



1 the approval of District Judge Campbell. (docket # 74) The Final Pretrial Conference is set for  
2 Tuesday, March 23, 2010 at 10:00 a.m. in Courtroom 302 at the Sandra Day O'Connor U.S.  
3 Courthouse in Phoenix. (docket # 84)

4 **MOTION FOR SUPPLIES**

5 On February 2, 2010, Defendants' counsel gratuitously mailed the following  
6 to Plaintiff: two legal pads, ten plain white envelopes and two pen fillers. Said supplies were  
7 mailed to Michael Davis #77904 at Arizona State Prison – Florence, Special Management Unit  
8 2, Post Office Box 3400, Florence, Arizona 85132. (docket # 83) The Court has not received  
9 any notice from Plaintiff that the Arizona State Prison officials have denied him use of these  
10 materials. In light of defense counsel's gifts to Plaintiff, this Motion will be denied as moot.

11 **MOTION FOR INJUNCTION**

12 Plaintiff's Motion for Injunction requests the Court "to order [Arizona  
13 Department of Corrections "ADOC"] to stop treating [Plaintiff] in an unconstitutional matter  
14 (sic) witch (sic) places [his] life in immediate danger and deprives [Plaintiff] of [his]  
15 constitutional rights." (docket # 80 at 1) Specifically, Plaintiff complains that other inmates at  
16 the SMU Unit 2 throw feces and urine out of their cells onto the floor and walls and ADOC  
17 employees simply mop it up rather than using a decontamination crew. Plaintiff contends the  
18 poor cleaning "could cause life threatening diseases." (*Id.*)

19 Plaintiff's Motion for Injunction also alleges that the ADOC "hinders, obstructs,  
20 delays, or attempts to deprive inmates (i.e. me) the right to prosecute (sic) there (sic) claims in  
21 the courts." (*Id.* at 2) Plaintiff complains of the Resource Librarian T. Dixon denies him access  
22 to legal materials, like text books, forms, etc., for "allegedly not turning back in the Arizona  
23 Constitution." He alleges this denial violates *Lewis v. Casey*, 518 U.S. 343 (1996).

24 Plaintiff's Motion for Injunction seeks an injunction "to prevent ADOC from  
25 placing his health/life in imminent (sic) and immediate harms way," and to "order ADOC to stop  
26 hindering, obstructing, delaying or otherwise denying [him] legal access to resource  
27 materials/law library access. (*Id.* at 2-3)

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1 **LAW ON INJUNCTIONS**

2 A preliminary injunction is an extraordinary and drastic remedy and “one that  
3 should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.”  
4 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*) (quoting 11A C. Wright, A.  
5 Miller, & M. Kane, *Federal Practice and Procedure* § 2948, pp. 129-130 (2d ed. 1995)  
6 (emphasis added)). To obtain a preliminary injunction, the moving party must show “that he is  
7 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
8 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the  
9 public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008).  
10 The moving party has the burden of proof on each element of the test. *Environmental Council*  
11 *of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000). “The standard for issuing  
12 a temporary restraining order is identical to the standard for issuing a preliminary injunction.”  
13 *Whitman v. Hawaiian Tug & Barge Corporation/Young Bros., Ltd. Salaried Pension Plan*, 27  
14 F. Supp. 2d 1225, 1228 (D. Haw. 1998).

15 **DISCUSSION**

16 The Court must determine if Plaintiff has met all the elements of the test for a  
17 preliminary injunction—“that he is likely to succeed on the merits, that he is likely to suffer  
18 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,  
19 and that an injunction is in the public interest.” *Winter*, 129 S. Ct. at 374. The Court holds that  
20 it cannot find that Plaintiff is likely to succeed on the merits of his claims; therefore, he is not  
21 entitled to the relief that he seeks.

22 First, the Arizona Department of Corrections is not a Defendant in this lawsuit.  
23 Secondly, Plaintiff’s Motion does not even indicate that Plaintiff served a copy of his Motion for  
24 Injunction on the Arizona Department of Corrections, much less in a proper manner required by  
25 Rules 4 and 5, FED.R.CIV.P. These flaws are fatal in themselves to his Motion.

26 Thirdly, the right of access to the courts is only a right to bring petitions or  
27 complaints to the federal court and not a right to discover such claims or even to litigate them  
28 effectively once filed with a court. *Casey*, 518 U.S. at 354; *Cornett v. Donovan*, 51 F.3d 894, 898

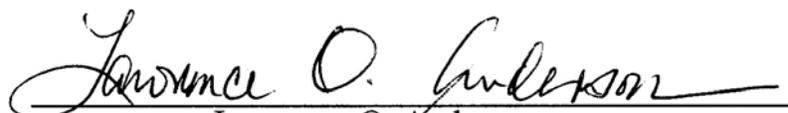
1 (9th Cir. 1995) (“[W]e conclude the Supreme Court has clearly stated that the constitutional right  
2 of access requires a state to provide a law library or legal assistance only during the pleading  
3 stage of a habeas or civil rights action.”). There is no abstract, freestanding right to a law library  
4 or legal assistance. *Casey*, 518 U.S. at 351. An inmate cannot establish actual injury “simply by  
5 establishing that his prison’s law library or legal assistance program is subpar in some theoretical  
6 sense.” *Id.* In an access-to-the-court claim, the inmate must submit evidence showing an “actual  
7 injury” resulting from defendants’ actions. *Id.* at 343. With respect to an existing case, the actual  
8 injury must be “actual prejudice” . . . “such as the inability to meet a filing deadline or to present  
9 a claim.” *Id.* at 348.

10 Plaintiff is not entitled to any specific amount of time in the library. *Id.* at 354.  
11 Moreover, Plaintiff has submitted nothing but speculation that he will be unable to meet filing  
12 deadlines or to prepare for trial. In fact, despite his incarceration in a high-security unit, Plaintiff  
13 has represented himself quite well in this litigation and has been successful in creating an issue  
14 of fact for jury resolution. Plaintiff must demonstrate that he is likely to suffer irreparable harm;  
15 mere speculation is insufficient. Mere “[s]peculative injury does not constitute irreparable harm  
16 sufficient to warrant granting a preliminary injunction.” *Caribbean Marine Services Co., Inc.*  
17 *v. Baldrige*, 844 F. 2d 668, 674-675 (9th Cir. 1988) (emphasis added).

18 Even if ADOC were a Defendant in this case, Plaintiff must demonstrate that  
19 he is likely to suffer irreparable harm by the manner in which the SMU Unit is being cleaned.  
20 Acknowledging ADOC does mop up the feces and urine thrown by other inmates out of their  
21 cells onto the floors and walls, Plaintiff speculates that ADOC does not use an appropriate  
22 disinfectant.

23 **IT IS ORDERED** that Plaintiff’s Motion to Force ADOC to Provide Plaintiff  
24 with Additional Legal Supplies, docket # 76, and Motion for Injunction, docket # 80, are  
25 **DENIED**.

26 Dated this 23rd day of February, 2010.

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28 Lawrence O. Anderson  
United States Magistrate Judge