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**FILED**

**SEP 30 2005**

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EUGENE BATCHELDER, et al.,

Plaintiffs,

v.

JAMES M. GEARY, et al.,

Defendants.

No. C-71-02017 RMW

ORDER RE: CONTEMPT FOR VIOLATION  
OF CONSENT DECREE

**[Re Docket No. 207, 230]**

A hearing was held on November 19, 2004 on the court's Order to Show Cause as to why defendants James Geary and the County of Santa Clara should not be held in contempt for their alleged noncompliance with the "Joint Plan to Provide Inmates of Santa Clara County Jail with Access to the Courts" approved by court order in April 1973 ("Access Consent Decree"). The court finds that the defendants have violated the Access Consent Decree and thus are in civil contempt. However, the court defers a determination of the appropriate remedy, if any, pending a decision on defendants' current motion to terminate the Access Consent Decree and the "Stipulation Amending Disciplinary Procedures" adopted by the court in 1977.

The Access Consent Decree directed defendants to establish and maintain a law library in Santa Clara County's jail facilities for *pro per* inmates in accordance with specific procedures set forth therein. The defendants argue that their good faith efforts to comply with the provisions of the Decree should

1 excuse their noncompliance. They submit that in 2002 the County implemented a program for  
2 providing access to the courts that is superior to that required by the Access Consent Decree and that  
3 such program was instituted with the acquiescence of the Public Interest Law Firm, plaintiffs'  
4 representative in these proceedings. The defendants, however, instituted the new program without  
5 obtaining court approval for the termination or modification of the Access Consent Decree. The  
6 defendants' position appears to confuse the liability standards for Eighth and Fourteenth Amendment  
7 violations (which may not exist with the new access program) with applicable standards of review for  
8 contempt orders. Intent is irrelevant to a finding of civil contempt and, therefore, good faith is not a  
9 defense. *See Stone v. City and County of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992). The  
10 question is merely whether the defendants took every reasonable step to comply with the provisions of  
11 the Consent Decree; it is not whether the current program meets constitutional standards or is superior  
12 to the program required by the Consent Decree. Thus, although defendants may have acted in good faith  
13 and may have implemented an effective means for *pro se* access to the courts, they have failed to comply  
14 with the Access Consent Decree, a specific and definite order. They are, therefore, in civil contempt.  
15 The remedy, if any, needed to purge the contempt is deferred until determination of the defendants'  
16 motion to terminate the two consent decrees issued by the court.

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DATED: 9/30/05 Ronald M. Whyte  
RONALD M. WHYTE  
United States District Judge

1 THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WAS PROVIDED TO:

2 **Counsel for plaintiffs:**

3 James McManis  
4 Tara Kaushik  
5 McManis, Faulkner & Morgan  
6 A Professional Corporation  
7 West San Fernando Street, 10<sup>th</sup> Floor  
8 San Jose, California 95113

9 James Zahradka  
10 Kyra Kazantzis  
11 Public Interest Law Firm  
12 Law Foundation of Silicon Valley  
13 111 West Saint John Street  
14 San Jose, California 95113

15  
16 **Counsel for defendants:**

17 Ann Miller Ravel, County Counsel  
18 Stephen H. Schmid, Deputy County Counsel  
19 Aryn P. Harris, Deputy County Counsel  
20 County Government Center, East Wing  
21 70 West Hedding Street, Ninth Floor  
22 San Jose, California 95110

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25 Date: SEP 30 2005

DIANE MIVASHIRO  
Chambers of Judge Whyte

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