IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

ORDER

02-C-473-C

JON E. LITSCHER, Secretary
Wisconsin Department of Corrections,
et alia,

Defendants.

Before the court is plaintiff's twelve-page motion to compel discovery (dkt. 82), to which defendants object. (dkt. 84). I am granting a very few of plaintiff's requests and denying the rest, as set forth below:

Fifth set of discovery, interrogatory 2: plaintiff complains that defendants did not provide him with the reviews that led to the ban of "Temple of Wotan" and "Creed of Iron." Without conceding the point, defendants have attached copies of the reviews to its response. This is sufficient.

Fifth set of discovery, interrogatory 8: plaintiff complains that Defendant Boughton did not personally respond to this one. Defendants respond that Boughton has no personally responsive information. This is sufficient.

Fifth set of discovery, interrogatory 9: plaintiff asked how many Bibles were at WRC, and how many Asatru/Odinist/Wotanist texts; defendants responded that they had never counted

the Bibles, but there were no A/O/W texts. Plaintiff complains that they should have investigated and provided an approximate number. Defendants respond that the burden of investigating outweighs the benefit to plaintiff. That's essentially true, but it can't hurt to provide a guesstimate to establish an order of magnitude. Defendants must provide their "best estimate," labeled as such, within these parameters: less than ten; more than ten but less than fifty; more than fifty.

Fifth set of discovery, interrogatory 11: plaintiff complains that defendant Koplitz will not guess as to what religious texts he made available to WRC inmates. Guessing is not required. If, however, Koplitz has access to an already-existing bibliography of religious texts *available* to WRC inmates, then he must provide a copy of this to plaintiff. If he has general knowledge that texts of certain religions, such as Christianity, Islam, Buddhism, were available, then he must so state, even if he cannot recall specific titles or other information.

Fifth set of discovery, Interrogatory 12: plaintiff complains that defendants will not identify who actually approves the sale of Christian cards in the WRC canteen. Defendants respond that a third party vendor fills the orders, and they don't deny that Christian cards are available but Wotanist cards are not. This is sufficient.

Fifth set of discovery Interrogatory 14: plaintiff complains that defendants did not give enough information in response to his request regarding special diets. Having read defendants' response, I find that they did.

Fifth set of discovery, Interrogatory 16: plaintiff complains that it was not sufficient for defendants to refer him to the documents that provide the requested information. It was sufficient.

Fifth set of discovery, Interrogatories 18-20. Plaintiff contends that he was de facto demoted to a lower level, and that defendants should at least admit that he was, even if the documents don't reflect this. Defendants stand by their answer and have appended a document showing plaintiff's movement history at WRC. This is sufficient.

Fifth set of discovery, Interrogatory 22: plaintiff objects that defendants' objections of vagueness and speculation are not well-taken. Actually, they are. If plaintiff wanted information specific to the demotions at issue in this case, he had to say so.

Fifth set of discovery, Interrogatories 23 and 24: plaintiff complains that the response does not name names. Defendants respond that the decision was made as a team, as reflected by the document attached as Exhibit C, and that the Level Handbook explains the consequences of demotion. This is sufficient.

Fifth set of discovery, Request for Documents 1: plaintiff wants a copy of the cell extraction that was related to a claim that has been dropped from this lawsuit. Plaintiff claims the tape still is relevant to show the retaliatory motive of defendant Biggar in requesting cell extraction. Defendants respond that it's irrelevant and that it exceeds the limit of 60 requests. Both objections are well taken.

Fifth set of discovery, Interrogatories 3 and 4: plaintiff seeks information regarding the authenticity and price of kosher meals. Defendants claim this is irrelevant to plaintiff's request

for a self-created Wotanist diet because no such meals exist to be purchased. So long as defendants admit that they do in fact accommodate kosher dietary needs of inmates, this is enough.

Fifth set of discovery, Interrogatory 5: plaintiff asked for a breakout of conduct reports written against inmates misbehaving at Christian religious services and at Wicca services at WCI. Defendants objected that this was irrelevant and unduly burdensome. Both objections are correct. Such evidence, even if easily adduced, would do little or nothing to establish any bias relevant to plaintiff's claims.

Fifth set of discovery, Interrogatory 13: plaintiff wants the defendants to identity their personal religious faith and identify their place of worship by denomination, name and address. Defendants object on the grounds of harassment and irrelevance. In his motion to compel, plaintiff wants to find out if the defendants are members of "hate religions" which would show motive, intent and conspiracy to suppress Wotanism. Theoretically a party's personal faith could be relevant to show bias in a religious suppression case, but on these facts, I will not require any such disclosures by the defendants. Plaintiff is setting a straw man in order to compare and contrast Wotanism to more mainstream religions.

In Section II of his motion (dkt. 82 at 6), plaintiff complains that defendants did not actually answer 100 admissions (the limit set by the court) because they improperly divided into subparts plaintiff's RFAs 7, 15-17 and 41. In any event, he complains that the defendants are playing hardball, and that all of the RFAs sought relevant, proper information. As the defendants explain, because of plaintiff's litigation tactics, they must carefully scrutinize each

of his discovery requests; thus, they are not inclined to cut him any slack on the number of RFAs they will answer. Additionally, defendants point out that this court stated that each subpart of each RFA would count against the limit, and that defendants offered plaintiff the chance to revise his RFAs before they responded to them. This dispute is simply another byproduct of plaintiff's sprawling and unfocused approach to federal litigation and pretrial discovery. Plaintiff has objected every step of the way to the tight numerical limits and temporal deadlines this court has imposed on him in this lawsuit. Duly noted, again. This court imposed these limits in an attempt to rein in plaintiff's pell mell prosecution of his myriad claims. Plaintiff is an experienced litigant who routinely tests limits, perhaps as much to provoke a reaction as to obtain the information ostensibly sought. One hundred means one hundred, subpart means subpart, and plaintiff had the opportunity and ability to edit and reorganize his RFAs if it were important to him. Apparently it was not; he will not receive relief from that choice.

Next, plaintiff objects that defendants did not label the documents they produced to indicate to which RFP they responded. Defendants counter that they divided their documents into four logical and discernible categories. Absent a specific and persuasive example of an actual problem with defendant's approach, plaintiff is not entitled to relief.

Plaintiff complains that the defendants will not give him access to "Temple of Wotan" and "Creed of Iron," the books at the crux of the dispute in this lawsuit. As Lindell is aware from previous orders in this case and others he has filed, he cannot obtain access to the banned books simply by filing this lawsuit and demanding access to them as part of discovery. This court has unredacted copies of the two books in the court file. Plaintiff has demonstrated a

working knowledge of their contents. There is no problem at this stage of the case denying plaintiff direct access to the books.

Plaintiff complains that the defendants will not produce to him copies of letters he wrote and sent to other inmates that defendants seized as contraband. But defendants provided plaintiff with access to these letters and allowed him to review them. Apparently, he never asked for copies to be made, nor could he afford to pay for copies in any event. Nothing else is required of defendants at this time.

Next, plaintiff challenges the defendants' objections to some of his requests as "vague" and cites by number nine pages of "Exh. E" (to dkt. 71). In no case was the vagueness challenge the only challenge to the discovery request, and in some cases, the defendants answered notwithstanding the objection. This is sufficient.

Plaintiff complains that defendants made "countless" irrelevancy objections, then provides "the most egregious examples." Dkt. 82 at 9-11. First is plaintiff's document request for all inmate complaints against all defendants for issues for which the defendants are being sued by plaintiff. Plaintiff claims that he needs this information to show knowledge and to overcome any qualified immunity defense. In response, defendants re-print in their brief their two-paged single-spaced response to this request. *See* dkt. 84 at 19-21. Defendants' claims of irrelevance, undue burden and vagueness are well-taken. Nothing more is required of them at this time on this request.

Next, plaintiff complains that defendants have raised absurd relevancy objections to his claims for information about Asatru and Odinism, which plaintiff claims are beliefs systems

included within Wotanism. Defendants respond that claiming they are the same doesn't make them the same, as evidenced by Professor Dubois's expert report. (Dkt. 79, under seal), and that in any event, they have produced everything they've got. Defendants appear to be correct (Wotanism as advocated in the banned texts appears to be distinct from Asatru and Odinism) but even if they weren't, they don't have any other documents to produce.

Plaintiff complains that defendants will not produce documents related to other inmates' requests to practice Wotanism. Defendants admit that plaintiff is not the only inmate who has been denied permission to practice Wotanism but correctly point out that this case is about plaintiff's religious disputes, not other inmates. Nothing else is required.

Plaintiff seeks to compel additional production in response to his ninth document request, asking for all documents considered by DOC when implementing IMP 6A, banning certain publications in prisons. Plaintiff suspects the documents might show that IMP 6A is intended solely to suppress "white Nationalist/religious ideas." Defendants refused to produce documents protected by attorney client and work product privileges and claimed the entire request was vague, overbroad, unduly burdensome and irrelevant. Defendants add in their brief that this lawsuit is not a referendum on the constitutionality of IMP 6A. Absent some greater showing of relevance, plaintiff is not entitled to background documents related to the IMP, which speaks for itself.

To the same effect, plaintiff requested production of information detailing other prisoners' withheld documents under IMP 6A. But this case is about what happened to plaintiff,

not whether the defendants are misusing the policy in general, which is an entirely different can of worms.

Plaintiff asks for a better response to his third discovery request, RFA 9; but as defendants point out, the RFA asks defendants to opine whether it would be "more convenient and sensible" to enact a hypothetical policy to transfer property to segregation more quickly. This is not a proper request for admission.

Plaintiff wants defendants to admit that they use the Bible as their religious text because it will expose their "Christ-supremist" [*sic*] bible-based hate for 'Pagans'/Polytheists." Dkt. 82 at 10. Plaintiff also wants a substantive answer to his RFA that inmates may draw crosses on their correspondence. He reasons that because the cross is a well known white racist symbol, defendants can't allow it yet ban the swastika. In both cases, plaintiff's syllogism is flawed and the information sought cannot prove the point for which he offers it.

Plaintiff wants a better answer to his request regarding the education of prisoners in segregation versus the general population, arguing that allowing only Bibles and Korans to inmates in segregation "keeps inmates stupid, so they break rules and can't cope, then instills bizarre and hateful monotheistic ideas in their fragile brains." Dkt. 82 at 10-11. Plaintiff cannot expect this court to treat him as a serious litigant or cut him any slack during discovery when he pursues evidence of this nature for this purpose.

Plaintiff wants a substantive answer to his question what religious dietary accommodations defendants made for WSPF inmates on December 25, 2001, claiming this will

show discrimination against his religious dietary demands. This is another non sequitur; in any event, defendants answered that they followed IMP 6B.

Plaintiff wants more information regarding the ethnic and religious-based programing opportunities available in the prisons; but defendants provided plaintiff with access to IMP 6, which provides an overview, and defendants admit they offer no programming opportunities for Wotanists. That is sufficient.

On page 11 of his motion plaintiff generally complains about information withheld on grounds of security, burden, and so forth, but doesn't provide any detail that would persuade this court to order defendants to disclose additional information in response to any particular claim by plaintiff. Similarly, plaintiff accuses defendants of obfuscating and refusing to provide detail, then points to 4 different pages of the defendants' discovery response (dkt. 71, Exh. E) as proof that defendants should have provided more information; but each discovery request prompted an answer from defendants, some required payment of copying fees, and none is deficient in an obvious way that requires remedy at this time.

Plaintiff had more than enough opportunities to obtain the necessary discovery in this case, and in fact probably has gathered all available relevant information in spite of–not because of–his prolix, broad-brushed, doctrinaire discovery demands. Plaintiff continually portrays himself as a victimized litigant, but most of his litigation wounds are self-inflicted and completely avoidable. The instant twelve-page motion to compel is just another example of this. Whatever small relief plaintiff has obtained by virtue of this order could not have been worth the time and effort of preparing the sweeping motion, let alone preparing the underlying

discovery requests that netted plaintiff nothing that fewer, narrower requests would not also have obtained.

ORDER

It is ORDERED that plaintiff's motion to compel discovery is granted in part and denied in part in the manner set forth in this order.

Entered this 29th day of December, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge