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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PRISON LEGAL NEWS, a registered
name of PRISONER'S
LEGAL NEWS, a non-profit
Washington corporation,

Plaintiff,
vs.

MILLARD COUNTY, a government
entity; ED PHILLIPS,
Sheriff of Millard County;
PENNY PROWS, Staff Member, Millard
County Jail; MICHAEL WINGET,
Staff Member, Millard County Jail;
CAPT. DEKKER, Commander, Millard
County Jail; and
JOHN DOES I - X, Officers of
Millard County Jail,

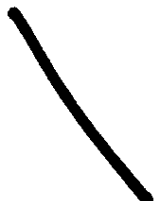
Defendants.

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: COMPLAINT
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: Case No.
:

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: 2:01-CV-_____
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Plaintiff **PRISONER'S LEGAL NEWS**, a Washington non-profit corporation, (d.b.a. **PRISON LEGAL NEWS**) by and through counsel, Brian M. Barnard and James L. Harris, Jr. complains, states, alleges and claims as causes of action against defendants as follows:

I. Introduction

1. This 42 U.S.C. § 1983 action seeks equitable relief from defendants' practices and enforcement of unconstitutional written and unwritten policies of the defendants which prevents plaintiff **PRISONER'S LEGAL NEWS (PLN)** from distributing its publication to inmates in the Millard County Jail. That policy is referred to hereinafter as the "no publication policy." The "no publication policy" is unlawful under the First and Fourteenth Amendments of the United States Constitution and Art. I, § 7 and § 15 of the Utah Constitution ("Art. I, § 7 & § 15"). At this time, plaintiff seeks no money damages but only equitable relief from the "no publications policy" which restricts the plaintiff's rights under the federal and state constitutional rights to free expression and deprives plaintiff of property and liberty interests without due process.

II. Jurisdiction and Venue

2. This Court has jurisdiction over this action invoking federal statutory and constitutional rights pursuant to 28 U.S.C. § 1331, § 1343(a)(3), and § 1343(a)(4).

3. This Court has jurisdiction to grant declaratory relief in this action pursuant to 28 U.S.C. § 2201.

4. This Court has supplemental jurisdiction over plaintiff's state constitutional claims pursuant to 28 U.S.C. § 1367(a). The plaintiff's state claims are related to, based upon the same operative facts and form part of the same case and controversy as the federal constitutional claims.

5. Venue is proper in the Central Division of the United States District Court for the District of Utah pursuant to 28 U.S.C. § 1391(b). All conduct complained of herein occurred or will occur in Millard County, Utah and the Central Division. The Millard County Jail is located at Fillmore, Utah in Millard County, Utah and the Central Division of this Court. The parties defendant to this action reside and/or have official duties in the Central Division of the District of Utah. Millard County maintains its principal place of business in the Central Division of Utah. The individual defendants are sued personally and as government agents and actors.

6. The plaintiff has no administrative remedies available through the Millard County Jail. Defendants preclude the plaintiff from pursuing any administrative remedy. Defendants refuses to deliver to Millard County Jail inmates editions of plaintiff's publication. Defendants given no notice to plaintiff of that refusal. Because of defendant's failure to give plaintiff notice of their actions, defendants prevent plaintiff from pursuing any administrative grievance.

III. Parties

7. **PRISONER'S LEGAL NEWS (PLN)** a non-profit Washington corporation has offices in Seattle, Washington and publishes and distributes nation-wide a monthly magazine known as *Prison Legal News* ("PLN").

8. **MILLARD COUNTY** is a governmental entity created under the statutes of the State of Utah and governing the geographical area known as Millard County, Utah. It is the employer of all other defendants. It is the owner and operator of the Millard County Jail.

9. **ED PHILLIPS** is the duly elected and serving Sheriff of Millard County. As such, on behalf of Millard County, he is ultimately responsible for supervising the Millard County Jail and its staff and for formulating, adopting, implementing and

enforcing all Millard County Jail rules and policies, including those regulating newspapers, magazines and other printed materials at the Millard County Jail. Sheriff Phillips is the policy maker for Millard County with regard to the operations of the Millard County Jail. He is an employee, officer and agent of Millard County. He is the supervisor of defendants Winget and Prows. He is the supervisor of JOHN DOES I - X.

10. **CAPT. DEKKER** is the Commander of the Millard County Jail. As such, on behalf of Millard County, he is responsible for supervising the Millard County Jail and its staff and for formulating, adopting, implementing and enforcing all Millard County Jail rules and policies, including those regulating newspapers, magazines and other printed materials at the Millard County Jail. He is an employee, officer and agent of Millard County. He is the immediate supervisor of defendants Winget and Prows. He is the immediate supervisor of JOHN DOES I - X.

11. **MICHAEL WINGET** and **PENNY PROWS** are officers and agents of the other defendants and/or Millard County. These defendants and each of them are involved in the receipt and processing of mail at the Millard County Jail sent by **PLN** to inmates of the Millard County Jail. They enforce the "no publications policy" on a day-to-day basis at the Millard County Jail.

12. JOHN DOES I - X are officers and agents of the other defendants and/or Millard County. Their full true and correct names are unknown to plaintiff at this time. When plaintiff discovers the full, true and correct names of these defendants, plaintiff will amend the complaint in this action. These defendants and each of them are involved in the receipt and processing of mail at the Millard County Jail sent by PLN to inmates of the Millard County Jail. They enforce the "no publications policy" on a day-to-day basis at the Millard County Jail.

IV. Facts

13. At all relevant times, defendants were, are and will be acting under color of state law, custom and usage, and were and are government actors.

14. For more than ten (10) years, plaintiff PLN has published a monthly magazine ("Prison Legal News" -- "PLN") which provides information with regard to issues affecting prisons, inmates, prison operations, related litigation, etc.

15. Plaintiff, PLN currently has subscribers who are inmates housed in the Millard County Jail.

16. Plaintiff, PLN has in the past had subscribers who were inmates housed in the Millard County Jail.

17. Defendants and/or their officers and agents in control of the Millard County Jail have enacted and are enforcing practices, rules and regulations governing distribution of and access to publications. Defendants and/or their officers and agents in control of the Millard County Jail have enacted and are enforcing certain unwritten practices governing distribution of and access to certain publications. As a result of said practices, and the unwritten and written policy of the defendants, inmates are denied certain publications. As a result of said practices and policies at the Millard County Jail, plaintiff **PLN** is denied the ability to deliver its publication, "PLN" to inmates in the Millard County Jail.

18. Defendants' Millard County Jail Policy 508, ¶ 2(f)(5), p. 2 provides:

Other reading materials that will not be allowed into the facility are:

* * *

f. publications that encourage or provide instruction for the commission of criminal activity or that is contrary to the preservation of safety, law, and order.

19. Defendants' Policy 508, ¶ 3(a), p. 2 provides:

Newspapers:

a. Inmates may not subscribe to newspapers.

20. Defendants' Policy 508, ¶ 4, p. 2 provides:

Magazines: Magazines may be approved on a case by case basis depending on the length of time an inmate will be incarcerated at the jail and his housing classification.

21. Defendants' Policy 501, ¶ 13, p. 6 provides:

Grieving the Mail System: Inmates may grieve the mail system through the regular inmate grievance system. The public may grieve or appeal mail system actions to the Jail Commander verbally or in writing. Whenever possible, appeals and grievances will be heard within two working days of being received.

22. Defendants' policies contain no guidelines or criteria with regard to Policy 508, ¶ 4, p. 2 which purports to allow magazines to "be approved on a case by case basis."

23. Defendants' "no publications policy" prohibits inmates from ordering, receiving, possessing or reading most written or printed materials (newspapers and magazines, including the "PLN").

24. Defendants' "no publications policy" bans "PLN" from the Millard County Jail.

25. The "no publications policy," developed and enacted by defendants and enforced by them, deprives plaintiff of its constitutional rights of free expression and due process.

26. There is no legitimate basis for defendants' total ban on all magazines and newspapers in the Millard County Jail.

27. The "no publications policy" is not reasonably related to any legitimate penological interests.

28. No valid rational connection exists between defendants' "no publications policy" and any legitimate state interests which the policy is intended to protect.

29. Defendants' "no publications policy" leaves Millard County Jail inmates with no alternative means of exercising free expression rights by receipt, possession and enjoyment of legal reading and other materials through the mail.

30. Defendants' "no publications policy" leaves plaintiff with no alternative means of exercising free expression rights in sending "PLN" to Millard County Jail inmates.

31. Accommodation of the free expression and due process rights of the plaintiff and Millard County Jail inmates will not have significant impact at the Millard County Jail.

32. Readily available alternatives exist to defendants' current "no publications policy" which, at a *de minimis* cost, could easily meet any legitimate or significant interests of defendants without sacrificing the plaintiff's free expression and due process rights.

33. **PLN**'s monthly magazine (currently approximately 24 pages in length) contains news articles and other materials of interest to correctional officials and inmates with regard to

litigation affecting prisons, jails and inmates. That magazine is called *Prison Legal News* ("PLN"). Litigation trends, recent court rulings and decisions, and other issues of interest to inmates and correctional officers are presented in monthly editions of "PLN". PLN has been distributing its magazine for more than ten (10+) years. The contents of "PLN" are beneficial to inmates and provide information as to inmates' legal rights and pending litigation.

34. During 2001, editions of "PLN" mailed to subscribing inmates in the Millard County Jail have not been delivered to the inmates. Those editions have been placed by defendants into the inmates' property storage.

35. During 2001, when editions of "PLN" mailed to subscribing inmates in the Millard County Jail have not been delivered to the inmates, defendants have informed the inmates of the denial of the material.

36. During 2001, when editions of "PLN" mailed to subscribe inmates in the Millard County Jail have not been delivered to the inmates, defendants denied "PLN" because it as "contraband" and/or "a threat to security."

37. The rejection of editions of "PLN" was made by WINGET, PROWS and/or JOHN DOE I - X acting on behalf of the other

defendants and following the practices and policies of the other defendants.

38. **PLN** has never received any notice from defendants with regard to defendants' recent refusal to deliver editions of "**PLN**". **PLN** has never been informed of any appeal or rights that it may have to challenge the rejections by defendants.

V. Causes of Action

39. Defendants' "no publications policy" violates the free expression rights of the plaintiff protected by the First Amendment and Art. I, § 15 of the Utah Constitution.

40. Defendants' actions and policy have deprived plaintiff of property without due process through defendants' summary rejection of "**PLN**".

41. Defendants' actions and policy have deprived plaintiff of a liberty interest without due process by not giving notice and by not allowing plaintiff to challenge defendants' summary rejection.

42. Defendants' actions and "no publications policy" violates the due process protections afforded the plaintiff by the Fourteenth Amendment and Art. I, § 7 of the Utah Constitution.

43. Plaintiff has suffered, is suffering and will continue to suffer harm as a result of enforcement of defendants' "no publications policy."

VI. Possible Damages

44. Plaintiff **PLN** seeks no damages at this time.

45. Plaintiff **PLN** may seek damages, if a Temporary Restraining Order and/or a Preliminary Injunction are not issued in this action.

46. Plaintiff **PLN** may seek leave of the Court to amend this action to seek damages, if appropriate.

VII. Immediate Equitable Relief

47. Unless a temporary restraining order and a preliminary injunction are issued, plaintiff will continue to suffer immediate and irreparable harm and a deprivation of its First Amendment and due process rights as well as a violation of the rights secured by the Utah Constitution, Art. I, § 7 & § 15. Irreparable injury "is presumed to exist whenever First Amendment constitutional rights are infringed." Albright v. Board of Education, 764 F. Supp. 687, 682 (D. Utah 1987).

48. Plaintiff is entitled to a prospective temporary restraining order, a preliminary injunction, a permanent injunction

and declaratory relief against defendants' "no publications policy."

VIII. Court Costs and Attorney Fees

49. Plaintiff **PLN** has incurred and will incur court costs and attorney fees in the pursuit of this matter.

50. Pursuant to 42 U.S.C. § 1983 and § 1988, plaintiff is entitled to reimbursement for costs and fees incurred.

IX. Demand for Relief

WHEREFORE, plaintiff, **PLN** demands the following relief:

1. A determination and declaratory judgment that defendants' "no publications policy" violates the United States and the Utah Constitutions;
2. A temporary restraining order and a preliminary injunction during the pendency of this action enjoining defendants from continuing to enforce their "no publications policy" at Millard County Jail;
3. An immediate order that defendants are to deliver to Millard County Jail inmates the editions of "**PLN**" that have been put into the inmates' property as "contraband" and/or as "a threat to security;"

4. A permanent and final order enjoining defendants henceforth from enforcing their "no publications policy" at the Millard County Jail;

5. The right to seek leave to seek damages if a temporary restraining order and/or a preliminary injunction are not issued;

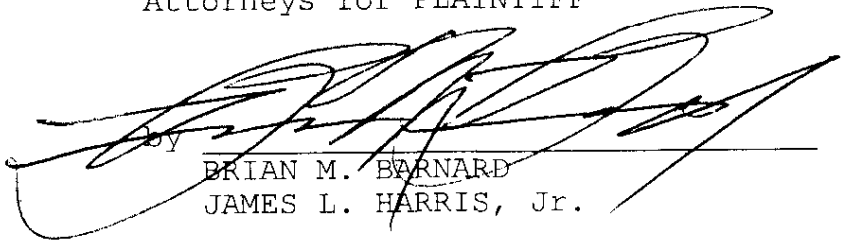
6. An award of attorneys fees under 42 U.S.C. § 1988;

7. An award of court costs; and,

8. For such other and further equitable relief as the court deems just and proper.

DATED this 30th day of JULY 2001.

UTAH LEGAL CLINIC
Attorneys for PLAINTIFF


by
BRIAN M. BARNARD
JAMES L. HARRIS, Jr.

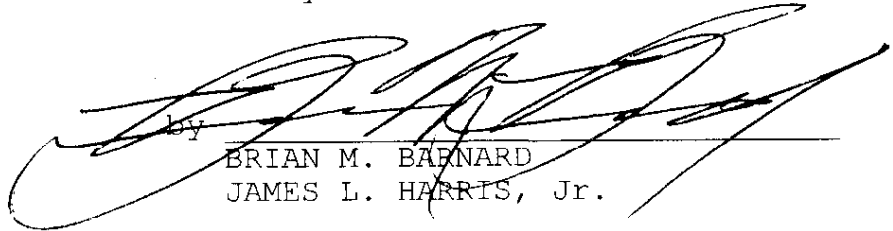
CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing COMPLAINT to:

LeRay G. Jackson
Millard County Attorney
Attorney for Defendants
259 North Highway 6
P.O. Box 545
Delta, Utah 84624

on the 30th day of JULY 2001, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorneys for PLAINTIFF

by 
BRIAN M. BARNARD
JAMES L. HARRIS, Jr.