

CLOSED, TRIAL-LINCOLN

**U.S. District Court
District of Nebraska (4 Lincoln)
CIVIL DOCKET FOR CASE #: 4:84-cv-00712-WKU-CRZ**

Rust et al v. Gunter et al
Assigned to: Senior Judge Warren K. Urbom
Referred to: Magistrate Judge Cheryl R. Zwart
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 10/24/1984
Date Terminated: 08/25/1986
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

John Rust

represented by **Michael J. Wilson**
SCHAEFER, SHAPIRO LAW FIRM
1001 Farnam Street
Third Floor
Omaha, NE 68102
(402) 341-0700
Fax: (402) 341-3380
Email: mwilson@theomahalawyers.com
ATTORNEY TO BE NOTICED

Victor E. Covalt , III
BALLEW, SCHNEIDER LAW FIRM –
LINCOLN
P.O. Box 81229
Lincoln, NE 68501
(402) 436-3030
Fax: (402) 436-3031
Email: vcovalt@ballewcovalt.com
ATTORNEY TO BE NOTICED

Plaintiff

Charles J. Palmer

represented by **Michael J. Wilson**
(See above for address)
ATTORNEY TO BE NOTICED

Victor E. Covalt , III
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Peter Hochstein

represented by **Michael J. Wilson**
(See above for address)
ATTORNEY TO BE NOTICED

Victor E. Covalt , III
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Steven Harper

represented by **Michael J. Wilson**
(See above for address)
ATTORNEY TO BE NOTICED

Victor E. Covalt , III
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Frank Gunter

*Individually and as Director of
Correctional Services*

represented by **Linda L. Willard**
ATTORNEY GENERAL'S OFFICE –
NEBRASKA
2115 State Capitol Building
P.O. Box 98920
Lincoln, NE 68509–8920
(402) 471–2757
Fax: (402) 471–3591
Email: linda.willard@nebraska.gov
ATTORNEY TO BE NOTICED

Defendant

Charles Black

*Individually and as warden of Nebraska
State Penitentiary*

represented by **Jon C. Bruning**
ATTORNEY GENERAL'S OFFICE –
NEBRASKA
2115 State Capitol Building
P.O. Box 98920
Lincoln, NE 68509–8920
(402) 471–2683
Fax: (402) 471–3297
Email: kim.schwaninger@nebraska.gov
ATTORNEY TO BE NOTICED

Linda L. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Robert M. Spire
ATTORNEY GENERAL'S OFFICE –
NEBRASKA
2115 State Capitol Building
P.O. Box 98920
Lincoln, NE 68509–8920
(402) 471–2682
Fax: (402) 471–3297
TERMINATED: 08/20/2012

Defendant

Charles Hohenstein

*Individually and as Legal Aid
Coordinator*

represented by **Jon C. Bruning**
(See above for address)
ATTORNEY TO BE NOTICED

Linda L. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Robert M. Spire
(See above for address)
TERMINATED: 08/20/2012

Defendant

John P. Shaw

*Individually and as Associate Warden,
Programs*

represented by **Jon C. Bruning**
(See above for address)
ATTORNEY TO BE NOTICED

Linda L. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Robert M. Spire
(See above for address)

TERMINATED: 08/20/2012

Defendant

Terence B. Campbell
*Individually and as Legal Aid
Coordinator*

represented by **Jon C. Bruning**
(See above for address)
ATTORNEY TO BE NOTICED

Linda L. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Robert M. Spire
(See above for address)
TERMINATED: 08/20/2012

Defendant

John T. Eggers
*Individually and as Housing Unit
Manager*

represented by **Jon C. Bruning**
(See above for address)
ATTORNEY TO BE NOTICED

Linda L. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Robert M. Spire
(See above for address)
TERMINATED: 08/20/2012

Defendant

Mario Peart
Individually and as Unit Administrator

represented by **Jon C. Bruning**
(See above for address)
ATTORNEY TO BE NOTICED

Linda L. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Robert M. Spire
(See above for address)
TERMINATED: 08/20/2012

Defendant

Harold W. Clarke
*Individually and as Associate Warden,
Custody*

represented by **Jon C. Bruning**
(See above for address)
ATTORNEY TO BE NOTICED

Linda L. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Robert M. Spire
(See above for address)
TERMINATED: 08/20/2012

Defendant

Gary Grammer
*Individually and as Warden of the
Nebraska State Penitentiary*

represented by **Jon C. Bruning**
(See above for address)
ATTORNEY TO BE NOTICED

Linda L. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Robert M. Spire
(See above for address)
TERMINATED: 08/20/2012

Defendant

Fred Britten

represented by **Linda L. Willard**
(See above for address)
ATTORNEY TO BE NOTICED

Interested Party

Eric F. Vela

represented by **Amber Allred**
WOUNDED WARRIOR PROJECT
4899 Belford Road
Suite 300
Jacksonville, FL 32256
(904) 296-7350
Fax: (904) 296-7347
Email: aallred@woundedwarriorproject.org
TERMINATED: 10/18/2010

Edward G. Warin
KUTAK, ROCK LAW FIRM – OMAHA
1650 Farnam Street
Omaha, NE 68102-2186
(402) 346-6000
Fax: (402) 346-1148
Email: Edward.Warin@kutakrock.com
ATTORNEY TO BE NOTICED

Matthew M. Enenbach
KUTAK, ROCK LAW FIRM – OMAHA
1650 Farnam Street
Omaha, NE 68102-2186
(402) 346-6000
Fax: (402) 346-1148
Email: matthew.enenbach@kutakrock.com
ATTORNEY TO BE NOTICED

Michael J. Wilson
(See above for address)
ATTORNEY TO BE NOTICED

Interested Party

Jorge A. Galindo

represented by **Amber Allred**
(See above for address)
TERMINATED: 10/18/2010

Edward G. Warin
(See above for address)
ATTORNEY TO BE NOTICED

Matthew M. Enenbach
(See above for address)
ATTORNEY TO BE NOTICED

Michael J. Wilson
(See above for address)
ATTORNEY TO BE NOTICED

Interested Party

represented by

John L. Lotter

*and all other inmates who constitute a
class of persons serving a death penalty
in the Tecumseh State Correctional
Institution*

Michael J. Wilson

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/05/2010	<u>88</u>	MOTION for Order of Contempt and Injunctive Relief filed by Eric F. Vela and Jorge A. Galindo. (Attachments: # <u>1</u> Cover letter)(JAB) (Entered: 02/18/2010)
02/05/2010	<u>89</u>	OBJECTION filed by Eric F. Vela and Jorge A. Galindo. (Attachments: # <u>1</u> Copy of Consent Decree missing page 3)(JAB) (Entered: 02/18/2010)
02/16/2010	<u>86</u>	NOTICE – This case is partially converted as of 2/16/2010 to the CM/ECF System. The docket sheet prior to 2/16/2010 is attached. (JAB) Modified on 2/17/2010 to correct document number. (JAB) (Entered: 02/17/2010)
02/16/2010	<u>87</u>	ORDER – Volume I and Volume II of the files obtained from the Federal Records Center in the above-captioned case, shall be checked out to Victor Covalt. The files shall be returned to the Office of the Clerk of the District Court in Lincoln, Nebraska, on or before February 25, 2010. Ordered by Senior Judge Warren K. Urbom. (JAB) (Entered: 02/17/2010)
02/18/2010	<u>90</u>	RECEIPT regarding Temporary Loan of Court Files. Files picked up by Victor Covalt's office. (JAB) (Entered: 02/18/2010)
02/25/2010		Remark – Public: Case files CS1 and CS2 returned to the Clerk's office by Victor Covalt's office. (AOA) Modified on 2/25/2010 to correct Attorney's name. (AOA). (Entered: 02/25/2010)
03/01/2010	<u>91</u>	ORDER APPOINTING COUNSEL – (1) the request for counsel contained in <u>88</u> is granted and under the inherent authority of the court Edward G. Warin is appointed as counsel for Jorge A. Galindo and for Eric F. Vela. (2) Volume I and Volume II of the files obtained from the Federal Records Center in the above-captioned case, shall be checked out to Edward G. Warin; and (3) the files shall be returned to the Office of the Clerk of the District Court for the District of Nebraska on or before 4/2/2010 as ordered by Senior Judge Warren K. Urbom. (SED) (Entered: 03/01/2010)
03/12/2010	<u>92</u>	RECEIPT OF TEMPORARY LOAN OF COURT FILES: volume 1 and 2 checked out to Edward Warin to be returned on or before 4/2/10. (ADB,) (Entered: 03/12/2010)
03/15/2010		Remark – Public: Case files CS1 and CS2 returned to the clerk's office by Edward Warin. (TCL) (Entered: 03/15/2010)
04/28/2010	<u>93</u>	ORDER sustaining <u>89</u> Objection. Ordered by Senior Judge Warren K. Urbom. (Copy mailed to pro se parties)(EJL) (Entered: 04/28/2010)
05/17/2010	<u>94</u>	TEXT MINUTE ENTRY for telephone conference held in chambers on 5/17/10 with Senior District Judge Warren K. Urbom and counsel Edward Warin, Amber Allred and Linda Willard; discussion held regarding progression of the case; Time Commenced: 10:00 a.m.; Time Concluded: 10:26 a.m. (Attorney Linda L. Willard added for defendants Charles Black, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Charles Hohenstein, Mario Peart, and John P. Shaw; Attorney Amber Allred added for interested parties Eric F. Vela and Jorge A. Galindo). (BMH) (Entered: 05/18/2010)
08/02/2010	<u>95</u>	Amended MOTION to Enforce Consent Decree by Attorney Edward G. Warin on behalf of Interested Parties Jorge A. Galindo, Eric F. Vela.(Warin, Edward) (Entered: 08/02/2010)
08/02/2010	<u>96</u>	BRIEF in support of Amended MOTION to Enforce Consent Decree <u>95</u> by Attorney Edward G. Warin on behalf of Interested Parties Jorge A. Galindo, Eric F. Vela.(Warin, Edward) (Entered: 08/02/2010)

08/06/2010	<u>97</u>	MOTION to Dismiss <i>MOTION TO TERMINATE CONSENT DECREE AND DISMISS CASE</i> by Attorney Linda L. Willard on behalf of Defendant Fred Britten.(Willard, Linda) (Entered: 08/06/2010)
08/06/2010	<u>98</u>	BRIEF in support of MOTION to Dismiss <i>MOTION TO TERMINATE CONSENT DECREE AND DISMISS CASE</i> <u>97</u> by Attorney Linda L. Willard on behalf of Defendant Fred Britten.(Willard, Linda) (Entered: 08/06/2010)
08/06/2010	<u>99</u>	INDEX in support of MOTION to Dismiss <i>MOTION TO TERMINATE CONSENT DECREE AND DISMISS CASE</i> <u>97</u> by Attorney Linda L. Willard on behalf of Defendant Fred Britten. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Willard, Linda) (Entered: 08/06/2010)
08/30/2010	100	TEXT MINUTE ENTRY for a telephone conference held in chambers on 8/30/10 with Senior District Judge Warren K. Urbom and counsel Assistant Attorney General Linda L. Willard for the Attorney General and Ed Warin and Amber Allred for the interested parties, Eric F. Vela and Jorge A. Galindo; Time Commenced: 10:01 a.m.; Time Concluded: 10:25 a.m. (BMH) (Entered: 08/30/2010)
08/30/2010	<u>101</u>	ORDER on Procedure. The plaintiffs shall have until September 30, 2010, to respond to the Defendants Motions to Terminate Consent Decree and Dismiss Case, to which the defendants may then have until October 12, 2010, to respond. Further activity on other motions now pending may be delayed until resolution of the Defendants Motions to Terminate Consent Decree and Dismiss Case. Ordered by Senior Judge Warren K. Urbom. (EJL) (Entered: 08/30/2010)
09/08/2010	<u>102</u>	ORDER terminating <u>88</u> Motion for Order of Contempt and Injunctive Relief. The Amended Motion to Enforce Consent Decree <u>95</u> is the operative motion regarding that issue. Ordered by Senior Judge Warren K. Urbom. (JAB) (Entered: 09/08/2010)
09/13/2010	<u>103</u>	MOTION to Appoint Counsel filed by John L. Lotter.(GJG) (Entered: 09/20/2010)
09/22/2010	<u>104</u>	ORDER ON MOTION FOR COUNSEL, FILING <u>103</u> – IT IS ORDERED that: 1. the clerk shall send to Edward G. Warin and Linda L. Willard, counsel for the present parties, a copy of filing <u>103</u> , and 2. response to filing <u>103</u> shall be made by counsel for Eric F. Vela and Jorge A. Galindo on or before October 12, 2010, and by counsel for the defendants on or before October 26, 2010, regarding the issue of intervention.Ordered by Senior Judge Warren K. Urbom. (Copies mailed as directed and to pro se party)(TCL) (Entered: 09/22/2010)
09/30/2010	<u>105</u>	BRIEF in opposition to MOTION to Dismiss <i>MOTION TO TERMINATE CONSENT DECREE AND DISMISS CASE</i> <u>97</u> by Attorney Edward G. Warin on behalf of Interested Parties Jorge A. Galindo, Eric F. Vela.(Warin, Edward) (Entered: 09/30/2010)
10/08/2010	<u>106</u>	BRIEF in support of MOTION to Dismiss <i>MOTION TO TERMINATE CONSENT DECREE AND DISMISS CASE</i> <u>97</u> <i>DEFENDANTS' REPLY BRIEF</i> by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter, Charles Hohenstein, Mario Peart, John P. Shaw.(Willard, Linda) (Entered: 10/08/2010)
10/12/2010	<u>107</u>	BRIEF in opposition to MOTION to Appoint Counsel <u>103</u> by Attorney Edward G. Warin on behalf of Interested Parties Jorge A. Galindo, Eric F. Vela.(Warin, Edward) (Entered: 10/12/2010)
10/12/2010	<u>108</u>	INDEX in support of Brief <u>107</u> by Attorney Edward G. Warin on behalf of Interested Parties Jorge A. Galindo, Eric F. Vela. (Attachments: # <u>1</u> Declaration of A. Allred, # <u>2</u> Exhibit A, September 26, 2010 Letter from Marco Torres)(Warin, Edward) (Entered: 10/12/2010)
10/15/2010	<u>109</u>	MOTION to Withdraw as Attorney by Attorney Amber Allred on behalf of Interested Parties Jorge A. Galindo, Eric F. Vela.(Allred, Amber) (Entered: 10/15/2010)

10/18/2010	<u>110</u>	ORDER granting <u>109</u> Amber Allred's Motion to Withdraw as Attorney. Ordered by Senior Judge Warren K. Urbom. (JSF) (Entered: 10/18/2010)
10/22/2010	<u>111</u>	BRIEF in opposition to MOTION to Appoint Counsel <u>103</u> by Attorney Linda L. Willard on behalf of Defendant Fred Britten.(Willard, Linda) (Entered: 10/22/2010)
11/05/2010	<u>112</u>	MOTION for Leave <i>To File Instantly a Brief in Response to Defendants' Brief in Opposition to Mr. John Lotter's Motion</i> by Attorney Edward G. Warin on behalf of Interested Parties Jorge A. Galindo, Eric F. Vela.(Warin, Edward) (Entered: 11/05/2010)
11/05/2010	<u>113</u>	BRIEF <i>in Response to Defendants' Brief in Opposition to Mr. John Lotter's Motion</i> by Attorney Edward G. Warin on behalf of Interested Parties Jorge A. Galindo, Eric F. Vela.(Warin, Edward) (Entered: 11/05/2010)
11/08/2010	<u>114</u>	ORDER granting <u>112</u> Interested Parties' Motion to File Instantly a Brief in Response to the Defendants' Brief in Opposition to Mr. John Lotter's Motion. Ordered by Senior Judge Warren K. Urbom. (EJL) (Entered: 11/08/2010)
12/06/2010	<u>115</u>	MEMORANDUM AND ORDER ON PENDING MOTIONS – Vela's and Galindo's "Amended Motion to Enforce Consent Decree," (ECF No. <u>95</u>), is denied; Britten's "Motions to Terminate Consent Decree and Dismiss Case," (ECF No. <u>97</u>), are granted insofar as they seek the denial of Vela's and Galindo's motion to enforce the consent decree, but in all other respects, I reserve ruling on the motion until the death row inmates have been given an opportunity to supplement the record. Lotter's motion to appoint counsel, filing <u>103</u> , is granted. Counsel shall contact my chambers within seven days of the date of this order to schedule a meeting or teleconference concerning the progression of this case. Ordered by Senior Judge Warren K. Urbom. (Copy mailed to pro se party)(GJG) (Entered: 12/06/2010)
12/15/2010	<u>116</u>	ORDER – In my Memorandum and Order on Pending Motions, filing <u>115</u> , and under the inherent authority of the court Michael J. Wilson, Schaefer Shapiro, 1001 Farnam Street, 3rd Floor, Omaha, Nebraska 68102, (402) 341-0700, is appointed counsel for John L. Lotter and all other inmates who constitute a class of persons serving a death penalty in the Tecumseh State Correctional Institution; and payment of litigation costs and attorney fees shall be paid from the Federal Practice Fund under the restrictions set out in the Amended Plans for Administration of the Federal Practice Fund and The Federal Practice Committee District of Nebraska (As of July 15, 2008). Ordered by Senior Judge Warren K. Urbom. (Copy mailed to pro se party)(AOA) (Entered: 12/16/2010)
01/14/2011	<u>117</u>	MOTION for Extension of Time filed by Attorney Edward G. Warin on behalf of Interested Parties Jorge A. Galindo and Eric F. Vela. (TEL) (Entered: 01/14/2011)
01/14/2011	<u>118</u>	ORDER granting <u>117</u> Motion to Extend. Case Management Deadline set for 1/17/2011. Ordered by Senior Judge Warren K. Urbom. (EJL) (Entered: 01/14/2011)
01/20/2011	119	TEXT MINUTE ENTRY for telephone conference held in chambers on 1/20/11 with Senior District Judge Warren K. Urbom and counsel Linda L. Willard, Ed Warin and Michael Wilson; Time Commenced: 11:00 a.m.; Time Concluded: 11:22 a.m. (BMH) (Entered: 01/20/2011)
02/01/2011	<u>120</u>	MEMORANDUM AND ORDER – There is no longer need to refer to Eric F. Vela and Jorge A. Galindo as parties, but they now join Lotter and the other inmates on death row as beneficiaries of any provision of a decree favorable to Lotter. Eric F. Vela and Jorge A. Galindo, as well as all other inmates on death row, shall not be known as parties, unless application is made and receives approval of the court for joinder under Rule 20 or for intervention under Rule 24 of the Federal Rules of Civil Procedure. The interests of all inmates on death row, including Eric F. Vela and Jorge A. Galindo, shall be represented by Michael Wilson. The defendants have agreed that by reason of stare decisis any decree entered will be applicable to each death row inmate held at the Tecumseh facility at the time of the decree or thereafter. This action shall not proceed as a class action under Rule 23 of the Federal Rules of Civil Procedure, unless so designated by order of the court. The Clerk shall assign this case to Magistrate Judge Cheryl Zwart for pretrial purposes,

		including discovery, scheduling and holding pretrial conference or conferences, settlement conference or conferences, and setting a trial date amenable to counsel. Discovery is expected to be completed within three months of the date of this order, subject to change, of course, by Magistrate Judge Zwart. Counsel may proceed with discovery as orally stated in our telephone call of January 20, 2011, until any change is made by Judge Zwart. Edward G. Warin of Kutak Rock LLP, appointed by my order of March 1, 2010, to represent Eric F. Vela and Jorge A. Galindo, is relieved of his appointment, but has volunteered to remain as advisory counsel to Michael Wilson as may be requested by Michael Wilson. Matthew M. Enenbach has also appeared with Edward G. Warin for Eric F. Vela and Jorge A. Galindo. He similarly is relieved of representation of Vela and Galindo, except insofar as Mr. Warin's letter of January 17, 2011, appears to include Mr. Enenbach as a volunteer advisory counsel to Michael Wilson, as may be requested by Michael Wilson. I understand that neither Mr. Warin nor Mr. Enenbach expect to receive any fee but do expect to be reimbursed for litigation expense through the Federal Practice Fund. That arrangement of voluntary service is approved by the court. Ordered by Senior Judge Warren K. Urbom. (GJG) (Entered: 02/02/2011)
03/30/2011	<u>121</u>	NOTICE of Serving Plaintiff's First Set of Interrogatories and Requests for Production of Documents upon Defendants by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust (Wilson, Michael) (Entered: 03/30/2011)
05/24/2011	122	TEXT ORDER SETTING HEARING: Status Conference set for 6/1/2011 at 01:30 PM by telephone before Magistrate Judge Cheryl R. Zwart. Counsel for the defendants shall arrange the call. Ordered by Magistrate Judge Cheryl R. Zwart. (CRZ) (Entered: 05/24/2011)
06/01/2011	<u>123</u>	MEMORANDUM AND ORDER – IT IS ORDERED: As to the discovery disclosed by the defendants, defense counsel will identify any discovery it deems "confidential." Absent prior approval of the court, plaintiffs' counsel will not disclose to the plaintiffs any discovery designated as confidential by the defendants. A telephonic status conference to discuss further case progression will be held before the undersigned magistrate judge on September 1, 2011 at 10:00 a.m. Counsel for the defendants shall place the call. (Telephone Conference set for 9/1/2011 at 10:00 AM by telephone before Magistrate Judge Cheryl R. Zwart) Ordered by Magistrate Judge Cheryl R. Zwart. (TEL) (Entered: 06/01/2011)
06/13/2011	<u>124</u>	Certificate of Serving Discovery by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter, Charles Hohenstein, Mario Peart, John P. Shaw.(Willard, Linda) (Entered: 06/13/2011)
06/17/2011	<u>125</u>	Certificate of Serving Discovery by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter, Charles Hohenstein, Mario Peart, John P. Shaw.(Willard, Linda) (Entered: 06/17/2011)
08/24/2011	126	TEXT ORDER SETTING HEARING: At counsels request, the telephone Conference is reset for 9/1/2011 at 04:00 PM by telephone before Magistrate Judge Cheryl R. Zwart. Counsel for the defendants shall place the call. Ordered by Magistrate Judge Cheryl R. Zwart. (DMS) (Entered: 08/24/2011)
09/01/2011	<u>127</u>	FINAL PROGRESSION ORDER – Depositions due November 30, 2011. In Chambers Conference set for 5/14/2012 at 08:30 AM before Senior Judge Warren K. Urbom. Non-Jury Trial set for 5/14/2012 at 09:00 AM in Courtroom 4, Robert V. Denney Federal Building, 100 Centennial Mall North, Lincoln, NE before Senior Judge Warren K. Urbom. Pretrial Conference set for 4/26/2012 at 09:00 AM in Chambers before Magistrate Judge Cheryl R. Zwart. Ordered by Magistrate Judge Cheryl R. Zwart. (CRZ) (Entered: 09/01/2011)

09/16/2011	<u>128</u>	Joint STIPULATION by Attorney Michael J. Wilson on behalf of Plaintiff John Rust.(Wilson, Michael) (Entered: 09/16/2011)
09/19/2011	<u>129</u>	ORDER granting <u>128</u> Stipulation. Ordered by Magistrate Judge Cheryl R. Zwart. (CRZ) (Entered: 09/19/2011)
10/12/2011	<u>130</u>	Certificate of <i>Serving Discovery</i> by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter, Charles Hohenstein, Mario Peart, John P. Shaw.(Willard, Linda) (Entered: 10/12/2011)
10/12/2011	<u>131</u>	MOTION to Incur Expenses from Federal Practice Fund by Attorney Michael J. Wilson on behalf of Plaintiffs John Rust, Peter Hochstein, Charles J. Palmer and Steven Harper.(Wilson, Michael) Modified on 10/12/2011 to add all plaintiffs per attorney's request (AOA). (Entered: 10/12/2011)
10/17/2011	<u>132</u>	ORDER granting <u>131</u> Motion to Incur Expenses from Federal Practice Fund. Ordered by Senior Judge Warren K. Urbom. (EJL) (Entered: 10/17/2011)
01/09/2012	<u>133</u>	Certificate of <i>Serving Discovery</i> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 01/09/2012)
01/11/2012	<u>134</u>	MOTION for Protective Order by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 01/11/2012)
01/11/2012	<u>135</u>	BRIEF in support of MOTION for Protective Order <u>134</u> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 01/11/2012)
01/11/2012	<u>136</u>	INDEX in support of MOTION for Protective Order <u>134</u> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Affidavit, # <u>3</u> Affidavit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Affidavit, # <u>8</u> Affidavit, # <u>9</u> Affidavit, # <u>10</u> Affidavit, # <u>11</u> Affidavit, # <u>12</u> Affidavit, # <u>13</u> Affidavit, # <u>14</u> Affidavit, # <u>15</u> Affidavit)(Wilson, Michael) (Entered: 01/11/2012)
01/11/2012	137	TEXT MINUTE ENTR for telephone conference held on 1/11/12 with Senior District Judge Warren K. Urbom and counsel Linda Willard and Michael Wilson; Time Start: 1:53 PM; Time Stop: 2:14 PM; Time in Court: 21 Minutes. (BMH) (Entered: 01/11/2012)
01/11/2012	<u>138</u>	MEMORANDUM AND ORDER ON MAIL ISSUE AND AMENDING DEADLINE FOR MOTIONS – On February 1, 2012, at 2:00 p.m. I shall initiate a telephone conversation with Ms. Willard and Mr. Wilson to discuss possible resolution of the complaints by the plaintiffs about the handling of mail in the prison, allowing time for Ms. Willard to investigate relevant activities and procedures at the prison. The defendant shall have until February 1, 2012, to respond to the newly–filed Motionfor Protective Order, filing <u>134</u> . The Magistrate Judge's order of September 1, 2011, filing <u>127</u> , is amended by changing paragraph b to read: the deadline for filing motions to dismiss, motions for summary judgment or motions to exclude expert testimony on Daubert and related grounds is February 29, 2012. Ordered by Senior Judge Warren K. Urbom. (AOA) (Entered: 01/12/2012)
01/26/2012	<u>139</u>	Certificate of <i>Serving Supplemental Discovery</i> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 01/26/2012)
01/27/2012	<u>140</u>	RESPONSE to <i>Death Row Inmates' Concerns Regarding Legal Mail</i> by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter,

		Charles Hohenstein, Mario Peart, John P. Shaw.(Willard, Linda) (Entered: 01/27/2012)
01/27/2012	<u>141</u>	INDEX in support of Response, <u>140</u> by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter, Charles Hohenstein, Mario Peart, John P. Shaw. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Willard, Linda) (Entered: 01/27/2012)
01/31/2012	<u>142</u>	Certificate of <i>Serving Supplemental Answers to Discovery</i> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 01/31/2012)
02/01/2012	<u>143</u>	TEXT MINUTE ENTRY for telephone conference held on 02/01/12 with Senior District Judge Warren K. Urbom and counsel Linda Willard and Michael Wilson; the court takes judicial notice of filings 136 and 141; no audio recording was made of the telephone conference; Time Start: 1:57 PM; Time Stop: 2:23 PM; Time in Court: 26 Minutes. (BMH) Modified on 2/7/2012 to reference filings and no audio recording(BMH). (Entered: 02/01/2012)
02/01/2012	<u>144</u>	Certificate of <i>Serving Supplemental Answers to Discovery</i> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 02/01/2012)
02/01/2012	<u>145</u>	MEMORANDUM OF HEARING BY TELEPHONE – The exhibits now received in evidence show no inappropriate misuse of the mails at the Tecumseh State Correctional Institution (TSCI) with respect to the plaintiffs or any of them since the issuance of the January 12, 2012, clarification document by Director Bob Houston. In light of that it appears that I best can hold in abeyance the Motion for Protective Order, ECF No. <u>134</u> . Depending upon the activity or lack of activity regarding the mail handling, the motion should be ready for resolution by April 1, 2012, or be declared moot. Ordered by Senior Judge Warren K. Urbom. (AOA) (Entered: 02/07/2012)
02/28/2012	<u>146</u>	INDEX of Exhibits in Support of Defendant's Motion to Terminate Consent Decree <u>97</u> by Attorney Linda L. Willard on behalf of Defendant Fred Britten. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit)(Willard, Linda) Modified on 2/29/2012. (TEL) (Entered: 02/28/2012)
02/28/2012	<u>147</u>	BRIEF in support of MOTION to Dismiss <i>MOTION TO TERMINATE CONSENT DECREE AND DISMISS CASE 97</i> by Attorney Linda L. Willard on behalf of Defendant Fred Britten.(Willard, Linda) (Entered: 02/28/2012)
03/01/2012	<u>148</u>	MOTION Terminate Consent Degree and Close Case regarding Brief <u>147</u> by Attorney Linda L. Willard on behalf of Defendant Fred Britten.(Willard, Linda) (Entered: 03/01/2012)
03/21/2012	<u>149</u>	RESPONSE regarding MOTION Terminate Consent Degree and Close Case regarding Brief <u>147</u> <u>148</u> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 03/21/2012)
03/21/2012	<u>150</u>	Certificate regarding MOTION Terminate Consent Degree and Close Case regarding Brief <u>147</u> <u>148</u> , MOTION to Dismiss <i>MOTION TO TERMINATE CONSENT DECREE AND DISMISS CASE 97</i> Amended Certificate of Service by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 03/21/2012)
03/21/2012	<u>151</u>	INDEX in support of <i>Brief in Opposition to State's Motion to Terminate Consent Decree and Dismiss Case</i> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust. (Attachments: # <u>1</u> Exhibit Affidavit

		of Carey Dean Moore, # <u>2</u> Exhibit Affidavit of Marco Torres, # <u>3</u> Exhibit Affidavit of Eric Vela, # <u>4</u> Exhibit Affidavit of Michael Ryan, # <u>5</u> Exhibit Affidavit of Jeffrey Hessler, # <u>6</u> Exhibit Affidavit of John Lotter, # <u>7</u> Exhibit Affidavit of Arthur Gales, # <u>8</u> Exhibit Affidavit of Raymond Mata, # <u>9</u> Exhibit Affidavit of Roy Ellis, # <u>10</u> Exhibit Affidavit of Jorge Galindo, # <u>11</u> Exhibit OM 116.01.02–Inmate Rights–Inmate Law Program, # <u>12</u> Exhibit Notice Westlaw to LexisNexis–June 17, 2011, # <u>13</u> Exhibit Saw Shaw Deposition, # <u>14</u> Exhibit OM 116.01.04–Inmate Rights–Photocopying Services, # <u>15</u> Exhibit Paddi Hughes Deposition, # <u>16</u> Exhibit Inmate Grievance Forms Re: Typewriter, # <u>17</u> Exhibit OM 107.01.01–Library Services, # <u>18</u> Exhibit Defendants' Answers to Plaintiffs' First Set of Interrogatories, # <u>19</u> Exhibit OM 207.03.03–Recreation Programs, # <u>20</u> Exhibit Michele Hillman Deposition, # <u>21</u> Exhibit Luke Morris Deposition, # <u>22</u> Exhibit Jamie Sahs Deposition, # <u>23</u> Exhibit Scott Busboom Deposition)(Wilson, Michael) (Entered: 03/21/2012)
03/22/2012	<u>152</u>	MOTION for Leave to File a Reply Brief in Support of Defendants' Motion to Terminate Consent Decree by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter, Charles Hohenstein, Mario Peart, John P. Shaw.(Willard, Linda) (Entered: 03/22/2012)
03/29/2012	<u>153</u>	REPLY BRIEF in support of MOTION Terminate Consent Degree and Close Case regarding Brief <u>147</u> <u>148</u> by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter, Charles Hohenstein, Mario Peart, John P. Shaw.(Willard, Linda) (Entered: 03/29/2012)
03/29/2012	<u>154</u>	INDEX in support of Reply Brief, <u>153</u> by Attorney Linda L. Willard on behalf of Defendants Charles Black, Fred Britten, Terence B. Campbell, Harold W. Clarke, John T. Eggers, Gary Grammer, Frank Gunter, Charles Hohenstein, Mario Peart, John P. Shaw. (Attachments: # <u>1</u> Exhibit 24, # <u>2</u> Exhibit 25)(Willard, Linda) (Entered: 03/29/2012)
04/09/2012	<u>155</u>	TEXT ORDER – The pretrial conference set for 4/26/2012 at 9:00 a.m. in the Chambers of Magistrate Judge Zwart is continued until further notice of the Court. Ordered by Magistrate Judge Cheryl R. Zwart. (DMS) (Entered: 04/09/2012)
05/02/2012	<u>156</u>	MEMORANDUM AND ORDER ON DEATH ROW INMATES' MOTION FOR PROTECTIVE ORDER <u>134</u> – The death row inmates' motion for a protective order is denied without prejudice. Ordered by Senior Judge Warren K. Urbom. (TEL) (Entered: 05/02/2012)
05/02/2012	<u>157</u>	MEMORANDUM AND ORDER ON DEFENDANTS' MOTION FOR LEAVE TO FILE A REPLY BRIEF <u>152</u> – Defendants' motion for leave to file a reply brief, is granted, and the defendants' brief <u>153</u> and index of evidence <u>154</u> will be considered in connection with Britten's motion to terminate the consent decree. Ordered by Senior Judge Warren K. Urbom. (TEL) (Entered: 05/02/2012)
05/02/2012	<u>158</u>	MEMORANDUM AND ORDER ON DEFENDANT'S MOTION TO TERMINATE THE CONSENT DECREE <u>148</u> – Britten's motion to terminate the consent decree is granted, and the consent decree entered on August 22, 1986, Filing No. 85, is terminated. Britten's previously–filed motion to terminate the consent decree <u>97</u> is denied as moot. Ordered by Senior Judge Warren K. Urbom. (TEL) (Entered: 05/02/2012)
05/02/2012	<u>159</u>	JUDGMENT pursuant to Memorandum and Order <u>158</u> – Judgment is entered in favor of the defendants, and the consent decree entered on August 22, 1986, Filing No. 85, is terminated. Ordered by Senior Judge Warren K. Urbom. (TEL) (Entered: 05/02/2012)
08/08/2012	<u>160</u>	MOTION for Reimbursement from Federal Practice Fund by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(Wilson, Michael) (Entered: 08/08/2012)
08/08/2012	<u>161</u>	INDEX in support of MOTION for Reimbursement from Federal Practice Fund <u>160</u> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A.

		Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust. (Attachments: # <u>1</u> Exhibit Thomas & Thomas Invoice, # <u>2</u> Exhibit General Reporting Services Invoice, # <u>3</u> Exhibit State of Nebraska Invoice, # <u>4</u> Exhibit Legal Imaging Solutions Invoice, # <u>5</u> Affidavit Affidavit of Counsel in Support of Motion for Reimbursement)(Wilson, Michael) (Entered: 08/08/2012)
08/21/2012	<u>162</u>	ORDER – The Motion for Reimbursement from the Federal Practice Fund (Filing No. <u>160</u>) filed by Plaintiff's counsel is granted, in part, as follows: Total expenses are ordered reimbursed in the amount of \$779.80. Ordered by Chief Judge Laurie Smith Camp. (E–mailed to PAW as directed) (TEL) (Entered: 08/21/2012)
02/06/2013	<u>163</u>	MEMORANDUM AND ORDER ON MOTION FOR ATTORNEY'S FEES FROM THE FEDERAL PRACTICE FUND – IT IS ORDERED that filings shall be made as follows: 1. Motion for Attorney's Fees from the Federal Practice Fund; 2. Index of Evidence in Support of Motion for Attorneys Fees from the Federal Practice Fund; 3. Counsels Affidavit in Support of Motion for Attorney's Fees from the Federal Practice Fund; and 4. the Motion for Attorney's Fees from the Federal Practice Fund, as well as the Counsel's Affidavit in Support of Motion for Attorney's Fees from the Federal Practice Fund, is referred to Chief Judge Laurie Smith Camp. Ordered by Senior Judge Warren K. Urbom. (TCL) (Entered: 02/06/2013)
02/06/2013	<u>164</u>	MOTION for Attorney Fees From the Federal Practice Fund by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(TCL) (Entered: 02/06/2013)
02/06/2013	<u>165</u>	INDEX OF EVIDENCE in Support of MOTION for Attorney Fees From the Federal Practice Fund <u>164</u> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(TCL) (Entered: 02/06/2013)
02/06/2013	<u>166</u>	COUNSEL'S AFFIDAVIT In Support of MOTION for Attorney's Fees From Federal Practice Fund <u>164</u> by Attorney Michael J. Wilson on behalf of Interested Parties Jorge A. Galindo, John L. Lotter, Eric F. Vela, Plaintiffs Steven Harper, Peter Hochstein, Charles J. Palmer, John Rust.(TCL) (Entered: 02/06/2013)
02/11/2013	<u>167</u>	ORDER – IT IS ORDERED: 1. The Motion for Attorney's Fees from the Federal Practice Fund (Filing No. <u>164</u>) filed by Plaintiff's counsel, Michael J. Wilson, is granted in part, as follows: Michael J. Wilson is awarded from the Federal Practice Fund a fee totaling \$6,000.00 for his service in this case; and 2. A copy of this Order shall be provided to Pat Williamson of the Clerk's Office so that he may make arrangements for payment from the Federal Practice Fund, and appropriate bookkeeping entries. Ordered by Chief Judge Laurie Smith Camp. (E–mailed to Pat Williamson)(TCL) (Entered: 02/11/2013)