IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHANIEL ALLEN LINDELL,

ORDER

Petitioner,

02-C-473-C

v.

JAMES DOYLE, Governor of Wisconsin; SCOTT McCALLUM, Former Governor of Wisconsin; MATTHEW J. FRANK, Secretary of Wisconsin Dept. of Corrections; JON E. LITSCHER, former WDOC Secretary; STEVEN CASPERSON, Administrator of Wisconsin Dept. of Adult Institutions; LAURA WOOD, policy advisor for D.A.I.; GARY R. McCAUGHTRY, former warden of Waupun Correctional Institution (W.C.I.); GERALD BERGE, Warden of Wisconsin Secure Program Facility; BYRON BARTOW, Director of Wisconsin Resource Center; KATHLEEN BELLAIRE, Deputy Director of W.R.C.; CINDY O'DONNELL, Deputy Secretary of D.O.C.; CATHY JESS and JODINE DEPPISCH, both deputy wardens at W.C.I.; PETER HUIBREGTSE, former security director at W.C.I., now deputy warden at W.S.P.F.; JOHN RAY, D.O.C. Corrections Complaint Examiner; SANDY HAUTAMAKI, also D.O.C. C.C.E.; N. SALMON, Secretary of Gerald Berge; JOHN DOES 1 THROUGH 14; MARC CLEMENTS, Security Director at W.C.I.; CAPT. STEVE SCHUELER, a Captain at W.C.I.; CPT. MURASKI, a Captain at W.C.I.; CAPT. BLACKBOURN, a Captain at W.S.P.F.; GARY BOUGHTON, the Security Director at W.S.P.F.; CPT. JULIE M. BIGGAR, a Captain at W.S.P.F.; DEBRA TETZLAFF, W.C.I.'s Program Director; CURT

JENSSEN, Manager of WCI's Health and Segregation Complex; TIM HAINES, Manager of Echo Unit at W.S.P.F.; JOHN SHARPE, Manager of Foxtrot Unit at W.S.P.F.; VICKI SHARPE (n/k/a/ Vicki Sebastian), W.S.P.F. Program Director; CAPTAIN LINJER, a former Captain at W.S.P.F.; CPT. SCOTT ECKSTEIN, a former Cpt. at W.C.I.; STEVE PUCKETT, Director of D.O.C. Office of Offender Classification; LT. RANDALL GARRITSON, a Lieutenant at W.C.I.; LT. GARDINER, a Lieutenant at W.S.P.F.; JIM WEGNER, Supervisor of W.C.I. Chapel; WILLIAM SCHULTZ, cashier at W.C.I.; BRAD HOMBE, Manager of W.S.P.F.'s Alpha Unit; SGT. HOTTENSTEIN; SGT. O'ROURKE; SGT. MARK CARPENTER; SGT. DARREN S. MILLER; SGT. HANKE, all Sergeants at W.S.P.F.; TODD OVERBO, W.S.P.F.'s Chaplain; C.O. JOHN C. SMITS and MS. WATSON, both guards at W.C.I.; LINDA ALSUM-O'DONOVAN and JAMES MUENCHOW, Inmate Complaint Examiners at W.C.I.; ELLEN RAY, KELLY TRUMM and TOM "DOE," I.C.E.s at W.S.P.F.; MR. NORTH and MR. FRANCIS, Chaplains at W.C.I.; LINDA HODDY, Charlie Unit Mgr. at W.S.P.F.; DR. KEVIN MILLER, Psychologist at W.R.C.; DR. VIRGINIA WOJNAC, Psychologist at W.R.C.; STEVE SPANBAUER, I.C.E. at W.R.C.; MR. FERRELL, Program Facilitator at W.S.P.F.; MR. HRUDKA, member of Program Review Committee at W.S.P.F.; STEVEN D. ECK, MICHAEL J. SHERMAN, CHAD LOMEN, DENNIS J. McCLIMMANS, MR. GODFREY, JOANNE GOUIERE, JEREMY M. McDANIELS, guards at W.S.P.F.; DIANE MERWIN, an I.C.E. at W.S.P.F; and LINDA OATMAN, Librarian at W.S.P.F.,

Respondents.

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This is a proposed civil action for declaratory, injunctive and monetary relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, asks for leave to proceed in forma pauperis. 28

U.S.C. § 1915. From the trust fund account statement petitioner submitted when he filed his original complaint, I find that petitioner has no means to pay an initial partial payment of the filing fee.[1]

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. A court may also dismiss a complaint for failure to comply with Fed. R. Civ. P. 8, but such a dismissal is usually without prejudice to petitioner's repleading in a manner that complies with the rules of pleading.

Petitioner's complaint does not comply with Rule 8. It is a 66-page document, single-

[1]Originally, this case was filed in August of 2002. I denied petitioner leave to proceed in forma pauperis on February 3, 2003, for the reason that petitioner was prosecuting several other lawsuits at that time and had no means to prosecute another one. The Court of Appeals reversed this ruling on December 12, 2003 and remanded the case for further proceedings. In a separate order entered today, I have granted petitioner's request to substitute an amended complaint dated December 28, 2003 for his original complaint. It is the amended complaint that is presently before the court for screening.

spaced and handwritten, and made up of 440 numbered paragraphs, some of which include multiple sub-parts. Although petitioner has divided his complaint into 23 counts, most of the counts include numerous additional subcounts. The first 10 counts recited below provide a good sampling of petitioner's style of pleading.

> Count 1. Conditions at W.S.P.F. Create a Liberty Interest, Yet Defendants Provide Not Even Minimal Procedural Safeguards Before Sending Lindell and Others There, or Making Decisions to Prolong their Stay, Nor do they Tell Prisoners What They Must Do to Leave or Avoid Being Placed in WSPF, Contrary to Due Process, Contrary to Free Speech, Contrary to Free Exercise and R.L.U.I.P.A. Rights.
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> Count 2. W.S.P.F.'s Level System Violates Due Process, as it does not inform Prisoners of Exactly [what] Can Cause them to be Demoted or Denied Promotion, nor Gives a Time Limit on How Long Inmates Can be Kep at the Most on the Lower Levels, nor Gives Inmates a Chance to be Heard or Defend Themselves Before Being Demoted or Denied Promotion and Causes them to Suffer W.S.P.F.'s Atypical and Significant Hardships.
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> Count 3. Defendants Used Level System to Retaliate Against Lindell for Complaining Also Violated Fourth and Eighth Amendment and RLUIPA.
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> Count 4. Defendants Violating Free Speech, Equal Protection and RLUIPA by Censoring and Selecting What Music and Video Broadcasts they See/Hear.
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> Count 5. Defendants Violated Eighth Amendment, Equal Protection by not Constructing a Prison with Outdoor Facilities with Bathroom Facilities and Keeping Inmates in Such a Prison.
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> Count 6. Defendants Discriminatorily and Retaliatorily Assaulted and Battered Lindell, Contrary to their own rules, and Customarily do so to WSPF Inmates in Violation of Free Exercise, Court Access/Petition for Redress, Cruel and Unusual Punishment Prohibition, Due Process and Equal Protection and RLUIPA Rights of Lindell and Others.

> Count 7. Variety of Claims Not Raised in Original Complaint Concerning Interference/Substantial Burden of Lindell's Religious Exercise, as Well as Other Rights.
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> Count 8. Variety of Religious and Related Claims Not Raised in Lindell's Original Complaint, Over WSPF Staff's Actions.
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> Count 9. W.C.I.'s Policy Banning HSC Inmates from Possessing Any Books/Zines other than a Bible or Koran Violated Free Speech, Free Exercise, Court Access, Equal Protection and RLUIPA Rights of Lindell and Others.
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> Count 10. Denying Religious 'Zine Due to Publisher Only Rule, Violating Free Speech and RLUIPA Rights.

Courts are empowered to dismiss excessively wordy or confusing complaints because such complaints "make[] it difficult for the defendant to file a responsive pleading and make[] it difficult for the trial court to conduct orderly litigation." Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 775-76 (7th Cir. 1994) (199-page, 385-paragraph complaint "violated the letter and spirit of Rule 8(a)"); see also I.M. Hofmann v. Fermilab NAL/URA, 205 F. Supp.2d 900, 902 (N.D. Ill. 2002) (rambling 113-page complaint dismissed for violating Rule 8(a)).

Petitioner's complaint is both excessively wordy and confusing. With respect to each "count," petitioner leaves it to the court to sort out which parts of the several paragraphs making up the count relate to his various constitutional claims within the count, if they relate at all. Moreover, courts faced with hopelessly verbose complaints must consider the "right of . . . defendants to be free from . . . costly and harassing litigation." Vicom, 20 F.3d

at 776 (quoting Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 675 (9th Cir. 1981)). Many of petitioner's factual allegations of wrongdoing are devoid of specific actors. For example, in count 1, petitioner accuses "defendants" of violating his constitutional rights by transferring him to the Wisconsin Secure Program Facility. Yet petitioner is suing 79 prison officials who work at three different penal institutions. It is not likely that each of the 79 defendants would be responsible for transferring petitioner to the Facility. In other paragraphs, petitioner alleges that he "and all [other prisoners confined at a particular institution]" are denied various privileges or rights. When he makes these allegations, he does not specify any one or more of the respondents who he believes is responsible for the denial. This style of pleading robs defendants of fair notice regarding which of the exhaustively described actions are actually alleged to be illegal and, as to those that petitioner contends are illegal, which defendants were or are personally involved in the wrongdoing.

The complaint is not a proper device for presenting evidence or excessive factual detail. Petitioner's practice of cluttering his complaint with numerous allegations concerning the steps he has taken to exhaust his administrative remedies contributes to the unwieldy size of his complaint. Although it is true that because petitioner is a prisoner, he is required to exhaust his administrative remedies before filing a lawsuit, he does not need to describe in his complaint every phase of the exhaustion procedure he took. Failure to exhaust is an affirmative defense that the defendants have the burden of raising or the defense is waived.

Also adding unnecessarily to the length of petitioner's complaint are petitioner's claims purportedly raised on behalf of a class of other inmates for 1) incidents that occurred in the past; 2) conditions that exist at institutions other than the one in which he is presently confined; and 3) conditions that were certified for class treatment in Jones'El v. Berge, 00-C-421-C. I have no intention of appointing a lawyer to represent a class of inmates challenging conditions at the Wisconsin Secure Program Facility that are the subject of the settlement agreement in Jones'El, when there already exists a class of such inmates that is represented by counsel in Jones'El. Moreover, petitioner is not a proper class representative to bring a claim for declaratory and injunctive relief for conditions that exist or incidents that occurred at institutions in which he was confined in the past, because he can no longer benefit from such relief. Therefore, I would not certify a class or appoint counsel for a class on petitioner's claims about matters that arose at the Waupun Correctional Institution or the Wisconsin Resource Center.

On a more troublesome note, in addition to violating Rule 8, petitioner's complaint appears to violate Fed. R. Civ. P. 11. Specifically, in some counts of his complaint, petitioner raises claims that this court already has decided in other lawsuits petitioner filed. To note a few, I ruled expressly in Lindell v. Litscher, 02-C-459-C, slip op. at 21-22 (W.D. Wis. Dec. 4, 2002), that petitioner's transfer to the Wisconsin Secure Program Facility does not implicate a liberty interest and thus did not violate his due process rights, yet petitioner

is again making that claim in count 1 of the complaint in this case. In count 2 of the complaint, petitioner alleges that the Wisconsin Secure Program Facility's level system violates his due process rights. In Lindell v. Litscher, 02-C-21-C (slip op. May 28, 2002, pp.26-27), I ruled that the level system does not implicate a liberty interest triggering the need for due process protections. In count 10, petitioner alleges that the refusal to give him an issue of "Pagan Revival" violated his rights to free speech and RLUIPA. The constitutionality of withholding his "Pagan Revival" magazine was the primary subject of his lawsuit in Lindell v. McCaughtry, 01-C-209-C, and was resolved in defendant's favor on a motion for summary judgment on October 7, 2003. Petitioner's insistence upon repleading claims after they have been addressed by this court is the sort of conduct Rule 11 was meant to regulate. Serritella v. Markum, 119 F.3d 506, 507 (7th Cir. 1997).

In other places, petitioner raises claims he cannot truly believe rise to the level of a constitutional violation. For example, petitioner alleges in count 5 of his complaint that "defendants" violated the Eighth Amendment and his equal protection rights under the Fourteenth Amendment by "constructing a prison with outdoor exercise facilities with [no] bathroom facilities and keeping inmates in such a prison." Petitioner cannot seriously contend that he has a *constitutional* right to an exercise facility with an attached bathroom. Also, in paragraph 132, petitioner alleges that a strip search substantially burdened his religious beliefs that forbid men from viewing him naked. In paragraph 384, petitioner

alleges that an in-cell camera "substantially burdens Lindell's religiously motivated beliefs that nobody should view him showering or using the toilet and only females should view him nude."

In Johnson v. Phelan, 69 F.3d 144, 146 (7th Cir. 1995), the Court of Appeals for the Seventh Circuit left no room for future challenges to the question whether prison officials may observe inmates nude.

> Hudson v. Palmer, 468 U.S. 517, 526-30, 104 S.Ct. 3194, 3200-02, 82 L.Ed.2d 393 (1984), observes that privacy is the thing most surely extinguished by a judgment committing someone to prison. Guards take control of where and how prisoners live; they do not retain any right of seclusion or secrecy against their captors, who are entitled to watch and regulate every detail of daily life. After Wolfish and Hudson monitoring of naked prisoners is not only permissible--wardens are entitled to take precautions against drugs and weapons (which can be passed through the alimentary canal or hidden in the rectal cavity and collected from a toilet bowl)--but also sometimes mandatory. Inter-prisoner violence is endemic, so constant vigilance without regard to the state of the prisoners' dress is essential. Vigilance over showers, vigilance over cells--vigilance everywhere, which means that guards gaze upon naked inmates.

One of the basic purposes of Rule 11 is to "deter baseless filings in the district court . . . ." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990). When a plaintiff signs his complaint, he is required by Fed. R. Civ. P. 11(b) to be certifying to the court that to the best of his knowledge, information and belief "*formed after an inquiry reasonable under the circumstances,* his claims are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law . . . ." (Emphasis added.) Petitioner is a

seasoned litigant. Even a minimal amount of research would have made it clear to him that his claim is frivolous that he has a federally protected right to be free of strip searches and guards viewing him nude.

Because petitioner's complaint is too lengthy for either the court or defendants to manage and because petitioner has ignored the requirement in Rule 8 that his complaint contain "a short and plain statement of the claim[s] showing that [he] is entitled to relief, I will dismiss the complaint. However, I will not close this case without first allowing petitioner to submit a proposed amended complaint that complies with the Federal Rules of Civil Procedure. In his new amended complaint, petitioner is to omit all claims that this court has considered on the merits in his previous lawsuits and all claims brought on behalf of a class. In addition, petitioner is cautioned that if he includes in his amended complaint previously decided claims or claims that are clearly legally frivolous such as his claim that he has a legally protected right not to be viewed in the nude, he may be subject to the imposition of sanctions under Fed. R. Civ. P. 11. Petitioner should describe his claims in short and plain statements, saying no more than is necessary to explain what happened, where it happened, when it happened, who did it, and what he wants the court to do about it.

ORDER

IT IS ORDERED that petitioner's complaint is DISMISSED.

Further, IT IS ORDERED that petitioner may have until February 27, 2004, in which to submit a proposed amended complaint that complies with Fed. R. Civ. P. 8 and 11. If, by February 27, 2004, petitioner fails to submit a pleading that complies with the Federal Rules of Civil Procedure, I will dismiss this action.

Entered this 2nd day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge