

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JULIAN T. STONE, ET AL.,)
Charles E. Caine, Jr.,)
Plaintiffs,)
VS.)
JOHN O. BOONE, ET AL.,)
Harold W. Clarke, 1/)
Defendants.)

CIVIL ACTION NO. 73-1083-JLT

PLAINTIFF'S VERIFIED COMPLAINT FOR ENFORCEMENT OF CONSENT
DECREE and 103 C.M.R. 478, and for CIVIL CONTEMPT

This is an action brought by a class member; surviving party; intervenor; intended third party beneficiary and pro se plaintiff, Charles E. Caine, Jr., W-34359, pursuant to Federal Rules Of Civil Procedures 70 and 71 for civil contempt and for enforcement of this Court's consent decree entered in this matter on October 10, 1974, arising from the defendants and their officers, employees, agents, successors, and all persons acting in concert with them in the disobedience of the provisions of the consent decree entered into by the parties and this Court (Tauro, J.) on October 10, 1974 providing for the installation of an adequate law library at MCI-Walpole, now known as MCI-Cedar Junction. (Consent Decree attached as EXHIBIT A).

1. In 1973 former plaintiff, Julian T. Stone 2/ and the "STONE CLASS", filed this lawsuit alleging violation of their First, Sixth and Fourteenth amendments rights in conjunction with the defendants impeding inmates access to the courts by refusing to provide all inmates with access to law books and needed legal resource materials.

1/ Harold W. Clarke is the current Commissioner of Dept. of Correction, substituted for John O. Boone is no longer in office, pursuant to Fed.R.Civ.P. 25 (d)(1).
2/ Charles E. Caine, Jr., a state inmate is substituted for lead plaintiff, Julian T. Stone died in 2001 in MCI-Souza Baranoswki Correctional Center, pursuant to Fed.R.Civ.P. 25 (a)(2).

2. Thereafter, the lawsuit was certified as a class action pursuant to Rule 23 (a) and (b), affecting all present and future similarly situated prisoners incarcerated at MCI-Walpole/MCI-Cedar Junction.

3. On October 10, 1974 the parties entered into a binding consent decree, requiring among other things:

A. That "...a [LAW LIBRARY] will be installed at MCI-Walpole as soon as feasible. Said library shall contain BUT SHALL NOT BE LIMITED TO, the following volumes:

Paragraph - 2: Supreme Court Reporters (starting with 1950);
Para. 3: Federal Reporters (starting with 1960);
Para. 4: Federal Supplement (starting with 1960);
Para. 10: Massachusetts Decisions (start with volume 1);
Para. 28: Prison Law Reporters; and
Para. 38: Supreme Court Practice."

(Consent Decree attached as EXHIBIT A).

4. This Court's consent decree requires that the defendants shall also, within a reasonable time, but not later than December 1, 1974 agree to:

1. " providing funding of continuing revision (i.e. pocket parts) for the above [law] library beginning with the 1976 fiscal year;"
2. " provide the inmates at Walpole with adequate physical and support facilities for the law collection. These facilities shall include at least 400 linear feet of shelving;"
3. " supervised access for inmates during the week (both days and evenings) including weekends. The law library shall be open to all inmates (except as special circumstance dictate) for a reasonable number of hours during the week;"
4. " The parties shall also agree, within a reasonable time, to develop rules and regulations for the supervision and maintenance of the law library at MCI-Walpole;" and
5. " This decree shall be binding upon the defendants and their officers, employees, agents, successors, and all persons acting in concert with them.

(See, Consent Decree as EXHIBIT A).

5. Thereafter, the parties agreed upon and promulgated regulations for the supervision and maintenance of the law library as DOC 103 CMR 478.01 et seq. dated January 4, 1991 attached as EXHIBIT B.

6. On November 30, 1973 plaintiff Caine was committed to the custody and care of the defendants. Caine is serving a life sentence for first-degree murder. See Com. vs. Caine, 366 Mass. 366 (1974). He is currently incarcerated at MCI-Cedar Junction, formerly known as MCI-Walpole, in Walpole, Massachusetts.

7. From October 1988 through October 2004 defendants provided Caine a general population inmate with access to the MCI-Walpole/MCI-Cedar Junction main law library area accordance with DOC 103 Code Of Mass. Regulation 478.01 et seq., as mandated by this Court's consent decree. (See, 103 C.M.R. 478.00 attached as EXHIBIT B).

8. On September 5, 1996 defendants' agent, Nancy White, Associate Commissioner/General Counsel issued a memorandum to advise all institution librarians to remove all law books from their prison law libraries that are not "expressly mentioned in the Boone consent decree." White listed all the law books that "should be eliminated from inmate law libraries" within the Commonwealth. violates the Stone vs. Boone Consent Decree's mandate that "Said library shall contain BUT SHALL NOT BE LIMITED TO, the following (38) volumes:"

(See, White's MEMORANDUM attached as EXHIBIT C).

9. From 1991 to 1999 defendants had reduced the daily three (3) time periods (8:30am to 11:30am, 1:30pm to 3:30pm and 6:30pm to 8:30pm) of access to the main law library area for all inmates housed in the general population in both the West Wing and East Wing main corridor at MCI-Cedar Junction from 7-hours per day/49-hours per week to seven (7) 2-hour periods per week during the evening for inmates housed in the West Wing, and six (6) 2-hour periods per week during the afternoons for inmates housed in the East Wing in direct violation of the required time periods in this Court's Consent Decree.

10. From July 2000 to March 1, 2002 defendants' agent, Librarian, Beverly Ferris Veglas unilaterally removed over 2,000 volumes of law books from the shelves in the main law library area and has stored those law books in the storehouse at MCI-Cedar Junction, because said law books are not among the 38 named volumes mandated by this Court's consent decree. Veglas removed the entire volumes of Corpus Juris Secundum, Words & Phrases, Acts & Resolves, Mass. Decisions Volumes 1 to 1959, Supreme Court Report from 1900 to 1959 and many other law books. The removal of these law books violates this Court's consent decree that states "Said library shall contain BUT SHALL NOT BE LIMITED TO, the following (38) volumes;" named in the consent decree. (See Partial list of removed law books attached as EXHIBIT D).

11. On February 23, 2004 defendants' agent, Veglas denied Caine's requests for photocopies and access to the Atlantic 1st, 2nd and 3rd series, to pre-1960 Mass. Decisions and U.S. Supreme Court Decisions, because those law books are not expressly mandated in this Court's consent decree. (See LEGAL PHOTOCOPYING REQUEST FORMS attached as EXHIBITS P 8, 9, 25 and 27 to 40).

12. Thereafter, as a direct result of the defendants' agent, Veglas' actions in removing over 2,000 volumes of law books from the main law library area and eliminating the 20-year-old policy of providing all inmates with photocopies of statutes, case laws, treatises and other legal resource materials to keep and study in their cells, plaintiff Caine and similarly situated inmates' ability to effectively research legal issues and draft criminal appeals and condition confinement lawsuits have been severely hindered since time and capacity (20 inmates at a time per period) in the (general) library area was reduced and several inmates may need to use the same law

book, at the sametime, it is possible that it takes weeks to simply read one court decision per-period in the general library area.^{3/}

13. On November 8, 2004 defendants' agent, Librarian, Veglas converted the main law library area into a [GENERAL] library area in direct violation of this Court's consent decree. (See EXHIBIT A).

14. From October 27, 2004 through November 8, 2004 defendants' agent, Beverly F. Veglas the Librarian, John Luongo the Deputy Superintendent of Classification and Programs, and David Nolan the Superintendent at MCI-Cedar Junction used the sub-provision in 103 CMR 478.12 (2) "written procedures regarding daily [operating procedures] shall be established by the Librarian with the approval of the superintendent." to ignore and violate certain specific provisions contained in this Court's October 10, 1974 Consent Decree, in the following respects:

A. To substantially change and modify this Court's consent decree and D.O.C. 103 C.M.R. 478.01 et. seq. and implementation of the so-called "MCI-Cedar Junction Procedure for 103 CMR 478.00 Library Services" without seeking both the permission of the class members nor written approval of this Court after a hearing upon a motion to modify certain specific provisions contained in the consent decree and 103 CMR 478.00. (See Beverly F. Veglas; MCI-C.J. Procedure for 103 CMR 478.00 attached as EXHIBIT E);

B. Defendants' agent, Librarian, Veglas in her sworn affidavit dated December 9, 2004 boldly admits that the defendants misused 103 CMR 478.12 (2) "OPERATING PROCEDURES", to disregard and modify certain specific provisions of the October 10, 1974 Consent Decree without proper judicial decree as required by Rule 60 (b)(1-6). (See Veglas' AFFIDAVIT

Veglas stated that she determined, on her own initiative, to invoke 103 CMR 478.12 (2) "operating Procedures" to scrap

^{3/} plaintiff Caine's AFFIDAVIT in support of this Verified Complaint is attached herewith.

and amend 103 CMR 478.07 (1)(2)(5) and (6) "Staff"; 103 CMR 478.08 "Budget"; 103 CMR 478.10 (5) "General Library Services"; 103 CMR 478.11 (1)(2)(3)(4)(a-b) and (5)(a) "Legal Services", "Photocopies" of statutes, case laws, treatises and other legal resource materials eliminated and "Supplies" of carbon paper eliminated; 103 CMR 478.14 (1) and (2) "Responsible Staff"; and 103 CMR 478.17 "Effective Date" and, in effect to disregard the obligations imposed by this Court's consent decree, because Veglas concluded that 103 CMR 478.10 and 478.11 and this Court's consent decree were to costly, unworkable, unacceptable, bothersome and disliked in the following respects:

(i) Veglas without stating her qualification as required by 103 CMR 478.07 (1) "Institutional Librarian - A full time staff member holding either a Master's Degree in Librarian Science or certification as a professional librarian." Veglas affirmed in her affidavit at paragraph:

1. "I am...the...institutional librarian for MCI-Cedar Junction... I have held this position since June 12, 2000."

(See Veglas' Affidavit as

2. Pursuant to the Library Services regulation, written procedures regarding daily operating procedures shall be established by the librarian with the approval of the superintendent 103 CMR 478.12(2). Accordingly, the [Library] Services Procedures at MCI-Cedar Junction was implemented on November 8, 2004.

(See "MCI-Cedar Junction Procedure for 103 CMR 478, Library Services" attached as EXHIBIT E).

3. Pursuant to Library Services regulation, inmates are provided with photocopies "...of duplicating original legal documents and FOR THE PURPOSE OF INCREASING ACCESS TO THE LEGAL COLLECTION." within a reasonable amounts at no charge. 103 CMR 478.11 (4)(a-b) as EXHIBIT B. MCI-Cedar Junction provided these photocopying services to all 866 or so inmates that are housed at the institution...the library receives, on averages, 126 to 150 requests for photocopying...per week...These requests result in approximately 28,000 photocopies...each week...for a total of over 2 million copies per year. Making this extraordinary

number of photocopying for fiscal year 2003 to 2004 was \$ 21,000.00 non-inclusive of labor costs. The costs of photocopying are paid for by the Department Of Correction (D.O.C.)..."

4. "Consequently, for both fiscal and practical reasons, the 20 year-old procedure by which all inmates obtain their photocopies of original legal documents and statutes, case laws, treatises and other legal resource materials from the general library area has been reviewed and modified..." The 396 state convicted inmates who are housed in the general population (216 inmates in the West Wing and 180 inmates in the East Wing) at MCI-Cedar Junction are no longer permitted to request photocopies of statutes, case laws, treatises and other legal resource materials to keep and study in their cells, rather these 396 inmates are limited to requesting a maximum of 5 law books per (Paging System) request, to read in the general library area. In addition to the 216 inmates' 7 2-hour periods and the 180 inmates' 6 2-hour periods were REDUCED to five (5) 2-hour periods per week access to the general library area to request the use of law books. Only 20 inmates at a time are permitted to visit the general library area to read law books on a [FIRST COME BASIS]. The remaining 470 or so inmates housed in the restricted housing units and segregation cellblocks are permitted to visit the general library area and requires that those inmates be provided with photocopies of statutes, case laws, treatises and other legal resource materials to study in their cells in accordance with the 14 Day Legal Loaner Program (Paging System) for a maximum copy of 5 case laws per request, 1 or 2 requests per week. In the absense of the librarian or the librarian's designee, all photocopying request forms are to be submitted to the Department staff member on-duty and are placed in a secure area...the librarian or the librarian's designee

on his/her next designated workday, reviews the requests, and the requests are then turned over to the inmate law clerks for photocopying ... Inmate law clerks are hired solely for the purpose of handling all inmate photocopying requests.. Barring any extenuating circumstances approved photocopying requests are completed and returned to the inmate within 3 to 5 working days. Contrast EXHIBIT N.

5. General population inmates have law library/general library access for a total of 11-hours per week (e.g. cellblocks B-1, B-2, B-4, B-5, B-6 and B-8 go together on Tuesday & Thursday evenings, Friday & afternoons and Saturday mornings for 4 2-hour periods and one 2½-hour period on Sunday afternoons). See Library Access Schedule attachment B attached to EXHIBITS E & O. In the absence of the librarian and the librarian's designee, other Department staff, such as the Recreational Officers (R/O) and Correctional Officers (C.O.), cover the general library access periods. These non-library staff members are in the law/general library area solely for security purposes with surveillance cameras mounted in the ceiling. See EXHIBITS E and O.

15. The November 8, 2004 MCI-Cedar Junction law and general library policy and Veglas' December 9, 2004 affidavit (EXHIBIT E) demonstrates that the defendants and their agents, Veglas, Luongo and Nolan determined on their own initiative to scrap law library regulation 103 CMR 478.01 et seq. (EXHIBIT B), in effect, to disregard the obligations imposed by this Court's consent decree (EXHIBIT A), without seeking relief from the consent decree in accordance with proper judicial proceedings under Rule 60 (b), in the following respects:

A. The defendants and their agent, Veglas unilaterally modified the requirements of the consent decree by (1) converting the law library

area into a general library area; (2) removed all the law books from the shelves in the general library area and relocated the law books to an adjacent room that is only accessible to the inmate law clerks and prison staff, all inmates are no longer allowed to browse through the entire law collection stacked on the shelves; (3) requiring 216 inmates housed in the West Wing and 270 inmates housed in the East Wing to compete on a (FIRST COME BASIS) for access to (20) available slots per-period to use either the legal collection of law books or use the general (non-law books) collection of books like Harry Potter; (4) reduced the total 49 hours access per week to 11 hours access per week for all 396 state convicted inmates housed in the general population, and 15 hours access per week for all 90 federal pre-trial detainees; and (5) excluding "class members" from actually participating in the development of past and current rules and regulations governing the supervision and maintenance of the law library at MCI-Cedar Junction.

B. 103 CMR 478.11 (4)(a) that was promulgated pursuant to the terms of the consent decree requiring the defendants to provide Caine with access to CONFIDENTIAL photocopying of his original legal documents and legal reference materials, in his presense, and by a staff person designated by the superintendent.

Defendants and their agent, Veglas unilaterally modified 103 CMR 478.07 (6) "Institutions may use inmates as library clerks", 103 CMR 478.11 (4)(a) "photocopying services shall be for the purpose of duplicating original legal documents and for the purpose of increasing access to legal collection. The superintendent shall designate the the staff member responsible for photocopying original legal documents and legal reference materials."

Defendants and their agents modification is based on the defendants exercise of their discretion to create and confine at least 470 of the inmates housed within MCI-Cedar Junction/Walpole (C.J.) in various restricted housing units (i.e. Department Disciplinary Unit (D.D.U.)); Department Segregation Units (D.S.U.); East Wing Segregation Units (E.W.S.U.); Orientation Units (OU-I and II); ^{TEN BLOCK;} Nine Block; HSU and Federal Pre-Trial Detainees Units (Fed Blocks) and thereafter restricting those inmates access to the law library and requiring that those inmates be provided with photocopies of original legal documents and with copies of statutes, case laws, treatises and other legal resource materials and said photocopying compelled modification of 103 CMR 478.11 (4)(a) "Due to the sheer volume of photocopies being made, MCI-Cedar Junction's main law library, like all of the other libraries within the Department's institutions, no longer makes photocopies on demand during the inmate's allotted time in the law library/general library area as had been done for 20 years.

See EXHIBITS B, E, K and O.

"All photocopying requests are to be submitted to the Department staff member on-duty and are placed in a secure area." See, EXHIBITS E and O, VIII. Photocopying at 478.08 and 478.10.

"Inmate law clerks are hired solely for the purpose of handling all inmate photocopying requests." See, EXHIBITS E and O.

On or about November 20, 2004 plaintiff Caine filed an Inmate Request To See Staff Member Form informing defendants that their November 8, 2004 photocopy policy--non-confidential photocopying violated the consent decree and 103 CMR 478.11 (4)(a) and that said policy was chilling the exercise of his state and federal constitutional rights to seek redress in the courts.

C. 103 CMR 478.11 (5)(a) requires defendants to provide Caine with typing paper, pencils, carbon paper and envelopes for the express purposes of preparing and filing his legal pleadings in the courts, however, under defendants' November 8, 2004 policy Caine does not have a right to typing paper, ink pens and envelopes, unless he demonstrate a need for said supplies.

Defendants denied Caine's requests for carbon paper for the purpose of making carbon copy of his "original legal documents" as a back-up if his original legal documents are lost in the institutional mailing system as set forth in the MCI-Cedar Junction Procedure for 103 CMR 478.08 and 478.10 as EXHIBITS E and O, plus 4 NOTICES OF (G) Annual Library INVENTORY 2/20/2007; (H) Library Photocopy Protocol 8/1/07; (I) Annual Audit of LAW COLLECTION 4/23/08; and (J) Original Legal Photocopy 8/25/2008 attached as EXHIBITS G, H, I & J.

D. On or about November 29, 2004 Caine was compelled to comply with defendants' November 8, photocopy policy 478.08 in (EXHIBIT E), Caine submitted his legal documents (i.e. criminal memorandum and Decision, S.J.C. for Suffolk No. 2004-0160) through the institution mailing system to an on-duty staff member for photocopying outside the present of Caine. The on-duty staff member misplaced the said legal documents and said legal materials were never returned to Caine.

E. On November 8, 2004 defendants and their agents reduced the allotted law library access time from the general population to 10 hours of law library access periods per week for 216 inmates and limited the maximum number of inmates allowed ^{PER-} period to 25 inmates at a time, including inmate clerks (i.e. 4), thus general population has only 10 hours per week X 21 = 210 inmates, there are 216 inmates confined in the West Wing thus each inmate confined in the West Wing if luck [FIRST COME BASIS], are provided only 50 minutes per week

law library access time. The 180 state convicted inmates confined in the East Wing general population are also limited to 10 hours of law library access time per week and limited the maximum number of inmates allowed per period to 20 inmates at a time, including inmate clerks (i.e. 4), thus the 180 state convicted inmates and 90 federal pre-trial detainees housed in the general population has only 10 hours per week X 20 = 180 state convicted inmates, thus each state inmate confined in the East Wing if lucky! [FIRST COME BASIS], are provided only one-hour per week law library access time. On December 10, 2004 Caine filed an Inmate Request To See Staff Member Form alleging that the one hour per week law library time was inadequate and violated the consent decree and was preventing Caine from researching, preparing and filing his 4th Rule 30 Motion For New Trial.

F. On December 12, 2004 defendants implemented a revised promulgated 103 CMR 478.00 deleting carbon paper 478.11 (5)(a), and also deleted photocopying services shall be "...for the purpose of increasing access to the legal collection." clearly violates this Court's consent decree that states "Said library shall contain BUT SHALL NOT BE LIMITED TO, the following (38) volumes:" See 103 CMR 478.00 Library Services dated December 1, 2004 attached as EXHIBIT K.

G. On January 17, 2005 defendants denied Caine's requests for a photocopy of the November 8, 2004 MCI-Cedar Junction Procedure for 103 CMR 473 Library Services policy marked EXHIBIT E. Thereafter, defendants' agent, Veglas denied Caine's request for a copy of the 103 CMR 478.00 and other policies are to be read in the general library area. See LEGAL INTERLIBRARY LOAN REQUEST FORM attached as EXHIBIT P-7 to 9.

H. On August 31, 2005 plaintiff Caine filed a GRIEVANCE No. 12955 alleging that the on-duty C.Officer assigned to the law library area refused Caine's requests to unlock the wall cabinet so that Caine could resume reading the Federal Habeas Corpus Practices & Procedures and the Lawyers Manual because Caine has a petition C.A. No. 03-11065-PBS pending in this Court. Said Grievance was partial approved on September 29, 2005 by the Institutional Grievance Coordinator (IGC), Ann Marie Aucoin, C.O.I stated "That the on-duty C.O. inadvertently failed to note the postings placed in the library." to unlock wall-cabinet. See GRIEVANCE No. 12955 attached as EXHIBIT L.

I. On September 1, 2005 Caine filed another Grievance No. 12981 alleging the on-duty C.O., Barrett refused Caine's requests to unlock the wall-cabinet so that Caine could resume reading the Federal Habeas Corpus Practice & Procedures and Lawyer Manual because Caine has a petition C.A. No. 03-11065-PBS pending in this Court. Said grievance was denied on September 30, 2005 because this problem was resolved in grievance No. 12955 described in preceding paragraph H. See GRIEVANCE No. 12981 attached as EXHIBIT M.

J. On November 25, 2005 Caine filed a Grievance No. 14762 alleging the on-duty C.R.O., Gary Fyfer denied Caine's requests to accept and approve photocopying request forms with attached original legal documents. Recreational Officer, Fyfer claimed he is not authorized to accept completed legal photocopying request forms from inmates nor is he authorized to unlock the photocopy machine. Said grievance was denied on November 29, 2005 by IGC, Ann Marie Aucoin, C.O.I. See GRIEVANCE No. 14762 attached as EXHIBIT N.

K. On August 3, 2007 Caine filed Inmate Request To See Staff Member Form to Beverly F. Veglas, Librarian and Richard Solomon,

Recreational Officer who is permanently assigned to the law library area since 1985, and plaintiff Caine alleged that since February of 2005 he has been and continues to be denied physical access to the law library area at least once or twice a week due to the [FIRST COME BASIS] that limits only 4 inmates from each cellblock is allowed access to the law library per-period as set forth in ATTACHMENT G to the revised MCI-Cedar Junction Procedure for 103 CMR 478.00 attached as EXHIBIT O.

Defendants' agent, Veglas denied Caine's propose remedies for adequate law library access time per week for all inmates who wish to conduct legal research in the general library area because inmates who wish to use the general library area to socialize with fellow inmates, or browse through the (non-legal) general collection of books like Harry Potter, those inmates have the same constitutional rights to access to the general library area as due those inmates who wish to access the general library area to conduct legal research, to write or type-up criminal pleadings or condition confinement lawsuits. See Inmate Request To See Staff Member Form attached as EXHIBIT Q.

L. On August 9, 2007 Caine filed a "Legal Interlibrary Loan Request Form to Beverly Ferris Veglas, Librarian and Richard Solomon, R/O permanently assigned to the law library area, and Caine also attached a list citing 52 case laws and other resource materials have been TORN-OUT OF THE LAW BOOKS, and Caine requested copies of said missing legal case laws to read in his cell. See Request Form attached as EXHIBIT P 1 to 42.

Thereafter, on August 10, 2007 defendants' agent, Veglas sent copies of 10 case laws to Caine to read in his cell under the new

14 Day Legal Loan Program which allowed plaintiff Caine to request copies of a maximum of 5 case laws (i.e. torn-out of the lawbooks) per request, and only 2 requests per week which violates this Court's consent decree and 103 C.M.R. 478.11 (4)(a).

M. On October 1, 2007 Caine filed another LEGAL INTERLIBRARY LOAN REQUEST FORM to Beverly F. Veglas, Librarian and Richard Solomon, R/O, and Caine attached a 2nd list citing 77 case laws have either the first 2 pages or last 2 pages torn-out of the law books, and Caine requested copies of these said missing case laws to read in his cell in accordance to 103 CMR 478.11 (4)(a) "...for the purpose of increasing access to the legal collection." and 478.11 (4)(c) " The librarian shall make reasonable efforts to secure materials not in an institution's collection but available through established inter-library loan procedures." See Legal Interlibrary Loan Request Form attached as EXHIBIT P 17 to 22.

Thereafter, on October 3, 2007 Caine filed a grievance No. 29823 alleging that Veglas denied his request for copies of 5 case laws torn-out of the law books to read in his cell as described in preceding paragraph M. Said grievance partially approved by IGC/C.O., Robert E. Stork who stated "Case law that is available in the law library must be read in the library. Only cases that area not available in the law library may be requested through the institution librarian on a 14 Day Loaner period." Grievance Appeal denied by Supuerintendent, Peter St. Amand who stated "I concurred with IGC,..there is no policy that mandates the librarian to provide copies of case law to inmates." (See GRIEVANCE No. 29823 attached as EXHIBIT R).

N. On November 29, 2007 defendants' agent, Veglas informed Caine that her supervisor Mary-jo Sweeney, Manager Of Library Services had ordered Veglas to terminate the 14 Day Legal Loaner Program to all inmates housed in the general population, ^{but} continue to provide the 14

14 Day Legal Loaner Program to all inmates housed in the restricted units and segregation cellblocks within MCI-Cedar Junction.

O. On December 17, 2007 plaintiff Caine was removed from the general population and transferred to the Department Segregation Unit (D.S.U.) cellblock B-3 for being forced to urinate in a plastic bag lining a trash barrel in the main law library area, because the on-duty C.O., Timothy Mello refused to allow Caine to return to his cell to use the toilet. Veglas had issued an order that the inmate toilet and drinking ^{WATER} facility located across the hallway from the law library was no longer available to inmates because Veglas was using said facility. See Disciplinary Report No. 121889 attached as EXHIBIT T, and also see EXHIBITS E and O at 478.02 (I)(I) and 478.02 (I)(G) "Inmates who request to leave the main law library for purpose of using the bathroom will be allowed to leave, however, may not be allowed to return."

P. On December 27, 2007 defendants' agent, Veglas denied Caine's Legal Photocopying Request Form for copies of 10 case laws dated before 1960, because this Court's consent decree does not mandate the law library to provide case law prior to 1960. See EXHIBIT P 29 & 30.

Thereafter Veglas suggested that Caine can purchase copies of the said 10 case laws cited by the U.S. Supreme Court from the Bristol Trial Court Law Library in violation of this Court's consent decree and 103 CMR 478.11 (4)(c). See Legal Photocopying Request Form marked as EXHIBIT P 27 & 28, and April 15, 2008 Reply letter by Debra O'Donnell, Acting Head Law Librarian at Bristol Law Library attached as EXHIBIT S.

Q. On January 10, 2008 defendants' agent, Librarian, Beverly F. Veglas denied plaintiff Caine's request to use the minimum 5 hours per week access to either the main law library area or Block 10 D.S.U. Satellite Law Library area to conduct legal research on his 4th Rule

30 Motion For New Trial and to use the typewriter and photocopy machine as mandated in this Court's Stipulation Of Dismissal in Cepulonis vs. Fair, U.S.D.C., C.A. No.78-3233-Z dated June 24, 1987. Veglas denied Caine's request to visit the Satellite Law Library area because Veglas believes the Stipulation does not apply to DSU cell-blocks B-3 and B-7 which her decision violates PART I.A. in the Stipulation in Cepulonis. See Veglas' Reply LETTER dated 1/10/08 attached as EXHIBIT U.

R. On January 18, 2008 plaintiff Caine filed a grievance No. 31752 alleging that the Librarian, Veglas has restricted Caine to submitting a written request for copies of a maximum of 5 case laws per request once a week or once a month for purpose of legal research on his 4th Rule 30 Motion For New Trial is in direct violation of this Court's consent decree in Stone vs. Boone, and also the Stipulation in Cepulonis. Said grievance denied by IGC on June 20, 2008. Grievance Appeal pending. See Grievance Forms attached as EXHIBIT V and EXHIBITS P 29 to 40.

L E G A L A R G U M E N T

S T A N D I N G

Caine is a member of Julian T. Stone, et al vs. John O. Boone, et al, U.S.D.C. Mass. Civil Action No. 73-01083-JLT class and is a third party beneficiary of the Stone, et al consent decree of October 10, 1974 pursuant to Federal Rules of Civil Procedures 71 and thereby has standing to bring this action to enforce the consent decree.

Hook vs. State Of Aroz. Dept. Of Corrections, 972 F.2d 1012, 1015 (9th Cir. 1992) "Rule 71 clearly allows intended third party beneficiaries to enforce consent decrees." "In short, intended third party beneficiaries of a consent decree have standing to enforce the decree." Id. 972 F.2d at 1014.

It is indisputable that plaintiff Caine is an intended third party beneficiary under the 1974 consent decree. The decree provides that "defendants to provide...an adequate law library at MCI-Walpole", "shall be open to all inmates" and "supervised access for inmates". (See Consent Decree marked as EXHIBIT A).

In any event, the Stone litigation was certified as a class action by this Court to include all future inmates house at Walpole.

Caine has been an inmate confined within MCI-Walpole/MCI-Cedar Junction since November 30, 1973. Thus, Caine is an intend third party beneficiary of 1974 consent decree and with standing to enforce his rights under the 1974 consent decree.

BREACH OF CONSENT DECREE

It is well established that consent decrees are essentially contracts agreements that are given the status of a judicial decree. Contract principles are generally applicable in our analysis of consent decrees, provided contract analysis does not undermine the judicial character of the decree. Consent decrees are construed as contracts for purposes of enforcement. United States v. ITT Continental Baking Co., 420 U.S. 223, 238 (1975).

Hook, "Therefore, enforcement of sconsent decrees is govern by the established contract principles that non-parties, as intended third party beneficiaries, may enforce an agreement." Id 972 F.2d at 1014.

Laplante v. Department of Correction, _____ F. Supp. 2d _____ 2003 WL 1877872(D. Mass.) "under Massachusetts law, a settlement agreement is enforceable as a contract. United States v. Baus, 834 F.2d 1114, 1127 (1 Cir. 1987). Contract interpretation ordinarily is a question of law for the court...Where the wording

of the contract is unambiguous, it must be enforced according to its terms. Edmonds v. United States, 642 F.2d 877, 881 (1 Cir.1981). A question of fact for determination by a jury arises only when contractual terms are ambiguous." WL 1877872 at 6.

Morrison v. Travisono, 509 F. 2d 1358, 1360 (1 Cir.1975)
"Defendants cannot unilaterally order the elimination of rights determined in federal courts simply because the decree was to be enforced through state machinery."

Defendants cannot ignore the decree because they viewed the terms of the decree unworkable, unacceptable, costly and burdensome.

Defendants' agents, Nancy White's Memorandum and Beverly F. Veglas' affidavit demonstrates that the defendants determine on their own to disregard the terms of the consent decree, without leave of this Court. (See, EXHIBIT C). Rufo vs. Inmates Of Suffolk County Jail, 112 S.Ct. 748,760 (1992) "a party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants revision of the decree."

"A party seeking modification of a consent decree may meet its initial burden by showing either a significant change either in factual conditions or in law." The burden rests on the defendants and cannot be alleviated by ignoring the consent decree and compelling the inmates to undertake litigation to enforce the decree." Hook, 972 F.2d at 1017. The proper approach for modification is a Rule 60(b) motion. Defendants failed to seek judicial modification.

In the case at bar, the consent decree unambiguously obligates the defendants and their agents to provide Caine! with access to:

2. Supreme Court Reports (starting with 1950);
3. Federal Reporters (starting with 1960);

4. Federa Supplement (starting with 1960;
10. Massachusetts Decisions (starting with Volume 1);
28. Prison Law Reports;
33. Handbook on criminal law in the U.S. District Court;
35. Sentencing;; and
38. Supreme Court Practice. (See Consent Decree EXHIBIT A)

Further, the decree obligates the defendants:

1. To fund costs for MCI-Walpole/Cedar Junction law library beginning with the 1976 fiscal year;

2. To provide the inmates at Walpole with adequate physical and support facilities for the law collection. These facilities shall include at least 400 linear feet of shelving;
(Exhibit "A")

3. To provide supervised access for inmates during the week (both days and evenings) including weekends. The law library shall be open to all inmates...for a reasonable number of hours during the week;

4. The parties shall also agree, within a reasonable time, to develop rules and regulations for the supervision and maintenance of the law library at MCI-Walpole. Thereafter the parties agreed upon 103 CMR 478.01 et seq.

The September 5, 1996 Memonrandum by Nancy White, the November 8, 2004 Library policy, and Beverly F. Veglas' affidavit of December 9, 2004 (Exhibits C, D & E) reveals that the defendants simply determined, on their own initiative, to scrap both this Court's consent decree and 103 CMR 478.01 et seq. (Exhibits A & B) and, in effect, to disregard the obligations imposed on them by the consent decree and 103 CMR 478.11 as unworkable, costly and bothersome. (Exhibits E & O).

This the defendants cannot do, in fact the defendants are bound by the terms of the consent decree until this court issues an order otherwise under Rule 60(b).

Here, the terms of the decree and 103 CMR 478.11 and defendants flagrant disregard for those terms are clear.

Accordingly, defendants have breached the consent decree and 103 C.M.R. 478.00.

CIVIL CONTEMPT

A court's inherent power to hold a party in civil contempt may be exercised only when (1) the order the party allegedly failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the party has not diligently attempted in a reasonable manner to comply." EEOC v. Local 638 Local 28 of Sheet Metal Worker's Int., 753 F.2d 1172, 1178 (2 Cir. 1985), aff'd 478 U.S. 421 (1986). These prerequisites are satisfied here.

The district court has wide latitude in determining whether there has been a contemptuous defense of its order." Gifford v. Heckler, 741 F.2d 263, 266 (9 Cir.1984). Spallane v. United States, 493 U.S. 265, 276 (1990) "federal courts have inherent power to enforce their lawful orders through contempt." See also Fortin v. Comm'r of Mass. Dept. of Public Welfare, 692 F.2d 790, 797 (1 Cir. 1982).

Here, defendants, Nancy White's memorandum of September 5, 1996, the November 8, 2004 Library Services policy, Beverly F. Veglas' affidavit of December 9, 2004 and plaintiff Caine's grievances all demonstrates that the defendants are in contempt of the unambiguous terms of this Court's consent decree and 103 CMR 478.07(1)(2) and (6); 478.08; 478.11(2)(a-b); 478.11(3); and 478.11(4)(a-c) and (5)(a).

Further, White's memorandum, Veglas' affidavit, the November 8, 2004 and February 6, 2007 Library Services policies reveals that Veglas and the defendants misused 103 CMR 478.12(2) to modify and disregard certain terms contain in this Court's consent decree and 103 CMR 478.11 et seq.

Here, defendants November 8, 2004 policy, Veglas's affidavit and Caine's grievances all demonstrates that the defendants are in contempt of the unambiguous terms of the consent decree and 103 CMR 478.07(1)(2) and (6); 478.08; 478.11(2)(a-b); 478.11(3); 478.11(4)(a)(5)(a).

Further, Veglas affidavit and the November 8, 2004 policy reveals that Veglas and the defendants misused 103 CMR 478.12(2) to modify and disregard the consent decree and 103 CMR 478.11 et seq.

WHEREFORE, Plaintiff prays that this Court:

1. Issue a summons ~~CONCLUSION~~ directing the defendants to within ten (10) days hereof appear and show cause why the instant complaint for civil contempt should not be granted;

2. After hearing, find that the defendants and their agents breached the consent decree and are in contempt of court;

3. As a sanction for defendants breach and contempt, enter an order providing as follows:

A. Defendants are permanently enjoined from violating the terms of the October 10, 1974 consent decree and 103 CMR 478.07(1)(2)(6); 478.08; 478.10(1-5); 478.11(1)(2)(3)(4)(a-c) & (5)(a), forthwith.

B. Defendants are permanently enjoined and required to comply with the terms of the consent decree and 103 CMR 478.01 et seq.

C. Defendants and their agents are enjoined and required to forthwith recall the November 8, 2004 and February 6, 2007 MCI-Cedar Junction law library policies and issue a memo to all the inmates within MCI-Cedar Junction stating that said policies should not have been issued without judicial action pursuant to Rule 60 (b);

D. Defendants and their agents are enjoined and required to forthwith recall the 12/17/2004 D.O.C. 103 CMR 478.11 (4)(a) and re-instate the provision to provide all inmates housed with MCI-C.J. who request photocopies of statutes, case laws, treatises and other legal resource materials from the law collection and issue a memo to all the inmates housed within MCI-Cedar Junction stating that said subsection should not have been modified without the participation and approval of the inmate population in developing the rules and regulations governing the main law library in accordance with the terms of this Court's consent decree;

E. Defendants and their agents are enjoined and required to provide plaintiff Caine and similarly situated inmates housed in the general population with access to in-person confidential photocopying services for the express purposes of photocopying his/their legal documents, pleadings and legal reference materials;

F. Defendants and their agents are enjoined and required to forthwith convert the general library area back to a law library area and thereafter all inmates who visit the law library area shall be permitted to browse through the entire legal collection of law books stacked on the shelves;

G. Defendants and their agents are enjoined and required to forthwith remove 3 of the 4 chairs from each 5' X 2 $\frac{1}{2}$ ' tables to provide confidentiality to any inmate who wishes to use a table to conduct adequate legal research, to write or type criminal pleadings or condition confinement lawsuits, or to assemble briefs or complaints.

H. Defendants and their agents are enjoined and required to forthwith return all the law books, pocket parts and other legal resource materials that Veglas removed ^{from the main law library} from ~~from~~ from July 2000 to present date of this order, and has stored said law books in the storehouse,

to return said law books, pocket parts and other legal resource materials back to the shelves in the main law library for use by all the inmates housed at MCI-Cedar Junction as mandated in this Court's consent decree states "Said library shall contain BUT SHALL NO BE LIMITED TO, the following (38) volumes:"

I. Defendants and their agents are enjoined and required to forthwith develop and implement a REQUEST TO USE MAIN LAW LIBRARY FORM for all inmates housed in the general population shall be allowed to place their completed request forms ⁱⁿ the locked law library mailboxes already mounted on the wall in each cellblocks, at least one day before the time period requested to access the main law library area, a similar access procedure is already in use by inmates housed in the restricted cellblocks and segregation cellblocks;

J. Defendants and their agents are enjoined and required to re-open the toilet facility across the hallway to the main law library area to provide all MCI-Cedar Junction inmates access to a toilet, drinking water, toilet paper, handwash sink and soap while accessing the main law library area in accordance with the Department Of Public Health 105 Code of Massachusetts Regulation 451.100 through 117;

K. That defendants' attorney shall file an affidavit of compliance with the above orders within ten (10) days;

L. Defendants and their agents and successors in office are permanently enjoined from retaliating against Caine because he brought this matter to this Court's attention or any other inmate who may have testified or provided Caine with an affidavit in this matter and from transferring Caine to any other prison or correctional facility during the pendency of this action without permission of this Court.

4. Award plaintiff compensatory damages;

5. Award plaintiff Caine nonimal damage;
6. Award plaintiff the costs of this action, including reasonable standby attorney fees;
7. Award such other relief as this Court deems just and proper.

Charles E. Caine, Jr.

Charles E. Caine, Jr., W-34359
MCI-Cedar Junction
P.O. Box 100
South Walpole, Mass. 02071

September, 5, 2008

VERIFICATION

I, Charles E. Caine, Jr., W-34359 hereby certify that I reside at MCI-Cedar Junction an the plaintiff herein, and that I have read the foregoing complaint for civil contempt and enforcement of CONSENT DECREE and 103 CMR 478 and know the contents thereof and that the same are true and accurate, except as to the matters herein stated to be alleged on information and belief, and as to those matters I believe them to be true.

Charles E. Caine, Jr.

Charles E. Caine, Jr.

September, 5, 2008.