

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

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TONY WALKER,

Plaintiff,

v.

PATRICK BRANT, FRANCIS LARDINOIS,  
and RICHARD JAUQUET,

Defendants.

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ORDER

02-C-135-C

Defendants have filed a motion for summary judgment, seeking dismissal of plaintiff's claim that defendants Patrick Brant, Francis Lardinois and Richard Jauquet deprived him of his First Amendment rights by denying him a variety of publications. In the motion, defendants argue that as to all but one of the alleged rejected publications, a catalog of "Adults Only" books and magazines published by a mail order business identified as Paper Wings, plaintiff has failed to exhaust his administrative remedies; as to the Paper Wings catalog, defendants argue that the item was properly denied as contraband because it contains pornographic material. Defendants have submitted the catalog as evidence in support of their motion for summary judgment, together with a motion to place the catalog

“under seal.”

In an order entered in this case on August 27, 2002, I granted defendants’ motion for *in camera* review of a portion of the same exhibit they are submitting now in support of their motion for summary judgment. Subsequently, defendants withdrew their motion for summary judgment. I do not understand defendants’ renewed request to place the catalog “under seal” to be a request to keep the catalog out of the public record, which is what sealing a document generally does. As I told defendants in my order of July 25, 2002, placement of a document under seal does not mean that the *parties* cannot view the document. Defendants’ request is aimed at preventing *plaintiff* from receiving through his lawsuit the catalog he is not allowed to have under the contraband rules of the prison. I construe defendants’ second motion to seal as a second request for the court to review the exhibit *in camera*. This time, the motion will be denied.

The legal question in this action as it relates to the allegedly contraband catalog is whether defendants properly applied Department of Corrections regulations governing the prohibition of pornography to the catalog. The answer will not be as straightforward as defendant may believe it to be. I prefer that both parties have the opportunity to argue their positions forcefully, and plaintiff cannot do this without knowing what the catalog depicts. Nevertheless, I agree with defendants that it would be improper to allow plaintiffs challenging the application of contraband regulations to receive items rejected as contraband

simply by filing a lawsuit. In consideration of the conflicting interests of both parties, I have decided to appoint counsel to represent plaintiff. Plaintiff's counsel will be able to review the catalog and argue plaintiff's position and the interests of justice will be met without allowing plaintiff access to the alleged contraband in the absence of a ruling in his favor on the merits of the claim.

ORDER

IT IS ORDERED that briefing on defendants' motion for summary judgment is STAYED until I have appointed counsel to represent plaintiff.

Further, IT IS ORDERED that defendants' motion for *in camera* inspection of Exhibit F to the Affidavit of Daniel Bertrand is DENIED.

Entered this 26th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge