

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

USA ex rel. PARAPROFESSIONAL	:	
LAW CLINIC, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
JEFFREY A. BEARD, Secretary of	:	
Corrections, DONALD T. VAUGHN,	:	
Superintendent of SCI-Graterford, and	:	
MANUEL A. ARROYO, Deputy	:	
Superintendent at SCI-Graterford	:	No. 78-538
Defendants	:	

MEMORANDUM AND ORDER

SCHILLER, J.

May , 2002

I. BACKGROUND

In January 1976, inmates at the State Correctional Institution at Graterford¹ (“Graterford”) formed the Para-Professional Law Clinic (“PPLC”) to provide legal assistance to other Graterford inmates. *United States of America ex rel. Para-Professional Law Clinic v. Kane*, 656 F. Supp. 1099, 1100 (E.D. Pa. 1987), *aff’d without op.*, 835 F.2d 285 (3d Cir. 1987). In 1978, Graterford announced plans to close the PPLC, and several inmates at Graterford brought suit against the predecessors of the current Defendants in E.D. Pa. Civil Action No. 78-206. The Court entered a preliminary injunction on February 17, 1978, ordering the defendants to reopen the PPLC. *Wade v. Kane*, 448 F. Supp. 678, 685 (E.D. Pa. 1978), *aff’d without op.*, 591 F.2d

¹ Graterford is a maximum security state prison operated by the Pennsylvania Department of Corrections (“DOC”) housing men generally serving long sentences. (Hr’g Tr. at 34, 148, 150; Pls.’ Ex. 9.)

1338 (3d Cir. 1979). Other Graterford inmates later filed the present action requesting similar action against the same defendants, and the two actions were consolidated.² *Kane*, 656 F. Supp. at 1100. In 1987, after a hearing, the Court issued a permanent injunction enjoining the defendants and their successors and agents from closing any PPLC office or facility. *Id.* at 1108, *as modified by* March 27, 1987 Order (Docket Entry 64).

On February 14, 2001, Defendants moved to terminate the 1987 injunction under the Prison Litigation Reform Act.³ A full evidentiary hearing on that motion was held before this Court on March 28, 2002. Also outstanding are the parties' Motions for Summary Judgment and Defendants' Motion in Limine.

II. FINDINGS OF FACT

A. Inmate Population at Graterford

In 1978, Graterford's population was around 1600. (Hr'g Tr. at 104-05.) By 1987, the population had risen to 2500. *Kane*, 656 F. Supp. at 1103. By February 2002, Graterford's population exceeded 3,130. (Hr'g Tr. at 105; Pls.' Ex. 9.) Currently, 8-10% of that population is mentally ill. (Hr'g Tr. at 104.) Between 1978 and February 2002, the Hispanic inmate population rose from 45 inmates, or 2.8% of the population, to 8.8% of the inmate population, or around 275 inmates. (Hr'g Tr. at 105-06; Pls.' Ex. 9); *see Wade*, 448 F. Supp. at 681.

Upon entry into the state correctional system, 15-20% of the inmates at Graterford read below a fifth-grade level. (Hr'g Tr. at 103-04, 112; Beard dep. at 35.) Around 40% then read

² E.D. Pa. Civil Action No. 78-206 was eventually dismissed with prejudice. *Kane*, 656 F. Supp. at 1100.

³ Defendants, sued in their official capacities, are the successors in office of the original defendants. Plaintiffs, except for Bebley Wells, are members of the PPLC.

below an eighth-grade level. *Id.* For the past six or seven years, Graterford required inmates who read below the minimum educational level of fifth-grade reading level at intake to enroll in educational programs; in January 2002, Graterford raised that minimum educational level to the eighth-grade reading level. (Hr’g Tr. at 110-12, 168-69; Beard dep. at 33-35.) Graterford also offers more advanced instruction programs. Over 100 inmates graduate from Graterford’s GED program every year. (Hr’g Tr. at 43, 66, 110-11.)

B. Graterford’s Law Libraries

Graterford has two main law libraries for the use of general population inmates: the Main Library in the school area and the “New Side” Library in Graterford’s new addition. (Defs.’ Ex. 16.) The Main Library is usually open Monday-Thursday: 8:00-11:00 a.m., 1:00-3:00 p.m., and 6:00-8:00 p.m., and Friday-Saturday: 8:00-11:00 a.m. and 1:00-3:00 p.m. The New Side Library is usually open Mondays: 1:00- 3:00 p.m. and Tuesday-Friday: 8:00-11:00 a.m. and 1:00-3:00 p.m. (Hr’g Tr. at 95-96; Def’s Ex. 29.) Between April 22 and December 31, 2000, however, one or both of these libraries was closed on 44 different occasions. Between January 1 and September 24, 2001, one or both of these libraries was closed on 42 occasions. Sometimes the closures lasted all day.⁴ (Hr’g Tr. at 86-89; Pls.’ Ex. 16.)

If an inmate wants to use the main law library, he must submit a written request. (Hr’g

⁴ Upon agreement of counsel, the substitute list of library closings submitted by Plaintiffs after conclusion of the hearing will replace the document submitted at trial as Plaintiffs’ Exhibit 16. (Defs.’ Objections to Pls.’ Exs. at 1; Pl. PPLC’s Resp. to Defs.’ Objections at 3.) At the hearing I admitted Plaintiffs’ exhibits into evidence, subject to Defendants’ objections. Defendants duly submitted objections to Plaintiffs’ Exhibits 1, 10, 25, and 27. Plaintiffs’ Exhibit 25 is inadmissible because it is irrelevant; since it is dated June 30, 2000, it does not reflect the current conditions at Graterford. Since I did not need to consider Plaintiffs’ Exhibit 1, 10, or 27 in order to reach my decision, it is unnecessary to rule on their admissibility.

Tr. at 91, 97.) The law libraries currently operate near full capacity. *Id.* at 93, 95. The waiting period for law library passes is 7-10 days. *Id.* at 92. If an inmate obtains an emergency pass, however, he may be able to access the library within a day or two. *Id.* at 96-97, 164. Once an inmate gains access to the library, he may access it for up to a week. *Id.* at 97.

The libraries are currently supervised and maintained by a librarian and two assistant librarians. *Id.* at 96, 161-62. Currently, nine inmates work as legal reference aides in the Main and New Side libraries. *Id.* at 84, 165. Upon request, the law librarian and reference aides provide inmates with legal forms including Pennsylvania Post Conviction Relief Act petitions, the Form for Use in Applications for Habeas Corpus Under 28 U.S.C. § 2254, and the Form to be Used by a Prisoner Filing a 42 U.S.C. § 1983 Civil Rights Complaint. *Id.* at 155-56. The legal reference aides assist other inmates to locate rules, statutes, cases, forms, and other relevant documents. (Defs.' Ex. 15, at 12-13.) If the inmates request further assistance, they are usually referred to the PPLC. (Hr'g Tr. at 63, 75, 89-91, 94, 100, 191-92, 196; Pls.' Exs. 12, 24.)

The Main and New Side law libraries contain a full set of the Pennsylvania statutes, the United States Code, state and federal criminal and civil procedure and court rules, Atlantic 2d Reporter, United States Supreme Court Reports, Federal Reporter 2d & 3d, Federal Supplement, Federal Supplement 2d, and BNA Criminal Law Reporter. They contain current volumes of Shepard's Citations for the Federal Reporters, Federal Supplements, Pennsylvania statutes, and the United States Code. They contain the Pennsylvania Digest 2d and Federal Practice Digest 4th. They also stock a variety of secondary materials on topics in criminal law, criminal procedure, habeas corpus, parole, civil rights, prisoners' rights, evidence, civil procedure, legal forms, and legal research. (Defs.' Ex. 17.)

Little language assistance is available in the law libraries to assist inmates who do not speak English. No Spanish-language legal reference materials are available. (Hr’g Tr. at 74.) Although the Department of Corrections has contracted with a vendor to provide language translation services for non-English-speaking inmates, Graterford has not trained its employees to utilize this service. (Hr’g Tr. at 73, 167; Beard dep. at 25-26.) Neither the law librarian nor the “staff paralegal,” who is responsible for assisting non-English-speaking inmates, had ever used or even heard of it before the March 28, 2002 hearing. (Hr’g Tr. at 73, 89.) One of the legal reference aides currently assigned to the law library speaks Spanish and limited English. *Id.* at 94-95, 165, 195-96.

The two law libraries just described are inaccessible to inmates in the Restrictive Housing, Mental Health, or Special Needs Units. These inmates may, however, obtain photocopies of legal materials from these libraries by making a specific request in writing. (Hr’g Tr. at 169; Defs.’ Exs. 19-20.) In addition, inmates in the Restrictive Housing Units can access one of the three “mini-law libraries” in their unit. (Hr’g Tr. at 27, 161; Defs.’ Exs. 20, 21). The inmates in the Mental Health and Special Needs Units, who number up to 40 at any one time, have no physical access to any library. (Hr’g Tr. at 150-51.)

C. Graterford’s “Paralegal” Services

Graterford also claims to employ a “staff paralegal,” who is responsible for assisting illiterate, non-English-speaking, and certain disabled inmates. It advertises that her services include drafting legal documents, helping inmates use the law library, identifying procedural forms, transcription, and providing citations to procedural rules, statutes, and cases. (Defs.’ Exs. 15, 22.) She is responsible for assisting inmates in all areas of the prison, including inmates in

the Restrictive Housing, Mental Health, and Special Needs Units. (Hr'g Tr. at 76-77.)

The current occupant of this position is a high school graduate with no college degree or degree in paralegal studies. *Id.* at 72, 82-83, 166. After five years on staff, she is still unsure whether she has ever been inside the law library. *Id.* at 72, 81. She currently spends about three days a week at Graterford and sees Graterford inmates only about once a week. *Id.* at 72, 75. She also serves as backup grievance coordinator at Graterford and paralegal at seven other Pennsylvania institutions. *Id.* at 71-72.

Given the limited educational background and multiple other responsibilities of the current "staff paralegal," it is certain that she does not perform the full range of paralegal tasks advertised. Her legal assistance work apparently consists mainly of giving inmates appropriate grievance or court forms, reading the forms aloud, and transcribing for them if necessary. *Id.* at 78-79, 186-89.

D. Communication with Courts and Attorneys at Graterford

Inmates may receive visits from attorneys and make telephone calls to attorneys. (Hr'g Tr. at 158-60; Defs.' Exs. 3, 10-13.) Inmates may send mail to and receive mail from the courts and attorneys. (Hr'g Tr. at 152-53.) Each inmate receives ten free postage-paid envelopes per month. (Hr'g Tr. at 153; Defs.' Ex. 3.) An inmate who establishes indigency status can borrow funds from Graterford to buy postage for legal mail. (Hr'g Tr. at 153; Defs.' Ex. 4.) Graterford also offers for sale to inmates supplies such as paper, carbon paper, pencils, pens, envelopes, erasers, typewriter correction paper, writing tablets, and dictionaries. (Hr'g Tr. at 153-54; Defs.' Ex. 6, at 10.) If an inmate establishes indigency status and prepares a written request, Graterford gives him free paper, carbon paper, and a pen. (Hr'g Tr. at 154-55; Defs.' Ex. 4.)

Inmates may make photocopies at \$.10 per page. (Hr'g Tr. at 157; Defs.' Exs. 8-9.) Typewriters are available for use by inmates in the library upon written request. (Hr'g Tr. at 158; Defs.' Ex. 16, at 7.) Inmates also may purchase typewriters from outside vendors for use in their cells. (Hr'g Tr. at 156; Defs.' Exs. 6-12.) With the exception of those stand-alone computers currently owned by the PPLC, Graterford does not permit inmates to use computers or related equipment, including disks, except in the educational areas as part of a supervised educational or vocational program. (Hr'g Tr. at 20-22, 120-21, 133-45; Pls.' Exs. 7, 11; Beard dep. 49-50.)

E. Legal Services Provided by the PPLC at Graterford

The PPLC is a Pennsylvania non-profit corporation governed by a board of directors composed largely of inmate officers elected by inmate members. (Hr'g Tr. at 15, 30-36; Pls.' Ex. 14.) Members of the PPLC assist inmates with legal matters including post conviction relief petitions, habeas corpus petitions, appeals from convictions, civil rights actions, and parole matters. (Hr'g Tr. at 28, 44; Pls.' Ex. 5.) The inmates who work for the PPLC are compensated by the DOC as they would be for any institutional work assignment. (Hr'g Tr. at 11, 17, 50.) Currently, 21 inmates, all Plaintiffs in this action, work for the PPLC. (Hr'g Tr. at 15; Pls.' Ex. 3.)

The PPLC currently works out of several offices or facilities at Graterford. Its main administrative office is located in front of C-Block. It also has offices on each of the five old housing blocks (A- through E-Blocks), and another office on the New Side. The PPLC also has a law library across from Graterford's Main Law Library, across from E-Block in the school activities section. (Hr'g Tr. at 13-14, 37-40.) With the exception of the New Side office, the PPLC had all of these offices at the time the final injunction was entered in 1987. *See Kane*, 656

F. Supp. at 1102.

The PPLC's hours of operations are 7:30-11:20 a.m., 1:00-3:00 p.m., and 6:00-8:45 p.m., seven days a week including holidays. (Pls.' Ex. 3.) Inmates do not need a special pass to access the PPLC office within their block. (Hr'g Tr. at 17-18.) In addition, PPLC members personally visit inmates in the Special Needs and Mental Health Units. *Id.* at 14, 25-27. Two current members of the PPLC speak Spanish. *Id.* at 62-64. One of them translates official announcements and notices into Spanish for other inmates. (Hr'g Tr. at 64-65; Pls.' Ex. 23.) The PPLC's own records show that its members assisted inmates in 1,326 separate legal matters in the fifteen-month period from July 1, 2000 through September 30, 2001. (Hr'g Tr. at 51-52; Pls.' Ex. 5.)

F. Anticipated Future of the PPLC at Graterford

Defendant Secretary Beard expects to close the PPLC after the injunction is lifted. (Beard dep. at 30, 44-45.) Defendants have expressed concern about the potential security problems posed by certain aspects of the PPLC's current operation, such as relatively minimal staff supervision, inmate supervision of other inmates, and unsupervised mobility of the PPLC officers. (Hr'g Tr. at 114-15, 170-173.)

None of the Defendants, however, knows how Graterford will be able to accommodate the increased demand for its legal services by inmates that is certain to follow its closure. *Id.* at 115, 122-24, 172-73, 186-80. Defendants apparently believe that the services provided by their current library and staff, with the possible addition of one or two staff members and inmate legal reference aides, will be sufficient. (Hr'g Tr. at 124; Beard dep. at 30.)

III. CONCLUSIONS OF LAW

A. Legal Standard

Under the Prison Litigation Reform Act (“PLRA”), prospective relief in any civil action with respect to prison conditions is terminable by motion of any party as of at least two years after the PLRA’s enactment on April 26, 1996.⁵ 18 U.S.C. § 3626(b)(1)(i). The 1987 permanent injunction unquestionably fits within the broad statutory definition of “prospective relief” in a civil action. 18 U.S.C. § 3626(g)(7). Defendants moved to terminate the injunction more than two years after the PLRA’s enactment. Therefore, the 1987 injunction is terminable.

Nevertheless, even after a party moves to terminate such an injunction, a court may still not terminate such prospective relief if it “makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the

⁵ Plaintiff Clifton, who has represented himself separately from the other members of the PPLC, has argued that this section is unconstitutional. Section 3626(b) has been upheld against every constitutional challenge raised against it by virtually every appellate court to consider the issue. *See Imprisoned Citizens Union v. Ridge*, 169 F.3d 178, 184-85 (3d Cir. 1999) (holding that immediate termination provision in 18 U.S.C. § 3626(b)(2) does not violate separation of powers principles or equal protection clause). *See also Miller v. French*, 530 U.S. 327, 350 (2000) (holding § 3626(e)(2) of the PLRA does not violate principles of separation of powers); *Benjamin v. Jacobson*, 172 F.3d 144, 159 (2d Cir. 1999) (en banc) (holding that § 3626 does not violate separation of powers principles or due process and equal protection clauses); *Ruiz v. United States*, 243 F.3d 941, 945 (5th Cir. 2001) (holding that § 3626(b) does not violate due process clause or separation of powers principles); *Gavin v. Branstad*, 122 F.3d 1081, 1090-91 (8th Cir. 1997) (holding that § 3626(b) does not unconstitutionally restrict access to courts or violate separation of powers principles, equal protection clause, or due process rights).

By its very terms, § 3626(b) does not violate prisoners’ civil rights. The immediate termination provisions of § 3626(b) take away from prisoners only those terms of the prospective relief that are not necessary to protect their federal rights. *See Gavin*, 122 F.3d at 1090. “The right to enforce [prospective relief] that goes beyond the bounds of constitutional necessity is not equivalent to the right to bring constitutional grievances to the attention of the courts.” *Id.* at 1090.

prospective relief is narrowly drawn and the least intrusive means necessary to correct the violation.” 18 U.S.C. § 3626(b)(3).

The federal right at issue is the inmates’ right to access the courts. Under the standard newly articulated in *Lewis v. Casey*, 518 U.S. 343 (1996), an inmate cannot show a violation of this right simply by showing lack of access to a law library or legal assistance or that these services are inadequate. *Lewis*, 518 U.S. at 350-51. An inmate must “demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.” *Id.* at 351. In order to make a systemic challenge against an institution, as in the present case, inmates must show actual and widespread inability to pursue their legal claims. *Id.* at 349.

In light of *Lewis*, this injunction must terminate unless the evidence shows that violations of the inmates’ right to access the courts are widespread, current, and ongoing. As the Court in *Kane* observed and Plaintiffs have argued, it would be impossible to show a violation of the inmates’ right to access the courts since the entry of the injunction, assuming that the injunction has served its purpose, since its purpose was to prevent such injury. *Kane*, 656 F. Supp. at 1108.

Nevertheless, this is exactly the showing required by the PLRA. See *Cason v. Seckinger*, 231 F.3d 777 (11th Cir. 2000) (rejecting definition of “current and ongoing” that would include potential or even likely future violations); *Gilmore v. California*, 220 F.3d 987, 1009 (9th Cir. 2000) (finding “[t]here can be no doubt that Congress intended to deprive courts of jurisdiction to continue relief” even if “necessary to prevent reversion to past unconstitutional practices”); *Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649, 662 (1st Cir. 1997) (holding “PLRA imposes no obligation on the trial court to make a predictive inquiry into future conditions before

terminating an existing consent decree,” but noting that if “plaintiffs' trepidation proves justified, they remain free to initiate a new round of proceedings designed to show that post-termination prison conditions actually do violate their federally protected rights”); *Martin v. Ellandson*, 122 F. Supp.2d 1017, 1023 (S.D. Iowa 2000) (finding evidence that prison officials were “poised to resume” unconstitutional behavior insufficient to prevent termination of prospective relief).

The PLRA requires this Court to inquire into “current and ongoing” violations of inmates’ right to access the courts. I must make this determination upon consideration of all the services currently available to the inmates at Graterford, including services provided by the PPLC.

B. Application

The record shows that Graterford’s two main law libraries are chronically under-staffed and intermittently subject to closure. Despite the marked increase in inmate population, especially Hispanic inmates, since entry of the preliminary injunction in 1978, there is no official mechanism of language translation currently in use at Graterford. The inmates in the Mental Health and Special Needs Units receive virtually no legal assistance through Graterford, other than from the PPLC. It is unlikely that such inmates could submit written requests for photocopies of specific documents from the law library without assistance, and it is equally unlikely that the “staff paralegal” would be able to help them do so. Even if the current occupant of that position were qualified for the job, she would have trouble finding the time, since she is assigned to two positions at Graterford and works at seven different institutions in addition to her positions at Graterford.

The evidence indisputably shows that Graterford does not take seriously inmates’

fundamental right to access the courts. Not only did Graterford hire an unqualified person to fill the “staff paralegal” position for the last five years, but it has made no effort to address the conflict of interest evident in the simultaneous assignment of the “staff paralegal” as backup grievance counselor. Graterford has also taken no steps to train its staff in the use of the language line service that apparently exists.

Nevertheless, I cannot conclude that the injunction remains necessary to correct a current and ongoing violation of Plaintiffs’ right of access to the courts. In order to show such a violation, Plaintiffs would have had to show that the current situation is inadequate; on the contrary, Plaintiffs have demonstrated that inmates at Graterford have ample means of access to the courts. The PPLC is an integral part of that system of access. Both inmates and staff rely heavily on it for legal assistance, including for research and document production. The services currently offered by the PPLC supplement the otherwise inadequate and unreliable services provided by Graterford itself.

Since I find that there is no widespread, current, and ongoing violation of the Graterford inmates’ fundamental right of access to the courts, the permanent injunctive relief must terminate. 18 U.S.C. § 3626(b). If Defendants carry out their contemplated closure of the PPLC, however, in light of Graterford’s past failures to provide reliable access to the courts, I strongly recommend that Defendants overhaul Graterford’s entire system of legal assistance to ensure inmates’ access to the courts. If they fail to do so, they can expect to be hauled back into court in the near future.

IV. CONCLUSION

In conclusion, the Court will grant Defendants’ Motion to Terminate Prospective Relief.

The permanent injunction shall terminate immediately. The parties' motions for summary judgment and Defendants' Motion in Limine will therefore be denied as moot. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

USA ex rel. PARAPROFESSIONAL LAW CLINIC, et al., Plaintiffs,	:	
	:	CIVIL ACTION
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v.	:	
	:	
JEFFREY A. BEARD, Secretary of Corrections, DONALD T. VAUGHN, Superintendent of SCI-Graterford, and MANUEL A. ARROYO, Deputy Superintendent at SCI-Graterford Defendants	:	No. 78-538

ORDER

AND NOW, this day of **May, 2002**, upon consideration of Defendants’ Motion to Terminate Prospective Relief, Defendants’ Motion in Limine, the parties’ motions for summary judgment, Defendants’ Objections to Plaintiffs’ Exhibits, and all responses thereto, after a hearing before this Court thereon, and for the foregoing reasons, it is hereby **ORDERED** as follows:

1. Defendants’ Motion to Terminate Prospective Relief (document no. 91) is **GRANTED**.

2. The permanent injunctive relief entered on March 25, 1987 shall terminate immediately.

3. Defendants' Motion in Limine (document no. 126) is **DENIED** as moot.

4. The parties' motions for summary judgment (document nos. 127, 128, & 130) are **DENIED** as moot.

BY THE COURT:

Berle M. Schiller, J.