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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 FRANK CLEMENT
13 Plaintiff,
14 vs.
15 CALIFORNIA DEPARTMENT OF
16 CORRECTIONS, et al.,
17 Defendants.
18
19
20
21

No. C 00-1860 CW

**DECLARATION OF DEIRDRE
K. MULLIGAN IN OPPOSITION
TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Date: August 9, 2002
Time: 10 a.m.
Before: Hon. Claudia Wilken

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1 I, Deirdre K. Mulligan, declare the following:

2 1. I am currently the Director of the Samuelson Law, Technology
3 & Public Policy Clinic at the Boalt Hall School of Law, University of
4 California at Berkeley. I am also an acting clinical professor at Boalt Hall.
5 I have held this position since January 2001. I submit this Declaration in
6 support of plaintiff Frank Clement’s Opposition to Defendants’ Motion for
7 Summary Judgment. Unless otherwise indicated, if called upon to do so, I
8 could competently testify of my own personal knowledge to the facts set
9 forth herein.

10 2. In July 2001, I sent Public Records Act requests pursuant to the
11 California Public Records Act to the California Department of Corrections
12 (“CDC”) and all 33 CDC facilities in California. I requested the following
13 materials:

14 (a) all documents related to the formal or informal policies of the
15 CDC and the individual prisons for the handling of incoming inmate
16 mail containing materials originating on the Internet;

17
18 (b) all policies, regulations or other documents related to the
19 classifying of inmate mail as contraband;

20 (c) all inmate appeals or complaints concerning the prison’s handling
21 of incoming mail containing Internet-generated materials;

22
23 (d) all reports, summaries or other documents relating to the reasons
24 for classifying as contraband material originating from the Internet;

25 (e) all reports, summaries, correspondence with respect to each prison
26 as to the amount of incoming mail, the percentage of incoming mail
27 classified as contraband, and the percentage of incoming mail
28

1 classified as contraband because of the inclusion of Internet-
2 generated materials; and

3 (f) all reports, summaries, correspondence and other documents that
4 relate to formal or informal policies or procedures for identifying
5 whether material included in incoming inmate mail originated on the
6 Internet.

7
8 3. On June 17, 2002, I visited the website maintained by the CDC
9 at <http://www.cdc.state.ca.us> and printed the document attached hereto as
10 Ex. A which describes the security categories into which CDC facilities are
11 grouped. The security categories are as follows:

12 Level I: prisons with open dormitories without a secure perimeter;

13 Level II: prisons with open dormitories with secure perimeter fences
14 and armed coverage;

15 Level III: prisons with individual cells, fenced perimeter and armed
16 coverage;

17 Level IV: prisons with cells, fenced or walled perimeters, electronic
18 security, more staff and armed officers both inside and outside the
19 installation;

20 Security Housing Unit ("SHU"): the most secure area within a Level
21 IV prison designed to provide maximum coverage;

22 Condemned: prisons that house inmates with death sentences.

23 *See Exhibit A.*

24
25 4. In response to my Public Records Act request, I received
26 information from 27 State Prisons in California. Of those, the majority did
27 not have policies banning Internet-generated materials.

1 5. At the time of my Public Records Act request, fifteen prisons,
2 including prisons from all security levels, allow prisoners to receive
3 Internet-generated materials in the mail. For example, Mule Creek State
4 Prison (categorized in Ex. A as Security Levels I, III, IV) and Valley State
5 Prison for Women (categorized in Ex. A as Security Levels I, II, III, IV,
6 and SHU) do not have a ban on Internet-generated materials.

7
8 6. Eight prisons did implement policies prohibiting prisoners from
9 receiving Internet-generated materials. Pelican Bay State Prison
10 (categorized in Ex. A as Security Levels I, IV, SHU) adopted such a
11 regulation on February 13, 2001.

12 7. At the time of the responses to my request, San Quentin State
13 Prison (categorized in Ex. A as Security Levels I, II and Condemned) was in
14 the process of reviewing its Internet mail policy. I am informed and believe
15 that San Quentin subsequently adopted a policy similar to Pelican Bay's
16 regulation. To the best of my knowledge, a total of nine prisons in
17 California currently prohibit prisoners from receiving Internet-generated
18 materials in the mail.

19 8. At the time of the responses to my request, three more prisons
20 were reviewing their policies and stated that they intended to adopt a ban on
21 Internet-generated materials. Exhibit B, attached hereto, contains a
22 summary of the documents produced by the 27 prisons and the CDC in
23 response to my Public Records Act request.
24

25 9. Based on the materials received from Pelican Bay, it appears
26 that the volume of mail containing Internet-generated materials is minimal.
27 Pelican Bay does not have a tracking system to count the volume of
28 incoming mail. Mailroom supervisor Jill Tholl estimates that the mailroom

1 processes between 5,000 to 10,000 pieces of mail each day. *See* Ex. D,
2 Letter from C. Threm. She estimates that 1,000 to 1,500 items are rejected
3 each month as contraband. One-third of these contraband materials are
4 disallowed because they contain information printed from the Internet.
5 Assuming the highest estimate, Pelican Bay receives 300,000 pieces of mail
6 each month, 500 of which contain Internet-generated materials.

7
8 10. Several prisons, including High Desert State Prison
9 (categorized in Ex. A as Security Levels I, III, IV and Administrative
10 Segregation), limit the number of pages of photocopied material a prisoner
11 can receive. Most prisons, including Pelican Bay and San Quentin, do not
12 indicate that they place any page limits on photocopied materials.

13 11. Attached hereto as Exhibit C is a true and correct copy of
14 Warden McGrath's February 13, 2001 letter adopting the ban on Internet-
15 generated materials, provided to me by Pelican Bay State Prison in response
16 to my Public Records Act request.

17
18 12. Attached hereto as Exhibit D are true and correct copies of a
19 letter from Litigation Coordinator C. Threm at Pelican Bay State Prison, as
20 well as Pelican Bay State Prison's Operating Procedures, provided to me in
21 response to my Public Records Act request.

22 13. Attached hereto as Exhibit E are true and correct copies of
23 letters sent to me stating that the following prisons permit prisoners to
24 receive Internet-generated materials:

- 25
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- California Institute for Men;
 - California Institute for Women;
 - California Medical Facility;

- 1 • California Men’s Colony;
- 2 • Central California Women’s Facility (I am informed and
- 3 believe that since the time of my Public Records Act request,
- 4 CCWF may have changed its policy allowing Internet-generated
- 5 materials, at least with respect to its condemned prisoners);
- 6 • Chuckawalla Valley State Prison;
- 7 • High Desert State Prison;
- 8 • Ironwood State Prison;
- 9 • Mule Creek State Prison;
- 10 • North Kern State Prison;
- 11 • Pleasant Valley State Prison;
- 12 • Substance Abuse Treatment Facility and State Prison at
- 13 Corcoran; and
- 14 • Valley State Prison for Women.

15 I declare under penalty of perjury under the laws of the United States
16 of America and the State of California that the foregoing is true and correct.
17 Executed this ___ day of June, 2002, at Berkeley, California.

18
19
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21 _____
Deirdre K. Mulligan