

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

MARK MELVIN,

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2011 SEP 23 P 4: 39

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PLAINTIFF,

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

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vs.

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*

KIM THOMAS, in his individual and
official capacities as Commissioner for
the Alabama Department of Corrections;

*

Civil Action No. _____

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RICHARD ALLEN, in his individual
capacity as former Commissioner for
Alabama Department of Corrections;

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BOBBY BARRETT, in his individual
and official capacities as Warden of
Kilby Correctional Facility; JOHN
CUMMINS, in his individual capacity

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as former Warden of Kilby Correctional
Facility; WILLIE ROWELL, in his
individual and official capacities as

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Deputy Warden of Kilby Correctional
Facility; and VICTOR NAPIER, in his
individual and official capacities as

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Captain of Kilby Correctional Facility,

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DEFENDANTS.

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COMPLAINT

INTRODUCTION

1. This is a civil rights action brought by an inmate incarcerated at Kilby Correctional Facility to obtain relief from the prison's action in banning *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, a

Pulitzer Prize-winning book that examines racial history in the southern United States. Defendants Cummins, Rowell, and Napier, officials at Kilby Correctional Facility (“Kilby”) in Mt. Meigs, Alabama, banned *Slavery by Another Name* from the prison and denied Plaintiff access to the book in violation of his constitutional rights to freedom of speech, equal protection, and due process.

2. Defendants banned *Slavery by Another Name* invoking the prison’s written policy of prohibiting mail that poses a security threat to the facility. Defendants’ invocation of this policy is both pretextual – *Slavery by Another Name* is an educational and historical work that illuminates a chapter of American racial oppression and prejudice in the southern United States following the Civil War; it does not advocate racial violence or a violent political ideology – and arbitrarily applied – at the same time that Defendants denied Plaintiff access to *Slavery by Another Name* based on its political content and its exposition of historical racial discrimination in the southern United States, Defendants permitted inmates to have access to other materials which contain anti-authoritarian, violent, or racist ideology.

3. Defendants’ action in banning *Slavery by Another Name* violated Plaintiff’s rights to freedom of speech, due process, and equal protection as secured by the Constitution of the United States, thereby entitling him to relief. This action is brought pursuant to 42 U.S.C. § 1983, the United States Constitution, and the Constitution of the State of Alabama.

JURISDICTION

4. This is a civil action authorized by 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights, privileges, and immunities guaranteed by the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, as well as jurisdiction over the claims arising under the Constitution of the State of Alabama pursuant to 28 U.S.C. § 1367(a). This Court also has jurisdiction over Plaintiff's action for declaratory relief pursuant to 28 U.S.C. § 2201. Injunctive relief is authorized by 28 U.S.C. § 2202 and 42 U.S.C. § 1983.

5. Venue is appropriate in the Middle District of Alabama under 28 U.S.C. § 1391(b), as the events giving rise to this action occurred in this jurisdiction.

PLAINTIFF

6. Plaintiff Mark Melvin is an inmate at Kilby Correctional Facility.

DEFENDANTS

7. Defendant Kim Thomas, sued in his individual and official capacities, is the Commissioner for the Alabama Department of Corrections. Under Alabama Department of Corrections Regulation Number 448(V)(H), the Commissioner is responsible for making the ultimate determination whether publications mailed to inmates in the Alabama Department of Corrections ("ADOC") will be banned from ADOC facilities.

8. Defendant Richard Allen, sued in his individual capacity, was the Commissioner of ADOC at the time that the facts giving rise to this action occurred.

9. Defendant Bobby Barrett, sued in his individual and official capacities, is the current warden of Kilby Correctional Facility.

10. Defendant John Cummins, sued in his individual capacity, was the warden at Kilby Correctional Facility at the time that the facts giving rise to this action occurred and was personally involved in the decision to ban *Slavery by Another Name* from the institution.

11. Defendant Willie Rowell, sued in his individual and official capacities, is a deputy warden at Kilby Correctional Facility and was personally involved in the decision to ban *Slavery by Another Name* from the institution.

12. Defendant Victor Napier, sued in his individual and official capacities, is a captain at Kilby Correctional Facility and made the initial determination to ban *Slavery by Another Name* from the institution.

FACTUAL ALLEGATIONS

13. On September 21, 2010, Plaintiff requested and was mailed two widely respected award winning books of non-fiction: *Mountains Beyond Mountains* by Tracy Kidder and *Slavery by Another Name* by Douglas Blackmon.

14. On September 29, 2010, Plaintiff was informed by Defendant Napier that he was not permitted to have *Slavery by Another Name* in Kilby. Defendant Napier confronted Plaintiff about the book and told Plaintiff, "You know you can't have [this book] here." Plaintiff was, however, permitted to have *Mountains Beyond Mountains*.

15. Defendant Napier informed Plaintiff that he had *Slavery by Another Name*

inspected by Defendant Rowell, who confirmed that the book was not permitted in the prison and deemed it a “security threat.” Defendant Napier informed Plaintiff that the book was “too incendiary” and “too provocative.”

16. On October 14, 2010, Plaintiff filed a grievance with Defendant Rowell appealing the prison’s decision to ban *Slavery by Another Name*. In the grievance, Plaintiff stated that he believed the book was a “work of history” and that he should not be “denied access to it based on its content.”

17. Defendant Rowell informed Plaintiff that the decision to exclude *Slavery by Another Name* from Kilby was made by Defendants Cummins and Napier. Defendant Rowell affirmed the denial, noting that the book was denied pursuant to Paragraph (V)(G)(4)(a) of the Alabama Department of Corrections Regulation Number 448, pertaining to inmate mail. Paragraph (V)(G)(4)(a) states that:

Incoming mail may be determined to be a threat to the security of the institution and returned to the sender if, in the opinion of the Warden, it could reasonably be considered to . . . Be an attempt to incite violence based on race, religion, sex, creed, or nationality.

17. Plaintiff received a notification of rejected mail on November 9, 2010, which stated that the “unauthorized publication can be mailed home at inmate expense.” Plaintiff appealed this rejection of *Slavery by Another Name* on November 12, 2010. Plaintiff stated that he would like to have access to this book because he believes it “to be an account of American History.” Defendant Napier denied Plaintiff’s appeal on the same day without

explanation.

18. Inmates at Kilby currently have access to books, magazines, literature, and other materials and media that contain provocative images and ideology.

19. *Slavery by Another Name* is a Pulitzer Prize-winning historical account of racial oppression and racial bias in the southern United States from the late 1800s through the mid 1900s. It details a chapter of history in the southern United States in which recently emancipated African Americans were targeted and arbitrarily branded as criminals through the passage of sham laws and were then leased back into slavery to steel and mining companies during periods of industrial labor shortages. *Slavery by Another Name* does not advocate violence or a violent political ideology, nor does it attempt to incite violence based on race.

20. The book is widely critically acclaimed and, in addition to the winning the 2009 Pulitzer Prize, is the recipient of the 2008 American Book Award, the 2009 Mississippi Institute of Arts and Letters Award for Nonfiction, the 2009 Odyssey Medal for Global Awareness, and the 2010 Grass Roots Justice Award. It was included on the list of "25 Books All Georgians Should Read" by Georgia Center for the Book, which is the Georgia affiliate of the Center for the Book at the Library of Congress in Washington, D.C. *Slavery by Another Name* is also currently being developed into a multi-part documentary to be aired on PBS.

20. Douglas Blackmon, the author of *Slavery by Another Name*, is an award-

winning journalist and a Senior National Correspondent for the *Wall Street Journal*. The book was published by Doubleday Books in 2008. Neither the author, nor the publisher, were notified when the book was banned.

CAUSES OF ACTION

Count One

Defendants denied Plaintiff access to *Slavery by Another Name* based on its content, under the color of state law for the purposes of 42 U.S.C. §1983. The book is a factual account of a chapter of American history in which newly emancipated African Americans lost basic rights and freedoms by being forced into unpaid labor in conditions that rivaled slavery. Defendants' decision to ban the book was based on their desire to restrict access to information about historical racism in the Southern United States and is not reasonably related to a legitimate penological purpose. For the foregoing reasons, Defendants' censorship and rejection of *Slavery by Another Name* violated Plaintiff's rights to freedom of speech, expression, and to receive ideas under the First and Fourteenth Amendments to the United States Constitution and Section 4 of the Constitution of the State of Alabama.

Count Two

Defendants' intentional exclusion of *Slavery by Another Name* was based on racial discrimination and racial bias. Defendants acted under the color of state law for the purposes of 42 U.S.C. §1983. In banning the book from Kilby, Defendants discriminated against African Americans by denying them access to information about African American history

in the Southern United States in violation of the Equal Protection Clause of the United States Constitution. Plaintiff was harmed by Defendants' discriminatory actions because he was denied access to this historical information. Defendants' discriminatory acts were invidious, intentional, and were unnecessary to further a compelling government interest. Their actions violated Plaintiff's right to equal protection under the Fourteenth Amendment to the United States Constitution and Section 1 of the Constitution of the State of Alabama.

Count Three

Defendants Napier and Rowell personally reviewed Mr. Melvin's appeal of their determination to censor *Slavery by Another Name* and did not allow review of their decision by an independent official not involved in the initial determination to ban the book. Defendants acted under the color of state law for the purposes of 42 U.S.C. §1983. Therefore, Defendants denied Plaintiff access to *Slavery by Another Name* without the required minimum procedural safeguards in violation of due process under the Fourteenth Amendment to the United States Constitution and Section I of the Constitution of the State of Alabama.

Count Four

Defendants' deprivation of Plaintiff's fundamental property interest in *Slavery by Another Name*, under color of state law for purposes of 42 U.S.C. §1983, was intentional, arbitrary, and shocking to the conscience in violation of substantive due process under the Fourteenth Amendment to the United States Constitution.

Count Five

Paragraph (V)(G)(4)(a) of the Alabama Department of Corrections Regulation Number 448, which states that incoming mail will be rejected if it is “an attempt to incite violence based on race, religion, sex, creed, or nationality,” is vague and overbroad and creates a chilling effect on constitutionally protected speech. The regulation is ambiguous because it provides for no reasonable standard for distinguishing between protected and unprotected speech, as is demonstrated by the denial of *Slavery by Another Name*, particularly in light of other materials to which prisoners at Kilby have access. Further, Defendants’ rejection of *Slavery by Another Name* demonstrates that this regulation allows for the censorship of substantially more speech than is permissible under the First Amendment to the United States Constitution. For the foregoing reasons, Paragraph (V)(G)(4)(a) of the Alabama Department of Corrections Regulation Number 448 is unconstitutionally vague and overbroad in violation to the First and Fourteenth Amendments of the United States Constitution.

PRAYER FOR RELIEF

On the basis foregoing, Plaintiff respectfully requests this Court to do the following:

- (A) Declare that the policies, practices, acts, and omissions of the Defendants described in this complaint are in violation of the Plaintiff’s rights to freedom of speech;
- (B) Permanently enjoin Defendants, their officers, agents, employees, and successors in office, as well as those acting in concert with and participating with them from

subjecting Plaintiff to the illegal and unconstitutional conditions described in this Complaint;

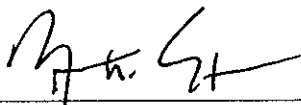
(C) Retain jurisdiction of this matter until this Court's order has been fully implemented;

(D) Award compensatory damages against Defendants sued in their individual capacity;

(E) Award Plaintiff his reasonable costs and attorneys' fees; and

(F) Grant such other relief as may be just and reasonable.

Respectfully submitted,



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September 23, 2011

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