thereof by proper proceedings for contempt  
or otherwise.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 1986.

BY THE COURT:

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Warren K. Urbom