

89. Courts have made clear that "equal protection" does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made; See, Baxtrom v. Herald, ___ U.S. ___, 86 S.Ct. 760 (1966); the crucial question in all equal protection cases is whether there is an appropriate governmental interest furthered by the differential treatment. See, State v. Post, ___ Wis.2d ___, 541 N.W.2d 115, 130 (Wis. 1995).

90. As argued above, there is no legitimate governmental purpose for the ban of pornography, nor is there a legitimate interest served by the ban of cassettes and cassette-tape-players; as a result, there can be no legitimate reason for subjecting Wisconsin prisoners to those deprivations simply because they happen to be incarcerated within the State.

91. If the deprivations at issue truly are motivated by legitimate penological objectives, then there is no reason for out of state Wisconsin prisoners to be treated any differently.

92. In short, Wisconsin prisoners currently incarcerated should not be treated differently than Wisconsin prisoners currently incarcerated in private prisons out of state; i.e., all prisoners within the Wisconsin penal system should be afforded similar treatment that is dictated by the particular security classification, rather than the location of the facility.

93. Since the defendants have decided to impose the aforementioned deprivations only upon those Wisconsin inmates currently incarcerated within the State of Wisconsin, while allowing out-of-state Wisconsin prisoners to avoid similar treatment, and since there is no rational reason for the disparity of treatment beyond the location of the particular facility, the plaintiffs believe and hereby contend that the ban of cassettes, and cassette-tape-players, and the ban of pornography, is in violation of the Fourteenth Amendment's Equal Protection Clause.

94. Accordingly, for the reasons stated, the Plaintiffs respectfully request that this Court issue a declaration of law holding the ban of pornography, cassettes and cassette-tape-players unconstitutional under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

RELIEF REQUESTED

95. Wherefore, plaintiff Spriggie Hensley and plaintiff Allen Koch, of the Columbia Correctional Institution, pro se, and on behalf of all other persons similarly situated, hereby request that this Honorable Court:

a) assume jurisdiction over this action;

b) declare that the plaintiffs possess property within the meaning of the Fourteenth Amendment once that property amounts to a legitimate claim of entitlement;

c) declare that the DOC Administrative Code and the rules and regulations of the Columbia Correctional Institution create a legitimate claim of entitlement to all legally purchased and lawfully owned property once that property is received through officially approved channels;

d) declare, therefore, that all cassettes and cassette-tape-players purchased and possessed in accordance with the DOC Administrative Codes and the rules and regulations of the Columbia Correctional Institution, qualify as "property" under the Fourteenth Amendment;

e) declare, as a matter of law, that such property constitutes a protected property interest that may not be infringed upon absent a legitimate penological purpose and/or governmental interest;

f) declare, as a matter of law, that any restriction or deprivation imposed on such a protected interest must be rationally related to the legitimate penological interest and

may not be an exaggerated response thereto;

g) declare, as a matter of fact, that the defendants have not advanced a legitimate penological interest that would be served by the ban of such property, and that due to available alternatives, the imposition of a state-wide ban is an exaggerated response if such a governmental interest actually exists;

h) declare, therefore, that defendants have violated the plaintiffs' rights under the Fourteenth Amendment by enacting an unreasonable policy that will deprive the plaintiffs, and all others similarly situated, of their legally purchased and lawfully owned cassettes and cassette-tape-players without providing compensation for the value of same or an opportunity to be heard in opposition thereto;

i) declare, as a matter of law, that plaintiffs and all other persons similarly situated, may not be deprived of pre-recorded music based on the "offensive" quality of "rap-music" due to the First Amendment's prohibition of arbitrary censorship and the presumption of protected speech that is accorded music under the First Amendment;

j) declare, as a matter of law, that plaintiffs and all other persons similarly situated, may not be deprived of sexually oriented materials under the current pornography ban due to the over-broad definition of pornography and the First Amendment prohibition of arbitrary censorship;

k) declare, therefore, that the defendants have

violated the plaintiffs' First Amendment rights due to the enactment of consecutive bans on music and "sexually oriented material" that amounts to arbitrary censorship unrelated to legitimate penological and/or governmental interests;

l) declare that the plaintiffs have been denied equal protection due to the fact that the defendants have enforced the aforementioned deprivations against only those Wisconsin prisoners currently incarcerated in Wisconsin, and not those Wisconsin prisoners currently residing out of state by virtue of the recent out-of-state-transfers;

m) the plaintiffs further request that this Court issue a permanent injunction restraining the defendants from enforcing the ban and/or confiscation of legally purchased and lawfully owned cassettes and cassette-tape-players;

n) the plaintiffs request that this Court issue a permanent injunction restraining the defendants from enforcing the current ban of music protected under the First Amendment;

o) the plaintiffs request that this Court issue a permanent injunction restraining defendants from enforcing the current ban on pornography;

p) the plaintiffs request that this Court enter such other and further relief as the Court deems just and proper.

The plaintiffs hereby swear, under penalty of perjury that the foregoing is true and correct.

Respectfully submitted this 28th day of MAY,

1999.

Spriggie Hensley
Spriggie Hensley

Allen Koch
Allen Koch

Columbia Corr. Inst.
P.O. Box 900
Portage, Wisconsin,
53901

Library

Mailing Address

149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471
Fax (608) 267-3661



**State of Wisconsin
Department of Corrections**

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary

April 21, 1999

To: All Wardens

From: Dick Verhagen, Administrator
Division of Adult Institutions

Re: DOC 309, IMP #1-A, Electronic Equipment - Television, Radio, Tape Cassettes & Combination Units

Internal Management Procedure #1-A will be revised to reflect the following:

Effective June 1, 1999

1. Inmates will not be allowed to receive cassette tapes from a retail outlet.
2. Inmates will not be allowed to receive a cassette player, or cassette player combination unit, from a retail outlet.
3. Inmates will not be allowed to retain possession of cassette tapes upon transfer to another DOC Institution/Center. In such cases, the inmate will be allowed to send the cassette tape(s) out on visit, mail the tape(s) to someone on their visiting list or have the tape(s) destroyed.

Effective June 1, 2000

1. Inmates will not be allowed to have cassette tapes in their possession.
2. Inmates will not be allowed to have a cassette player in their possession.

NOTE: Cassette player combination units (radio/cassette, TV/radio/cassette) will be allowed provided the inmate was in possession of the item prior to June 1, 1999.

Each institution will be responsible for notifying inmates of this revision to IMP #1-A.

Cc: Cindy O'Donnell, DOC Deputy Secretary
Marianne Cooke, DAI Asst. Administrator
Cindy Schoenike, DAI ASST. Administrator
Office and Bureau Directors
File

Library

**COLUMBIA CORRECTIONAL INSTITUTION
CORRESPONDENCE/MEMORANDUM**

STATE OF WISCONSIN

DATE: April 21, 1999
TO: All Inmates and Staff
FROM: Jeffrey P. Endicott, Warden
SUBJECT: DOC 309 IMP #1-A - Cassette Tapes

PLEASE POST HU _____

Attached is DOC 309 IMP #1-A related to cassette tapes. Since some elements of this IMP regarding receipt of new tapes and equipment go into effect June 1, 1999, you should review it carefully at this time. It does contain a Grandfather Clause with respect to equipment and tapes in possession prior to June 1, 1999. Possession may extend until June 1 of 2000, except in the event of institution transfer.

Please read this IMP carefully and assure that you are in compliance as stated by the implementation date. Thank you in advance for your cooperation.

JPE:jp

Imp tapes 21

Cc: Mail/Property Room Staff
Lt. Thomure
Library-POST
IMP Manual Holders
ROLL CALL
File

**COLUMBIA CORRECTIONAL INSTITUTION
CORRESPONDENCE/MEMORANDUM**

STATE OF WISCONSIN

DATE: September 1, 1998

TO: All Inmates and Staff

PLEASE POST ON HU _____
until 2/1/99

FROM: Jeffrey P. Endicott, Warden 

SUBJECT: Revised Administrative Code DOC 309

The Department of Corrections has revised DOC 309. Some of the significant changes are related to property and mail. The implementation of this rule goes into effect as of December 1, 1998.

The following are a partial list of some of those changes:

1. **DEFINITIONS:** Amends and creates new definitions. It amends the definition of close family member, general account, release account, and administrator. It creates definitions for mail, nudity, pornography, secretary, warden, sexual behavior, and sexual excitement.
2. **SCOPE:** Adds the provision that this rule does not apply to inmates placed by the Department in county penal facilities or other State or Federal penal facilities. The rules of those other facilities will apply to these inmates.
3. **MEDIA:** Changes the provision that news media representatives shall be permitted to interview individual inmates under certain circumstances, to a provision which provides that the Department may permit news media representatives to interview individual inmates under certain circumstances and adds new factors to be used in determining to allow it or not.
4. **CORRESPONDENCE:** Requires the Department to permit inmates to correspond with anyone, unless specifically disapproved by the Warden.
5. **MAIL INSPECTION:** Permits inmate mail sent to certain parties to be opened for inspection if the Security Director has reason to believe that the mail contains contraband and provides that mail received by an inmate from any of these parties may be opened by institution staff in the presence of the inmate. This rule adds a provision that staff may inspect the document but only to the extent necessary to determine if the mail contains contraband, or if the purpose is misrepresented. This rule also adds the provision that certain mail may be read if there is reason to believe that it is other than a legal document.
6. **READING OF MAIL:** Permits correctional staff to read incoming and outgoing mail from certain parties to ensure the security of the institution, institution staff, inmates, and general public.

7. **THREATENING MAIL:** Changes a provision that provides that incoming and outgoing mail shall not be delivered if it threatens physical harm to a provision that incoming and outgoing mail shall not be delivered if it threatens harm to any person.
8. **MAIL IDENTIFICATION:** Requires mail from certain parties to be clearly identified as being from one of the parties.
9. **UNACCEPTABLE MAIL:** Creates a provision that incoming or outgoing mail may not be delivered if the Security Director has reasonable grounds to believe that the mail teaches or advocates illegal activity or disruption or behavior consistent with a gang or a violent ritualistic group.
10. **PORNOGRAPHY:** Creates a provision that incoming or outgoing mail may not be delivered if it is determined to be injurious and defines injurious as materials which are pornographic. Pornographic materials also include nudity which is not part of any published or printed material, such as a personal nude photograph. Pornography in the institution contributes to a hostile work environment. Also, many inmates are sex offenders whose treatment may be compromised by exposure to pornography. Once pornography is allowed in an institution, institution staff cannot control its distribution. There have been instances where inmates admit that they are addicted to pornography and have used pornography to commit crimes such as making obscene telephone calls and writing obscene letters to members of the public.*
11. **GOALS OF DOC:** Creates a provision that incoming or outgoing mail may not be delivered if it is determined to interfere with individual penological interests, goals or needs.
12. **WARDEN DETERMINATION:** Creates a provision that incoming mail may not be delivered if the Warden determines it to be inappropriate for distribution throughout the institution.
13. **INSTITUTION SECURITY RESTRICTIONS:** Adds a provision that inmates may not receive publications which teach or advocate hatred and present a danger to institutional security and order.
14. **EXEMPTION:** Exempts inmate to inmate mail from the requirement that a record be kept of any mail that it reads.
15. **PERSONAL PROPERTY STORAGE:** Provides that all inmate personal property shall be stored as specified by each institution.

The Pornography Rule will be implemented on December 1, 1998. As of that date, mail that contains material deemed to be pornographic per the definition in the rule will not be delivered. Any such materials found in an inmate's possession as of that date will be considered contraband and shall be dealt with accordingly.

Decisions on questionable materials will be made on a case by case basis. These decisions will be governed by the Internal Management Procedure presently being developed by the Division of Adult Institutions. The decisions will also cover personal photographs and books. There will be no redacting (editing/altering) of materials. It is either all of a given material or none of it.

Memo: Revised Administrative Code DOC 309

September 1, 1998

Page 3

Between now and December 1, inmates are to send out or properly dispose of any materials that may meet the definition of pornography. Some advisory examples of magazines that are likely to have contained pornographic materials in the past, such as Playboy, Hustler or the Swimsuit Issue of Sports Illustrated, and some of the other more graphic materials, may not be allowed. Inmates may wish to cancel their subscription or change the receiving address to a friend or relative on the outside.

A copy of the new Administrative Rule is available in the Library for inmates to review.

*According to DOC 309.02(16) "Pornography" means any material, whether written, visual, video, or audio representation or reproduction, that depicts any of the following:

- a. Human sexual behavior.
- b. Sadomasochistic abuse, including but not limited to flagellation, bondage, brutality to or mutilation or physical torture of a human being.
- c. Unnatural preoccupation with human excretion.
- d. Nudity which appeals to the prurient interest in sex.
- e. Nudity which is not part of any published or printed material, such as a printed nude photograph.
- f. Nudity of any person who has not attained the age of 18.

Nudity is defined in DOC 309.02(14), which states "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion below the top of the areola or nipple, or the depiction of covered male genitals in a discernibly turgid (erected/excited) state."

JPE:jp
Doc30991

EX: Department Heads
Cc: Roll Call
Daily Report
Mail/Property Department Staff
Housing Unit _____(POST)
Library (POST)
Housing Unit _____ Sergeants
File

BY _____
GARY H. HANBLIN
CLERK OF THE COURT
DAY OF _____
1998
M _____
TA ETUTITABUS JAMPOREB

OCT 17 2000

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

HARLAN RICHARDS 037975
P.O. Box 31
Plymouth, WI 53073

RICHARD J. CALLAWAY
CIRCUIT COURT, BR 8

and

KENT DENNY 115386
PETER GALOWSKI 096262
JEFFREY GOLDSMITH 164394
WILL HIGHFILL 164178
DONALD GOLL 111244
SCOTT JENKINS 142866
GERALD KRAMAR 174297
RICHARD KUSCH 179388
ROBERT PRIHODA 039560
LAVERN ROGERS 040256
THOMAS STANTON 047720
EDDIE ROBINSON 125022
REYNALDO MOYA-GOMEZ 167959
P.O. Box 147
Fox Lake, WI 53933,

Case No. 00CV2451

Classification Type Code:

Declaratory Judgment 30701
Unclassified 30703

SUMMONS

Plaintiffs,

-vs-

JON LITSCHER, Secretary,
STEPHEN PUCKETT, Classification Chief,
Department of Corrections, and
JERRY SMITH, Chairperson,
Wisconsin Parole Commission,
being sued in their individual
and official capacities,
149 East Wilson Street
P.O. Box 7925
Madison, WI 53707,

Defendants.

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE
COUNTY CLERK OF CIRCUIT COURT,
DANE COUNTY, WI.
JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

SEP 7 8 08 AM '00

CIRCUIT COURT

THE STATE OF WISCONSIN: To each person named as a defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements

Person Served: David Gustafson

Time: 10:32

Date: 10-17-2008

Place (address): 15 S. Capital

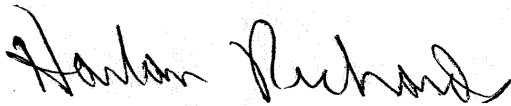
Manner of service: Personal service

Signature: [Handwritten Signature]

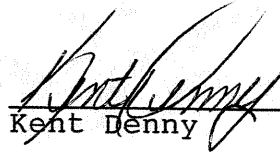
of the statutes. The answer must be sent or delivered to the court, whose address is 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53709; and to plaintiff Harlan Richards, whose address is P.O. Box 31, Plymouth, WI 53073; and all other plaintiffs whose address is P.O. Box 147, Fox Lake, WI 53933. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

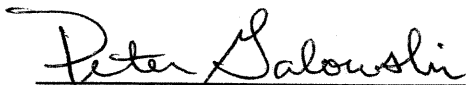
Dated this 24 day of August, 2000.



Harlan Richards
P.O. Box 31
Plymouth, WI 53703



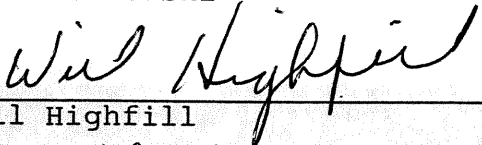
Kent Denny



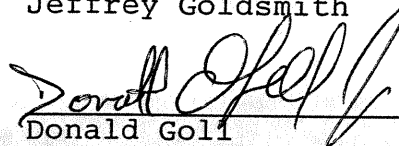
Peter Galowski




Jeffrey Goldsmith



Will Highfill



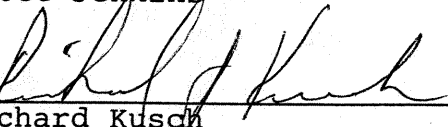
Donald Goli



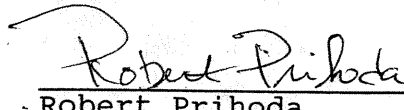
Scott Jenkins



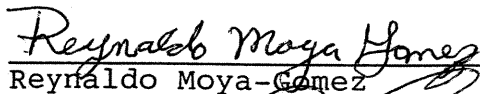
Gerald Kramar



Richard Kusch



Robert Prihoda



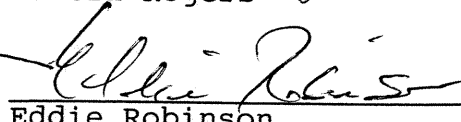
Reynaldo Moya-Gomez



Lavern Rogers



Thomas Stanton



Eddie Robinson
P.O. Box 147
Fox Lake, WI 53933

HARLAN RICHARDS 037975
P.O. Box 31
Plymouth, WI 53708

and

KENT DENNY 115386
PETER GALOWSKI 096262
JEFFREY GOLDSMITH 164394
WILL HIGHFILL 164178
DONALD GOLL 111244
SCOTT JENKINS 142866
GERALD KRAMAR 174297
RICHARD KUSCH 179388
ROBERT PRIHODA 039560
LAVERN ROGERS 040256
THOMAS STANTON 047720
EDDIE ROBINSON 125022
REYNALDO MOYA-GOMEZ 167959
P.O. Box 147
Fox Lake, WI 53933,

Case No. 00CV2451

Classification Type Code:

Declaratory Judgment 30701
Unclassified 30703

Plaintiffs,

-vs-

JON LITSCHER, Secretary,
STEPHEN PUCKETT, Classification Chief,
Department of Corrections, and
JERRY SMITH, Chairperson,
Wisconsin Parole Commission,
being sued in their individual
and official capacities,
149 East Wilson Stret
P.O. Box 7925
Madison, WI 53707,

Defendants.

DANE COUNTY
CIRCUIT COURT
SEP 7 8 08 AM '00
THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT
JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

CIVIL COMPLAINT

Nature of the Action

1. This is an action for monetary, declaratory, and injunctive relief to declare DOC 302.145, the "risk rating system" employed under DOC 302.14(15), and DOC 302.145(3)(c)3.

(that requires a parole plan before a lifer can transfer to minimum) as ex post facto laws which subject plaintiffs to more onerous conditions of confinement and prolonging the time of incarceration they must spend in prison. This action also challenges the de facto application of the "life means life" legislation enacted in 1988; and the "truth in sentencing" legislation which took effect on January 1, 2000. This court has jurisdiction pursuant to sec. 806.04, Wis. Stats., and 42 U.S.C.A § 1983.

Parties to the Action

2. All named plaintiffs are serving life sentences and received their sentences prior to 1988 (persons serving life sentences will be referred to as "lifers" in this action); in addition some plaintiffs are serving consecutive sentences, namely Peter Galowski is serving a consecutive life term; Robert Prihoda and Lavern Rogers are each serving 70 years consecutive to their life term; Scott Jenkins is serving 30 years consecutive to his life term; Jeffrey Goldsmith is serving 20 years consecutive to his life term; Thomas Stanton is serving 5 years consecutive to his life term; and Will Highfill is serving 5 years consecutive to his life term;

3. Jon Litscher is the secretary of the Department of Corrections and as such has control over the application and implementation of the Wisconsin Administrative Code as it applies to plaintiffs; and is being sued in his individual and official capacity;

4. Stephen Puckett is the classification chief who has applied DOC 302.145 to plaintiffs subjecting them to more onerous conditions of confinement and causing them to serve more time in prison; and is being sued in his individual and official capacity;

5. Jerry Smith is the chairperson of the Wisconsin Parole Commission who has employed the "life means life" and "truth in sentencing" legislation against plaintiffs in a de facto manner; and is being sued in his individual and official capacity;

Facts

6. In 1988, the Division of Corrections (which in 1990 became the Department of Corrections (DOC) promulgated prison classification guidelines for persons serving life sentences which created mandatory restrictions on transfer to reduced security;

7. DOC 302.145(2)(a)1., 2., 3. and (3)(a)(b)1., 2., 3. created requirements that plaintiffs had to serve 6, 8, or 15 years in maximum security in accordance to their designation as to category of lifer before being transferred to a medium or minimum security; in addition to the life sentence, plaintiffs must serve a minimum of an additional 25% of a consecutive sentence or sentences, and in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wis. Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wis. Act 528; and the "risk

rating system" pursuant to DOC 302.14(15) as applied to lifers employs the same guidelines as under DOC 302.145;

8. DOC 302.145(3)(c)3. created a requirement that plaintiffs could not be transferred to minimum security until there had been a request for a preparole plan from the parole commission;

9. Numerous lifers challenged the classification guidelines in Smart, et al. v. Goodrich, et al., 89 CV 430, Dane County, which resulted in DOC 302.145 being declared unconstitutional *ex post facto* punishment in 1990;

10. The trial court relied on Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 965 (1981), to hold that the new rule subjected lifers to "more onerous" conditions of confinement by blocking their transfer to reduced security;

11. The trial court in Smart did not reach the issue of whether the new rule resulted in lifers spending more time in prison;

12. The state appellate court reversed the trial court in Burrus v. Goodrich, 194 Wis.2d 655, 535 N.W.2d 85 (Wis.App.1995), relying on State v. Thiel, 188 Wis.2d 695, 524 N.W.2d 641 (Wis.1994), to hold that since the subjective intent of the rule was not to punish lifers the rules were not *ex post facto* punishment;

13. The appellate court went on to find as a fact that lifers would not serve any more time in prison as a result of the rule -- a fact which was disputed by plaintiffs in the trial court proceedings;

14. In spite of the Burrus decision being issued in 1995, DOC 302.145 was not formally reapplied to lifers until April 1998;

15. In 1997, the United States Supreme Court in Lynce v. Mathis, 519 U.S. 433, 117 S.Ct. 891 (1997), held that it was not the "subjective intent" of the persons who created a law or rule that was the controlling issue in an ex post facto claim but rather the "actual effect" of the rules;

16. Also in 1988, the Wisconsin legislature modified sec. 973.014, Wis. Stats., to permit a court to set a parole eligibility date for lifers at any point beyond the then minimum eligibility of 13 years 4 months (20 years less the statutory good time);

17. Lifers whose crimes occurred before July 1984 were eligible for parole in 11 years 3 months -- thereafter, the minimum time to parole was 13 years 4 months;

18. In 1995, the legislature amended sec. 973.014, Wis. Stats., to permit a court to sentence a lifer to life without parole;

19. In 1998, the legislature abolished all good time credits effective January 1, 2000, requiring lifers to serve a minimum of 20 years in prison before being considered for supervised release;

20. From 1980 to the present, lifers have been required to spend an increasingly longer period of incarceration in prison before release;

21. The average time served before release for lifers

in the early 1980's was from 11 to 15 years;

22. The amount of time served to release for lifers has increased to where it now takes an average of 20 years to be released -- for those who have been released. Many more lifers have served beyond 20 years but are still being denied release on parole and/or transfer to minimum security;

23. Prior to 1988 and the implementation of DOC 302.145, lifers were routinely transferred to minimum security in 11 to 13 years or earlier;

24. From 1980 to the present, lifers have been required to serve ever-increasing periods of incarceration in maximum and medium security prisons before being permitted to transfer to minimum security;

25. In the first 6 months of 2000, no lifers have been permitted to transfer to minimum security or paroled, while in 1999 only 2 lifers were allowed to transfer to minimum security after having served an average of 19 years and only 2 were paroled after serving over 20 years;

26. Conditions in maximum and medium security institutions are more restrictive and punitive than conditions in minimum security;

27. Prisoners transferred to minimum security have opportunities for work and school release, community contacts, increased freedom and additional entitlements to personal property and other privileges;

28. The average time lifers have been required to serve at minimum security before release on parole has been steadily

increasing from the early 1980's when it was 1 to 3 years to where it is now in excess of 4 years;

29. Lifers cannot be released on parole until after they are transferred to minimum security;

30. Each of the lifers in this action have been denied transfer to minimum security based on the criteria under DOC 302.145(3)(a)(b)1., 2, 3. and (c)3.;

31. Each of the lifers in this action have been denied transfer to minimum security based on the "risk rating system" under DOC 302.14(15);

32. Each of the plaintiffs have been denied parole because they are unable to transfer to minimum security to meet the parolability requirements imposed by defendant Smith;

33. Each of the plaintiffs have been denied transfer to minimum security and release on parole based on defendant Smith's retroactive application of the legislative intent that persons currently receiving life sentences spend more time in prison;

34. The decisions made on which lifers transfer to minimum security or are released on parole since 1988 have been arbitrary as there is no rational basis upon which those lifers released or sent to minimum can be distinguished from plaintiffs;

35. Plaintiffs have exhausted all administrative remedies, they filed a group complaint on December 16, 1999, which was rejected by the inmate complaint examiner on December 16, 1999. An appeal to the corrections complaint examiner was filed on December 18, 1999, which was dismissed on December

23, 1999, and being accepted by the secretary on December 28, 1999; even though the secretary issued his decision on December 28, 1999, plaintiffs were not notified of the decision until May 18, 2000.

Statement of Claim

36. DOC 302.145 is ex post facto punishment which subjects plaintiffs to increased time of incarceration and more onerous conditions of confinement;

37. The application of the "risk rating system" under DOC 302.14(15) is ex post facto punishment which subjects plaintiffs to increased time of incarceration and more onerous conditions of confinement;

38. The de facto application of the "life means life" legislation is ex post facto punishment which subjects plaintiffs to increased time of incarceration in prison;

39. The de facto application of the "truth in sentencing" legislation is ex post facto punishment which subjects plaintiffs to increased time of incarceration in prison:

40. The arbitrary selection of lifers for transfer to minimum security or release on parole has no rational basis and denies due process and equal protection of the laws;

Relief Requested

41. A declaratory judgment that DOC 302.145 is ex post facto punishment in violation of the Wisconsin and United States Constitutions by holding plaintiffs in more onerous conditions

conditions of confinement and by requiring them to serve more time in prison prior to release;

42. A declaratory judgment that the "risk rating system" under DOC 302.14(15) as applied to lifers is **ex post facto** punishment in violation of the Wisconsin and United States Constitutions by holding plaintiffs in more onerous conditions of confinement and by requiring them to serve more time in prison prior to release;

43. A declaratory judgment that defendant Smith has retroactively applied the "life means life" and the "truth in sentencing" legislation to plaintiffs in a de facto manner inflicting **ex post facto** punishment in violation of the Wisconsin and United States Constitutions;

44. An order finding plaintiffs presumptively eligible for immediate transfer to minimum security unless defendants can show a compelling governmental interest in preventing such transfer;

45. An order finding plaintiffs in this complaint eligible for immediate release on parole unless defendants can show a compelling governmental interest in denying such release on parole;

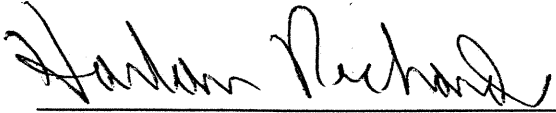
46. Compensatory and punitive damages;

47. All costs and attorney fees incurred in this action;

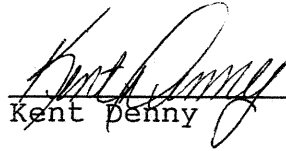
48. Any other relief the court deems just and proper.

Dated this 24 day of August, 2000.

Respectfully submitted,



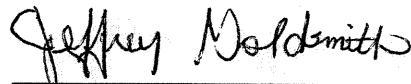
Harlan Richards
P.O. Box 31
Plymouth, WI 53073



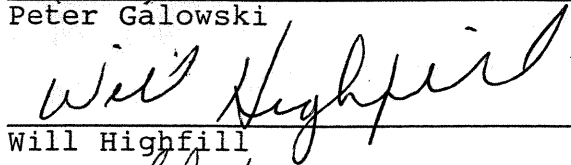
Kent Penny



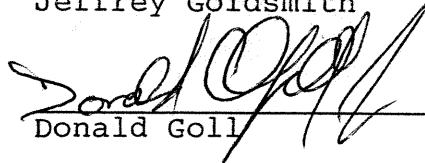
Peter Galowski



Jeffrey Goldsmith



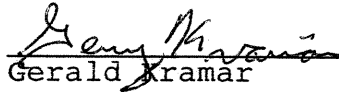
Will Highfill



Donald Goll



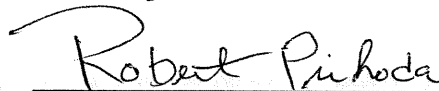
Scott Jenkins



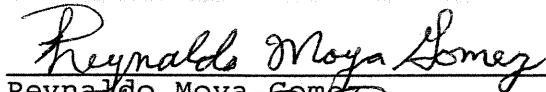
Gerald Gramar



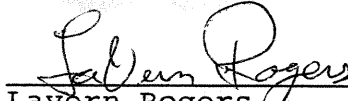
Richard Kusch



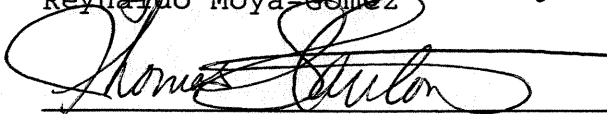
Robert Prihoda



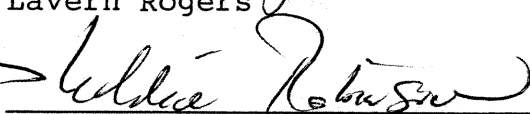
Reynaldo Moya Gomez



Lavern Rogers



Thomas Stanton



Eddie Robinson
P.O. Box 147
Fox Lake, WI 53933

OFFENDER COMPLAINT

INSTRUCTION *SEE REVERSE SIDE*

OFFENDER NAME (If group complaint, enter name of spokesperson)		DOC NUMBER
THOMAS STANTON		47720
INSTITUTION NAME	OFFENDER HOUSING UNIT	CELL OR ROOM NUMBER
FLCI	3C	D-396

TO BE FILLED IN BY ICE ONLY	
DOC COMPLAINT FILE NUMBER	
INSTITUTION COMPLAINT FILE NUMBER	
DATE COMPLAINT RECEIVED	
TYPE OF COMPLAINT	CODE NUMBER
<input type="checkbox"/> Individual <input type="checkbox"/> Group	
DATE OF INCIDENT OR DENIAL OF REQUEST	

STATE YOUR COMPLAINT

Pursuant to DOC 310.10, this is a Group Complaint. Each of the complainants are lifers with commitment offense(s) which occurred prior to 1988.

During the 27 year time period between 1967 and 1994, Wisconsin parole authorities granted parole release(s) to 228 inmates sentenced to at least a term of life imprisonment upon said inmates serving "an average" of just slightly more than 14 years each. See, Overview of Release Experiences of Lifers in Wisconsin Institutions 1967-1981, Department of Health and Social Services, Wisconsin Parole Board, Fred W. Hinckle, Chairman, dated January of 1982 (documenting 126 first releases on parole of Wisconsin inmates convicted of 1st Degree Murder in an "average time served" of 14.9 years each); CONFIDENTIAL MEMO of May 7, 1987, Wisconsin Parole Board, Mary Wilburn, Chairperson (indicating that the 1982 study "still reports the Wisconsin experience with clarity and continuing accuracy"); Wisconsin/Legislative Audit Bureau Report of March 9, 1994, Dale Cattanaon, State Auditor (factual finding that "between 1980 and August 1993, 102 inmates serving life sentences were release [on parole] upon serving an average of 13.6 years each"). All of those inmates were classified as minimum security prior to receiving their grant(s) of parole, since no Wisconsin inmate having a security classification of maximum, medium, or medium-out has ever been given serious consideration for parole release by the Wisconsin Parole Commission.

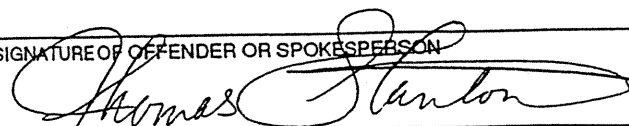
In 1988, the DOC promulgated new prison classification guidelines for persons serving life sentences, to wit: DOC 302.145 & 302.14(15). The new guidelines, inter alia, created mandatory requirements which must be met by lifers in order to transition to reduced custody -- most particularly, the establishment of distinct "categories" [of lifers] requiring lifers to spend 6, 8, or 15 years in maximum or medium security, and also requiring a specific request for a preparole plan from the Parole commission before permitting the minimum security classification and minimum security placement of a lifer -- that had not been required of lifers classified and placed at minimum security settings prior to enactment of the rules.

In successive circuit court decisions entered in 1990, two circuit court judges held that the rules violated the ex post facto Clause when applied to lifers whose commitment offense(s) occurred prior to enactment of the rules. State ex rel. Ronald Schilling v. Patricia Goodrich, et al., 88CV2911 (Dane County, Wisconsin); Smart, et al. v. Goodrich, et al., 89CV430 (Dane County, Wisconsin). Upon these circuit court decisions, the DOC discontinued utilization of § 302.145 and 302.14(15) relative to ALL lifers whose commitment offense(s) occurred prior to enactment of the rules.

Not long after discontinuation of reliance on § 302.145 and 302.14(15) to assign classification to lifer, DOC-classification authorities conspired with Wisconsin parole authorities in the creation and use of a substitute modus of approving or denying minimum security classification and placement of lifers. The alternative modus operated by making parole authorities the de facto

NAME(S) OF PEOPLE WHO HAVE INFORMATION ABOUT THIS COMPLAINT

SIGNATURE OF OFFENDER OR SPOKESPERSON



DATE SIGNED

12-16-99

NOTICE TO OFFENDER: The ICE will acknowledge your complaint within 3 working days of the date of receipt.

Program Review Committee and classification authorities by requiring that parole authorities enter a "window recommendation" [in a parole decision] before PRC could, or classification authorities would, recommend and approve assignment of minimum security for a lifer. This modus of lifer classification became commonly known as "The Window Rule."

In 1994, a declaratory judgment action was initiated by Stanton on the issue of whether DOC and parole authorities had abused their discretion by utilizing the "window rule" in the classification of lifers. After DOC-classification and parole authorities consistently denied knowledge of any "window rule" throughout nearly three years of preliminary proceedings, at a court trial for declaratory judgment held on March 11, 1997, DOC-classification and parole authorities ADMITTED their use of the "window rule" in 1992, 1993, 1994 and early 1995 as a modus of approving or denying minimum security classification to lifers. On April 11, 1997 a Declaratory Judgment Order was entered holding that the DOC and parole authorities had acted contrary to law by using the "window rule" in the security classification of lifers which was not properly promulgated under rulemaking procedures of ch. 227; Wis. Stats. Of relevance to the instant complaint is a statement comprising the declaratory judgment drawn by counsel for classification and parole authorities, stating:

"There is no intent by either the Parole Commission or the Office of Offender Classification to institute a policy or practice of requiring the Parole Commission to state that it will parole an inmate serving a life sentence within three to five years before the Program Review Committee will recommend that a lifer be assigned a minimum security classification."

Stanton v. Husz, et al., 94CV3479 & 96CV0527 (Dane County, Wisconsin).

The state appealed Smart v. Goodrich, and on appeal several cases were consolidated addressing the same issues and a published case was issued reversing the trial court's finding that §302.145 and 302.14(15) violated the ex post facto Clause (Burrus v. Goodrich, 194 Wis. 2d 655, 535 N.W. 2d 85 (Wis. App. 1995)). The Wisconsin Appellate Court, relying on State v. Thiel, 188 Wis. 2d 695, 524 N.W. 2d 641 (Wis. 1994), held that since the subjective intent of the lifer classification rules was not to punish the lifers, the rules could not be ex post facto punishment.

In spite of the 1995 precedent established by Burrus, neither §302.145 nor 302.14(15) were employed by the DOC during 1995, 1996, 1997 and ~~early 1998~~ as a modus of assigning security classification to lifers whose commitment offenses occurred prior to 1988.

Prior to February 26, 1998, numerous lifers were assigned minimum security classifications and sent to minimum security settings without first having received a request for a preparole investigation (PPI) by the parole commission.

On February 26, 1998, Gerald Konitzer sent an e-mail to numerous correctional authorities instructing them to begin [anew] utilization of § 302.145 in classification of all lifers when considering reduced security assignment and transfer to minimum security settings.

Subsequent to February 26, 1998, § 302.145 and 302.14(15) have been applied to all named complainants at classification (PRC) hearings, and each [of us] have been denied minimum custody and transfer because parole authorities have not issued a request for a preparole plan/investigation (PPI).

In 1997, the U.S. Supreme Court issued a decision in Lynce v. Mathis, 519 U.S. 433, 117 S.Ct. 891 (1997), holding that the subjective intent of state officials who create retrospective laws is not relevant to ex post facto analysis. Instead, it is the actual effect of the retrospective policy which must be evaluated.

In Burrus, the state appellate court held that § 302.145 and 302.14(15) would not result in lifers serving any additional time in prison. However, that conclusion was not based on any factfinding by the appellate court but, instead, was merely a pronouncement. In point of fact, when the appellate court decided Burrus, in 1995, there was little evidence to support any particular fact-based conclusion concerning the "actual effect" of a retrospective application of the rules because the rules had only been utilized in the assignment of security classifications for a period of a year-and-a-half before being struck down by the Dane County Circuit Courts and were discontinued in practice by the DOC. However, now having meaningful evidence by which to assess the "actual effect" of the retrospective application of said rules, it has NOW become clearly evident that the rules are depriving complainants of an ability to timely transition from medium to minimum security settings and, consequently, are requiring complainants to serve additional time in prison on their life sentences. As such, the rules are effecting ex post facto punishment on complainants in violation of rights secured by the United States Constitution.

Kent Denny
 Kent Denny 115386

Jeffrey Goldsmith
 Jeffrey Goldsmith 164394

Donald Goll
 Donald Goll 111244 LC 177A

Gerald Kramar
 Gerald Kramar 174297 3-C 171A

Robert Prihoda
 Robert Prihoda 39560 U2A 46B

Lavern Rogers
 Lavern Rogers 40256

Eddie Robinson
 Eddie Robinson 125022, U-3C, 390-D

Peter Galowski
 Peter Galowski 96262

Will Highfill
 Will Highfill 164178 U2A, 48B

Scott Jenkins
 Scott Jenkins 142866

Richard Kusch
 Richard Kusch 179388 2A 30B

Brian Rolf
 Brian Rolf 28465 270-C A

Reynaldo Moya-Gomez
 Reynaldo Moya-Gomez 18959 2E D-96

Harlan Richards
 Harlan Richards 37975

RELIEF REQUESTED

Complainants request exemption from application of the ex post facto rules and transfer to minimum security correctional settings.

Tommy G. Thompson
Governor

ICE RECEIPT
FLCI-1999-66691



Jon E. Litscher
Secretary

State of Wisconsin

Department of Corrections

**** ICRS CONFIDENTIAL ****

To: STANTON, THOMAS D # 47720
UNIT: 03 -396
FOX LAKE CORRECTIONAL INSTITUTION
W10237 LAKE EMILY ROAD / P.O. Box 147
Fox Lake, WI 53933-0147

Complaint Information:

DOC Complaint Number:

Date Received:

Subject of Complaint:

Brief Summary:

This is to acknowledge the complaint you filed and which was received on the date indicated. Depending on the nature of the complaint, you may or may not be interviewed by the ICE. A recommendation on the complaint will be made and submitted to the appropriate reviewing authority within 15 working days of acknowledgement. A decision will be made by the appropriate reviewing authority within 5 working days following receipt of the recommendation unless extended for cause.

Please write to the ICE if this issue is resolved before you receive an answer.



Jon E. Litscher
Secretary

State of Wisconsin

Department of Corrections

REJECTION OF COMPLAINT

To: STANTON, THOMAS D # 47720
UNIT: 03 - 396
FOX LAKE CORRECTIONAL INSTITUTION
W10237 LAKE EMILY ROAD / P.O. Box 147
Fox Lake, WI 53933-0147

Complaint Information: **REJECTED** DOC Complaint Number:

Date Complaint Received:

Subject of Complaint:

Inmate Contacted?

Person Interviewed:

Documents Relied Upon:

Brief Summary:

Rejection Comment:

All the lifers should be transferred to minimum because the rules enacted in 1994 should not apply to them.

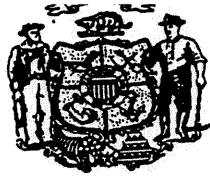
Requests for PRC action are not properly the subject of the inmate complaint review system (DOC 310.08(2)(b), Wis. Adm. Code); these are done at one's regular six-month PRC recall. Challenges to those decisions are made to the classification chief and they are not appealable through the ICRS (DOC 310.08(2)(e)).

DOC 302.145 and 302.14(15) were promulgated in 1988 and the most recent signator was incarcerated on 5/27/1987. Thus, this complaint is untimely filed (DOC 310.09(3)) because more than 14 calendar days have elapsed.

The appeal process for assignments made under DOC 302.145 is specified in (2)(b): "An inmate may appeal the designation as to category of lifer to the classification chief within 10 days after receipt of the designation." This appeal is well beyond the 1987 date of the most recently incarcerated signator and is also untimely.

Finally, it is noted that the administrative code is promulgated through a lengthy legal review process. The mere citation of

Tommy G. Thompson
Governor



FLCI-1999-00091
ICE REJECTION

Jon E. Litscher
Secretary

State of Wisconsin
Department of Corrections
REJECTION OF COMPLAINT

Rejection Code:

case history is, therefore, not sufficient, in and of itself, to
negate the code.

Scope

Date: Thursday, December 16, 1999

Examiner's Signature:

Tom Gayinde

REQUEST FOR CORRECTIONS COMPLAINT EXAMINER REVIEW

INSTRUCTION:

1. Prepare an original and one copy of this request. Please print or type.
2. Keep the copy of this request for your records and send the original, in a sealed envelope, to:

CORRECTIONS COMPLAINT EXAMINER
DEPARTMENT OF JUSTICE
Post Office Box 7857
MADISON, Wisconsin 53707-7857

PART I - MUST BE COMPLETED

INMATE NAME THOMAS D. STANTON, #47720	INSTITUTION (Abbreviate) FLCI	COMPLAINT FILE NUMBER 1999-66691
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STATE BRIEFLY WHY YOU ARE NOT SATISFIED WITH THE ACTION OF THE WARDEN

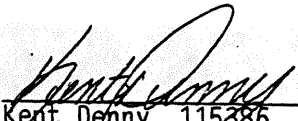
We are appealing the rejection of this grievance because, per §310.11(4), a complaint may only be rejected if it is frivolous and there was not finding of frivolousness entered in this case. Therefore, the rejection is contrary to law.

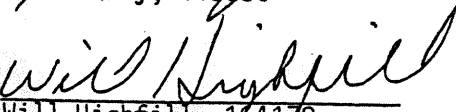
DOC 310.08(2) states in relevant part:

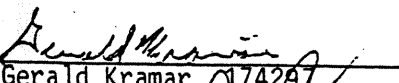
"An inmate may use the ICRS to raise significant issues regarding rules . . ."

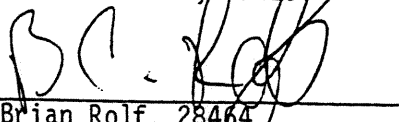
This is a challenge to the promulgation and implementation of ex post facto classification rules. It is not a challenge to the individual classification decisions, per se, as the PRC is bound by the Administrative Code. It is a challenge to the provisions comprising the Code used by PRC and Office of Offender Classification in the security classification assignments of the complainants. Further, this is not a challenge about procedural matters, so use of §302.19 as a prerequisite to utilizing the ICRS is inappropriate in this case.

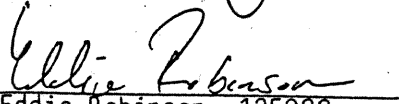
Exhaustion of the ICRS is a requirement when filing a legal action in state court by state prisoners. Its purpose is to give the DOC an opportunity to address the issue prior to the commencement of litigation. This grievance is intended to meet that purpose.

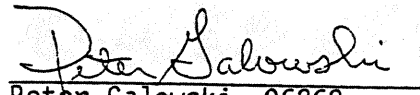

Kent Denny, 115386


Will Highfill, 164178

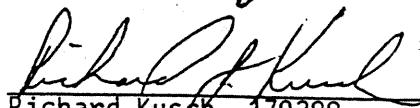

Gerald Kramar, 174297

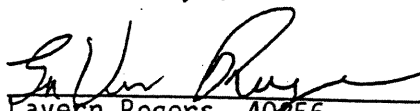

Brian Rolf, 28464

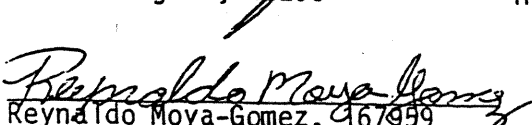

Eddie Robinson, 125022

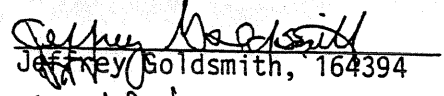

Peter Galowski, 96262

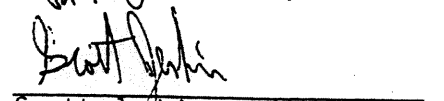

Donald Goll, 111244

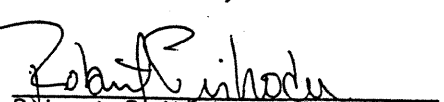

Richard Kusch, 179388

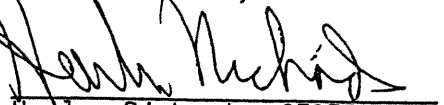

Lavern Rogers, 40256


Reynaldo Moya-Gomez, 467959


Jeffrey Goldsmith, 164394


Scott Jenkins, 142866


Robert Prihoda, 39560


Harlan Richards, 37975

PART 2 - IDENTIFY AND LIST ALL FORMS OF PROOF YOU HAVE OR ARE AWARE OF THAT SUPPORTS YOUR COMPLAINT.

NAME OF PERSON WHO CAN VERIFY YOUR STATEMENT

WHERE CAN THIS PERSON BE REACHED

WHAT WOULD THIS PERSON VERIFY

NAME OF PERSON WHO CAN VERIFY YOUR STATEMENT

WHERE CAN THIS PERSON BE REACHED

WHAT WOULD THIS PERSON VERIFY

OTHER (Receipts, property sheets, disciplinary paper work, PRC summaries, etc.)
See original complaint. Further documents available upon request.

PART 3 - MUST BE COMPLETED

SIGNATURE OF INMATE

Thomas Gordon

DATE SIGNED

12-18-99

Tommy G. Thompson
Governor

CCE RECEIPT
FLCI-1999-66691



Jon E. Litscher
Secretary

State of Wisconsin

Department of Corrections

**** ICRS CONFIDENTIAL ****

To: STANTON, THOMAS D # 47720
UNIT: 03 -396
FOX LAKE CORRECTIONAL INSTITUTION
W10237 LAKE EMILY ROAD / P.O. Box 147
Fox Lake WI 53933-0147

Complaint Information:

DOC Complaint Number:

Date Received:

Subject of Complaint:

Brief Summary:

Your request for review has been received.

You can expect a decision by the Secretary within 47 working days. If you do not receive a decision or other notices within that time, you may write directly to:

Secretary of the Department of Corrections
Post Office Box 7925
Madison, WI. 53707-7925

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



CCE REPORT
FLCI-1999-66691

State of Wisconsin

Department of Corrections

CORRECTIONS COMPLAINT EXAMINER'S REPORT

To: STANTON, THOMAS D # 47720
UNIT: 03 - 396
FOX LAKE CORRECTIONAL INSTITUTION
W10237 LAKE EMILY ROAD / P.O. Box 147
Fox Lake WI 53933-0147

From:
Corrections Complaint Examiner
Office of Audits, Investigations and Evaluations
P.O. Box 7925
Madison, WI. 53707-7925

RE: Complaint File #: FLCI-1999-66691

Name: STANTON, THOMAS D # 47720

Complaint Number: FLCI-1999-66691

Nature of Complaint: All the lifers should be transferred to minimum because the rules enacted in 1994 should not apply to them.

Method of Disposition:
Y Review on Record
N Investigation

Recommendation:

In agreement with and based on the report of the Institution Complaint Examiner, it is recommended this complaint be dismissed.

Date: Thursday, December 23, 1999

Handwritten signature of John Ray in cursive.

CORRECTIONS COMPLAINT EXAMINER

Tommy G. Thompson
Governor

*Rec'd
5-18-00 MD*



OOS REPORT
FLCI-1999-66691

Jon E. Litscher
Secretary

State of Wisconsin
Department of Corrections
OFFICE OF THE SECRETARY'S REPORT

To:

STANTON, THOMAS D # 47720
UNIT: 03 - 396
FOX LAKE CORRECTIONAL INSTITUTION
W10237 LAKE EMILY ROAD / P.O. Box 147
Fox Lake WI 53933-0147

Complaint File #: FLCI-1999-66691

The following is the Secretary's decision on the Corrections Complaint Examiner's recommendation of 12/23/99 in the above case:
The attached Corrections Complaint Examiner's recommendation to dismiss this complaint is accepted as the decision of the Secretary.

Date: Tuesday, December 28, 1999

Reviewer's Signature:

Chris O'Donnell

(2) Residents must be held at the level of custody at which they are classified or at a more secure level. Residents may be held at a level of custody more secure than the one at which they are classified because of space or program limitations, or with their consent.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. am. (intro.) and cr. (1) (f), eff. 1-1-90; am. (1) (intro.), cr. (1) (f), Register, September, 1990, No. 417, eff. 10-1-90; correction in (1) (c) 3 made under s. 13.93 (2m) (b) 5, Stats., Register, June, 1994, No. 462.

DOC 302.13 Institutional security classifications. No resident may be transferred to an institution unless the resident has the security classification required for residence in that institution as indicated below:

Correctional Institution	Inmate Classification			
	Maximum (Close and General)	Medium (Regular and Outside)	Minimum	Minimum/ CRC
Taycheedah (TCI)	X	X	X	X
Dodge (DCI)	X	X	X	X
Waupun (WCI)	X	X	X	X
Columbia (CCI)	X	X	X	X
Green Bay (GBI)	X	X	X	X
Racine (RCI)	X	X	X	X
Oshkosh (OSCI)		X	X	X
Kettle Moraine (KMCI)		X	X	X
Fox Lake (FLCI)		X	X	X
Oakhill (OCI)			X	X
Wisconsin Correctional Center System (WCCS)			X	X
Community Residential Confinement (CRC)				X
Wisconsin Resource Center (WRC)		X	X	X

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 1-1-90; r. and recr. Register, September, 1990, No. 417, eff. 10-1-90.

DOC 302.14 Factors in assigning a security classification. The following factors may be taken into consideration in assigning a security classification to an inmate:

(1) The nature of the offense of which the inmate was convicted, and its seriousness. Evaluation of the seriousness of the offense may include consideration of the following:

(a) Physical danger to another by the offense;
Register, June, 1994, No. 462

(b) Harm done to another in the commission of the offense;

(c) Whether the offender exhibited physical aggressiveness that exposed another to harm;

(d) Whether the crime was a crime against property; and

(e) Mitigating factors;

(2) The criminal record of the inmate;

(3) The length of sentence being served;

(4) The motivation for the crime of which the inmate was convicted;

(5) The inmate's attitude toward the offense and sentence;

(6) The inmate's vulnerability to physical assault by other inmates;

(7) The inmate's prior record of adjustment in a correctional setting, including any record of escape;

(8) The length of time the inmate has been in a particular security classification and institution;

(9) The medical needs of the inmate, including the need for physical or psychological treatment;

(10) Time already served for the offense;

(11) The reaction to the inmate in the community where the offense was committed or in the community where the institution is located;

(12) The inmate's conduct and adjustment in the general population of the institution;

(13) The inmate's performance in programs;

(14) A detainer filed with respect to the inmate, except that if a detainer is to be considered in giving an inmate a security classification, the detainer shall be evaluated on the basis of the potential penalties which may be imposed upon disposition of whatever underlies the detainer. The procedure for evaluating the detainer shall include the following:

(a) The registrar shall inform the inmate and the inmate's social worker of the detainer;

(b) The inmate's social worker shall make reasonable efforts to find out from the authority which has filed the detainer the reasons for filing the detainer, the underlying facts upon which the detainer is based, evidence of those facts and the potential penalties for whatever underlies the detainer;

(c) The inmate's social worker shall make available, with the inmate's permission, to the authority which filed the detainer any information useful in determining whether the detainer should be maintained;

(d) The inmate's social worker shall inform the inmate of all information acquired and given pursuant to pars. (b), (c), and (d);

(e) The inmate shall be given the opportunity to place on file and before anyone considering the detainer addi-

tional facts or facts contrary to those acquired and placed on file; and

(f) The extent to which the detainer is relied on and the reasons for relying on it shall be given to the inmate in writing; and

(15) The inmate's risk rating as high risk, moderate risk or low risk, determined by employing the department's risk rating system. Under the risk rating system, if one or more factors are rated high risk, the risk rating is high risk. If one or more factors are rated moderate risk and no factors are rated high risk, the risk rating is moderate risk. If all factors are rated low risk, the risk rating is low risk. In this subsection, "risk rating system" means the interpretive guidelines, procedures and forms used to assess the risk that an inmate presents to public safety and to the security and management of the correctional institution.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 12-7-88; r. and recr. Register, August, 1989, No. 404, eff. 9-1-89.

DOC 302.145 Requirements for assigning a security classification to an inmate serving a life sentence. (1) DEFINITIONS. In this section:

(a) "Administrator" means the administrator of the division of adult institutions in the Wisconsin department of corrections.

(b) "Life sentence" means a sentence of life imprisonment imposed following a conviction for a Class A felony. An inmate sentenced to life imprisonment who is released on parole, violates a condition of parole and is returned to a state correctional institution with or without a new sentence is serving a life sentence. If the governor pardons or commutes a life sentence, it is no longer a life sentence. In this paragraph, "Class A felony" means a crime specified as a Class A felony in chs. 939 to 951, Stats., or a crime from another jurisdiction that is punishable by a sentence of life imprisonment under that jurisdiction's laws.

(c) "Parole violator" means an inmate sentenced to life imprisonment who is released on parole, violates parole, has parole revoked under ch. DOC 331 and is returned to a state correctional institution with or without a new sentence.

(2) **CATEGORIES OF LIFERS.** (a) Each inmate serving a life sentence shall be designated as a category I, II, III or IV lifer. If the designation as to category of lifer is made at A & E, the A & E director or designee shall make the designation. At other times the PRC shall make the designation. A PRC designation as to category of lifer requires a unanimous vote. If a vote of the PRC is not unanimous, the case shall be referred to the classification chief to make designation as to category of lifer. Categories of lifers shall be designated in accordance with the following criteria:

1. A category I lifer is an inmate serving a life sentence who does not meet the criteria for a category IV lifer and who either committed a particularly vicious murder or other class A felony, including a murder or other class A felony involving torture, sexual abuse, body dismemberment, mutilation or sacrificial rituals, or multiple murders, or whose prior criminal record includes one or more felony or misdemeanor convictions or, within 10 years before commission of the current offense, one or

more juvenile delinquency adjudications, for behaviors which reflect an intent to inflict great bodily harm, as defined in s. 939.22, Stats., on the victim.

2. A category II lifer is an inmate serving a life sentence who does not meet the criteria of a category I, III or IV lifer.

3. A category III lifer is an inmate serving a life sentence who does not meet the criteria for a category I or category IV lifer and who has had no prior felony convictions and no prior juvenile delinquency adjudications within 10 years before the current offense for a felony offense and fewer than 5 prior misdemeanor convictions and juvenile delinquency adjudications within 10 years before the current offense for a misdemeanor offense, with none of the misdemeanor convictions or adjudications reflecting an intent to inflict great bodily harm on the victim, and no previous incarcerations in any state or federal correctional institution. The category III lifer had a close or long-term relationship with the victim. The murder or other class A felony was not committed for material gain and did not involve planning and preparation. The murder or other class A felony was a spontaneous emotional response to specific circumstances occurring at the time of the murder.

4. A category IV lifer is an inmate serving a life sentence who has a parole eligibility date set by the court under s. 973.014, Stats., later than the date provided in s. 304.06 (1), Stats.

(b) An inmate may appeal the designation as to category of lifer to the classification chief within 10 days after receipt of the designation.

(c) The PRC may review a designation as to category of lifer at any time on its own direction or at the request of the classification chief.

(3) **NEW LIFERS AND LIFERS WHO HAD A MAXIMUM SECURITY CLASSIFICATION ON DECEMBER 7, 1988.** (a) *Applicability.* The factors listed under s. DOC 302.14 may be taken into consideration in assigning a security classification to an inmate serving a life sentence who is received at a correctional institution following sentencing or revocation on or after December 7, 1988, and to an inmate serving a life sentence who had a maximum security classification on December 7, 1988. In addition, the requirements in this subsection shall apply to those inmates.

(b) *Time to be served in a maximum security institution.* Requirements for service of time in a maximum security institution by category of lifer are set out in this paragraph. A lifer shall serve in a maximum security institution at least the number of years that apply to his or her category, unless the PRC recommends placement in a medium security institution at an earlier date and the PRC recommendation is approved by the classification chief, or unless the lifer is in need of individualized care in which case he or she may be transferred to the Wisconsin resource center (WRC) under s. 302.055, Stats., with the time served in WRC deducted from the requirement for service of time in a maximum security institution. The following are the requirements for service of service of time in a maximum security institution:

1. Unless the classification chief approves placement in a medium security institution at an earlier date, a cate-

gory I lifer shall serve a minimum of 15 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category I lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wis. Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wis. Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

2. Unless the classification chief approves placement in a medium security institution at an earlier date, a category II lifer shall serve a minimum of 8 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category II lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wis. Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wis. Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

3. Unless the classification chief approves placement in a medium security institution at an earlier date, a category III lifer shall serve a minimum of 6 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category III lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wis. Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wis. Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

4. Unless the classification chief approves placement in a medium security institution at an earlier date, a category IV lifer shall serve his or her sentence in a maximum security institution at least up to the date 3 years prior to his or her parole eligibility date or for a minimum of 15 years, reduced by any sentence credit granted pursuant to s. 973.155, Stats., whichever is longer. If a category IV lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wis. Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wis. Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

5. Following revocation, a parole violator with an underlying life sentence but without the imposition of a new sentence or sentences shall serve a minimum of 12 months in a maximum security institution starting from the date of return to a state correctional institution, unless the classification chief approves placement in a medium security institution at an earlier date; and

6. Unless the classification chief approves placement in a medium security institution at an earlier date, following revocation, a parole violator with an underlying life sentence and with the imposition of a new sentence or sentences shall serve in a maximum security institution a minimum of 12 months or 50% of the time from the date of custody for the violation to a projected mandatory release date, calculated using the formula under s. 53.11 (1), Stats., on the new sentence or sentences imposed, whichever is greater.

(c) *Eligibility for minimum security classification.* To be eligible for a minimum security classification, an inmate serving a life sentence, including a parole violator with an underlying life sentence, shall have:

1. Reached parole eligibility as defined in ss. 304.06 (1) and 973.014, Stats.;

2. Served the required time in a maximum security institution under par. (b), unless the classification chief approved placement in a medium security institution at an earlier date;

3. Had a request by the parole board for a preparole plan;

4. Had a recommendation for minimum security classification made by the PRC under s. DOC 302.19 (4), using the factors listed under s. DOC 302.14, or, if the vote of the PRC for the change was not unanimous, had a recommendation for minimum security classification made by the A & E director and superintendent or designee, but if they could not agree, had the case referred to the classification chief;

5. Had a recommendation for minimum security classification made by the classification chief and referred to the administrator for a final decision; and

6. Had a final decision by the administrator approving the inmate's minimum security classification.

(4) *LIFERS WHO HAD A MINIMUM SECURITY OR MEDIUM SECURITY CLASSIFICATION ON DECEMBER 7, 1988.* (a) *Applicability.* The factors listed under s. DOC 302.14 may be taken into consideration in assigning a security classification to an inmate serving a life sentence who had a minimum security or medium security classification on December 7, 1988. In addition, the requirements in this subsection shall apply to those inmates.

(b) *Minimum security classification.* Prior to December 7, 1988, the parole board shall have provided a parole consideration file review for each inmate serving a life sentence who had a minimum security classification and who was parole eligible on December 7, 1988. If the parole board requested a preparole plan for an inmate, that inmate shall remain in minimum security classification until the inmate is found guilty of a major disciplinary violation under ch. DOC 303 or is released on parole under ch. PAC 1, except that an inmate in need of individualized care may be transferred to the Wisconsin Resource Center under s. 302.055, Stats. If the inmate was not parole eligible on December 7, 1988, or the parole board did not request a preparole plan, the PRC shall have reviewed the inmate's security classification. The criteria for this review and all subsequent reviews shall be the criteria under sub. (3) (c) 1 and 3 to 6 and s. DOC 302.14.

(c) *Medium security classification.* An inmate serving a life sentence who had a medium security classification on December 7, 1988, shall remain classified medium security until the inmate is found guilty of a major disciplinary violation under ch. DOC 303, meets the eligibility requirements for minimum security classification under sub. (3) (c) 1 and 3 to 6 or is released on parole under ch. PAC 1. An inmate serving a life sentence who was classified medium security on December 7, 1988, may be eligible for a minimum security classification without meeting the requirements of sub. (3) (c) 2.

(d) *Major disciplinary violations.* If an inmate serving a life sentence who had a minimum or medium security classification on December 7, 1988, is found guilty of a major disciplinary violation, the PRC shall review the inmate's security classification using the criteria under sub. (3) (c) 1 and 3 to 6 and s. DOC 302.14.

History: Emerg. cr. eff. 12-7-88; cr. Register, August, 1989, No. 404, eff. 9-1-89; correction in (4) (b) and (c) made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1994, No. 462.

DOC 302.15 Program assignment. (1) Unless otherwise specified in the rules of the department, every resident is eligible for every job, school, vocational or other program within the Wisconsin correctional system, provided the resident has the security classification which permits transfer to the institution where the job, school, vocational or other program is available and may otherwise be transferred to that institution or commute to the institution where the program is available.

(2) Each resident shall be offered a program assignment, consistent with available resources and security needs.

(3) Consistent with available resources, any resident may participate in any program at the institution at which the resident resides or at any other institution, provided the resident is otherwise eligible for the program and is assigned to it in accordance with the rules of the department.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

DOC 302.16 Criteria for program assignment. The criteria for assigning a resident to a job, school, vocational or other program shall include only the following:

(1) The medical needs of the residents, including any physical or mental disabilities or behavioral disorders the resident may suffer;

(2) The resident's:

(a) Aptitude;

(b) Motivation;

(c) Present and potential vocational and educational needs, interests and ability;

(d) Institutional adjustment;

(e) Past performance in programs;

(3) The physical vulnerability of the resident;

(4) Limitations on program participation due to population pressure;

(5) The needs of the institution; and

(6) The resident's security classification.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

DOC 302.17 Procedure for program assignment and security classification at conclusion of A & E process at WCI-Waupun, WCI-Green Bay, and WCI-Taycheedah. (1) With the advice of the A & E committee, the director shall recommend a security classification, assignment to a job, school, vocational or other program and an assignment to an institution to the classification chief at the end of the A & E process. The classification chief shall decide the security, program assignment and assignment to an institution for each resident.

(2) The director shall set the time for a review of the security classification, program assignment and assignment to an institution for each resident, but the date shall be not more than 6 months from the date of the initial classification and program assignment.

(3) Except at WCI-Taycheedah, the A & E committee shall be made up of not less than 3 permanent members who shall include:

(a) The director or designee;

(b) A member of the parole commission; and

(c) A member of the A & E staff designated by the director.

(4) At WCI-Taycheedah, the A & E committee shall be made up of not less than 3 permanent members who shall include:

(a) The superintendent or a member of the treatment staff designated by the superintendent;

(b) A director designated by the classification chief; and

(c) A member of the parole commission.

(5) Before the director recommends a security classification, assignment to an institution, and program assignment for a resident to the classification chief, the committee shall interview the resident. At the interview, the committee shall explain to the resident the criteria for the recommendations and decisions and the specific facts under consideration. The resident shall be afforded the opportunity to dispute these facts and to indicate what the resident believes to be the appropriate classification and assignment. The resident's views, to the extent they differ from the director's, shall be forwarded to the classification chief.

(6) The recommendation of the director and the reasons for it shall be explained to the resident orally and in writing and shall include the specific facts and criteria on which the recommendations are made.

(7) The director and the resident shall be informed in writing to the extent that the decision of the classification chief differs from the recommendation of the director and the specific facts and reasons for the classification chief's decision.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

DOC 302.18 Program review. (1) The security classification, assignment to an institution and program assignment of each resident shall be reviewed by the program review committee (hereinafter "PRC") not more than 6

Register, June, 1994, No. 462

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEAGUE OF WISCONSIN MUNICIPALITIES

202 State Street, Suite 300
Madison, WI 53703

1000 FRIENDS OF WISCONSIN

16 North Carroll Street
Madison, WI 53703

MUNICIPAL ENVIRONMENTAL GROUP

P. O. Box 1068
Madison, WI 53701

CITIZENS FOR A BETTER ENVIRONMENT

222 South Hamilton Street, Suite 2
Madison, WI 53703

RIVER ALLIANCE OF WISCONSIN, INC.

306 East Wilson Street, Suite 2W
Madison, WI 53703

and

THE TOWN OF CALEDONIA

6922 Nicholson Road
Caledonia, WI 53108

Plaintiffs,

vs.

WISCONSIN DEPARTMENT OF COMMERCE

201 West Washington Avenue
Madison, WI 53703

Defendant.

Case No. **00CV1510**

**Declaratory Judgment; Case Code 30701
Other Injunction; Case Code 30704**

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT
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ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

CIRCUIT COURT
00 JUN -5 PM 1:55
DANE COUNTY, WI

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53709-0001, and to plaintiffs' attorney, Richard L. Bolton, Boardman, Suhr, Curry & Field, LLP, whose address is Firststar Plaza, Suite 410, One South Pinckney Street, P.O. Box 927, Madison, Wisconsin 53701-0927. You may have an attorney help or represent you.

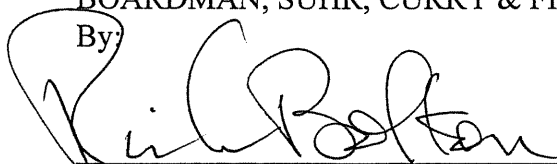
If you do not provide a proper Answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

If you require the assistance of auxiliary aids or services because of a disability, call 266-4678 (TDD 266-9138) and ask for the Court ADA Coordinator.

Dated this 5th day of June, 2000

BOARDMAN, SUHR, CURRY & FIELD, LLP

By:

A handwritten signature in black ink, appearing to read "Richard L. Bolton", written over a horizontal line.

Richard L. Bolton

State Bar No. 1012552

1 South Pinckney Street, Suite 410

P.O. Box 927

Madison, WI 53701-0927

Telephone: (608) 257-9521

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Attorneys for Plaintiffs

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STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEAGUE OF WISCONSIN MUNICIPALITIES
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and

THE TOWN OF CALEDONIA
6922 Nicholson Road
Caledonia, WI 53108

Plaintiffs,

vs.

WISCONSIN DEPARTMENT OF COMMERCE
201 West Washington Avenue
Madison, WI 53703

Defendant.

00CV1510

Case No. _____

Declaratory Judgment; Case Code 30701
Other Injunction; Case Code 30704

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

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ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

CIRCUIT COURT
00 JUN -5 PM 1:55
DANE COUNTY, WI

COMPLAINT

The Plaintiffs, by their attorneys, Boardman, Suhr, Curry & Field LLP, as their complaint for declaratory judgment pursuant to § 227.40, Wis. Stats., allege as follows:

NATURE OF ACTION

1. This is an action for a declaration that administrative rules recently promulgated by the Wisconsin Department of Commerce, relating to the siting, approval and operation of private septic systems, are invalid and unenforceable because they are contrary to law and exceed the agency's authority, including because the rules do not comply with compulsory groundwater standards for contaminants such as fecal coliform.

PARTIES

2. The plaintiff, League of Wisconsin Municipalities ("League"), is an unincorporated non-profit association, with a principal place of operation at 202 State Street, Suite 300, Madison, Wisconsin 53703.

3. The League is an association of Wisconsin cities and villages governed by municipal officials selected by representatives of member municipalities.

4. The League acts as a clearinghouse through which municipalities cooperate to improve and aid the performance of local government, and the League provides continuing services to its members, which most municipalities would not be able to secure individually because of excessive costs.

5. The League is recognized as the principal voice for the broad spectrum of all sizes of incorporated municipalities, including cities and villages, in advocating and representing their interests in matters relating to the legislative and executive branches of state government.

6. The League acts as a representative for its members in pursuing and advocating on issues of state law that affect the interests of the League's members.

7. The plaintiff, 1000 Friends of Wisconsin, is a Wisconsin non-stock corporation with its principal address at 16 North Carroll, Madison, Wisconsin 53703.

8. The plaintiff, 1000 Friends of Wisconsin, is a non-stock corporation established to promote and advocate local and state laws, regulations and policies that further the objective of wise use of Wisconsin land resources, including regulations that promote environmentally wise use of land resources.

9. The individual members of 1000 Friends live, work, own property, and engage in recreational activities in, and in proximity to, areas that are expected to be subjected to development and environmental deterioration resulting from the implementation of administrative regulations relating to POWTS.

10. The individual members of 1000 Friends will be adversely affected by implementation of proposed regulations by the Department of Commerce relating to POWTS.

11. The individual interests of 1000 Friends members who live, work, own property and engage in recreational activities in the areas likely to be affected by proposed POWTS regulations will suffer individual harms because their groundwater supplies are likely to be contaminated by biological and chemical contaminants from POWTS, thereby causing individual health and economic damages.

12. Areas of land on which individual 1000 Friends members camp, hike, hunt, fish, or otherwise recreate and enjoy also will be adversely affected by proposed POWTS regulations.

13. Areas of land previously used by 1000 Friends members for recreational activities will be subjected to development under proposed POWTS regulations which will diminish these natural and recreational uses enjoyed by individual 1000 Friends members.

14. The plaintiff, Municipal Environmental Group ("MEG"), is an unincorporated, non-profit association comprised of a Wastewater Division and a Water Division. The mailing address of the Wastewater Division is Post Office Box 1068, Madison, Wisconsin 53701-1068, and the mailing address of the Water Division is Post Office Box 927, Madison, WI 53701-0927.

15. MEG is a statewide coalition of municipalities established to undertake activities that will benefit municipally-owned wastewater treatment and water facilities and to engage in other environmental quality activities on behalf of member municipalities.

16. MEG acts as a representative for its members to promote legislation, regulations and other governmental action which will be beneficial to the members of MEG, and MEG takes action to oppose legislation, regulations or other governmental action that may be injurious to members.

17. MEG also acts as a representative for its members to promote greater consistency, understanding and accommodation for the problems and concerns of its members in environmental matters.

18. Membership in the Wastewater Division of MEG is open to all municipalities in the State of Wisconsin which own and operate wastewater treatment facilities.

19. The plaintiff, Citizens for a Better Environment, is a non-profit association, with a place of operation at 222 South Hamilton Street, Suite 2, Madison, Wisconsin 53703.

20. Citizens for a Better Environment also promotes and advocates for environmentally wise use of natural resources on behalf of its individual members who live, work, own property and engage in recreational activities in, and in proximity to, areas that are expected to be subjected to development and environmental deterioration resulting from implementation of administrative regulations relating to POWTS.

21. The plaintiff, River Alliance of Wisconsin, Inc., is a non-profit Wisconsin corporation located at 306 East Wilson Street, Suite 2W, Madison, Wisconsin 53703.

22. The River Alliance of Wisconsin, Inc. has approximately 1,400 members in the State of Wisconsin, whose interests it represents in advocating and promoting the protection of vulnerable wetlands and other land and water resources.

23. The plaintiff, Town of Caledonia, is a duly organized town under state law, located in Racine County, at 6922 Nicholson Road, Caledonia, WI 53108.

24. The plaintiff, Town of Caledonia, owns and operates a wastewater treatment plant and related wastewater collection systems which require substantial expenditures for capital improvements, operation, and maintenance.

25. The operation of Caledonia's wastewater treatment plant is, in part, affected by the background quality of receiving water upstream of the outfall of the plant, which is affected by the dispersal of groundwater contaminants from private on-site wastewater treatment systems ("POWTS").

26. The defendant, the Wisconsin Department of Commerce, is an agency of the State of Wisconsin, with its principal address at 201 West Washington Avenue, Madison, Wisconsin 53703.

27. The Department of Commerce has general supervision of the state plumbing code and may prescribe, publish and enforce reasonable standards for the construction, installation and maintenance of plumbing, which standards must be uniform and of statewide concern, so far as practicable.

PLUMBING MUST BE SAFE AND SANITARY

28. The construction, installation and maintenance of plumbing in connection with all buildings in Wisconsin is required to be safe and sanitary, so as to safeguard the public health and waters of the state.

29. The state plumbing code must comply with Chapter 160, Wis. Stats., relating to the protection of the groundwater of Wisconsin.

30. Wisconsin's groundwater law, Chapter 160, Wis. Stats., was adopted in 1984.

31. Chapter 160, Wis. Stats., requires that numerical standards for allowable levels of various substances in groundwater be implemented in the programs of each state agency, including the Department of Commerce.

32. Administrative rules were issued in 1985, in Chapter NR 140, Wis. Adm. Code, establishing specific numerical groundwater standards.

DEPARTMENT OF COMMERCE REGULATES POWTS WITH NEW RULES

33. The Department of Commerce is responsible for promulgating regulations for the proper siting, design, installation, inspection and maintenance of POWTS, as part of the state plumbing code.

34. POWTS can cause groundwater quality standards enacted under Chapter 160, Wis. Stats., to be exceeded.

35. As part of its responsibility for matters relating to the state plumbing code, the Department of Commerce has general supervisory authority over POWTS.

36. The Department of Commerce has recently promulgated new rules relating to POWTS, identified as clearinghouse rule number 98-083.

37. Clearinghouse rule number 98-083 purports to be a comprehensive revision of the Department of Commerce's regulation of POWTS, which rules embodied in Clearinghouse rule number 98-083 are hereinafter referred to generally in this complaint as "Comm. 83."

POWTS MAY ADVERSELY AFFECT GROUNDWATER

38. The use of POWTS affects land use and thus may have adverse impacts on the environment.

39. POWTS regulated by the Department of Commerce are intended to treat domestic wastewater.

40. Domestic wastewater is wastewater discharged from the plumbing systems of residential or small commercial buildings.

41. Under the current code regulations for POWTS, the types of systems that can be installed on a specific site are determined based upon the depth of unsaturated soil above bedrock or high groundwater.

42. POWTS are a critical and substantial wastewater treatment method in Wisconsin.

43. POWTS currently serve more than 700,000 facilities in Wisconsin.

44. POWTS can adversely contaminate groundwater if the effluent introduces contaminants to the groundwater.

DOMESTIC WASTEWATER FROM POWTS CONTAINS CONTAMINANTS

45. Domestic wastewater typically includes wastes generated from toilets, baths, laundry, dishwashing, garbage disposals, and cleaning.

46. Domestic wastewater contains substances from feces, urine, food particles, detergents and soaps, washing machine discharges and other household sources.

47. Domestic wastewater may include pathogenic organisms which can cause disease if ingested or if bodily contact occurs.

48. Common constituents of domestic wastewater may pose a risk or nuisance to public health and the environment, including substances such as bacteria, viruses, nitrate, chloride, solids, biochemical oxygen demand, and volatile organic compounds from various household products such as toilet bowl cleaners, disinfectants, paint thinners and degreasers.

49. Nitrate is a common substance of concern found in domestic POWTS and groundwater.

50. Bacteria are single-celled microscopic organisms.