

UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PRISON LEGAL NEWS; COMMON  
COURAGE PRESS; LARRY LYNCH  
(#176862); CALVIN HOLMES  
(#257962), on behalf of all  
other similarly situated  
prisoners and publishers,  
clearinghouses, and bookstores,

Plaintiffs,

-v-

Case No. 99-70523  
Hon. Avern Cohn

E. M. RANSOM, Case Manager  
at Huron Valley Men's Facility  
(HVMF); C. TALLIO, Case Manager  
at MBP; DAN BOLDEN, Deputy  
Director of the Michigan  
Department of Corrections  
(MDOC), are sued in their  
official and individual  
capacities,

Defendants.

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**CLASS ACTION COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND DAMAGES**

Jurisdictional Statement

1. Jurisdiction is invoked pursuant to 28 U.S.C. 1331 and Rule 65, FRCP, for injunctive relief. Jurisdiction is also based upon the First and Fourteenth Amendments to the U.S. Constitution. Plaintiffs are seeking a declaratory judgment pursuant to 28 U.S.C. § 2201(a), and damages only for Plaintiffs Prison Legal News and Common Courage Press.

2. Plaintiff Lynch has exhausted all available remedies. See Exhibit 1, as to Plaintiff Lynch.<sup>1</sup>
3. Furthermore, based upon the decision of defendant Bolden to place “The Ceiling of America” on the “Addendum to Restricted Publications List of August 4, 1998” (see Exhibit 2), this book is automatically rejected and therefore there are no available administrative remedies within the meaning of the PLRA to exhaust since the people running the system have decided the issue systemwide. See Exhibit 3, “Notice of Package/Mail Rejection,” dated 12/21/98, where “The Ceiling of America” is automatically rejected since its placement on the Restricted Publication List.

#### Listing of Parties

4. Plaintiff Prison Legal News (PLN) at all times relevant hereto was one of the senders of the ordered book called “The Ceiling of America” (hereafter “”TCOA””). PLN is a section 501(c)(3) non-profit organization located at 2400 N.W. 80th St., #148, Seattle, Washington, 98117.
5. Plaintiff Common Courage Press at all times relevant hereto was the publisher and a sender of the ordered book “TCOA.”
6. Plaintiff Larry Lynch, #176862, at all time relevant hereto was a prisoner confined with the Michigan Department of Corrections (hereafter “MDOC”).
7. Plaintiff Calvin Holmes #257962, at all times relevant hereto was a prisoner confined with

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<sup>1</sup> All Exhibits referenced in the complaint are attached to the motion for preliminary injunction that is filed concurrently with the complaint.

the MDOC.

8. Both plaintiffs Lynch and Holmes ordered separate copies of “TCOA” to be sent to them by plaintiffs PLN and Common Courage Press.
9. The copies of “TCOA” that were ordered by Plaintiffs Lynch and Holmes were rejected by the defendants without providing notice or a reasonable opportunity to respond to the senders of “TCOA.”
10. Defendant E. M. Ransom at all times relevant hereto was a Hearing Officer at Huron Valley Men’s Facility, which is part of the Michigan Department of Corrections.
11. Defendant C. Tallio, Case Manager at all times relevant hereto was a Case Manager at Marquette Branch Prison (MBP), which is part of the Michigan Department of Corrections.
12. Defendant Dan Bolden was at all times relevant hereto was the Deputy Director of the MDOC and is responsible for its policy and practices as it relates to publications sent to inmates.
13. The defendants are all being sued in their official and individual capacities.

#### Class Allegations

A. Prisoners Class.

14. Plaintiffs Lynch and Holmes wish to proceed in this action on behalf of all other persons similarly situated, Fed. R. Civ. P. 23, in the obtaining of an injunction against the present practice of the MDOC’s failure to provide notification and an opportunity to provide a response to the sender of the publications.
15. Plaintiffs Lynch and Holmes wish to proceed in this action on behalf of all other persons similarly situated, Fed. R. Civ. P. 23, in the obtaining of an injunction against the present

practice of the MDOC's for the refusal of the MDOC to allow delivery of "The Celling of America" to prisoners who order it.

16. The proposed class is composed of all present and future prisoners who have ordered or who will order "TCOA" and have been or will be denied receipt of it.
17. The proposed class is also composed of all present and future prisoners who wish to read "TCOA."

B. Sender Class.

18. PLM and Common Courage Press wishes to proceed in this action on behalf of all other senders of packages, such as publishers, clearinghouses, and bookstores, which are similarly situated, Fed. R. Civ. P. 23, in the obtaining of an injunction against the present practice of the MDOC for refusing to provide notice and a reasonable opportunity to respond to a proposed package rejection.
19. The proposed class is composed of all present and future senders of reading materials who have been or who will mail a book, manual or other writings to Michigan prisoner who have ordered such items.
20. The proposed class is composed of all present and future senders of reading materials who have an interest of access to prisoners to communicate their point of views

C. Common Allegations

21. The proposed class of persons similarly situated to the named prisoners-Plaintiffs are over 40,000 prisoner. This proposed class is so numerous that it is impractical to bring all members before the Court. On information and belief, there are at least a hundred, if not more, of Michigan prisoners who will order "TCOA" and will not be allowed to read it.

Plaintiffs are unaware of the actual number of prisoners who have sought to order and read “TCOA” and have been refused by the prison staff since it has been listed on a state-wide ban of books. Moreover, the proposed class is composed of persons who are incarcerated in penal institutions throughout the State of Michigan, the majority of whom are probably indigent and cannot obtain individual representation to pursue a similar claim.

22. The proposed class of senders of packages that are similarly situated to Plaintiffs PLN and Common Courage Press is so numerous that it is impractical to bring all members before the Court. On information and belief, there are probably thousands of senders of materials to Michigan prisoners who have not received notification and a reasonable opportunity to provide a response to a proposed rejection notice. Only the MDOC would have that information and most likely it has not kept a record of the senders that have had materials rejected without the MDOC following due process of law.
23. The named Plaintiffs and their counsel will fully and adequately represent the interests of all the members of the proposed classes.
24. The nature of the rights sought to be enforced for the proposed classes are typical of all of the members of the proposed classes inasmuch as there are common questions of law and fact that predominate over questions affecting only members, and where common relief is sought.
25. The maintenance of the instant action as a class action will be superior to individual litigation by promoting convenient and efficient administration of justice.

#### Factual Allegations

26. The book, “The Celling of America,” was published in 1998 by Common Courage Press. See

Exhibit 4, a copy of “The Ceiling of America.”<sup>2</sup>

27. This Book does not advocate violence in any way and its only reference to violence is in reporting incidents that have occurred in prisons around the country that have been reported by other mainstream media or personal account by prisoners who were at the facilities where prison incidents have occurred.
28. Many book reviews have been written about “The Ceiling of America.”
29. One of these book reviews was written for California Attorneys for Criminal Justice Forum, 1998, Vol 25, No. 2-3, by Thomas Quinn, which, in part, states:

The 49 essays and eight introductions gathered in *The Ceiling of America: An Inside Look at the U.S. Prison Industry* are the work of over a dozen prisoners and a half dozen journalists, activists and a Federal Judge. \*\*\* Almost all the essays are culled from the remarkable *Prison Legal News* (PLN), a staid looking publication started in 1990 and produced monthly from Pens and Wrights’ prison cells...

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The essays in *The Ceiling of America* are in the tradition of the muckraking journalists of the Progressive period. From their cells, these prisoners, relying on public media, Court documents, scholarly work, and a dense network of prisoner correspondents around the country, present a report on the amazing American prison system in its labyrinthine complexity, an institution that has moved from the backwaters portrayed in Cool Hand Luke to the center of national life.

See as Exhibit 5. A sample of other books reviews are as Exhibit 6, *Law & Politics*, July

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<sup>2</sup> This Exhibit is contained in a brown envelope and is marked as an Exhibit 4 and attached to the motion for preliminary injunction.

1998, Book Review by Leonard W. Schroeter; Exhibit 7, *Z Magazine*, June 1998, Book Review; Exhibit 8, *The Nation*, April 20, 1998, Book Review by Christian Parenti.

30. A review of the Affidavit of Paul Wright, one of the Editors of Prison Legal News and of “TCOA” demonstrate that all but a few items contained in “TCOA” have appeared previously in the monthly periodical Prison Legal News. See Exhibit 9, Declaration of Paul Wright, at 1.

TCOA is an anthology of articles that had previously been published in Prison Legal News. The only materials in TCOA which had not been published previously in Prison Legal News were the book introduction by William Greider, the chapter introductions, and the “Media Bows to Power” by Noelle Hanrahan and “Prison Legal News’ Top Ten Frivolous Prisoner Lawsuits.”

31. In his affidavit, Mr. Wright then goes on to list each article that appears in “TCOA” and cross-referenced it to the volume, issue, and page where it appears in Prison Legal News. *Id.*
32. Defendants have cited to pages 34, 35, 196, 215, 245, and 246 of “TCOA” for “mak[ing] various references to prison insurrection and advocates retaliatory violence toward prison staff.” See Exhibit 10, Administrative Hearing Report, dated 4/16/98, as to Plaintiff Lynch.
33. The only page mentioned in Exhibit 10 that have not previously appeared in Prison Legal News is the chapter introduction on pages 215 and 216. Exhibit 9, Affidavit of Paul Wright and Exhibit 4, “TCOA.”
34. A review of page 215 and 216 of “TCOA” shows that this introduction is no more than a comment on the history and dynamics of prison reform and contains no advocacy.
35. As stated earlier, PLN has been a monthly publication since 1990. Quite a few of the law libraries located at individual prisons of the MDOC, and some prison staff, receive individual monthly copies of the PLN. See Exhibit 11, Listing by PLN of Michigan prisons

law libraries and prison staff subscribing to PLN.

36. Approximately one hundred prisoners confined with the MDOC receive monthly subscription to PLN and have for a number of years. See Exhibit 12, Listing by PLN of Michigan prisoners subscribers to PLN.

37. At the beginning of this year, some of Michigan local prisons sought to impose a ban on certain issues of the PLN.

38. In March, 1998, Defendant Bolden stated that

Prison Legal News was never placed on the Agency wide Restricted Publication List. Restrictions of PLN may occur; however, it would be a derivative of the content, and only that issue would be restricted.

See Exhibit 13.

39. As of the filing of this lawsuit, no prior issue of the PLN has ever been banned by defendant Bolden or other Michigan's prison officials.

40. Further, none of the articles that have appeared in previous issues of PLN have been restricted by Defendant Bolden or prison staff.

41. Further, no violence or disruption has been attributed by MDOC's prison staff to prisoners' reading these articles.

42. Plaintiff Lynch ordered a copy of "The Ceiling of America" and it was sent to him by PLN. See Exhibit 14, Notice of Package/Letter Rejection, dated 4/10/98.

43. While confined in a Michigan prison, Plaintiff Lynch was notified by prison officials that he could not receive the ordered book, "The Ceiling of America." Id.

44. This notice of package rejection was not sent to either Plaintiff PLN or Common Courage Press.



45. Further, neither Plaintiffs PLN nor Common Courage Press received a notice of proposed package rejection of “TCOA” from MDOC staff.
46. Neither Plaintiffs PLN or Common Courage Press were given a reasonable opportunity to provide a response to the proposed rejection of “TCOA.”
47. On April 16, 1998, an administrative hearing was held as to this notice of package rejection given to Plaintiff Lynch. Exhibit 10, Administrative Hearing Report, date of disposition 4/17/98.
48. At the administrative hearing, Defendant Tallio, Case Manager, upheld the notice of package rejection and stated the following to support this action:

The book “Celling of America” makes various references of prison insurrection and advocates retaliatory violence toward prison staff (see pages 34, 35, 196, 215, 245, 246). Per PD-05.03.118, para. N, writings advocating violence, insurrection or violation or rules are considered prohibited materials. It is the prisoner’s responsibility to notify MBP mailroom staff of his wishes in regard to the rejected book.

Exhibit 10.

49. Plaintiff Lynch filed a grievance and processed it through the three-step grievance process of the MDOC. Exhibit 1, 3-pages. No relief was provided.
50. Plaintiff Holmes sought to obtain a copy of “TCOA”.
51. Plaintiff Holmes was notified by prison officials that he could not receive the ordered book, “The Celling of America.” See Exhibit 15, Notice of Package Rejection, dated 8/7/98.
52. This notice of package rejection was not sent to either Plaintiff PLN or Common Courage Press nor were they given a reasonable opportunity to provide a respond before “TCOA” was rejected by the defendants.

53. An administrative hearing was held as to Exhibit 15 on 8/18/98.
54. At the hearing of 8/18/98, Hearing Officer E.M. Ransom found that TCOA did “indeed advocates (sic) violence, riots, and other prison issues which is a threat to the order and security of the institution or the rehabilitation of a prisoner.” See Exhibit 16, Administrative Hearing Report, 8/18/98.
55. Upon receiving a letter from Plaintiff Lynch that MDOC Staff would not allow him to have the copy of “TCOA” that he ordered, staff of PLN wrote a letter to Defendant Dan Bolden on June 18, 1998.
56. On August 27, 1998, Defendant Dan Bolden responded to this letter stating that  

Please be advised that a review of the publication in question has been determined that its contents are indeed in violation of the Department’s mail policy in that it does not contribute towards our ability to maintain the good order and security of our institution.

See Exhibit 17, Bolden’s letter dated 8/27/98.
57. On August 28, 1998, the Central Office of the MDOC issued “Addendum to Restricted Publications List of August 4, 1998, which listed “The Celling of America,” by Daniel Burton Rose, Dan Pens and Paul Wright as being a “threat to order/security.” Exhibit 2.
58. On December 21, 1998, MDOC staff automatically rejected a copy of “TCOA” that was sent by Common Courage Press to Prisoner White, 229704. Exhibit 3.
59. No notification was given to Plaintiff Common Courage Press that this book sent to prisoner White was being rejected nor given a reasonable opportunity to provide comments.
60. Contrary to Defendant Bolden, there is no requirement in the law that “TCOA” “contribute towards our [MDOC] ability to maintain the good order and security of our institutions.”
61. Contrary to Defendant Bolden, “The Celling of America” does “contribute towards our

[MDOC] ability to maintain the good order and security of our institutions.”

62. Defendant Deputy Director Bolden is in charge of publications that come into the prisons of the State of Michigan and has implemented a policy that prevents Plaintiffs PLN and Common Courage Press from having the book “TCOA” delivered to prisoners in Michigan.
63. The MDOC has enacted a policy that is implemented by Defendant Bolden that does not allow senders to receive notice of proposed rejections nor a reasonable opportunity to respond to these proposed package/letter rejection notices.
64. On information and belief, when the events that are discussed in the different articles of “TCOA” were reported in the national print media, the MDOC did not censor nor preclude delivery of these publications.
65. On information and belief, when the events that are discussed in the different articles of “TCOA” were reported on TV and radio, the MDOC did not censor nor turn off the radios and TVs of the prisoners so that they could not hear about these events.
66. These defendants have prevented the Plaintiffs-prisoners and the class members from receiving a copy of “TCOA” and from reading it.
67. The book “TCOA” is not banned or restricted by prison officials in other states.
68. The acts of these Defendants were done intentionally and with the purpose of depriving all Plaintiffs of their First Amendment rights.
69. In 1998, the law was clearly established that the sender of a publication being considered for rejection was entitled to notice and a reasonable opportunity to respond. *See* Martin v. Kelly, 803 F.2d 236 (6th Cir. 1986) and Brooks v. Seiter, 779 F.2d 1177 (6th Cir. 1985).
70. In 1998, it was clearly established that publishers had a First Amendment interest of access

to prisoners, through subscriptions, to communicate their point of views. Thornburgh v. Abbott, 490 U.S. 401, 109 S.Ct. 1874, 1879 (1989).

Causes of Action

Count I

71. Plaintiffs reallege and incorporate by reference paragraphs 1 through 70.
72. Plaintiffs PLN and Common Courage Press have a First and Fourteenth Amendment right to send “TCOA” to prisoners confined in Michigan upon their requests.
73. Defendants breached their legal duty to comply with the First Amendment interest of the plaintiffs-publishers to communicate with prisoners to express their view through subscriptions.
74. Defendants breached their legal duty to comply with the Fourteenth Amendment Due Process Clause when they failed to send notices to PLN and Common Courage Press before holding a hearing as to the proposed rejection of “TCOA.”
75. Defendants breached their legal duty to comply with the Fourteenth Amendment Due Process Clause when they failed to allow sufficient time for Plaintiffs PLN and Common Courage Press to respond to the proposed rejection notice prior to holding a hearing to reject “TCOA.”
76. As a result of the actions by these defendants, Plaintiffs PLN and Common Courage Press have been harmed monetarily.

Count II

77. Plaintiffs reallege and incorporate by reference paragraphs 1 through 70.
78. Defendants violated the prisoners-plaintiffs’ First Amendment rights, and the rights of the

members of the class, because the information contained in the articles in “The Ceiling of America” does not pose a threat to legitimate penological interests and defendants’ censorship of “TCOA” is not reasonably related to such interest.

79. Furthers, these issues of PLN are contained in many of the prison law libraries of the MDOC and prisoners have access to these articles everyday.
80. The actions of these defendants were done in an arbitrary and capricious manner.

### Relief

WHEREFORE, this Court should grant the following relief:

1. Accept jurisdiction over this matter.
2. Certify this matter as a class action.
3. Grant a declaratory judgment that the plaintiffs-prisoners’, and members of the class, First Amendment right to receive “The Ceiling of America” was violated.
4. Grant a declaratory judgment that the plaintiffs-publishers’ First Amendment right to have the prisoners read their point of view was violated.
5. Grant a declaratory judgment that the plaintiffs-publishers’ First Amendment right to communicate with prisoners to express their view through subscriptions.
6. Grant a declaratory judgment that the Plaintiffs PLN and Common Courage Press’s Fourteenth Amendment Due Process rights were violated when they did not receive notice of the proposed rejection of “TCOA” and given a reasonable opportunity to file a response before “TCOA” was rejected.
7. Grant an injunction ordering the defendants’ to allow the the plaintiffs-prisoners, and

members of the class, to receive a copy of “TCOA.”

8. Grant an injunction requiring MDOC to notify the sender of a package of a proposed package rejection and to require that they be given a reasonable opportunity to provide a response.
9. Award both compensatory and punitive damages to Plaintiffs PLN and Common Courage Press for violation of their First and Fourteenth Amendment rights.
10. Award attorney fees and costs.
11. Grant any other relief this Court deems just and equitable.

Respectfully submitted,

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Dated: \_\_\_\_\_

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