ORIGINAL

22-7475

UNITED STATES SUPREME COURT

JASON J. HYATT,

Plaintiff-Appellant, *pro se,*

v. 20-1114

(L.C. 16-cv-383)

PORTAGE COUNTY SHERIFF MIKE LUKAS, *et al.,*

Defendant-Appellees.

PETITION FOR WRIT OF CERTIORARI

I, Jason J. Hyatt, *pro se* plaintiff-appellant in the instant matter, hereby approaches the court seeking review of a judgment in the court of appeals pursuant 28 USCA § 2101 and 28 USCA § 1254. The following is provided in support.

Jason J. Hyatt 372470

Columbia Correctional Institution

PO Box 900

Portage, WI 53901

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28 U.S.C. § 1915(e)(1)

Fed. R. Civ. P. 28

III. JURISDICTION

We review a decision granting summary judgment independently of the determinations rendered by the circuit court and the court of appeals. *Lambrecht v. Estate of Kaczmarczyk,* 2001 WI 25, ¶21, 241 Wis.2d 804, 623 N.W.2d 751. Summary judgment is appropriate when there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law. Id. ¶24.

Supreme Court granted writ of certiorari in action for violation of Federal Civil Rights Act, § 1983 of Title 42, because of a seeming conflict in Court of Appeals ruling affirming dismissal of complaint with Supreme Court's prior cases. *Monroe v. Pape*, U.S.Ill.1961, 81 S.Ct. 473, 365 U.S. 167, 5 L.Ed.2d 492; and *Pennsylvania R. Co. v. O'Rourke*, U.S.N.Y.1953, 73 S.Ct. 302, 344 U.S. 334, 97 L.Ed. 367, rehearing denied 73 S.Ct. 638, 345 U.S. 913, 97 L.Ed. 1347.

Where a question was important and recurring, Supreme Court would grant certiorari to resolve it. *Glus v. Brooklyn Eastern Dist. Terminal*, U.S.N.Y.1959, 79 S.Ct. 760, 359 U.S. 231, 3 L.Ed.2d 770

IV. STATEMENT OF THE CASE

1. The following paragraphs have been edited to correct object factual errors made by the appeals court in its December 12th, 2022 opinion.

2. Jason Hyatt appealed summary judgment in favor of correctional officers he sued for violating his constitutional rights at the Portage County Jail in Stevens Point, Wisconsin. The district court wrongly concluded that Hyatt did not raise any genuine issue of material fact with respect to his claims that the officers denied him meaningful access to the courts and violated his right of equal protection by depriving him of certain services. On appeal, the court accepted Hyatt's representation that he asserted only an access-to-courts claim, but viewing the record through that lens, the appeals court concluded that judgment for the defendants was proper

nevertheless. The court of appeals found no error in the discretionary decisions that Hyatt challenges, affirming the dismissal.

3. In April 2016, Hyatt was temporarily transferred from Green Bay Correctional Institution (GBCI) to the Portage County Jail so he could attend proceedings to withdraw his guilty plea in his criminal case (14CF57). He arrived at the jail with a 20" x 20" x 20" box of legal materials and personal documents. Hyatt was informed that he could not keep the entire box of materials with him because the jail's policy allowed only a three-inch stack of documents in a cell for ostensive safety and security reasons. The rest of the materials were taken and stored. Hyatt also brought envelopes and paper with him from GBCI, all of which were stored outside his cell. When he tried to purchase more envelopes from the jail's canteen, he could not; his account had been frozen to pay outstanding court fees. Instead he was debited not more than one envelope per week and two pieces of paper. His alternative means of communication was the cell block phone; but the phone in the cell area required prepayment and could not be used to reach cellphones or leave voicemails. (Hyatt did not state whether he had access to email, but asserts here that email was not then offered in the Portage County Jail) The other phone was designated for staff use only. An inmate could use it only if a correctional officer gave permission based on an "emergency" or special circumstance. Hyatt was denied permission for relative legal emergencies many times, while others were permitted to use the staff phone for non-legal purposes that were relative non-emergencies.

4. Hyatt wanted to review legal records and and provide them to his criminal defense lawyer(s) to support his argument that his guilty plea was involuntary because of his mental state (when he was in solitary confinement), **amongst other issues**. Hyatt complained several times for several months in advance, but he did not get access to his full box of materials until he met with his attorney on the day of the hearing (immediately after the visit, but right before court, **with no time to do both).** As a result, Hyatt and his attorney did not reference or submit any documents during his hearing. Why Hyatt's attorney failed to raise this issue at the hearing is of no consequence to the litigation at hand. At the hearing, Hyatt testified that he had accepted the plea deal because solitary confinement harmed his mental and physical health, **amongst other reasons**; but the judge did not find his testimony credible and denied his motion to withdraw the plea.

5. In June 2016, Hyatt filed a complaint under 42 U.S.C. § 1983, which the district court dismissed without prejudice at screening. Hyatt's amended complaint alleged, among other things, that the defendants restricted his access to legal materials he needed for his criminal case(s), denied him use of the staff phone that other inmates could use, or other reasonably accessible form of telecommunication, and prevented him from purchasing or obtaining more envelopes at the canteen after defendants stole the ones he came with. He asserted that these actions violated multiple constitutional rights (e.g. Hyatt was unsure whether his access to courts claim would be covered under Article IV of the U.S. Constitution, and/or the First, Fifth, and/or Fourteenth Amendments).

6. Hyatt also moved for the recruitment of *pro bono* counsel. **Amongst other impediments**, he stated that he would be unable to litigate his case because he is incarcerated with limited access to legal materials, the issues of his case were complex and required substantial research or investigation, and he has a learning disability (identified elsewhere as ADHD).

7. The court screened the amended complaint and determined that Hyatt could proceed on claims that he was deprived of meaningful access to the courts in violation of the First Amendment and was denied benefits available to other inmates in violation of his equal-protection rights. But the court declined to recruit counsel. It accepted that Hyatt could not afford counsel and had made reasonable efforts to find his own lawyer, but concluded that the challenges of his incarceration and learning disability did not prevent him from representing himself adequately. The court noted that Hyatt's communications were "clear and coherent" and that it was too soon to know how complex the case was or whether Hyatt could manage discovery or legal research. This is despite the judge having described Hyatt's claims as difficult, and despite threatening Hyatt with dismissal for being unable to meet the deadline for submitting the amended complaint. That is, Hyatt could barely manage the task of filing an amended complaint, yet the district court was unsure of how well Hyatt would perform as the litigation became more complicated.

8. Hyatt filed three more motions for the recruitment of counsel. He repeated his earlier arguments while clarifying that his anxiety disorder, ADHD, "and other psychological diagnoses" (e.g. bipolar disorder, obsessive compulsive disorder, untreated at the time) made it difficult for him to litigate. He added that he previously relied on the help of two jailhouse lawyers who were not available anymore, and that his transfer away from the Portage County Jail made obtaining discovery impossible.

9. Before the district court ruled on these motions, the defendants moved for summary judgment. Hyatt then filed motions to deny or delay action on the summary judgment motion, asserting that he lacked sufficient access to legal resources and needed more time to produce discovery. He also argued about the substance of his claims. The court denied Hyatt's requests and ordered him to respond to the summary judgment motion.

10. The court then denied the three pending motions to recruit counsel. It determined that the "legal and factual difficulty of the case" did not exceed Hyatt's demonstrated ability. The court noted that Hyatt's "lengthy filings", which "responded substantively to many of the defendants' proposed findings of fact and legal arguments," demonstrated that Hyatt had "the intellectual ability" to litigate his claims. In other words, the district court insinuates that Hyatt, for some inexplicable reason, has simply *chosen* not to apply himself, or that he was simply unsuccessful; not because of any of the impediments described herein.

11. After Hyatt responded to the motion for summary judgment, the district court granted it in favor of defendants. First, the court concluded that denying Hyatt's request to use a free phone, requiring him to pay for envelopes in the canteen, and limiting the amount of paper in

his cell were not equal-protection violations. But that's not what Hyatt alleged. He never demanded a "free call"; he demanded an indigent phone call, to be debited to his inmate trust account or otherwise. He never demanded free envelopes; only that indigent envelopes be debited to his inmate trust account (and he be credited for the ones they stole and sold back to him), or that they be allowed to be ordered or sent in. And he never demanded all of his papers, only time to view all of them, so he might select those that he needs. This is simply more of the courts' derogatory characterization of Hyatt's legitimate, cognizable claims. The court says that Hyatt lacked evidence that the defendants acted arbitrarily or treated him worse than other inmates. Maybe so, but Hyatt claimed these were court access violations, not equal protection claims. At any event, Hyatt had zero comprehension of how the court construed his allegations as an equal protection claim. Accordingly, Hyatt had no idea how to argue such a claim. On the access-to-courts claim, the court wrongfully determined that Hyatt had not created a factual dispute about whether the lack of access to his full box of documents until the day of his hearing actually injured him in his presentation of a non-frivolous legal claim.

12. On appeal, Hyatt first argues that the district court misconstrued his theory of the case—that all the allegedly unlawful acts together deprived him of meaningful access to the courts—when it instead addressed his claims under an equal-protection theory. But even with this clarification, the appeals court opines that his claim does not survive summary judgment, which would require evidence that the defendants' official acts frustrated his pursuit of a non-frivolous legal claim, citing *Jones v. Van Lanen*, 27 F.4th 1280, 1287 (7th Cir. 2022); that there must be "more than just some minimal degree of impediment," id. at 1288, and more than a theoretical injury. *Lewis v. Casey*, 518 U.S. 343, 351 (1996). But Hyatt argues that he established that the defendants, by depriving him of his materials and limiting his access to a free phone and envelopes, impeded his preparation for the hearing on his motion to withdraw his guilty plea and caused him to lose that motion. See *Bonner v. Coughlin*, 517 F.2d 1311 (7th Cir., 1975) "We may assume (as *Adams, Sigafus, and DeWitt* indicate), however, that an intentional taking of a prisoner's legal materials that results in an interference with his access to the courts violates this duty. Thus, with respect to the seizure of his transcript by the prison guards, Bonner has stated, assuming his ability to demonstrate such an interference, a Fourteenth Amendment cause of action as well as the Fourth Amendment claim..." interpreting broadly the right not to be deprived of materials necessary to afford reasonable access to the courts. And see *Murphy v. Walker,* 51 F.3d 714, 718 (7th Cir.1995) "Thus, we remand this claim in order that the district court might determine whether the denial of telephone privileges infringed on Murphy's Sixth Amendment rights." "In certain limited circumstances, unreasonable restrictions on a detainee's access to a telephone may also violate the Fourteenth Amendment." *Tucker v. Randall,* 948 F.2d at 391; *Duran v. Elrod,* 542 F.2d 998, 1000 (7th Cir.1976); *Robinson v. Moses,* 644 F.Supp. 975, 979 (N.D.Ind.1986). Similarly, the right of access to the courts requires that the prisoner have basic scribe materials. *Gentry v. Duckworth,* 65 F.3d 555, 558 (7th Cir.1995). Yet the district court found an equal protection-of-one claim...

13. And the court of appeals determined that Hyatt's claim could not succeed as a matter of law, arguing that a plaintiff is not deprived of meaningful access to the courts when jail officials confiscate legal materials if the plaintiff has personal knowledge of the matter that supports his underlying claim. *Jones,* 27 F.4th at 1288; but see *U.S. v. Messino*, 55 F.3d 1241, 1247 (1995)(A hearing on a motion to withdraw a plea is to be 'routinely granted' if the movant offers any 'substantial evidence that impugns the validity of the plea.' But if no such evidence is offered, or if the allegations advanced in support of the motion 'are mere conclusions or are inherently unreliable' the motion may be denied.) Hyatt says that his papers would have shown that his plea agreement was invalid because solitary confinement had severely depleted his mental and physical health, that corrections officials blocked his access to courts and counsel, and his attorney failed or refused to visit or prepare for trial with him. The appeals court then doubled down on the assertion that Hyatt having testified about his personal knowledge of the prison conditions and mental and physical state was in fact sufficient court access.

14. Then the appeals court falsely claimed that Hyatt did not suggest that he was not allowed to testify about his diagnoses and treatment. The 9/9/16 transcript clearly demonstrates that Hyatt's testimony was strictly controlled, that he was not to speak freely, and only to provide narrow answers to the questions he was asked; and at no point in the litigation was this a point of contention and thus it was never litigated, i.e. Hyatt was never afforded a proper opportunity to argue on something the appeals court now says matters. E.g. *Bartlett v. Commissioner of Internal Revenue,* 937 F.2d 316, 322 (7th Cir.1991).

15. The appeals court also points to the trial judge not citing a lack of documentation as a factor in denying Hyatt's motion; but a judge denying the motion based on Hyatt's testimony alone is the same thing. Thus, it follows from these misunderstandings that an appeals court would find that Hyatt did not demonstrate that the deprivation of his materials was a "meaningful impediment" when he had personal knowledge of the basis of his arguments (citing Jones). But these cannot all be mere misunderstandings or oversights and they begin to give the appearance of bias.

16. The appeals court asserts that Hyatt cannot show an actual injury because he has not stated with *specificity* what materials he lacked that could have led to a different outcome, citing *Devbrow v. Gallegos*, 735 F.3d 584, 587 (7th Cir. 2013); notwithstanding *Devbrow*, nor any of the cases it cited therein mentions a "different outcome," explicitly or implicitly, verbatim or in any other language.

17. The appeals court claims that Hyatt's only complaint was that he couldn't keep all his papers in his cell at one time. That is not what Hyatt grieved; and that can only be true if the court disregards everything Hyatt said in his verified complaint and beyond (Dkt.#17). Taking this error at face value, it can only be explained as an attempt to take unfair advantage of what Hyatt actually wrote. Accordingly, the appeals court claims that the evidence only establishes that Hyatt was *prohibited* from keeping all his papers in his cell at one time. Not only does the appeals court fail to cite any portion of the record which helps us identify this "evidence," but

any such evidence would be in direct conflict of the evidence Hyatt submitted (Ex. A). In other words, the appeals court is simply adopting all of the defendants' conclusory assertions while casually disregarding all of Hyatt's.

18. The appeals court then accused Hyatt of not providing *any* specificity that restricted access to envelopes and a free phone created a "barrier to communicat[ion]" with his lawyer; but is it not so obvious or self-evident that it goes without explanation? (i.e. is Hyatt supposed to communicate telepathically, for what other way do human beings typically confer with counsel?) That is, the precise content of the privileged communication is immaterial to the fact of its denial and the court's requirement amounts to no more than a technical hurdle required after the fact.

19. The appeals court arbitrarily and without qualification claimed that Hyatt never established that he had a need to communicate something specific but could not do so; yet, Hyatt plainly established that he urgently needed to contact his attorney prior to their upcoming hearing (which was postponed until the 9/9/16 hearing)~~(Ex.___ at ___)~~. That should be "specific" enough, for he had no other means to do so.

20. The appeals court claims that the evidence shows he communicated with his lawyer before the hearing; but that was right before the hearing, --with absolutely no time to prepare, or modify what Severson had prepared, for the hearing. That is precisely the scenario Hyatt was trying to avoid. Further, the appeals court attempts to do exactly what defendant's did , which is color Hyatt's only means to get through to his attorney as merely "wish[ing] to use the 'free' phone to speak to his family. Surely that was not Hyatt's claim. Hyatt is not asserting a right to free phone calls (although they cost next to nothing); but did assert that the *price* of $1.00 per minute (not the cost) was unreasonably restrictive, and did present a substantial and continuous impediment to court access. Hyatt paid for calls when he had funds to pay for them, but Hyatt does assert a right to legal calls to be debited to Hyatt's inmate trust account when he lacked the funds to pay upfront. Again, calls to family are not "privileged," but in Hyatt's case it was effectively the only way he could pass messages to counsel. After this attack against the record and what Hyatt actually submitted that the appeals court that it adopts virtually the same position of the district court. Thus, it is by these means that the appeals court can then nuance Hyatt's claims as only a "theoretical" injury. The appeals court appears to be mocking Hyatt.

21. Yet another asserted legal impediment to Hyatt's access-to-courts claim was that Hyatt was represented by counsel in his criminal proceedings (notwithstanding the other criminal and civil cases Hyatt specified in his complaint), "When a prisoner lacks access to legal materials but is represented by counsel, he is not without meaningful access to the court." *Campbell v. Clarke*, 481 F.3d 967, 968 (7th Cir. 2007) (citing *Bounds v. Smith*, 430 U.S. 817, 830–32 (1977)). STOP: defense counsel nor the district court raised this issue before the district court or in this appeal, therefore it should not be raised now. The cases holding that an omission of this character constitutes a waiver of the right to present that issue on appeal are legion. See, e.g., *National*

Fidelity Life Ins. Co. v. Karaganis, 811 F.2d 357, 360 (7th Cir.1987); *Ohio Cas. Ins. Co. v. Bazzi Const. Co., Inc.*, 815 F.2d 1146, 1149 (7th Cir.1987); *Lazzara v. Howard A. Esser, Inc.*, 802 F.2d 260, 268 (7th Cir.1986).

22. The appeals court then perpetuates the fiction that Hyatt made his only written request to access his materials the night before his hearing (see Ex. A ; and Hyatt's Appeal & Reply Br.), conveniently failing to mention that Hyatt received his box before meeting with counsel the next day, *right* before the hearing...i.e. with no time to view its contents before the meeting or before court. That is the point, and these present material factual disputes that the appeals court can only wash away by distorting the record.

23. Hyatt also challenged the district court's decisions to deny recruiting counsel on his behalf. We review these decisions for an abuse of discretion. *Pruitt v. Mote*, 503 F.3d 647, 649 (7th Cir. 2007) (en banc). When deciding whether to recruit counsel, the court must determine, as relevant here, whether the factual or legal difficulty of the case is beyond the capabilities of the plaintiff. Id. Hyatt contended that the district court overlooked most of his arguments when it denied his motions. The appeals court conceded that the court did not discuss in any detail Hyatt's learning disability, his mental health, his transfer from the jail, or his reliance on jailhouse lawyers—all things we have instructed district courts to consider. See *Eagan v. Dempsey*, 987 F.3d 667, 682–83 (7th Cir. 2021); *McCaa v. Hamilton*, 893 F.3d 1027, 1032–33 (7th Cir. 2018) (*McCaa* I). Further, the court's reasoning remained largely unchanged as the case progressed, although "complexity increases and competence decreases as a case proceeds." *Eagan*, 987 F.3d at 683. But the appeals court ultimately deferred to the court in having exclusively weighed Hyatt's "skillful communications" against the court's limited resources to appoint counsel, and a pragmatic consideration of how to allocate the few available attorneys can support a decision to deny recruitment of counsel. See *McCaa v. Hamilton*, 959 F.3d 842, 844–46 (7th Cir. 2020) (*McCaa* II). The court appeals says that Hyatt did not explain to the district court how his disabilities impaired his ability to litigate nor what discovery he could not obtain by mail or email, which, "in the face of his well-organized" filings and abundant correspondence, allowed the court's reasonable inference that he could manage alone. Id. at 847.

24. The appeals court contends that ultimately whether the court abused its discretion is not dispositive because Hyatt cannot show on appeal that he was prejudiced by the denial of counsel. *Pruitt*, 503 F.3d at 659; McCaa I, 893 F.3d at 1034. The appeals court continues that though an attorney undoubtedly would have helped Hyatt conduct discovery and respond to the motion for summary judgment, counsel could not have changed the fact that Hyatt's access-to-courts claim is foreclosed by our precedent. That has been addressed previously above and will be elaborated further below. That is where the appeals court made grievous error.

25. The appeals court also found that Hyatt has not demonstrated error with respect to the denial of his motion for more time to respond to the summary judgment motion, which Hyatt

had based on a need for more time to obtain and respond to discovery and his lack of adequate resources. The decision to not extend a deadline is also reviewed for an abuse of discretion, and we disturb it only if the court "acted unreasonably." *Blue v. Hartford Life & Accident Ins. Co.*, 698 F.3d 587, 593 (7th Cir. 2012) (quoting *Gonzalez v. Ingersoll Milling Mach. Co.*, 133 F.3d 1025 (7th Cir. 1998)). The appeals court finds that the district court's explanation was reasonable: despite the "purported" lack of resources, Hyatt filed a twenty-page motion for an extension of time to file his brief—one of many very long motions—in which he made several legal arguments but no legal citations), and he did not explain "with any degree of specificity" what he needed to respond properly. Note: whenever anyone describes something as "purported," it is rightly construed as unreliable. Moving on, the appeals court would have it that, in twenty pages, citing no legal authority, Hyatt failed to explain with any specificity what he needed to respond to summary judgment. This goes in direct contrast against the courts' attempts to nuance Hyatt as "skillful" and "well-organized." The fact is that Hyatt (a) did not know that any degree of specificity was required in this regard, and (b) Hyatt didn't even know at that point in time what he needed to respond. He didn't know what he was doing(!). The facts are all there, and read in the proper light they would support relief for Mr. Hyatt. Instead, the appeals court wipes all of this cumulative evidence away by it's self-serving assessment of Hyatt's legal savvy.

26. The appeals court says that Hyatt did not tell what he needed to oppose the motion more effectively or how he otherwise demonstrated good cause. Id. 592–94. But he did. He needed time. He repeatedly told the courts that he needed time. Given that Hyatt was not even close to completing his response, the fact that the power outage wiped Hyatt's drafted response would not have made much difference had it not occurred; but the fact that it did occur should demonstrate good cause. Ignoring this, and all the facts above, the appeals court discerned no prejudice. The error lies within the facts underlying the premise; and the selective discrimination of facts is to blame.

27. Given the sudden destruction of Hyatt's drafted response to summary judgment (due to a power outage and computer failure experienced by dozens of staff and patrons), it would seem "reasonable" to afford Hyatt time extension in that instance. It should be immaterial what exactly Hyatt needed "specifically," as most legal papers contain legal arguments, case cites, exhibits, etc., therefore it seems immaterial --and quite impractical-- to require Hyatt to specifically describe all that he requires within time constraints --when time is precisely what he is lacking. This is even more true because often times a prisoner-litigant does not have the benefit of planning and foresight, often working on an ad hoc basis to meet time constraints. Hyatt was limited to moral or logical arguments, not being afforded the time nor resources to draft cited, legal arguments. But the court(s) would rather blame Hyatt for wasting his own time and resources on these extravagant motions for counsel or time extension...--overlooking their ineffectiveness as well.

28. The appeals court dismissed Hyatt's appeal. He now petitions the supreme court for review.

*Note: Hyatt's prison (Columbia Correctional Institution) Business Office inexplicably failed to send a facility check along with Hyatt's letter to the Clerk's Office requesting various records that were to be used in support of this brief. In other words, corrections officials have substantially and continuously interfered with this very litigation, from start to finish, at every stage.

V. STATEMENT OF THE ISSUES

1. WHETHER or not the appeals court's numerous factual errors prevented it from properly analyzing the appeal.

2. WHETHER or not the courts wrongly concluded Hyatt did not raise any genuine issue of material fact with respect to his claims that the officers denied him meaningful access to the courts.

3. WHETHER or not, if the appeals court accepted Hyatt's representation that he asserted only an access-to-courts claim and viewing the record through that lens, the appeals court wrongly concluded that judgment for the defendants was proper nevertheless.

4. WHETHER or not the courts wrongly concluded that correctional defendants were not arbitrary in their decisions pertaining to court access.

5. WHETHER or not the courts wrongly concluded that Hyatt testified that he had accepted the plea deal ***only*** because solitary confinement harmed his mental and physical health at his motion to withdraw the plea.

6. WHETHER or not the courts wrongly denied Hyatt's motions for the recruitment of *pro bono* counsel.

VI. ARGUMENT

1. The appeals court's numerous factual errors prevented it from properly analyzing the appeal.

a. The preceding paragraphs are hereby incorporated by reference.

b. Instead of simply stating that the court of appeals could not have properly analyzed the facts, as shown by the fact the court ruled adversely to Hyatt, this argument focuses on factual errors in the court of appeals opinion. "Absent legal or factual errors, we afford 'great deference' to the court's decision." Id. (citation omitted); see also *Stuller, Inc. v. Steak N Shake Enters., Inc.*, 695 F.3d 676, 678 (7th Cir. 2012) (same). Within this context, the district court's legal conclusions are reviewed de novo, and its findings of fact are reviewed for clear error.

Stuller, Inc., 695 F.3d at 678. Hyatt points to these factual errors as evidence that the court of appeals did not carefully and thoroughly analyze the facts. "[W]e cannot say that a state court has 'carefully and fully analyze[d]' the facts of a Fourth Amendment claim if its factual findings are not fairly supported by the record. "*Weber v. Murphy,* 15 F.3d 691, 694 (7th Cir.1994). Moreover, "(a) discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16 (1981). See also *King v. King,* 224 Wis.2d at 248, 590 N.W.2d 480. The courts' determination was most unreasonable. As indicated above and below, these errors are numerous and most efficaciously treated as they arise.

2. The courts wrongly concluded that Hyatt did not raise any genuine issue of material fact with respect to his claims that the officers denied him meaningful access to the courts.

a. The preceding paragraphs are hereby incorporated by reference.

Note: We must temporarily ignore the equal protection claim, except for showing that: (a) the district court erred in construing Hyatt's access to courts allegations; (b) and in doing so the district court deprived Hyatt of allegations and arguments in support of his access-to-courts claim; (c) and in doing so the district court created unnecessary confusion and distraction, which did much harm to Hyatt's ability to litigate and meet his deadlines; and (d) that the district court erred in denying counsel to Hyatt. The appeals court claims to have viewed the deprivations associated with the equal protection claim in support of an overarching access-to-courts claim; however, if this were true then Hyatt's case would not have been dismissed.

b. On the access-to-courts claim, the court wrongfully determined that Hyatt had not created a factual dispute about whether the lack of access to his full box of documents until the day of his hearing actually injured him in his presentation of a non-frivolous legal claim. Under a totality of conditions theory Hyatt was actually deprived of any meaningful court access for at least one nonfrivolous case. Of the most egregious of defendants actions was the withholding of Hyatt's legal documents prior to a critical hearing, a plea withdrawal in 14CF57. Even more egregious was that the district court, and then the appeals courts, were complicit by covering up the evidence submitted to the court. The district court, then the appeals court ignored the grievances filed in regards to this allegation (Hyatt's appeal br., Ex. A). Both perpetuate the false narrative that Hyatt did not request these documents until the day before . . . notwithstanding the facts plead in the instant litigation (Dkt. #17 at ¶¶ 14, 15; Hyatt's Appeal & Reply Br.). That is, Hyatt filed this very litigation (16-cv-383) months before that plea withdraw hearing complaining of the withholding of legal papers necessary for this (and other) hearing(s); yet, the courts would have it that Hyatt never made any showing of this withholding of legal work until the day before the hearing. That's absurd. That doesn't make any sense. For the record, a "final" demand for his legal work would necessarily imply prior requests. And to make sure this is not overlooked again, the written request history is recited below (Ex. A):

4/28/2016 - first written request to search legal box (e.g."fire hazard"); noting that Hyatt was rushed during the initial opportunity to locate particular documents;

5/6/2016 - second written request to search (not possess, per se) legal records;

6/1/2016 - third written request reminding staff he's still being denied access to his legal property;

6/27/2016 - fourth written request for access to legal work;

6/28/2016 - fifth written request (citing staff's threats to destroy legal property after 90 days);

9/8/2016 - sixth **"final"** written request to "view" (i.e. not necessarily possess) legal property;

9/9/2016 - hearing date, seventh written request citing how defendants created a Hobson's choice: search through documents versus visit with counsel; and citing other cases open/pending;

9/10/2016 - eighth written request, begging for access to legal box;

9/11/2016 - ninth written request for access to legal box;

9/17/2016 - tenth written request for access to legal box;

9/20/2016 - formal written grievance regarding staff refusal to grant access to legal box (9/9/16 opportunity does not count);

9/22/2016 - twelfth written request for access to legal box;

9/23/2016 - thirteenth written request for access to legal box;

10/2/2016 - fourteenth written request for access to legal box;

11/8/2016 - fifteenth written request for access to legal box;

11/9/2016 - second formal written grievance regarding denied access to legal box.

*Note: defendants never approved or denied the grievances, instead extending a carrot on a stick, indicating that a remedy was forthcoming. Also, this does not include the countless verbal grievances made almost daily. Both courts simply ignore this evidence.

c. Additional conditions (or practices, etc.) included that defendants unreasonably restricted the use of every single piece of paper he had (i.e. his *own* paper); that they rationed his envelopes, and even sold his own envelopes back to him (as if he was out of his own); that defendants had opened Hyatt's privileged mail outside his presence multiple times, completely chilling his legal communications; that they provided inadequate legal materials to him when he was indigent; that they overcharged him for photocopies; that he was deprived of minimally adequate law library access or legal assistance; that Hyatt was deprived of minimally adequate telephone access (and no email); --all of this on top of the deprivation of legal work for five

months, until literally minutes before his hearing. The district court ignored all of these allegations or evidence of violations of court access, instead construing these facts in favor of an equal protection claim. But not even if we consider all of this (which the appeals court claims to) does the appeals court figure any denial of access to courts. Hyatt did not merely state an legal access claim, but a claim of interference, and retaliation (which did not survive screening either)(Dkt. #17; Summ.Judg.; grievances).

d. The courts also based their judgment upon the premise that Hyatt would have lost his hearing anyway, essentially calling it frivolous. If the case was frivolous on its face, the trial court would not have granted an evidentiary hearing. It is true that Hyatt's counsel was ineffective, and it is also true that the intrinsic bias of the trial court would have rendered it unlikely that any "fair and just reason" would be found for withdrawing Hyatt's plea; but that's not the basis upon which we are to determine Hyatt's access to courts claim. As explained above and below, the courts wrongfully ascribed Hyatt's sole reason for withdrawing his plea as based upon his mental and physical state. Even as stated, --even if Hyatt's plea withdrawal had been premised upon his mental state alone, the fact of the court having found his claims of serious mental illness incredible can only be explained the failure to support his testimony with documentation. Thus, a hearing on a motion to withdraw a plea is to be "routinely granted" if the movant offers any "substantial evidence that impugns the validity of the plea." *United States v. Fountain,* 777 F.2d 351, 358 n. 3 (7th Cir.), cert. denied, 475 U.S. 1029, 106 S.Ct. 1232, 89 L.Ed.2d 341 (1986). But if no such evidence is offered, or if the allegations advanced in support of the motion "are mere conclusions or are inherently unreliable," the motion may be denied without a hearing. Id. at 358; *United States v. Caban,* 962 F.2d 646, 649 (7th Cir.1992). Therefore, it doesn't matter what the issues were: without any documentation supporting Hyatt's reasons for plea withdrawal, it was a near certainty that any judge would find his testimony "inherently unreliable" no matter the case. It is sufficient that Hyatt stated there were in fact cognizable issues to be litigated, and that Hyatt warned defendants (and Atty. Severson) of this well in advance of the hearing. Where were these documents? Somewhere stuffed inside Hyatt's box of legal papers. Defendants admit to giving him the box --but with no time to go through it; yet now fraudulently claim that Hyatt never asked for it sooner. Unfortunately, the courts have willing adopted this false premise, in spite of the exhibits attached to the contrary (Ex. A).

e. Defendants and the courts adopted the erroneous legal argument that Hyatt could not rely on "self-serving testimony" to create a material factual dispute. First, the courts chose to simply ignore an untold number of Hyatt's statements made under his information and beliefs, as distinguished by his ***personal knowledge*** and beliefs. This semantic difference was tantamount to a clerical error caused by Hyatt's fundamental ignorance in matters of litigation (and should go against the courts' finding that Hyatt was grasping all relevant legal concepts. If a court would go back and reconsider *de novo* Hyatt's statements as if made under his personal knowledge and beliefs, Hyatt was merely countering defendants' own conclusory assertions. And where the moving party's version of material facts is supported solely by self-serving

assertions, self-serving assertions to the contrary by the nonmoving party may be sufficient to create a credibility dispute which is best resolved at trial. As such, the evidence produced by Hyatt was not insufficient, in this instance, to defeat a summary judgment motion. See *Szymanski v. Rite–Way Lawn Maintenance Co.*, 231 F.3d 360, 365 (7th Cir.2000). In hindsight, Hyatt could have done a better job by pointing into the existing record (grievances, deposition, etc.), but unfortunately Hyatt did not have the legal or intellectual faculty to do so at that juncture (i.e. he didn't know how). But if it is to be determined that Hyatt simply did not cultivate any material factual disputes, then it is not because they did not exist; it is rather because Hyatt was intellectually incapable of articulating any, and, because he was prevented from doing so by corrections officials (as described in his motions for time extension, counsel, and temporary restraining order).

f. While denying the facts as plead, the courts nonetheless assure us that even if Hyatt had properly and timely requested his legal papers, that, his claim would fails on grounds of qualified immunity. Notwithstanding Hyatt's inability to competently argue the qualified immunity of defendants, he does point out that the jail's policy, or defendant's application of it is illegal (e.g. DOC 309.20(3)(f); DOC 350.01; Wis. Stat.§ 227.11 (2)(a)) and therefore invalid. We must presume law enforcement officials were aware of the law. They simply had no rule-making authority to deny Hyatt of his legal property limits, frivolous health and safety pretexts aside.

g. The appeals court advances yet another legal impediment to Hyatt's access-to-courts claim was that Hyatt was represented by counsel in his criminal proceedings (notwithstanding the other criminal and civil cases Hyatt specified in his complaint), "When a prisoner lacks access to legal materials but is represented by counsel, he is not without meaningful access to the court." *Campbell v. Clarke*, 481 F.3d 967, 968 (7th Cir. 2007) (citing *Bounds v. Smith*, 430 U.S. 817, 830–32 (1977)). BUT defense counsel nor the district court raised this issue before the district court or in this appeal, therefore it should not be raised now. See, e.g., *National Fidelity Life Ins. Co. v. Karaganis*, 811 F.2d 357, 360 (7th Cir.1987); Ohio Cas. Ins. Co. v. Bazzi Const. Co., Inc., 815 F.2d 1146, 1149 (7th Cir.1987); *Lazzara v. Howard A. Esser, Inc.*, 802 F.2d 260, 268 (7th Cir.1986). And Bounds never stated what the court in Clarke purported to say. That is, Clarke does not say, "When a prisoner lacks access to legal materials but is represented by counsel, he is not without meaningful access to the court"; nor does Bounds, verbatim or in any combination of words. Bounds never said or implied that a prisoner represented by counsel necessarily has meaningful access to the court. It just doesn't say that. And it would be a logical fallacy to assert that prisoners represented by counsel cannot be without meaningful court access. Perhaps they meant private-paid counsel; otherwise we must forcefully disagree. Hyatt even wrote the trial court to express his dissatisfaction with his attorney (Ex. B). Consider for instance that Hyatt's counsel could've assisted Hyatt in his various problems as they pertained to legal access by placing a mere phone call on his behalf, but simply chose not to. But we aren't going to blame counsel for what defendants did. Hyatt's lawyer could have obtained medical or other records, but didn't; but that does not take away from the fact that

defendants blocked Hyatt from securing those records for counsel. And the appeals court inverts the burden by requiring Hyatt to "prove", that his attorney lacked these things because Hyatt couldn't provide them. At best the law reads that if county jail inmates enjoyed regular access to [the] public defender, [the] burden shifts to [the] inmate to show that such access was inadequate. See *Kunzelman v. Thompson*, 799 F.2d 1172, 1179 (7th Cir.1986). Once the state has shown the actual availability of a regular system of assistance by public defenders of which the inmates are generally aware, it has met its burden under Johnson v. Avery. The plaintiff then bears the burden of showing that under the particular circumstances the assistance was either not available to the inmates helped or that they were not aware of the system's availability. See *Buise v. Hudkins,* 584 F.2d at 228–229; *Johnson v. Avery*, 393 U.S. at 489, 89 S.Ct. at 750. This burden allocation protects the inmates' right to meaningful access without overburdening the government to prove facts not easily at its disposal.

m. If the court is trying to telegraph that Hyatt should have plead a Sixth Amendment claim based upon the denial of access to counsel, then the district court should have construed such a claim at screening See, e.g., *Wolff v. McDonnell*, 418 U.S. 539, 575-76 (1974); *Thornley v. Edwards*, 671 F.Supp. 339, 341-43 (M.D.Pa.1987). If the appeals court was keen to recognize Hyatt's equal protection claim as an access to court claim, then the appeals court could've just as easily converted the Fourteenth Amendment claim into a Sixth.

3. Accepting Hyatt's representation that he asserted only an access-to-courts claim, and viewing the record through that lens, the appeals court wrongly concluded judgment for the defendants was proper nevertheless.

a. The preceding paragraphs are hereby incorporated by reference.

b. Hyatt argues that he established that the defendants, by depriving him of his materials and limiting his access to a free phone and envelopes, impeded his preparation for the hearing on his motion to withdraw his guilty plea and caused him to lose that motion. The appeals court asserts that, even with the clarification concerning his equal protection claim, his claim for access to courts does not survive summary judgment (which Hyatt was of course barred from even arguing in support of his approved access to courts claim). The appeals court ruled that Hyatt did not provide evidence that the defendants' official acts frustrated his pursuit of a non-frivolous legal claim, Jones v. Van Lanen, 27 F.4th 1280, 1287 (7th Cir. 2022); and that there must be "more than just some minimal degree of impediment," id. at 1288, and more than a theoretical injury. *Lewis v. Casey*, 518 U.S. 343, 351 (1996). For the reasons articulated below, that's just nonsense.

c. The appeals court does not clarify a number of things which we will attempt to do now. For instance, the court does not articulate whether or not "evidence" means documentary evidence, or sworn testimony. For instance, it's unclear if the court means to say that Hyatt's claim was frivolous, or if defendants are immune from what they clearly did. Beginning on April

25th, 2016, correctional defendants, acting under color of law, frustrated or impeded Hyatt's pursuit of multiple non-frivolous suits (e.g. 14CF57; 16AP1225; 16SC4909; 16-cv-383; and others yet-to-be-filed). The district court only allowed Hyatt to proceed on the 14CF57 case, where Hyatt was deprived of his legal work (amongst other interference) needed for a fair chance of success at his plea withdrawal hearing. The appeals court asserts that Hyatt has no claim so long as he had personal knowledge of what those documents contain. *Jones v. Van Lanen,* 27 F.4th 1280, 1287 (7th Cir. 2022). But this is at odds with what we know about plea withdrawal cases. You see, Hyatt had already studied cases about plea withdrawals and noticed the pattern that his testimony was likely to be disregarded as "inherently unreliable" lacking some documentation to support it. See *U.S. v. Messino,* 55 F.3d 1241, 1247 (1995)(A hearing on a motion to withdraw a plea is to be 'routinely granted' if the movant offers any 'substantial evidence that impugns the validity of the plea.' But if no such evidence is offered, or if the allegations advanced in support of the motion 'are mere conclusions or are inherently unreliable.') Sure enough, the trial court called Hyatt inherently unreliable (or words to that effect) and for no other reason was the plea withdrawal denied (Tx. 9/9/16 at 56-71). To this extent Hyatt has established that defendants took steps imposing a meaningful impediment to his underlying claims. *Jones v. Van Lanen,* 27 F.4th 1280, 1288. This was no "minimal" degree of impediment: defendants withheld Hyatt's critical legal records for *five* (5) months, despite daily verbal requests and several written requests and grievances. That shows deliberate indifference. Hyatt had a pending case and defendants knew of it; they recklessly disregarded his requests in connection with pursuing this case; and Hyatt suffered actual injury as a result.

d. Not even if we add that defendants scrutinized the use of every single piece of paper he had (his own paper); not even if we add that they rationed his envelopes, and even sold his own envelopes back to Hyatt (as if he was out of his own); not even if we add that defendants had opened Hyatt's privileged mail outside his presence multiple times, completely chilling his legal communications; not even if we add that they provided inadequate legal materials to him when he was indigent; not even if we add that they overcharged him for photocopies; not even if we add that he was deprived of minimally adequate law library access or legal assistance; not even if we add that Hyatt was deprived of minimally adequate telephone access (and no email); --not even if we add all of this on top of the deprivation of legal work for *five (5) months*, until literally minutes before his hearing; not even if we consider all of this does the court(s) figure any denial of access to courts. This is not merely an legal access claim, but also a claim of interference, and retaliation even (which did not survive screening either). Clearly, this is another instance whereby the court claims to have considered these facts, but not actually ascribing any weight to them. Of no little import was it to defendants that this was the hearing that would have set him free on bond and changed the dynamic of the prosecution considerably had Hyatt been successful. That's called a motive. In fact, *after* the hearing was over Hyatt was allowed anything he wanted from his legal box (i.e. no longer a "fire hazard"). That's not all. As stated previously above, defendants blocked Hyatt from retrieving all necessary documents for *all* pending hearings. From the cumulative effect of defendants'

actions, a reasonable juror could find in favor of the plaintiff. That defendants' official acts frustrated his pursuit of a non-frivolous legal claim(s) would constitute the evidence that the court is longing for. Further, Hyatt's claim could not be meritless for his attorney surely would not have undertaken such an action and a court would not have scheduled such a hearing if the matter was so. At any rate, an inmate need not show that he definitely would have won the underlying claim that he was hindered in bringing, rather, he need only show that he was denied "the right to rise to the level of being a failure." *Gentry v. Duckworth*, 65 F.3d 555, 559 (7th Cir. 1995). Moreover, the shortcoming or ineffectiveness of counsel may have bearing upon the outcome of the hearing, but should have no bearing on the access to courts claim.

e. Also, the district court, then the appeals court, attempts to limit the scope of Hyatt's arguments for plea withdrawal, limiting it to issues surrounding solitary confinement and his depleted mental and physical health (Tx. 9/9/16 at___; dkt. #17 at___)). Even so, Hyatt suffers serious mental illness, not "just" ADHD. The trial court itself remarked upon its perception of Hyatt's mental problems, which were no doubt exacerbated by a solitary setting (--but only after the plea was set in stone, that is). The "other" issues include that: Hyatt was denied access to his legal papers or materials; a law library; a telephone for legal calls (or emails). It is not so clear as to whether the prison denied visits from his attorney, or if his attorney just failed to visit him pretrial (preplea). However, it is in a sense immaterial since all that matters is that the issues were nonfrivolous and defendants actions denied Hyatt the ability to assemble papers useful to -not just support his testimony, but to prepare for it in advance as well. Any further "specificity" is rather immaterial.

f. The many errors or misunderstandings by the court(s) is inexplicable if Hyatt communicates so coherently and concisely. It appears that the courts' assessments in this regard are self-serving. Again, this appears to be a case whereby the appeals court merely says it's taking facts in a light most favorable to the plaintiff, but not actually doing so. This may be why there has not been a successful access to courts case at the district court level since 1996. Otherwise, it appears that access to court claims are really so complex that counsel should be provided as a matter of course. Again, the district court even warned Hyatt that such cases were difficult (dkt.#27) and advised against ever filing one again (see Ex. N/A, 8/10/18 conf. call).

g. The appeals court asserts that Hyatt cannot show an actual injury because he has not stated with specificity what materials he lacked that could have led to a different outcome. They do speak of "prejudice," which, in Hyatt's case, is the absence of the record featuring any documentation Hyatt sought to submit. That's the point: because Hyatt was denied access to the documentation (or the ability to present it), now there is nothing we can specifically point to in the record. The appeals court claims that there's no evidence in the record of what records Hyatt specifically sought other than "some medical records." But the medical records alone would show that Hyatt is seriously mentally ill with a cognitive disability. Indeed, an evidentiary hearing on a defendant's competence to participate in the proceedings against him is required if there is "reasonable cause to believe that the defendant may presently be

suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. § 4241(a); *United States v. Graves*, 98 F.3d 258, 261-62 (7th Cir.1996); *United States v. Collins*, 949 F.2d 921, 924 (7th Cir.1991); *United States v. Leggett*, 162 F.3d 237, 241-45 (3d Cir.1998); *United States v. Sovie*, 122 F.3d 122, 128 (2d Cir.1997). But since a court judge only observes a defendant's behavior for a few minutes every hearing or so, where he is typically silent, there is little opportunity for interacting on a level necessary for informing such an opinion. Therefore, it is upon the defendant, via defense counsel, to supply the court with such information; and it is upon a defendant to actively assist his counsel accordingly. Incidentally, Hyatt's lawyer was ineffective for not requesting an evidentiary hearing, which may be useful contextual information; but we aren't here litigating the acts or omissions of defense counsel. This is relevant in the sense that the courts are trying to do what defendants tried to do: have Hyatt blame solely his attorney (or himself) for his court access complaints; but of course if he sued his attorney, he and the courts would just turn and blame Hyatt and there is no remedy. Trial counsel asked Hyatt more than once if he was pursuing a mental defect defense, and the trial court plainly identified Hyatt as being mentally ill at sentencing (i.e. after the plea withdrawal hearing was over and done with, of course)(Tx. 11/4/16 at 104-105

h. The appeals court asserts that Hyatt cannot show an actual injury because he has not stated with specificity what materials he lacked that could have led to a different outcome, citing *Devbrow v. Gallegos,* 735 F.3d 584, 587 (7th Cir. 2013); notwithstanding *Devbrow*, nor any of the cases it cited therein mentions a "different outcome," explicitly or implicitly, verbatim or in any other language. In *Bonner v. Coughlin*, 517 F.2d 1311 (7th Cir.1975) (Stevens, J.), appellant claimed that time was of the essence because he had been recently furnished with a transcript of his trial and had only a brief period in which to petition the Illinois Supreme Court for review. Furthermore, Bonner specifically alleged that the loss of his transcript would interfere with his seeking post-conviction relief in Illinois. Id. at 1321, n. 29. but *Bonner* was not required to state specifically which pages in his transcript he needed. Similarly, in *Sigafus v. Brown*, 416 F.2d 105 (7th Cir.1969), the legal papers said to have been confiscated were alleged by appellant to be "essential" to a pending appeal, but was not required to state every legal issue or how each specific document would support the appeal.

i. The appeals court claims Hyatt merely asserted, generally, that he was deprived of possessing ***all*** of his materials (or viewing them all, and condensing them so that he could better provide said specificity). The court gave Hyatt no guidance as to what level or degree of specificity is required for summary judgment, and Hyatt had no experience or resources with which to gauge the specificity the court required. Furthermore, a point which the appeals court conveniently overlooks, is that Hyatt was only permitted to submit approximately half of his response to summary judgment due to a computer malfunction (power outage)(Ex. N/A). But Hyatt must have made at least minimal reference to needing not just "any" or "all" files, but files specific to his upcoming plea withdrawal hearing. Hyatt had alleged in his complaint and

later explained to defendants and the court that he had not been allowed a viewing of the contents of his legal box at the time of drafting. This makes it difficult to identify any specific documents with any degree of specificity. Hyatt did not produce at summary judgment any specific documents because, as far as the record shows, no one specifically requested them, and Hyatt just assumed that summary judgment would hinge on something other than this undefined "specificity" the court now maintains to be so critical. Moreover, if the court(s) acknowledge no other issues than Hyatt's medical/mental condition, then it follows that they've likely overlooked any such references in the record. Hyatt, a mentally challenged pro se prisoner litigant with zero legal experience, must be excused for providing any degree of specificity beyond this; for how would he have known just how specific he needed to be without the presence of counsel?

j. The appeals court claims that it is Hyatt's only complaint was that he couldn't keep all his papers in his cell at one time. That can only be true if the court disregards everything Hyatt said in his verified complaint and beyond (Dkt.#17). It can only be explained as an attempt to take unfair advantage of what Hyatt actually wrote. Accordingly, the appeals court claims that the evidence only establishes that Hyatt was prohibited from keeping all his papers in his cell at one time. Not only does the appeals court fail to cite any portion of the record which helps us identify this "evidence," but any such evidence would be in direct conflict of the evidence Hyatt submitted (Ex. A). At this point, it appears that the appeals court is simply adopting all of defendants' conclusory assertions while casually disregarding all of Hyatt's.

k. The appeals court arbitrarily and without qualification claimed that Hyatt never established that he had a need to communicate something specific but could not do so (due to defendant's actions); yet, Hyatt plainly established that he urgently needed to contact his attorney prior to their upcoming hearing (which was postponed until the 9/9/16 hearing)(Ex.___at____). That should be "specific" enough; for he had no other means to do so. Indeed, considering the communication was in fact privileged, Hyatt cannot now be reprimanded for not sharing the details, contents or purpose of these privileged communications after the fact. Hyatt apparently plead at the level of specificity required by Rule 8(a), see *Christopher v. Harbury*, 536 U.S. at 417–18, 122 S.Ct. 2179, identifying a remedy that may be awarded as recompense in a denial-of-access case that would not be available in any other future litigation. Hyatt "established" a legal emergency that occurred when Hyatt had gained information that defendants were reading his legal mail, see e.g., *Wolff v. McDonnell*, 418 U.S. 539, 575-76 (1974); *Thornley v. Edwards,* 671 F.Supp. 339, 341-43 (M.D.Pa.1987), were not going to facilitate him in preparation for his hearing, and that Hyatt was being charged with an additional crime days before the hearing. That should be specific enough. The appeals court claims that the evidence shows he communicated with his lawyer before the hearing; but that was right before the hearing, --with absolutely no time to prepare, or modify what Severson had prepared, for the hearing. That is precisely the scenario Hyatt was trying to avoid. Further, the appeals court attempts to do exactly what defendant's

l. Hyatt's access to courts claim should have been based on the totality or cumulative effect of multiple inadequacies. It's one thing to have a dispute over one aspect of the legal access program at the Portage County Jail, but defendants took unfair advantage over *every* means of court access: phones, law library, supplies, mail, legal property, etc.. Crowder v. Lash, 687 F.2d 996 (7th Cir.1982) on plaintiff's due process, freedom of religion and access to courts allegations, and the fact that these allegations may properly be considered by the jury as part of the "totality of circumstances" relevant to plaintiff's eighth amendment claim, see, e.g., *Hutto v. Finney,* 437 U.S. 678, 687, 98 S.Ct. 2565, 2571, 57 L.Ed.2d 522 (1978); *Jones v. Diamond,* 636 F.2d 1364, 1368 (5th Cir.), cert. dism'd, 453 U.S. 950, 102 S.Ct. 27, 69 L.Ed.2d 1033 (1981). The Supreme Court has stated that plaintiffs cannot litigate an overriding totality of the circumstances claim based on unrelated conditions. See *Wilson v. Seiter,* 501 U.S. 294, 299 (1991)(the conditions of which they complain must be grouped according to the specific human need to which they relate), but Hyatt's claims were all closely related to court access. Access to the courts gives real existence to other fundamental rights. And, that makes access to the courts a fundamental right also, for without this right other rights have no meaning. Therefore, access to courts is a "specific human need."

4. The courts wrongly concluded that correctional defendants were not arbitrary in their decisions pertaining to court access.

(a) The preceding paragraphs are hereby incorporated by reference.

(b) For instance, an inmate could use the staff phone only if a correctional officer gave permission based on an "emergency" or special circumstance; yet Hyatt was denied permission for relative legal emergencies many times, while others were permitted to use the staff phone for non-legal purposes. Short of a funeral, what could be more important than a detainee's legal emergencies? Corrections officials are required to facilitate, not frustrate prisoners' legal access; but defendants did so at almost every turn.

(c) Whether qualified immunity applies turns on two questions: first, whether the facts presented, taken in the light most favorable to the plaintiff, describe a violation of a constitutional right; and second, whether the federal right at issue was clearly established at the time of the alleged violation. *Tolan v. Cotton,* 572 U.S. 650, 655–56, 134 S.Ct. 1861, 188 L.Ed.2d 895 (2014) (per curiam). These questions may be addressed in either order. *Jones,* 630 F.3d at 682 (citing *Pearson v. Callahan,* 555 U.S. 223, 236–43, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009)). "If either inquiry is answered in the negative, the defendant official is protected by qualified immunity." *Koh v. Ustich,* 933 F.3d 836, 844 (7th Cir. 2019) (citation and internal quotation marks omitted). There is no meritable dispute as to whether Hyatt had a federal right to access to court by way of his legal papers, amongst other things. Hyatt's state rights are further secured and defined, and prisons and jails in Wisconsin have articulated down to the inch how much legal paper Hyatt could have in his cell. At the very beginning of the regulations

governing "Jails" (DOC 350.01) it plainly defines the jail's authority as being limited by WIS. STAT. s. 227.11(2)(a) ("Agency rule-making authority"). That is, jail policy cannot further restrict any superseding policy or law already in place. The DOC's policy governing legal property limits (DOC 309.20(3)(f)) is all the defendants needed to know in crafting their own unlawful policy. But this is arbitrary because Hyatt merely requested ***access*** to his legal work, i.e. not possession of it all, in cell. Defendants refused Hyatt until the last minutes before his hearing. Somehow two courts have failed to grasp this distinction.

5. The courts wrongly concluded that Hyatt testified that he had accepted the plea deal ONLY because solitary confinement harmed his mental and physical health at his motion to withdraw the plea.

a. The preceding paragraphs are hereby incorporated by reference.

b. Even if Hyatt's plea withdrawal had been premised upon his mental state alone, the fact that a judge found his serious mental illness incredible can only be explained by counsel's failure to support his testimony with documentation. Thus, a hearing on a motion to withdraw a plea is to be "routinely granted" if the movant offers any "substantial evidence that impugns the validity of the plea." *United States v. Fountain,* 777 F.2d 351, 358 n. 3 (7th Cir.), cert. denied, 475 U.S. 1029, 106 S.Ct. 1232, 89 L.Ed.2d 341 (1986). But if no such evidence is offered, or if the allegations advanced in support of the motion "are mere conclusions or are inherently unreliable," the motion may be denied without a hearing. Id. at 358; *United States v. Caban,* 962 F.2d 646, 649 (7th Cir.1992). Therefore without any documentation supporting Hyatt's reasons for plea withdrawal, it was a near certainty that any judge would find his testimony "inherently unreliable" no matter the case. Hyatt warned defendants and Atty. Severson of this well in advance of the hearing. Where were these documents? Somewhere shuffled within Hyatt's box of legal papers. Defendants admit to giving him the box --*knowingly,* with no time to go through it; but they fraudulently claim that Hyatt never asked for it sooner. In fact, the courts have willing adopted this false premise, in spite of the exhibits attached to the contrary **(Ex. A).**

c. Hyatt is unable to complete this section or this petition largely due to mental/cognitive impairments untreated or accommodated and a lack of time. The fact that Hyatt was unable to complete this in the 90 days allotted is offered as further evidence of his ability to litigate. (That is, the time limits appear reasonable; however, it is unreasonable to expect Hyatt to meet this deadline nevertheless.)

6. The courts wrongly denied Hyatt's motions for the recruitment of *pro bono* counsel.

a. The preceding paragraphs are hereby incorporated by reference.

b. A decision under 28 U.S.C. § 1915(e)(1) is reviewed for an abuse of discretion. *Greeno v. Daley*, 414 F.3d 645, 658 (7th Cir.2005). Review is limited to the evidence available at the time that the motion was denied. *Pruitt v. Mote*, 503 F.3d 647, 659 (7th Cir.2007) (en banc). A party who wants assistance from the court in recruiting counsel must meet certain requirements. *Santiago v. Walls*, 599 F.3d 749, 760–61 (7th Cir. 2010). First, he must show that he is unable to afford counsel and that he made reasonable efforts on his own to find a lawyer to represent him. Hyatt has satisfied these first two requirements. Second, given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" Pruitt at 654. If a court's denial of counsel "amounts to an abuse of its discretion, we will reverse only upon a showing of prejudice." Id. at 659. Even if the district court abuses its discretion, we will not reverse unless there has been a showing of prejudice—i.e. that "there is a reasonable likelihood that the presence of counsel would have made a difference in the outcome of the litigation." Id. We review denials of motions for recruitment of counsel under § 1915(e)(1) for an abuse of discretion, id., asking "not whether [the judge] was right, but whether he was reasonable." *Pruitt*, 503 F.3d at 659 (internal quotation mark omitted).

c. As mentioned previously above, consideration of the equal protection claim only complicates things immensely. Since that was not Hyatt's intent to claim it, the district court erred in screening for it, it was an arguably unnecessary impediment to Hyatt's ability to litigate the case. Regardless of whether the appeals entertained this claim, it still then becomes relevant for the purpose of recruiting counsel. Had Hyatt been appointed counsel, counsel would have been able to avoid the misconstruing of Hyatt's access-to-court allegations as equal protection claims. But that was not the case, and as a result, the district court deprived Hyatt of allegations and arguments in support of his access-to-courts claim and caused unnecessary confusion and distraction, which did harm Hyatt. It also deprived Hyatt of scarce time. In fact, after Hyatt almost failed to submit his amended complaint, the court should have had some idea of how the rest of the litigation would go. The appeals court claims to have viewed these deprivations associated with the equal protection claim in support of an overarching access-to-courts claim, implying there is no harm; but that's just not so. Hyatt's court access claim may be novel in its request that it be viewed under a "totality of conditions" standard akin to deliberate indifference claims, and it further supports the need for counsel based on the complexity and difficulty of the case.

d. The district court's posture toward Hyatt was most unreasonable, if not hostile, from the beginning. Despite notification that Hyatt was at the Assessment and Evaluation stage of his incarceration, where prisoners are held temporarily and therefore not extended the full legal access available to prisoners once staffed, and despite his placement in solitary, the court threatened to dismiss his lawsuit for failure to prosecute (i.e. failure to amend). Note: it took three time extensions just to submit his amended complaint. Upon briefing, because Hyatt was unsure of how to answer certain questions (answering the best he knew how), the court admonished Hyatt and threatened him with sanctions (12/7/18). Though both parties are identified as belligerents, the court nonetheless nuances Hyatt's "resistance" to defendants'

discovery requests to suggest an attempt at "gamesmanship" that may warrant cost-shifting "if Hyatt continues to approach his lawsuit in this manner." The magistrate continues: "However, I will give Hyatt the benefit of the doubt and expect his behavior to change once he reviews this order and considers the following potential consequences to his failure to respond to reasonable discovery requests in a reasonable and timely manner. If Hyatt persists in obstructing the progression of this lawsuit, then he not only will face a court order shifting the fees and costs in favor of defendants, but defendants will have a valid basis to pursue a motion to dismiss, either for Hyatt's failure to prosecute or as a sanction for his failure to follow this order." Hyatt's "behavior" is his fundamental ignorance of litigation. Keep in mind this is Hyatt's first lawsuit and that Hyatt's "gamesmanship" consists of a lack of legal access with which to give competent responses, and a lack of money with which to obtain supplies, copies and postage, etc. Also keep in mind that Hyatt is the plaintiff, not the defendant, and the courts' treatment of Hyatt as some sort of criminal mastermind trying to avoid incriminating himself borders on the absurd. Effectively, the court had treated Hyatt as if he were the defendant responsible for violating corrections officials rights, or some law, and that Hyatt was being uncooperative or evasive for reasons that are beyond any reasonable comprehension.

e. During summary judgment, the court claimed that Hyatt has not shown that this is one of the relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds the litigant's demonstrated ability to prosecute it. *Pruitt*, 503 F.3d at 654–55. "The question is not whether a lawyer would present the case more effectively than the pro se plaintiff" but instead whether the pro se litigant can "coherently present [his case] to the judge or jury himself." Id. at 655. The court claimed that Hyatt's filings demonstrate that he is more than capable of responding to defendants' proposed findings of fact and legal arguments related to these claims. This is baffling since the judge himself admitted that the claims were exceedingly difficult (DKT. 27 + 8/10/13 CONF. CALL Ex. ___); and that, with respect to the equal protection claim, Hyatt demonstrated utter ignorance of understanding. Moreover, if Hyatt was in fact able to coherently present his case, the case would not have been dismissed.

f. The court points to having laid out the legal standards in the screening order and that "Hyatt has made it clear that he reads and reviews the court's orders." There is a difference between reading something and actually understanding it, and here again Hyatt demonstrated utter ignorance in comprehension. Note that Hyatt is severely limited in his ability to read, write and communicate in a coherent or concise manner, a fact that even DOC officials have reluctantly conceded. He has ADHD (combined type), a diagnosis prison officials are keen to suppress except for the most exceptional cases. Due largely to his inability to focus he spent every summer in high school at summer school, but ultimately failed to graduate. He obtained a GED and even went to technical college, but also ended up on academic probation, flunking out if you will. Hyatt also suffers from serious mental illness (Bipolar II disorder; Anxiety; OCPD; ADHD, etc.); but the ADHD alone is explains the "lengthy" filings the court turns around to cite in support of denying counsel. They are lengthy and rambling, or they are concise and brief: they cannot be both. Also consider it took Hyatt three extensions just to submit his amended

complaint, -which still wasn't completed when he submitted it (but was threatened with dismissal). Hyatt has no prior litigation experience. Id. at 655. The reason Hyatt has thus far been unsuccessful in litigation is precisely because he cannot "coherently present [his case] to the judge or jury himself." Id. at 655.

g. The court cites Hyatt's attempt at a stay of summary judgment proceedings, highlighting that Hyatt has already responded "substantively" to many of defendants' proposed findings of fact and legal arguments related to his equal protection and access to courts claims. The court says that these submissions show that Hyatt remembers the material events and has the intellectual ability to respond to defendants' proposed facts and legal arguments "adeptly," despite the fact that he has lost access to some of his legal materials. This is also confounding since Hyatt didn't even understand his equal protection claim(s) or what "similarly situated" meant. In fact, as the Appeals Court tacitly concedes ~~(Ex.),~~ the equal protection claim(s) could and should have been construed as, or in support of Hyatt's access to courts claims. This confusion plagued Hyatt for the duration. The court never bothers to inquire into what legal materials Hyatt is missing and their impact on the case. The court cites Hyatt's ability to respond to defendants' legal arguments, while failing to explain why Hyatt would find it strategic or advantageous to not provide any legal arguments or citations of his own. The complexity of a litigation increases and competence decreases as a case proceeds to the advanced phases of litigation. This circuit has stressed that "complexity increases and competence decreases as a case proceeds to the advanced phases of litigation." *James v. Eli,* 889 F.3d 320, 327 (7th Cir. 2018). "[A]s the case moves beyond the pleading stage, into discovery, and closer to trial, the plaintiff will face an increasingly complex set of demands." *Pruitt*, 503 F.3d at 663 (Rovner, J., concurring); *Walker v. Price,* 900 F.3d 933, 938 (7th Cir. 2018) ("We have emphasized that the assistance of counsel becomes increasingly important as litigation enters its later stages."). "Taking depositions, conducting witness examinations, applying the rules of evidence, and making opening statements are beyond the ability of most pro se litigants to successfully carry out." Miller v. Campanella, 794 F.3d 878, 880 (7th Cir. 2015) (quoting Perez v. Fenoglio, 792 F.3d 768, 785 (7th Cir. 2015)). As such, "fail[ing] to consider the complexities of advanced-stage litigation activities and whether a litigant is capable of handling them" is an abuse of discretion. Perez, 792 F.3d at 785.

h. On 4/22/19 or subsequent motions Hyatt stated that the merits of the indigent's claim are colorable, --and they are, *Tucker v. Randall*, 948 F.2d 388 (7th Cir. 1991); but the courts make no comment or reference disputing or acknowledging this fact.

i. His motions Hyatt stated that that his inability, as an of indigent incarcerated in a max facility, to investigate crucial facts occurring at a facility different from that in which the alleged conduct took place is significantly compromised if not impossible, Id.; but the courts never respond to this;

j. His motions Hyatt stated that the nature of the evidence indicates that representation by counsel will more likely expose the truth as counsel on both sides will more likely aid the search

for truth because a major issue in the case will be conflicting evidence and testimony, Id.; but the courts never respond to this;

k. His motions Hyatt stated that he is incapable of presenting the case, as it is clear that Hyatt could not present any case properly: his inartful pleadings in the district court (and appellate court), and his inability to follow the briefing schedule, show the need for counsel, Id. He didn't even know how to file a proper discovery demand, therefore no discovery was even made. The courts failed to respond, instead blaming Hyatt for not using his time wisely or other conclusory slights to his character. According to *Pruitt v. Mote*, 503 F.3d 647 (7th Cir. 2007), prejudice may be established by a litigant's poor performance before or during trial. For example, if the record demonstrates that the pro se plaintiff was incapable of engaging in any investigation; or locating and presenting key witnesses or evidence; or responding to summary judgment, the plaintiff may be able to establish a reasonable likelihood that the presence of counsel would have made a difference in the outcome. Hyatt never made it to trial precisely because he was incapable of engaging in any investigation; or locating and presenting key witnesses or evidence, et cetera.

l. His motions Hyatt stated that he would be unable to litigate his case because he is incarcerated in a max prison with limited access to legal materials and is untrained in the law; the court merely remarked that "nearly all pro se litigants are." No, many are in medium or minimum security prisons with as much as three times (300%) the law library access. The very fact of his incarceration is a factor the district court must consider in assessing the competence of the plaintiff to litigate his case. See, e.g., *Henderson v. Ghosh*, 755 F.3d 559, 565 (7th Cir. 2014) ("Henderson's limitations were exacerbated by his incarceration, which further restricted his ability to investigate the facts."); *Junior v. Anderson*, 724 F.3d 812, 815 (7th Cir. 2013) ("[A] plaintiff's inability to investigate crucial facts by virtue of his being a prisoner ... is a familiar ground for regarding counsel as indispensable to the effective prosecution of the case."). If considered at all, it was with the same dismissive "they all are" attitude seen elsewhere. The judge said that these things do not establish that the legal and factual difficulties of this case exceed Hyatt's abilities and even congratulated Hyatt on his filings, --notwithstanding it took three extensions to amend his complaint; notwithstanding his failure to make any legal arguments or cite any of throughout the litigation; and notwithstanding his failure to attach supporting documentation; and notwithstanding his ability to comprehend his own equal protection claim or the concept of qualified immunity. In *Navejar v. Iyiola*, the court emphasized that the proper inquiry is not whether the pro se plaintiff is competent to try the case, but whether he is competent to litigate his claims, which includes conducting the discovery and motion practice that normally attend litigation. 718 F.3d 692, 696 (7th Cir. 2013). Hyatt had failed to file any discovery demand; rather, he didn't even know how to (confused by the incorrect FRCP defendants sent him). According to the courts, all the qualities a litigant needs to possess are that he can read, express his thoughts in writing and follow directions generally. If this were true, it would put a lot of lawyers out of business, and therefore I find that reasoning unpersuasive (i.e. absurd). See *State v. Jackson*, 363 Wis.2d 484 867 N.W.2d 814

2015 WI App 45 (The trial court's conclusion that Jackson was not competent to proceed pro se is supported by the record.... The trial court attempted multiple times to gauge Jackson's understanding of trial procedure. Each time, Jackson failed to grasp the trial court's questions. The trial court inquired about Jackson's understanding of a pending motion. Jackson's response was a non sequitur... Jackson complained about his limited access to the evidence against him, limited access to legal materials, and the restrictions on his phone and mail privileges, while insisting that he was ready for trial.)

m. His motions Hyatt stated that he has a learning disability ("identified elsewhere as ADHD"). The district court purported that Hyatt's communications were "clear and coherent" and that it was too soon to know how complex the case was or whether Hyatt could manage discovery or legal research. The district court repeatedly said that plaintiff has not shown that he requires the assistance of counsel at "this stage" in the proceedings, a the while knowing that [he] was not going to provide counsel ever, no matter how further along and complex the case became. The fact that Hyatt later proved unable to manage discovery was of no impact on the court's discretion. Accordingly, Hyatt's inability to perform legal research, as evidenced by the lack of legal case citation throughout the entire litigation, was of no consequence to the court.

n. His motions Hyatt described the legal issues presented by the complaint as numerous complex constitutional issues arising under the First and Fourteenth Amendments. *Maclin v. Freake*, 650 F.2d 885, 887–889 (7th Cir.1981). See also *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007)(en banc) regarding complexity. An access-to-courts claim and an equal-protection-of-one claim, even the district court judge admitted the claims were very difficult, going so far as to dissuade Hyatt from ever filing again, verbally and in writing (~~Ex.____~~): In Merritt v. Faulkner, 697 F.2d 761, 764 (7th Cir.1983), we stated: DKT. 27; 8/10/18 Court. Call

"Quite often the factual and legal issues in a civil case are more complex than in a criminal case. This often will be true in cases presenting constitutional questions. Indeed, surviving a critical motion...may well depend upon the ability to perform legal research and present sophisticated legal arguments in such doctrinally complex areas as prisoner medical rights or free speech."

As stated previously, access-to-courts and equal protection-of-one claims are those complex issues. As noted in Pruitt, a trial court normally will take into consideration the plaintiff's "literacy, communication skills, educational level, and litigation experience." Id. at 655. Intellectual capacity and psychological history, to the extent that they are known, are also relevant; but the courts have disregarded Hyatt's disabilities and gone so far as to flatter him for the sole purpose of denying counsel. As stated previously above, Hyatt has ADHD - combined type, and due largely to his inability to focus or grasp information he spent every summer in high school at summer school, but ultimately failed to graduate. He obtained a GED and even went to technical college, but also ended up on academic probation, flunking out if you will. Hyatt suffers from serious mental illness (Bipolar II disorder; Anxiety; OCPD; ADHD, etc.).

o. The court commented on his demonstrated familiarity with his claims and the ability to present them, but this does not demonstrate that the district court specifically examined [petitioner's] personal ability to litigate the case, versus the ability of the "jailhouse lawyer(s)" who Hyatt indicated in his motion was helping him. *Dewitt v. Corizon, Inc.*, 760 F.3d 654 (7th Cir. 2014). The analysis should be of the plaintiff's ability to litigate his own claims, and the "fact that an inmate receives assistance from a fellow prisoner should not factor into the decision whether to recruit counsel." *Henderson v. Ghosh*, 755 F.3d at 565, 2014 WL 2757473 at *5. This meaning of the holding in this case has been frequently twisted in favor of denying counsel. Henderson said that the fact that an inmate receives assistance from a fellow prisoner is not a factor the court should consider in deciding whether to recruit counsel, since one inmate cannot assist another in taking depositions, for example (though few if any inmates have the financial resources needed to hire a court reporter or other officer before whom a deposition must be taken, see Fed. R. Civ. P. 28), or at trial. *Henderson*, 755 F.3d at 565. Even the idea that Hyatt could depose defendants from WCI was inconceivable. But, the courts make no reference to Hyatt's reliance on jailhouse lawyers. Finally, the court ignores (and fails to comment on) Hyatt's reliance upon one or more jailhouse lawyers to get him this far, and that by the time of summary judgment he had no assistance. The court espoused that [he] would gladly match up every pro se litigant in this court with a volunteer attorney if it could. The court comes off as disingenuous. As to the justice system's reliance on jailhouse lawyers to meet prisoners' needs:

"...[I]t is unwarranted and even mischievous to entertain the proposition that the availability of help in legal matters from persons untrained in the law is a serious answer, even a serious partial answer, to the tremendous and urgent need of prisoners for competent legal assistance. It is unwarranted because, with occasional exceptions, such help is not true help. It is mischievous because it tends to stall proper solutions to the problem and because it leads to the necessity for unsatisfactory judicial responses, (such as the order I am about to enter). I regret the trend of decision commencing with Johnson v. Avery. This trend of decision treats access to legal help from persons untrained in the law not simply as an opportunity for folly which neither prisoners nor non-prisoners can be denied, but as a serious answer or partial answer to prisoner needs." *Wetmore v. Fields*, 458 F.Supp. 1131 (W.D. Wis. 1978).

p. In its 9/17/2019 summary judgment order (dkt. #125) the court partially discusses Hyatt's previous motion for counsel. The court notes that Hyatt acknowledged receiving access to the law library for 30 hours to prepare his pending motion to alter or amend, although ignoring that Hyatt explained he only receives two actual hours out of every three nominal hours. (Hyatt did fail to explain the dynamic whereby the research computers are separate from the word processors, and how each or the other is typically full at any given time, rendering much of library time a waste.) The court stated how Hyatt "now" insists that he lost a large portion of his work because the computer he was using crashed, as if a convenient excuse. They were doing construction in the next room and the power went out, not saving anything Hyatt typed past a certain point in the draft. As a result, this prevented him from adequately explaining how Judge

Crocker was incorrect in finding that he had adequate access to the legal resources he needed to respond to defendants' motion for summary judgment, amongst other issues. As proof, Hyatt attached portions of the merits-based motion to alter or amend that he was "purportedly" preparing; i.e., the court insinuates that the extensive draft was merely a prop, crafted to deceive or engage in some sort of "gamesmanship." Hyatt also attached motions in preparation for this and apparently "another lawsuit," also raising concerns about adequate access to the law library and his materials to meet deadlines. (See dkt. ##133-1, 133-2, 133-3, 133-4, 133-5.) Though it is a fundamental requirement of the PLRA that Hyatt exhaust his administrative remedies, this court would have it that this is a waste of time Hyatt could have spent on the instant litigation and therefore his own fault. If a prisoner litigant is forced to choose between documenting violations of his access-to-courts and his exhausting administrative remedies or else meet his legal deadlines, then it is obvious that he isn't provided enough legal access for both. But since it is position of this court that Hyatt be subject to such rigorous standards of efficiency, it is no surprise that, unfortunately for Hyatt, "none of those submissions suggested that he was driving towards identifying a manifest error of law or fact in the court's original opinion and order on summary judgment, nor that Hyatt is entitled to any other relief from this court."

q. In Hyatt's post-judgment motions (4/16/21), Hyatt maintained that he was unable to prepare his motion to alter or amend because he did not receive adequate access to the law library and legal materials. In particular, Hyatt represented that even though he had access to the law library to prepare his motion to alter or amend, that access was insufficient. Hyatt had raised similar concerns in a previous motion for a temporary restraining order filed during the dispositive motion phase of this lawsuit, which the court already addressed "head-on" in its opinion and order granting defendants' motion for summary judgment:

"In his 13-page motion, Hyatt claims that various Waupun employees have been thwarting his ability to access the courts by refusing legal loans, requiring him to make co-payments for his medical needs, and forcing him to take a low-paying job that requires him to work 40 hours a week for pay that will likely be taken from him to pay other debts. These complaints have been a consistent refrain throughout Hyatt's current lawsuit, but they are unsubstantiated and at this point ring hollow. Indeed, Magistrate Judge Crocker has looked into Hyatt's claims that defense counsel or prison staff have been preventing him from litigating this claim, and concluded in the negative. (See dkt. ##86, 110.) Hyatt's filings show an understanding of the relevant legal principles, but it appears that he believes seemingly typical constraints that come with incarceration amount to inadequate access to the court."

r. Before going further, the court grotesquely distorted what Hyatt submitted. Hyatt attempted to describe an entire system of exploitation in detail, in sufficient detail, -but not too much detail as to state another claim. On that note, it should not be necessary to state another claim within a claim to obtain counsel; that said, Hyatt did, effectively (e.g. "another lawsuit", dkt.125, see above). For instance, Hyatt was wrongfully denied access to legal loan funds

within time constraints, leaving him unable to avoid copies, etc.. For instance, Hyatt has repeatedly charged medical copayments for visits not chargeable under policy, thwarting his ability to budget for legal expenses. For instance, Hyatt never claimed to be forced to work a low-paying job 40 hours per week, the proceeds of which will be paid for other debts. He never said that. He did try to explain the dynamic whereby prisoners are forced to work or go to school, and in either case it simply exhausts the time available for Hyatt to focus on his litigation. The court states that these complaints are "a consistent refrain" throughout the litigation, implying that they are invalid; but how could the judge comment competently if he cannot even recite Hyatt's claims correctly? Hyatt's complaints can be "substantiated" very easily by reading his sworn declaration(s), but which the court treat as meaningless. It's unlikely opposing counsel's declaration would be treated so hostile. It's unlikely the defendants' declaration would be called "hollow," despite their having every incentive to lie in their attempts to avoid a finding of guilt. The court has effectively turned Hyatt into the defendant in this case, or at least treated as such. It conveys the dismissive tone by which the court perceives the plight of countless prisoners. The court is effectively mocking Hyatt.

s. The claim that Magistrate Crocker "looked into" Hyatt's legal situation when he confronted it "head on" (dkt. 3386, 110) consisted of no more than his conclusory assertion. For instance, how did he "look into" the state of Hyatt's legal access at WCI? Nowhere does the court describe exactly how it "looked into" Hyatt's legal claims, or if it contacted someone, who? At best, Crocker obtained his *ex parte* information from prison officials themselves, which should be problematic for the most obvious reasons; but the point is that the district court didn't say with any specificity how it arrived at an explained judicial reasoning (and the appeals court ignored the controversy entirely). *McCleary v. State*, 49 Wis.2d 263, 278, 182 N.W.2d 512 (1971). But the court didn't stop there...The court concedes to the "merits of certain of his complaints", yet remarks that Hyatt seems unable to appreciate the "obvious contradiction" in his making those complaints while being given access to dozens of pages of paper and postage to file his grievances with this court. STOP: No one "gave" Hyatt anything, except his family. He purchased his own paper and postage with his own funds until he was out of funds and could purchase no more. The DOC gave or loaned him nothing, that is the point. What's more, the court seems to correlate the length of Hyatt's filings as an indication of their substance. This is fallacious logic, -a cheap jab, if you will. Referring to Hyatt's ADHD, an inability to form coherent and concise filings is a symptom of that disability. Finally, the court goes on to disparage Hyatt when [he] states how unfortunate it is that Hyatt appears intent on spending his time preparing complaints about the limitations on his ability to litigate his claims, rather than preparing substantive arguments and gathering evidence to support his claims. It is unclear whether the court is referring to Hyatt's use of the prison grievance system, but in any case one could easily infer that this judge is hostile to the very notion of prisoner's rights. And the judge would be right when he concludes that Hyatt is not entitled to any sort of injunctive relief in this case, but only if one one contorts the facts to the extent just demonstrated here, i.e. "a consistent refrain" throughout the litigation.

t. The court continues (4/16/21):

"For example, in his draft motion to alter or amend alone, which is 16 pages single spaced, Hyatt raises at least 18 challenges to the court's opinion and order. Yet while Hyatt carefully dissects the court's recitation of the facts (thus, demonstrating a clear understanding of the record), none of the "errors" identified suggest a manifest error of law or fact that would justify this court vacating its judgment in defendants' favor or take any further action."

u. By this juncture Hyatt had become very "adept" at looking for the judges attempts to twist his words, or add or omit them altogether. All Hyatt sought to accomplish by his "challenges" was to demonstrate the court's carelessness in reviewing Hyatt's filings. Not only was the court immune from such criticism, it turned around and used it in support of the denial of counsel. Again the court cites the number of pages in Hyatt's filings as some sort of evidence of Hyatt's legal savvy.

v. Hyatt's other attachments related to his "perceived" inability to litigate this case; i.e. the court is merely trying to encourage Hyatt Hyatt details his (1) mental health challenges, (2) insufficient access to the law library and paper, and (3) lack of understanding of the applicable standards. You see, Hyatt's failures up to this point are mere perceptions and all the court is trying to do is give him the confidence he needs to succeed.

w. Hyatt also attached the 22-page single-spaced motion he filed requesting an enlargement of time to complete discovery, elaborating at length on his interactions with various prison officials between when he received the court's summary judgment opinion and when he submitted his request for additional time to complete discovery. (Dkt. #133-5.) The court opines, "Again, the court simply cannot reconcile Hyatt's repeated, lengthy and detailed assertions about his claimed inability to litigate this case with an actual inability to do so." In other words, Hyatt's ability to demonstrate his need for counsel disproves that very need, ipso facto. The court repeats that "the court's orders detailed the relevant legal standards," but it must be abundantly clear that Hyatt did not comprehend a "legal standard" versus a legal holding, for instance. And the court claims to have "provided Hyatt with materials that would help guide his prosecution of his claims in this court;" though Hyatt cannot fathom for the life of him what those materials were. All Hyatt received was a screening order and briefing schedule, along with a packet on summary judgment. Apparently the court (and appellate court) believes this is all that is required to be successful in litigation. And yet the court expresses confusion as to why Hyatt "still had not come forward with any 'specific' explanation for why he was unable to respond with relevant legal and factual analysis to defendants' motion for summary judgment in greater detail than he provided in his declaration and response to defendants' proposed findings of fact." Looking past the construction of that sentence, the court appears to be saying that Hyatt has proffered no "specific" reason for why he is unable to provide more developed responses to summary judgment than he did in his findings of fact; but that is simply not true. Hyatt provided all the above reasons; the court just didn't want to hear them. Hyatt told the court of his cognitive issues. He told of the prison

interference, --including that his response to summary judgment was deleted the day before filing. He told how he no longer had anyone helping him. Hyatt told all of this in "lengthy and detailed assertions;" but the district court, and then the appeals court, simply ignored it. The court finds that "the fact that Hyatt can provide such granular details about the hours he was able to spend in the law library suggests that he is fully capable of tracking facts and making legal arguments, but has chosen not to do so." Pure sophism...all it proves is that Hyatt has learned to keep a calendar, so prison officials -or court judges- can't take unfair advantage of him. Finally, the judge consoles us all by assuring that Hyatt has simply chosen not to file a competent brief and was a victim of his own "gamesmanship," or something.

x. The court merely parrotted *McCaa* in describing Hyatt's skillful and well-organized communications, et cetera. Hyatt's communications can hardly be colored "skillful" or "well-organized" and this is simply more of the court just saying so just for the record's sake. The court should've been able to discern a difference between those filings which were handwritten versus typed, i.e. the latter typically with the help of his "jailhouse lawyer." And while Hyatt is being deprived of law libraries or assistance the only thing he could do is draft "lengthy" filings or "abundant" correspondence from his prison cell, i.e. to document the situation as it evolved; he could make no "legal" arguments nor cite them. He didn't even know how. Compare this with the court's irreconcilable description of Hyatt's submissions being "clear" and "concise." The fact that Hyatt, a person with serious cognitive difficulties, was faulted for not knowing that he would be required to explicitly state how his disability would impair his ability to litigate (effectively stating an ADA claim), is an unreasonable standard. Accordingly, disqualifying Hyatt because he did not state what discovery he could not obtain --when he did not even know how to conduct any discovery at all, is equally unreasonable. If Hyatt had been informed by the court that this was why counsel was being denied, he may have been able to bring some corrective action; but as it turns out this is just more moving of the goal posts. For the record: Hyatt could not effectively litigate on any meaningful level at any time during the litigation. He could not get any discovery by mail (or email) --at all. Finally, the appeals court, like the district court, fails to address that Hyatt was unable to depose anyone because of his circumstance. Its is not clear whether the courts simply don't understand the difficulties of litigating from prison, or that they actually don't care. There is no other explanation.

y. All the unanswered questions that defendants and the district court point to "cry out for evidence that a lawyer could obtain but the plaintiff could not." The judge should have realized this and tried to get him a lawyer. *Navejar v. Iyiola*, supra, 718 F.3d at 697–98; *Santiago v. Walls*, supra, 599 F.3d at 762–65; *Pruitt v. Mote*, 503 F.3d 647, 660 (7th Cir.2007) (en banc); *Montgomery v. Pinchak*, supra, 294 F.3d at 503; *Hendricks v. Coughlin,* supra, 114 F.3d at 394–95. See *Junior v. Anderson*, 724 F.3d 812, 816 (7th Cir. 2013). Certainly the appeals court should have realized this.

VII. CONCLUSION

1. The district court, and then the appeals court made numerous factual errors, to the extent that it may be reasonable to accuse both of taking unfair advantage of Hyatt. They were at least careless, and at any rate,unreasonable.

2. The courts wrongly concluded that Hyatt did not raise any genuine issue of material fact with respect to his claims that the officers denied him meaningful access to the courts solely by parsing words and completely ignoring Hyatt's sworn statements and exhibits.

3. The claim by the appeals court that conversion of the equal protection claim into an overarching totality-of-conditions access to court claim would still fail is premature because the parties were unable to litigate that claim. During the litigation, any facts or evidence associated with the equal protection claim were not allowed to be submitted in support of the access to court claim(s).

4. Hyatt's rights are firmly secured in every part of the law in every land and defendants well knew what they were doing. ~~If the court recalls,~~ Hyatt even nuanced defendants' actions or omissions as retaliatory.

5. There were multiple reasons, more or less developed, that Hyatt raised for withdrawing his plea, but the ineffectiveness of counsel nor the courts erroneous discretion are relevant to what defendants did personally and directly. That is the question both courts evade.

6. The court could have simply said up front that it does not matter what Hyatt says, he's just not going to get counsel no matter what. The court wipes away decades of court decisions by merely pointing to how "lengthy" Hyatt's filings are.

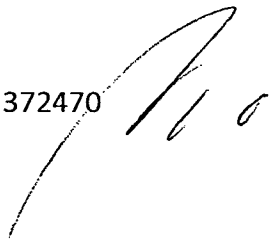
7. If this court corrects the record and actually views the facts most favorably to Hyatt, Hyatt wins. If Hyatt was appointed counsel, Hyatt would already have won, or at least went to trial. Summary judgment is not, however, a substitute for a trial, notwithstanding the "drift" in that direction that then-Chief Judge Posner noted. In Wallace v. SMC Pneumatics, Inc., 103 F.3d 1394, 1397 (7th Cir.1997), the Seventh Circuit cautioned:

"The expanding federal caseload has contributed to a drift in many areas of federal litigation toward substituting summary judgment for trial. The drift is understandable, given caseload pressures that in combination with the Speedy Trial Act sometimes makes it difficult to find time for civil trials in the busier federal districts. But it must be resisted unless and until Rule 56 is modified...."

WHEREFORE, petitioner Jason J. Hyatt respectfully requests a diligent review of the various controversies presented by this case.

Signed:

Jason J. Hyatt 372470



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Dated: 3/10/23

March 10th, 2023