

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

EDWARD HEWES, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 03-106-B-K  
 )  
 MARTIN MAGNUSSON, et al., )  
 )  
 Defendants )

**MEMORANDUM OF DECISION<sup>1</sup>**

Edward Hewes, an inmate at the Maine State Prison, has filed a complaint against multiple defendants complaining that he has inadequate law library access time and photocopy service and that he has been deprived access to his personal legal material; his liberty interests have been infringed by his segregation; he has not been properly notified; he has suffered equal protection violations because of an inability to earn a prison income; he has been the victim of a constitutional conspiracy; and he has suffered the torts of assault, battery, and negligence.

(Docket No.1.) Hewes seeks a preliminary injunction and/or a restraining order requiring the defendants to give him in-cell access to all his legal materials relating to this civil action.

(Docket No. 32.) The defendants have responded. I **DENY** Hewes’s motion.

***Discussion***

The First Circuit has instructed that trial courts entertaining motions for preliminary injunction “must consider (1) the likelihood of success on the merits; (2) the potential for irreparable harm if the injunction is denied; (3) the balance of relevant impositions, i.e., the

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<sup>1</sup> Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge Margaret J. Kravchuk conduct all proceedings in this case, including trial, and to order entry of judgment.

hardship to the nonmovant if enjoined as contrasted with the hardship to the movant if no injunction issues; and (4) the effect (if any) of the court's ruling on the public interest. Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 15 -16 (1st Cir. 1996) (citing Weaver v. Henderson, 984 F.2d 11, 12 & n. 3 (1st Cir.1993) and Narragansett Indian Tribe v. Guilbert, 934 F.2d 4, 5 (1st Cir.1991)). See also 18 U.S.C. § 3626(a)(1)(A) (“Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.”).

In his motion Hewes requests that I issue an order prohibiting the defendants from confiscating and destroying or storing his legal materials and requiring the return of Hewes’s legal materials that were placed in a prison storage room on January 19, 2003. Hewes explains that he needs the materials to amend his complaint and other pleadings, design his interrogatories, to comply with his discovery responsibilities under Federal Rule of Civil Procedure 26, prepare a motion for another injunction pertaining to photocopying privileges, and prepare a settlement demand. He further explains that his cell is the only place in the prison where he has the space and the quiet to lay-out and concentrate on his legal materials.

The defendants have responded. An affidavit of defendant Kevin Burns explains that he has been assigned as the caseworker for Edward Hewes since November 17, 2003. (Burns’s Aff. ¶ 2; Docket No. 37 Attach. 2.) Burns is familiar with the practices and procedures at the Maine

State Prison pertaining to the retrieval of prisoners' legal materials from the housing unit's storage cabinets (id. ¶ 3) and at the prison they lock cabinets on the housing units to store legal materials for prisoners (id. ¶ 4). A prisoner may get materials stored in the unit's cabinet by submitting a request to a caseworker or a care and treatment worker either directly or through the Pod Officer. (Id. ¶ 5.) Should Burns receive a request from Hewes to retrieve legal materials stored in the unit's locked storage cabinet, he would retrieve them; however, Burns cannot recall Mr. Hewes ever requesting access to this material since he has been his caseworker. (Id. ¶ 6.)

An affidavit of Robert Costigan, an administrative coordinator at the prison, explains that Costigan investigated a grievance filed by Edward Hewes on January 21, 2003, alleging a violation of due process rights arising out of the removal of legal materials from Mr. Hewes's cell. (Costigan Aff. ¶ 4, Docket No. 37 Attach. 1.) Costigan evaluated Hewes's grievance in light of the prison's policies and procedures (id. ¶ 6) and determined that his grievance concerned the staff's enforcement of the prison's policy on allowable property (id. ¶ 7). For reasons relating to fire safety and security, prison policy limits the amount and type of property that an inmate may keep in his cell. (Id. ¶ 8.) The allowable property list applicable to most inmates at the prison at the time of Mr. Hewes's grievance in January 2003 and the list that became effective on January 15, 2004, allow inmates, subject to certain exceptions not applicable in this case, to store up to two legal-size accordion folders of legal materials in their cells. (Id. ¶¶ 9-11; Docket 37 Exs. B & C.) If an inmate wants to store legal materials in excess of the allowable amounts, he may store them in a locked file cabinet maintained on the housing unit for this purpose. (Costigan Aff. ¶ 12.) In Hewes's grievance, Hewes did not dispute the staff's contention that he had in his cell an amount of legal materials in excess of that allowed under our policies. (Id. ¶ 13.)

In his reply to the defendants Hewes principally argues that the prison's rule was a misuse of the Emergency Rule Making Procedure Act. He states that the Prisoner Handbook Manual had never been adopted through any procedure whatsoever and that these are the kind of major substantive rules that need to be submitted to the legislature for legislative review. He states that justifying the policy due to a fire hazard is a smoke screen because the inmates are allowed as much reading and education materials as they want which are, in Hewes's view, as flammable as a footlocker filled with legal papers. He also challenges the notion that there is a security problem, arguing that the only difference between searching educational and reading materials verses legal materials is that an inmate is present during the search of the latter.

“Likelihood of success is the main bearing wall of the four-factor [preliminary injunction] framework.” Ross-Simons of Warwick, Inc., 102 F.3d at 16. With respect to the legal inquiry applicable to this element of Hewes's underlying complaint, the First Circuit has provided:

An absolute denial of access to all legal materials, like an absolute denial of access to a law library or other basic form of legal assistance, might be deemed inherently prejudicial, but this case does not involve such an unqualified deprivation. On the other hand, it would be unrealistic to expect prison authorities to give all prisoners unfettered access to all of their legal materials at all times. It is a fact of life that prisoners live in prison cells. Their warders therefore may have good reason, based on considerations of safety and security, to limit the amount of legal documents and similar materials that prisoners may keep with them; if they implement those regulations fairly, the prisoners subject to the regulations will still be able to participate meaningfully in the legal process. Thus, where a prisoner, like Sowell, does not allege an absolute deprivation of access to all of his legal materials, but rather complains about some sort of conditional restriction of access to some of them, we think it fair to require him to show an "actual injury" as a prerequisite to recovery.

Sowell v. Vose, 941 F.2d 32, 35 (1st Cir.1991). See also Lewis v. Casey, 518 U.S. 343, 349-55 (1996).

Hewes might find the procedure for requesting access to his legal papers and the two-folder limitation inconvenient but nothing in his pleadings begins to make a showing of “actual injury” with respect to his ability to pursue his present 42 U.S.C. § 1983 challenge to his conditions of confinement at the Maine State Prison. The docket of this case evidences Hewes’s ability to actively participate in his case. His allegations of anticipated difficulty are not sufficient to carry the day here. Hewes has identified the not insubstantial tasks at hand with respect to discovery, yet he does not contest Burns’s averment that Hewes has not requested more access to his legal papers pursuant to the adopted procedures. The document access and pleading preparation situation might be easier for unincarcerated pro se litigants, but the Supreme Court has made it clear that inmates do not have a constitutional right to the “wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims.” Lewis, 518 U.S. at 355.

For related reasons I conclude that Hewes has not carried the day on establishing his susceptibility to irreparable harm if this injunction is denied. I cannot, on this record, see how Hewes’s underlying § 1983 suit is in jeopardy as a consequence of the two-folder limitation, the inconvenience of the request system, noise interruptions, and the desire to spread out all his documentation.

With respect to the remaining two Ross-Simons of Warwick, Inc. inquiries, I cannot, on the record generated by both sides, balance the hardship on the prison if this policy is enjoined against the hardship to Hewes stemming from the access limitations. Nor can I gauge, with substantiation, whether my ruling, one way or the other would have any impact, pro or con, on the ‘public interest.’

### *Conclusion*

For these reasons Hewes’s motion is **DENIED**.

*So Ordered.*

March 17, 2004.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

**Plaintiff**

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PRO SE

V.

**Defendant**

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