IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ALFRED RILEY,

OPINION and ORDER

Plaintiff,

06-C-574-C

v.

JAMES DOYLE, HELENE NELSON, STEVE WATTERS, DAVID THORNTON, WENDY NORDBERG, TONY ASSID, STEVE HAMILTON, BYRAN BARTOW, MARIO CANZIANI, TOM SPEECH, BOB WHITTAKER, DIANE FERGOT, DR. JOHN JONES, WANDA BALDWIN, WISCONSIN STATE LEGISLATIVE COUNSEL, JOHN DOE and JANE DOE,

Defendants.

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This is a civil action for declaratory, injunctive and monetary relief, brought under 42 U.S.C. § 1983. Plaintiff Alfred Riley is detained by the state of Wisconsin at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin, pursuant to Wis. Stat. Ch. 980, Wisconsin's Sexually Violent Persons Law. On December 23, 2005, plaintiff filed this lawsuit in the United States District Court for the Eastern District of Wisconsin. The court granted without comment plaintiff's motion to proceed in forma pauperis under 28 U.S.C.

§ 1915.

On April 25, 2004, defendants filed a motion to dismiss the complaint under Fed. R. Civ. P. 8 or, in the alternative, 12(b)(6). At the same time, defendants filed a motion to transfer venue of the case to this district under 28 U.S.C. § 1404. On October 2, 2006, Judge Adelman granted defendants' motion to transfer venue, without ruling on the motion to dismiss, which is presently before this court.

Before turning to plaintiff's allegations, I note that his complaint is nearly identical to one filed in this court on September 28, 2006, by another patient of the Sand Ridge Treatment Center. See Case No. 06-C-497-C, dkt. #2. The only difference between the two complaints is that plaintiff names several defendants not named in Case No 06-C-497-C. Moreover, plaintiff's complaint appears to be an altered version of another complaint, with several names "whited out." Plaintiff and others at the facility tempted to submit massive, formulaic complaints (like the one plaintiff has filed here) should be aware that using complaints they have not drafted themselves without performing even a modest search to determine whether the claims have withstood scrutiny in this court are at risk of incurring sanctions under Fed. R. Civ. P. 11 if the claims raised in the complaint are shown to be without any arguable merit.

In his complaint, plaintiff contends that defendants violated his rights under the Fair Labor Standards Act of 1938, the First, Fourth and Fourteenth Amendments and state law

by limiting his access to employment and his wages, charging exorbitant rates for telephone use, searching his cell at random intervals, prohibiting him from possessing certain publications, limiting his ability to purchase electronics and other consumer items, such as clothing and food, confining him under harsh conditions and monitoring the mail, phone calls and visitors of Chapter 980 patients more carefully than the communications of other civilly confined patients.

Plaintiff will be denied leave to proceed on his claim under the Fair Labor Standards Act because the Act does not apply to institutionalized persons like himself. Plaintiff will be denied leave to proceed on his claims that defendants violated his right to free speech by charging excessive telephone rates because it is legally meritless. Similarly, plaintiff will be denied leave to proceed on his Fourth Amendment claim because state officials did not subject him to unreasonable searches. Because plaintiff has no right to be employed or to purchase electronics and other consumer goods, he will be denied leave to proceed on his claim that defendants violated his right to procedural due process. He will also be denied leave to proceed on his substantive due process claim because the conditions in which he is confined are not considered "punitive" under governing law. Plaintiff will be denied leave to proceed on his equal protection claim because he is not similarly situated to the civilly committed persons that allegedly receive more favorable treatment than he. However, plaintiff will be granted leave to proceed on his claim that unspecified defendants violated

his right to free speech by prohibiting him from receiving pornography and books about psychology.

Finally, because plaintiff's state law claims are voluminous and difficult to identify with precision, I will decline to exercise pendent jurisdiction over them. They will be dismissed without prejudice to plaintiff's refiling them in state court.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Plaintiff Alfred Riley is a patient confined involuntarily at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin.

Defendant James Doyle is Governor of the state of Wisconsin.

Defendant Helene Nelson is employed by the Wisconsin Department of Health and Family Services.

Defendant Steve Watters is employed by the Sand Ridge Secure Treatment Center.

Defendants David Thornton is Treatment Director of the Sand Ridge Secure Treatment Center.

Defendant Wendy Nordberg is Deputy Director of the Sand Ridge Secure Treatment Center.

Defendant Tony Assid is employed as Work Coordinator for the Sand Ridge Secure Treatment Center.

Defendant Steve Hamilton is a unit manager at the Sand Ridge Secure Treatment Center.

Defendant Byran Bartow is Director of the Wisconsin Resource Center in Winnebago, Wisconsin. Defendants Wanda Baldwin and Dr. John Jones are Psychiatric Care Supervisors at the Wisconsin Resource Center.

Defendant Mario Canziani is Security Director of the Wisconsin Resource Center.

Defendant Tom Speech is Treatment Director of the Wisconsin Resource Center.

Defendant Bob Whittaker is Work Coordinator of the Wisconsin Resource Center.

Defendant Diane Fergot is a unit manager at the Wisconsin Resource Center.

Defendant Wisconsin State Legislative Counsel is a Wisconsin state agency.

Defendants John and Jane Doe are "agencies or departments of the defendants who acted in concert, or participated with them and/or any of the defendants successors and/or successors of those persons acting as agents on behalf of the defendants . . . ."

B. Access to Work

Defendants limit plaintiff's participation in employment programming because plaintiff refuses to participate in "experimental treatment programs." Although plaintiff is

employed only for one hour a day, he is "on call" throughout the day, waiting to perform his hour of work. Defendants do not compensate plaintiff for time he spends "on call."

C. Conditions of Detention

Plaintiff is detained on the "A side" of the Sand Ridge Secure Treatment Center, which is the most "prison-like" unit in the facility. The living quarters on the A unit are locked and the cell conditions are harsh. Plaintiff has a steel toilet in his cell, no secure storage space and a steel door with a shutter. He sleeps on a mattress 2 ½ inches thick that rests on a concrete slab. Staff peer into patients' living quarters 36 to 48 times daily. In order to move to a less restrictive unit, have access to more pleasant living quarters or obtain increased access to employment, plaintiff must participate in "experimental treatment programs."

All patients at the Sand Ridge Secure Treatment Facility are subject to certain restrictions not placed upon other civilly committed persons. Their mail is screened, their phone calls are recorded, and their visitors are subject to a rigorous screening process. Plaintiff may not place calls whenever he wishes to do so, and he and his family and friends are charged "outrageous" costs for placing and receiving calls to and from the treatment center.

Treatment center staff must approve nearly all plaintiff's purchases, including

clothing, hygiene products and electronics. Defendants Watters, Nordberg and Schneider have prevented plaintiff from receiving "adult entertainment material," as well as books about psychiatry and psychology. Moreover, defendants have determined that patients will be "placed on a healthier eating regimen against their will, effectively denying them their individual preferences, or eating habits."

DISCUSSION

I understand plaintiff to be raising the following claims: that unspecified defendants have violated (1) his rights under the Fair Labor Standards Act of 1938 by limiting his access to employment and failing to provide him with opportunities for increased wages; (2) his right to free speech by prohibiting him from possessing pornography and books about psychology; (3)his right to free speech by charging excessive rates for telephone use; (4) his right to procedural due process by prohibiting him from possessing electronics and other consumer goods and forcing him to eat healthful food; (5) his right to substantive due process by confining him under excessively harsh cell conditions, (6) his right to be free from unreasonable searches by repeatedly inspecting his cell; (7) his right to equal protection by monitoring his mail, phone calls and visitors more carefully than the communications of other civilly confined patients; and (8) his rights under myriad state statutes and regulations.

A. Fair Labor Standards Act

Plaintiff contends that defendants have violated the Fair Labor Standards Act, 29 U.S.C. § § 201-219, by limiting his access to employment and failing to provide him with opportunities for increased wages. The Fair Labor Standards Act governs numerous aspects of employment, but is best known for its provisions establishing a minimum wage that must be paid to "employees" as those persons are defined under the Act. Although no federal court of appeals has determined whether civilly committed persons are entitled to protection under the Fair Labor Standards Act, it is well-established that neither prisoners nor pretrial detainees are covered by the Act, so long as the work they perform occurs within prison or institutional walls solely for the benefit of the institution and its wards or inmates. Vanskike v. Peters, 974 F.2d 806, 809-10 (7th Cir. 1992) (prisoners not covered by Act); Tourscher v. McCullough, 184 F.3d 236, 243 (3d Cir. 1999) (pretrial detainees not covered by Act); Gambetta v. Prison Rehabilitative Industries, 112 F.3d 1119, 1124-25 (11th Cir. 1997) (same).

By its plain terms, the Act applies only to workers who are "employees." 29 U.S.C. § 206(a). And, as the Court of Appeals for the Eleventh Circuit has explained,

> Focusing on the economic reality of the situation in its entirety . . . [a pretrial detainee] is not an "employee" under the FLSA. The purpose of the FLSA is to protect the standard of living and general well-being of the American

> worker. Because the correctional facility meets [the detainee's] needs, his "standard of living" is protected. In sum, the more indicia of traditional, free-market employment the relationship between the prisoner and his putative "employer" bears, the more likely it is that the FLSA will govern the employment relationship. [A pretrial detainee's] situation does not bear any indicia of traditional free-market employment contemplated under the FLSA.

Villarreal v. Woodham, 113 F.3d 202, 207 (11th Cir. 1997). The same reasoning applies with equal force to civilly committed persons, such as plaintiff. Like a prisoner or a pretrial detainee, plaintiff has his basic needs met by the facility in which he is detained. By his own account, he works within the institution for only one hour each day. His work is performed within the institution, occupying "time that might otherwise be filled by mischief . . . [and] train[ing] [plaintiff] in the discipline and skills of work." Danneskjold v. Hausrath, 82 F.3d 37, 43 (2d Cir. 1996). His work is not employment in the traditional sense and therefore is not subject to the provisions of the Fair Labor Standards Act. Consequently, plaintiff will be denied leave to proceed on his claim that defendants have violated his rights under the Act.

B. Free Speech

Plaintiff contends that defendants have impinged on his right to free speech in two ways: by forcing him to pay high rates for phone calls made to persons outside the treatment facility and by prohibiting him from possessing pornography or books relating to psychology.

Plaintiff's first claim is foreclosed by the decision in Arsberry v. Illinois, 244 F.3d 558 (7th Cir. 2001), in which the court of appeals held that telephone rates charged to institutionalized persons do not implicate the First Amendment no matter how exhorbitant they might be. Id. at 564. Therefore, plaintiff will be denied leave to proceed on his claim that defendants violated his right to free speech by charging excessively high rates for telephone use.

That leaves plaintiff's claim that defendants have prevented him from receiving "adult entertainment material" and books about psychology. Although the courts have not defined the contours of civilly detained persons' rights to free speech, the rights of civilly confined persons can be no more restrictive than those afforded prisoners. See, e.g., City of Revere v. Massachusetts Gen. Hospital, 463 U.S. 239 (1983) ("[T]he due process rights of a [pretrial detainee or other persons in state custody] are at least as great as the Eighth Amendment protections available to a convicted prisoner."). In the prison context, regulations that restrict a prisoner's ability to receive publications are "valid if [they are] reasonably related to legitimate penological interests." Thornburgh v. Abbott, 490 U.S. 401, 413 (1989) (citing Turner v. Safley, 482 U.S. 78, 89 (1987)). Conversely, when such a connection is lacking, restrictions on publications constitute an impermissible infringement of inmates' First Amendment rights.

In this case, plaintiff contends that defendants have prohibited him from possessing

pornography and books about psychology. Plaintiff does not say why these publications are prohibited. Defendants may well have a valid reason for denying plaintiff these publications, but it is their burden to articulate that reason. At this stage in the proceedings, plaintiff has done enough to state a claim under the First Amendment. Consequently, plaintiff will be granted leave to proceed against defendants on his claim that they violated his right to free speech by prohibiting him from possessing pornography and books about psychology.

C. Unreasonable Searches

Plaintiff contends that his Fourth Amendment rights have been violated by the Sand Ridge Secure Detention Facility's policy permitting staff to search and visually inspect his living quarters repeatedly throughout the day. The Fourth Amendment protects individuals from unreasonable government intrusion, but it is not triggered unless the state intrudes into an area "in which there is a constitutionally protected reasonable expectation of privacy." New York v. Class, 475 U.S. 106, 112 (1986) (citing Katz v. United States, 389 U.S. 347, 360 (1967)).

Although Chapter 980 patients do not forfeit all of their rights to privacy, their rights are severely curtailed by the fact of their detention. See, e.g., Bell v. Wolfish, 441 U.S. 520, 555 (1979) (pretrial detainees not entitled to be present during routine cell searches or avoid such searches). Furthermore, Wisconsin law authorizes officials to conduct routine cell

searches at all facilities where sexually violent persons are held, further negating any reasonable expectation of privacy plaintiff might have in his cell. Wis. Admin. Code § HFS 94.24(2)(e). Because plaintiff had no legitimate expectation of privacy in avoiding routine cell inspections and searches, I must deny him leave to proceed on his claim that defendants violated his right to be free from unreasonable search by repeatedly inspecting his cell.

D. Due Process

1. Procedural due process

The Fourteenth Amendment insures that no state will "deprive any person of life, liberty, or property, without due process of law," and protects individuals against arbitrary governmental action. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). To prevail ultimately on a due process claim, a litigant must demonstrate that the state has interfered with a protected interest and that "the procedures attendant upon that deprivation were constitutionally insufficient." Hewitt v. Helms, 459 U.S. 460, 472 (1983). Of course, "the types of interests that constitute liberty and property for Fourteenth Amendment purposes are not unlimited; the interest must rise to more than an abstract need or desire." Thompson, 490 U.S. at 460.

Although the Fourteenth Amendment protects pretrial detainees from punishment, and entitles them to safe living conditions and minimally adequate opportunities for

treatment and medical care, Youngberg v. Romeo, 457 U.S. 307, 320 (1982), it does not entitle them to be free from all forms of regulation. Bell v. Wolfish, 441 U.S. 530, 537 (1979) ("This Court has recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory restraints that may."); Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003).

In Thielman v. Leean, 282 F.3d 478 (7th Cir. 2002), the Court of Appeals for the Seventh Circuit held that a Chapter 980 patient cannot state a due process claim unless he can "identify a right to be free from restraint that imposes atypical and significant hardship in relation to the ordinary incidents of his confinement." Id. at 484. The court explained that although Chapter 980 patients are not confined as punishment for their earlier criminal behavior,

> [n]onetheless, facilities dealing with those who have been involuntarily committed for sexual disorders are "volatile" environments whose day-to-day operations cannot be managed from on high. Moreover, even though [a 980 patient] is not formally a prisoner, his confinement has deprived him (legally) of a substantial measure of his physical liberty . . . . [A]ny person already confined may not nickel and dime his way into a federal claim by citing small, incremental deprivations of physical freedom.

Id. at 483-484.

Just as patients may not create a due process claim by citing small deprivations of their freedom, they may not create a due process claim by citing small deprivations of their material possessions. The deprivations plaintiff alleges in this lawsuit are insufficient to

implicate his right to due process. Plaintiff alleges that defendants Watters, Nordberg and Schneider have denied his request to purchase a video game system and video cassette recorder and have placed plaintiff "on a healthier eating regimen against [his] will." Presumably, these "deprivations" occurred without process of any kind. The limits placed on plaintiff's purchase of junk food, electronics and other consumer goods may be irritating to him, but they are not atypical and significant hardships in relation to the ordinary incidents of Chapter 980 confinement. See, e.g., Senty-Haugen v. Goodno, 462 F.3d 876, 886 n.7 (8th Cir. 2006) (civilly confined patient's loss of "access to the canteen and outside vendors and computer privileges. . . . [were] de minimis restrictions with which the Constitution is not concerned"). Because plaintiff was not deprived of any protected liberty or property interest, he had no right to any process in connection with the deprivation. Montgomery v. Anderson, 262 F.3d 641, 644 (7th Cir. 2001) (In absence of protected liberty interest, "the state is free to use any procedures it chooses, or no procedures at all."). Consequently, plaintiff will be denied leave to proceed on his claim that defendants violated his right to procedural due process by prohibiting him from purchasing electronics and other consumer goods and by forcing him to eat healthful food.

2. Substantive due process

Substantive due process is implicated when the government exercises power without

reasonable justification, and is most often described as an abuse of government power that "shocks the conscience." Tun v. Whitticker, 398 F.3d 899, 900 (7th Cir. 2005). "The nub of a substantive due process claim is that some things the state just cannot do, no matter how much process it provides." Miller v. Henman, 804 F.2d 421, 427 (7th Cir. 1986). Rather than guaranteeing an individual the right to a fair decision making procedure, the concept of substantive due process prevents the state from taking certain actions even if it provides procedural safeguards, by protecting citizens against government conduct that is arbitrary or without reasonable justification. Tun, 398 F.3d at 902. In the context of civil confinement, substantive due process protects detainees from punishment.

It is well established that "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." Youngberg v. Romeo, 457 U.S. 307, 321-22 (1982). The key difference is that, unlike criminally confined offenders, persons civilly confined may not be "punished." Id. at 322. That does not mean, however, that civilly confined persons are exempt from "conditions that advance goals such as preventing escape and assuring the safety of others." Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003). So long as "the conditions and duration of [plaintiff's] confinement . . . bear some reasonable relation to the purpose for which persons are committed," they are constitutional. Seling v. Young, 531 U.S. 250, 265 (2001); West v. Schwebke, 333 F.3d 745, 748 (7th Cir.

2003). Therefore, in determining whether plaintiff has stated a substantive due process claim, the question is whether the actions of which plaintiff complains are punitive.

Not all restraints or restrictions imposed on civil detainees automatically constitute "punishment" in the constitutional sense of the word. In determining whether a condition or restriction is punitive, the critical question is "whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." Bell v. Wolfish, 441 U.S. 520, 538 (1979). Such legitimate purposes include the effective management of a detention facility and the maintenance of security and order. Id. at 540.

Plaintiff alleges that his substantive due process rights have been violated because he is forced to sleep "in a living quarters identical to a prison cell (i.e., concrete slab to sleep on, steel toilet and sink, no secure storage space, steel door with shutter, secure window screen. . .)." Cpt., ¶ 30(a). (Plaintiff explains elsewhere that he has been given a "2 ½" composite mattress in which to sleep upon, identical to those provided in county jails and prisons." Id., ¶ 48.) In Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2002), the court of appeals held that it is not "punishment" to place a civilly confined person "in a prison, subject to the institution's usual rules of conduct." Therefore, according to the court, persons who are confined as sexually violent "may be subjected to the ordinary conditions of confinement" and "may be assigned to prisons and covered by the usual institutional rules." Id. Insofar

as plaintiff is objecting to being treated as an "ordinary prisoner," Allison forecloses his substantive due process claim. Because his cell conditions do not constitute punishment in the constitutional sense of the term, plaintiff will be denied to proceed on his claim that defendants violated his substantive due process rights by confining him under prison-like conditions.

E. Equal Protection

Plaintiff contends that the state of Wisconsin treats him and all Chapter 980 patients differently from other civilly committed individuals by monitoring the phone calls, mail and visitors of Chapter 980 patients more stringently than the communications of other civilly committed persons. The equal protection clause of the Fourteenth Amendment guarantees that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). Therefore, to state an equal protection claim, plaintiff must identify similarly situated individuals from whom he is being treated differently. Although plaintiff draws a connection between Chapter 980 patients and all other persons civilly confined, the Court of Appeals for the Seventh Circuit has recognized that a rational basis exists for treating Chapter 980 patients differently from other civilly committed persons. Thielman, 282 F.3d at 485 ("[I]t is not unreasonable for the State to believe that a person with a mental disorder of a sexual nature is qualitatively more

dangerous than another mental patient who nonetheless threatens danger to himself or others"). Because plaintiff is not similarly situated to persons who are not confined under Chapter 980, he will be denied leave to proceed on his claim that unspecified defendants have violated his right to equal protection by monitoring the mail, phone calls and visitors of Chapter 980 patients more carefully than the communications of other civilly confined patients.

F. State Law Claims

When a federal court has the authority to hear any claim in a lawsuit, the court may choose also to hear state law claims that "that are so related to [federal] claims in the action that they form part of the same case or controversy." 28 U.S.C. § 1367(a). Although a court may exercise pendent jurisdiction over related claims, it need not do so in all cases. City of Chicago v. International College of Surgeons, 522 U.S. 156, 172 (1997) ("Our decisions have established that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right."). "The doctrine of pendent jurisdiction . . . is a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns and values." Carnegie-Mellon University v. Cohill, 484 U.S. 343, 350 (1988). A court may decline to exercise supplemental jurisdiction over a claim whenever "the claim raises a novel or complex issue of State law, the claim

substantially predominates over the claim or claims over which the district court has original jurisdiction, the district court has dismissed all claims over which it has original jurisdiction, or in exceptional circumstances, there are other compelling reasons for declining jurisdiction." 28 U.S.C. § 1367(c).

In this case, plaintiff alleges that defendants violated a number of state statutes and regulations. It does not appear, however, that any of these alleged violations of state law correspond to the one claim on which plaintiff is being granted leave to proceed. Consequently, I will decline to exercise supplemental jurisdiction over his state law claims. If plaintiff wishes to pursue these claims, he may do so in state court.

G. Proper Defendants to Plaintiff's Remaining Claims

In his complaint, plaintiff has named the Wisconsin State Legislative Counsel and "Wisconsin state agencies" John and Jane Does as defendants. The Eleventh Amendment of the United States Constitution bars federal lawsuits brought against states for money damages, Wynn v. Southward, 251 F.3d 588, 592 (7th Cir. 2001), and for the purpose of preserving state sovereign immunity, state agencies are entitled to sovereign immunity and are not subject to liability under 42 U.S.C. § 1983, Kroll v. Board of Trustees of Univ. of Illinois, 934 F.2d 904 (7th Cir. 1991) ("[A] state agency is the state for purposes of the eleventh amendment."). Consequently, plaintiff has failed to state a claim under § 1983

against the Wisconsin State Legislative Counsel or defendants agencies John and Jane Doe.

Plaintiff's complaint also names as defendants various persons employed by the Wisconsin Resource Center. Plaintiff does not allege that he has been incarcerated at the Wisconsin Resource Center or that he is in any danger of being returned there. He is presently confined at the Sand Ridge Secure Treatment Center, where the constitutional deprivations he alleges have occurred. A state actor may be held liable to a plaintiff under § 1983 only for deprivation in which he or she was personally involved. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). Because defendants Bartow, Baldwin, Jones, Canziani, Speech, Whittaker and Fergot are employees of the Wisconsin Resource Center and not of the facility where plaintiff is confined, they are not proper defendants to this lawsuit. Consequently, they will be dismissed.

Although it is likely that several of the remaining defendants, such as defendant Doyle and defendant Assid, had no personal involvement in prohibiting him from possessing pornography and books about psychology, it is unclear from plaintiff's complaint which defendants were involved in the alleged constitutional deprivation. Therefore, I will not dismiss any of the remaining defendants at this time.

ORDER

IT IS ORDERED that the motion to dismiss of defendants James Doyle, Helene

Nelson, Steve Watters, David Thornton, Wendy Nordberg, Tony Assid, Steve Hamilton, Byran Bartow, Wanda Baldwin, Dr. John Jones, Mario Canziani, Speech, Bob Whittaker, Diane Fergot, Wisconsin State Legislative Counsel, John Doe and Jane Doe is

1. GRANTED with respect to plaintiff Alfred Riley's claims that

a. unspecified defendants have violated his rights under the Fair Labor Standards Act of 1938;

b. unspecified defendants violated his right to free speech by charging exorbitant rates for telephone calls;

c. unspecified defendants violated his right to be free from unreasonable searches by repeatedly inspecting his cell;

d. unspecified defendants have violated his right to procedural due process by prohibiting him from possessing electronics and other consumer goods and by forcing him to eat healthful food;

e. unspecified defendants have violated his right to substantive due process by confining him under excessively harsh cell conditions; and

f. unspecified defendants have violated his right to equal protection by monitoring the mail, phone calls and visitors of Chapter 980 patients more carefully than the communications of other civilly confined patients; and

2. DENIED with respect to plaintiff's claim that unspecified defendants have

violated his right to free speech by prohibiting him from possessing pornography and books about psychology.

FURTHER, IT IS ORDERED that

3. Plaintiff's claims that defendants violated his rights under Wisconsin state law are DISMISSED without prejudice to his refiling them in state court.

4. Defendants Wisconsin State Legislative Counsel, John Doe, Jane Doe, Bartow, Baldwin, Jones, Canziani, Speech, Whittaker and Fergot are DISMISSED from this lawsuit.

Entered this 16th day of October, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge