

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

**PRISON LEGAL NEWS, a project of
the HUMAN RIGHTS DEFENSE
CENTER, a not-for-profit corporation,**

Plaintiff,

v.

**POTTAWATOMIE COUNTY PUBLIC
SAFETY CENTER TRUST, an
Oklahoma public trust; *et al.*,**

Defendants.

Case No. CIV-15-1090-R

CONSENT DECREE

The parties to this action, represented by counsel, hereby stipulate to and request that this Court order the following terms and conditions, which fully and finally resolve all of the plaintiff's claims for injunctive and declaratory relief:

1. On September 30, 2015, the plaintiff Prison Legal News, a project of the Human Rights Defense Center ("PLN"), filed suit in the above-captioned matter seeking injunctive and declaratory relief, damages, attorneys' fees and costs. The plaintiff's complaint alleges an unlawful and unconstitutional custom, practice, or policy regarding the delivery of incoming publications and correspondence to prisoners at the Pottawatomie County Public Safety Center ("PCPSC") in violation of the First and Fourteenth Amendments to the United States Constitution.

2. PLN alleged specifically that the defendants censored and failed to provide constitutionally-adequate due process notice of censorship for (a) issues of the monthly journal, *Prison Legal News*; (b) individual copies of the book, *The Habeas Citebook*; and (c) enveloped mail to individual prisoners, on at least eighty-four (84) occasions.

Moreover, PLN alleged that the defendants failed to provide to PLN constitutionally–adequate notice of their censorship of PLN’s written speech as well as an opportunity to challenge defendants’ censorship decisions.

3. On October 1, 2015, PLN filed a motion for preliminary injunction against the defendants’ unconstitutional policies and practices.

4. On November 4, 2015, Defendant Pottawatomie Public Safety Center Trust (“PCPSCT”) and the individual defendants (collectively “the defendants”) filed answers denying the allegations in PLN’s complaint. On November 30, 2015, the defendants responded in opposition to PLN’s preliminary injunction motion, arguing that the motion was moot because, on the advice of counsel, all PLN materials still in PSPSC’s possession had been delivered to the prisoners to whom the materials were directed, and that in the future “appropriate” publications from PLN would be delivered to the addressee.

5. After continuing communications between the parties, the defendants informed PLN by letter dated January 12, 2016 that PCPSCT had adopted a new mail policy, effective January 6, 2016. However, in a January 14, 2016 Joint Status Report to the Court, PLN contended that PCPSCT’s new policy was still constitutionally deficient because, among other reasons, the new policy did not explicitly state that a prisoner’s right to receive “correspondence” included books, newspapers, magazines absent some reasonable penological reason to exclude the materials that had been subject to a blanket ban under the superseded policy. On January 15, 2016, the court conducted a telephone conference with counsel after reviewing the joint status report. As a result of that

conference, the court directed the parties to submit supplemental briefs regarding PLN's request for declaratory and injunctive relief, which they did.

6. On September 21, 2016, PLN agreed in light of the status of the case to withdraw its motion for a preliminary injunction.

7. On December 1, 2016, after discovery and consistent with a scheduling order entered by the court, the parties filed cross-motions for summary judgment. Those motions remain pending.

8. The parties agree that the defendants deny any liability in this case. However, in order to avoid the expense, delay, uncertainty, and burden of litigation, the parties have agreed to the entry of this consent decree against it as part of a settlement of the litigation. This Consent Decree shall apply to the PCPSCT, its employees, agents, and other persons, in their official capacities with the PCPSCT, the PCPSC or any successors, responsible for the implementation of the terms of this Consent Decree. The parties agree that the individually named Defendants are dismissed from the action.

9. The parties agree, and the Court orders, that the PCPSC shall continue, if consistent with PCPSC's legitimate penological interests and express policy terms based thereon, to deliver publications (including but not limited to books, magazines, brochures, newsletters, and newspapers) to prisoners in their custody in the future.

10. The parties agree, and the Court orders, that this Consent Decree shall also be applicable to the delivery of all publications and other correspondence sent directly from any publisher to any person held in custody at the PCPSC. For the purposes of this Consent Decree, the term "publisher" shall mean any publisher, book seller, or

other type of distributor of literature that sends books or other publications to people through the mail.

11. The parties agree, and the Court orders, that whenever the PCPSC refuses to deliver any publication, correspondence, or document sent to any prisoner at the PCPSC for any reason, the PCPSC shall place into the mail written notice and an administrative appeal process to the sender within three (3) business days of making an initial mail rejection decision. The notice shall include the name and address of the publisher as well as the name(s) of the intended recipient(s), a description of the refused item of mail, a citation to the objectionable portion of the publication and a citation to the PCPSC rule concerning the way in which the censored speech would threaten one of the defendants' specific legitimate penological interests. Such notice may be satisfied through the utilization of a standardized form identical to or similar to that currently used by the PCPSC. The refused publication, correspondence or document will be retained by the PCPSC staff persons in accordance with the appeal process established by PCPSC.

12. The parties agree, and the Court orders, that the PCPSC shall provide a copy of this Consent Decree to all staff persons employed at the PCPSC who have duties that in any way concern the mail or property of prisoners and shall also post paper copies of this Consent Decree in places that are conspicuous to all staff persons and prisoners alike in each and every housing unit of the PCPSC, all within thirty (30) days of the entry of this Consent Decree.

13. The parties agree, and the Court orders, that the PCPSC shall conduct

an appropriate training session with all staff persons who are responsible for any part of the receipt, collection, and delivery of U.S. Mail to prisoners about the contents of this Consent Decree and the best practices for successful compliance herewith. The PCPSCT shall file with the Court a notice that said training has been conducted within ninety (90) days of the entry of this Consent Decree and it shall provide a copy of the written materials used for such training to PLN's counsel at the time of filing.

14. The parties agree, and the Court finds, that this case concerns the First and Fourteenth Amendment rights of a publisher and is therefore not a case concerning prison conditions as defined in the Prison Litigation Reform Act of 1996. The Court further finds that the relief herein ordered is narrowly drawn, extends no further than necessary to correct the harm to PLN, and is the least intrusive means necessary to correct that harm.

15. It is further agreed that the PCPSCT has previously adopted and currently enforces a new mail policy consistent with the terms herein. Nothing in this Consent Decree prevents the PCPSCT from seeking relief from the Consent Decree if circumstances or a change in law dictates such relief upon proper motion to the Court and notice of the request to PLN.

16. This Consent Decree is binding on the PCPSCT and its agencies, departments, successors, or independent contractors including agents and/or assigns who have or come to have responsibilities related to inmate mail or to the implementation of the requirements of this Consent Decree. The Court shall retain jurisdiction to enforce the provisions of this Consent Decree.

17. The parties agree, and the Court orders, that the PCPSCT is permanently enjoined from (a) refusing to deliver mail to prisoners on the grounds that the mail is not a postcard or on the grounds that the mail was sent in an envelope containing multiple pieces of paper; (b) refusing to ensure information, which indicates the date of the enclosed letter or materials and the sender of them, is delivered to prisoners, in the absence of the envelope itself or a copy being delivered; and refusing to deliver any content other than that typically included for mail delivery reasons, *e.g.* artwork, drawings, or brief messages to the recipient (c) refusing to deliver mail to prisoners from a licensed attorney on the basis that no attorney–client relationship exists; and (d) failing to provide due process (*i.e.*, adequate notice and a meaningful opportunity to appeal) to senders of mail when depriving them of their liberty interest in free speech, through the mail, with people detained at the PCPSC. The terms above shall not preclude the PCPSCT from restricting mail consistent with its legitimate penological interests and the current case law. Should pressing circumstances bearing on inmate mail cause a marked change in institutional needs, that necessitates adoption of a more restrictive mail policy, PCPSCT shall submit a motion to modify the instant Consent Decree within a reasonable time after such change in circumstances is reasonably believed to warrant a modification of the actions ordered herein.

IT IS SO ORDERED this ___ day of February 2017.

DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE