

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

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JOHNSON W. GREYBUFFALO,  
#229871,

Plaintiff,

OPINION AND ORDER

v.

06-C-504-C

PHIL KINGSTON, in his individual and  
official capacities as Warden of Waupun  
Correctional Institution;  
BRUCE MURASKI, in his individual and  
official capacities;  
CYNTHIA CLOUGH, in her individual and  
official capacities;  
CORRECTIONAL OFFICER BRET MIERZEJEWSKI,  
in his individual and official capacities; and  
WILLIAM SCHULTZ, in his individual  
and official capacities,

Defendants.

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In an opinion and order dated September 18, 2007, I concluded that defendants had violated plaintiff's First Amendment right to free speech by confiscating a document with the initials "A.I.M." at the top and later disciplining him for possessing it. In accordance with plaintiff's request for injunctive relief and 18 U.S.C. § 3626, I ordered defendants to

expunge from their records their finding that plaintiff violated prison rules by possessing the A.I.M. document. However, I did not order defendants to return the confiscated document to plaintiff because it appeared that defendants had given it to him with their summary judgment materials. (Counsel for defendants simply had attached the document to an affidavit without seeking to file the document in camera or under seal as has been the custom of the state attorney general's office in prisoner cases involving censorship. E.g., Kaufman v. Karlen, 06-C-205-C; Lindell v. O'Donnell, 05-C-04-C (W.D. Wis. 2005); West v. Berge, 05-C-37-C (W.D. Wis. 2005); Walker v. Brandt, 02-C-135-C (W.D. Wis. 2002); Lindell v. McCaughtry, 01-C-209-C.)

As it turns out, defendants did not provide the document to plaintiff. Defendants have filed a document called "Motion to Correct Errors of Fact in Court Order of 9/18/07" in which they state that plaintiff does not yet have the "A.I.M." document. Rather than giving plaintiff the document with their summary judgment materials, defendants allowed him to review it without keeping it while he was preparing his own filings. (Although defendants did not include this explanation in their proposed findings of fact, brief or the affidavit itself, they did include it in a cover letter sent to the clerk of court. Normally, the court does not review cover letters in the context of ruling on a motion for summary judgment.)

I will construe defendants' motion as one to alter or amend the judgment under Fed.

R. Civ. P. 59 and I will grant the motion. Because plaintiff's request for a return of the document is not moot, I will amend the September 18 order to include an injunction directing the return of the A.I.M. document to plaintiff.

### ORDER

IT IS ORDERED that defendants' motion to alter or amend the judgment (dkt. #33) is GRANTED.

FURTHER IT IS ORDERED that the September 18, 2007 opinion and order is AMENDED to state the following:

1. The motion for summary judgment filed by defendants Brett Mierzejewski, Bruce Muraski, Cynthia Clough, William Schultz and Phil Kingston is GRANTED with respect to plaintiff Johnson W. Greybuffalo's claim that defendants violated his right to free speech by censoring a document including a code of ethics of the Warrior's Society.

2. Defendants' motion is DENIED with respect to plaintiff's claim that defendants violated his right to free speech by censoring a document that included the initials "A.I.M." On the court's own motion, summary judgment is GRANTED to plaintiff on this claim.

3. It is DECLARED that defendants violated plaintiff's First Amendment right to free speech by confiscating the A.I.M. document and by disciplining him for possessing it.

4. Defendants are ordered to expunge from their records their finding that plaintiff

violated prison rules by possessing the A.I.M. document.

5. Defendants are ordered to return the A.I.M. document to plaintiff.

The clerk of court is directed to enter an amended judgment accordingly.

Entered this 25th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge