


UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH DAKOTA
 SOUTHERN DIVISION

FILED
 AUG 29 2007

 CLERK

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CIV. 06-4083

GERALD MILLER, :

Petitioner, :

vs. :

**AFFIDAVIT OF DOUGLAS
 WEBER**

DOUGLAS WEBER, :

Warden, South Dakota State Penitentiary, :

Respondent. :

0-0

Defendant Douglas Weber, submits the following response to the Court's Order dated August 22, 2007 in which the Court requested an Affidavit explaining in detail:

- (1) when the Department of Corrections closed the law library at the South Dakota State Penitentiary and other DOC facilities;
- (2) what provision were made for legal assistance to inmates during the time the law library was closed;
- (3) when the law library at the SDSP and other DOC facilities reopened;
- (4) which DOC facilities other than the South Dakota State Penitentiary, if any, have onsite law libraries;
- (5) provide a list of legal books, authorities, treatises statutes, etc. which have been provided in said law libraries since they were reopened;
- (6) explain in which DOC facility Mr. Miller has been housed since his incarceration began until the date of his federal habeas petition was filed (May 16, 2006).

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STATE OF SOUTH DAKOTA)
) : SS.
COUNTY OF MINNEHAHA)

1. At all times relevant to the above-entitled action, I have been employed by the South Dakota Department of Corrections as the Warden of the South Dakota State Penitentiary ("SDSP"). My current position title is Chief Warden and Director of Prison Operations.

2. To answer question (6) first, inmate Gerald Miller has been housed in only one prison facility, the Jameson Prison Annex (JPA), since his arrival at the South Dakota State Penitentiary (SDSP) in November, 1999.

3. In response to question (1), the South Dakota Department of Corrections (SDDOC) closed the law libraries at the Penitentiary and Jameson Prison Annex on September 23, 1997, SEE, Document 1, Memorandum of Douglas L. Weber, RE: Closing of Law Libraries. The library at Durfee State Prison, in Springfield, South Dakota, would have closed during the same approximate time period but I am unaware of the exact date. See also, *Lewis v. Casey*, 518 U. S. 343 (1996) (*Bounds v. Smith*, 430 U. S. 817 (1977) did not create a right to a law library or legal assistance; it merely acknowledged a right to court access).

4. Question (2), regards the legal assistance available to inmates after the law library closed. After closing the law library in September, 1997, contract attorneys were available to assist inmates in limited circumstances. These circumstances included the preparation of initial pleadings involving Habeas Corpus

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and §1983 conditions of confinement claims, SEE, Affidavit of inmate legal assistance contractor D. Sonny Walter, Document 2. SEE also, Document 3, “SDDOC Legal Assistance Office Contracts, July 1, 1997 through June, 2008” (lists the names and facilities covered by each of the attorneys, by fiscal year, July 1 through June 30). Each contract is let for legal services during a single fiscal year. I explained my initial understanding of the conditions of this legal assistance in Doc. 1, ¶ 2, 3, 4. On September 29, 1997, I issued another Memorandum “Clarification of legal advisor’s duties”, SEE, Weber Affidavit, Document 4, ¶ 1,2. SEE also, Document 5, *Pellegrino v. Janklow*, Civ. 98-4126, (D.S.D.) Memorandum Opinion of Judge Lawrence Piersol, September 13, 2002, page 22, for a description of the history of the law library closings.

5. The response to question (3), is regarding when the law libraries reopened. On or about May 17, 1999, then Department Secretary Jeff Bloomberg agreed to and signed an “Settlement Agreement and Release” (attached hereto as Document 6 and incorporated herein by reference) in the cases of *Morris v. State*, Civ. 98-4118 (D.S.D) and *Scholl v. Delaney*, Civ. 98-4068 (D.S.D.). The minimum number and type of legal reference books are listed on pages one and two of the settlement agreement and a copy of the attorney’s inmate legal assistance contract (as in effect at the time) is attached to the end of the Settlement Agreement.

Following the Settlement Agreement in May, 1999 some legal reference materials were made available to inmates immediately. However, due to the need to

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order new law books and updates the SDSP and JPA law libraries were not fully restored and reopened until July 9, 1999. The library at Mike Durfee State Prison, in Springfield, South Dakota, reopened at the same approximate time but I am unaware of the exact date.

Inmate Miller was not incarcerated at the SDSP, Jameson Prison Annex until November, 1999.

Following the reopening of the law libraries the SDDOC promulgated a new Department policy 1A.15 "Inmate Legal Assistance" which was signed by Secretary Bloomberg on August 12, 1999, SEE, Document 7. Please note that Attachment 1 of this document is a list of the minimum number and type of legal reference books that will be provided to inmates. These policies are periodically reviewed and updated.

The current version of the SDDOC "Inmate Legal Assistance" policy, now numbered 1.3.E.1 and signed by the current Department Secretary Tim Reisch on August 15, 2007, is attached, SEE, Document 8. Please note that Attachment 1 of this document still lists the minimum number and type of legal reference books that will be provided to inmates.

6. Question (4), requests information on which SDDOC facilities have on site law libraries. The three largest facilities have on site law libraries. These facilities are the South Dakota State Penitentiary (SDSP), the Jameson Prison Annex (JPA), both in Sioux Falls, and the Mike Durfee State Prison (MDSP) in

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Springfield. Each of these facilities has an inmate legal assistance attorney or paralegal either on site, or on a regular visit schedule and an inmate may write to the contract attorney to submit a question or request a consultation with the contract attorney. All adult SDDOC facilities (including Redfield, Yankton and Rapid City minimum units) have an inmate legal assistance attorney contracted to provide legal assistance for preparation of §1983 condition of confinement claims and Habeas Corpus appeals. SEE, Document 3, "SDDOC Inmate Legal Assistance Office Contracts, July 1, 1997 through June, 2008".

7. Question (5) requests a list of legal materials available to inmates through the law libraries since they were reopened in 1999. For comparison purposes, for the minimum legal reference materials required under SDDOC policy SEE, Doc. 6, *Scholl v. DeLaney* at page 1 and 2 or either Doc. 7, Attachment 1 or Doc. 8, Attachment 1, though some changes have been made over the years.

For the list of legal reference materials currently available to inmates at the SDSP and JPA includes a full set of the South Dakota Codified Laws (SDCL) thirty seven (37) volumes, a full set of American Jurisprudence, 2nd Edition (AmJur2d) one hundred and sixty two (162) volumes. Further legal reference books in the SDSP and JPA libraries include the following:

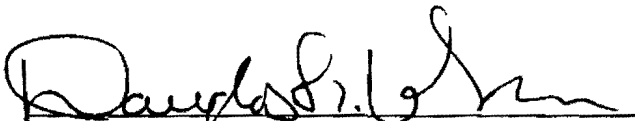
USCA: United States Constitution and Amendments
42 USCA 1981 - 1983
28 USCA 2241 - 2254
West Federal Civil Judicial Procedures and Rules
Local Rules of the U.S. Court of Appeals for the Eighth Circuit Court

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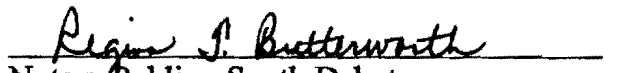
United States District Court Local Rules, District of South Dakota
M. Schwartz & J. Kirklin, Section 1983 Litigation, Claims and defenses
Black's Law Dictionary
ARSD Article 17 (Corrections)
South Dakota Criminal Pattern Jury Instructions
All publicly available Department of Corrections policies.
All publicly available South Dakota State Penitentiary Operation Memoranda

There are also miscellaneous single volumes or treatises that are available in one library but not the other. To illustrate that point I have included a copy of a blank "Legal Reference Book Inventory", SEE, Document 9. On the second page are listed several such books.

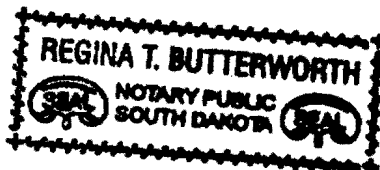
Dated this 29 day of August, 2007.


Douglas L. Weber

Subscribed and sworn to before me
this 29th day of August, 2007.


Notary Public - South Dakota
My Commission expires: May 17, 2013

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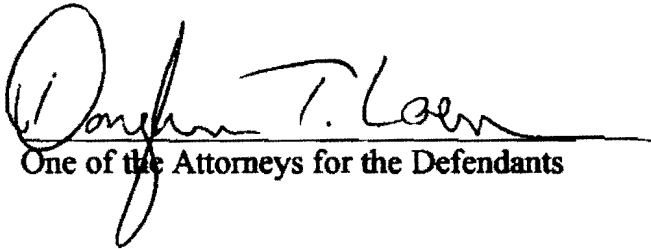


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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2007, I sent by United States mail, postage prepaid, a true and correct copy of the foregoing Affidavit of Douglas Weber and the attached documents numbered, 1-9 to the following:

Gerald Miller, #35867
Jameson Prison Annex
P. O. Box 5911
Sioux Falls, SD 57117-5911
Petitioner Pro Se


One of the Attorneys for the Defendants