



## ***LGIT'S COMMANDER'S LOG***

### **December 2007**

#### **DEFENDING CORRECTIONAL REGULATIONS AGAINST CONSTITUTIONAL CHALLENGE**

**QUESTION:** Is there an accepted test by which the reasonableness, *i.e.*, the constitutionality of correctional regulations is measured?

**ANSWER:** Yes, there are four specific factors by which the reasonableness of any correctional regulation is determined.

**CASE:** *Beard v. Banks*, United States Supreme Court, June 28, 2006

In *Beard v. Banks*, the United States Supreme Court once again was called upon to judge the reasonableness, *i.e.*, the constitutionality of a particular prison regulation. The Pennsylvania Department of Corrections houses its 40 most dangerous and recalcitrant inmates in a Long Term Segregation Unit (LTSU). Inmates begin in level 2, which has the most severe restrictions, but may graduate to the less restrictive level 1. Ronald Banks, a prisoner confined to LTSU level 2, filed a federal-court action against the Secretary of the Pennsylvania Department of Corrections. Banks claimed that the level 2 Policy of forbidding inmates access to all newspapers magazines, and photographs bore no reasonable relation to any legitimate penological objective and, thus, violated the First Amendment. The Secretary moved for summary judgment, which was granted by the federal district court. Banks then appealed to the federal appellate court for the Third Circuit. On appeal, a divided Third Circuit panel reversed the district court's award of summary judgment to the Secretary. The Secretary sought review in the Supreme Court, and the high court agreed to review the case.

The Supreme Court reversed the decision of the Third Circuit, and reinstated the judgment entered in favor of the Secretary. In doing so, the court reiterated that restrictive prison regulations are permissible if they are "reasonably related" to legitimate penological interests, and are not an "exaggerated response" to such objectives. Relying upon its earlier decision in *Turner v. Safley*, the court set forth the four factors relevant in determining the reasonableness of the regulation at issue. First, is there a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it? Second, are there alternative means of exercising the right that remain open to prison inmates? Third, what impact will accommodation of the asserted constitutional right have on guards and other inmates and on the allocation of prison resources generally? And, fourth, are ready alternatives for furthering the governmental interest available?

**In this case, the Secretary set forth several justification's for the prison's policy, including the need to motivate better behavior on the part of particularly difficult prisoners, the need to minimize the amount of property they control in their cells, and the need to assure prison safety, by, for example, diminishing the amount of material a prisoner might use to start a cell fire. Based upon the record, the court concluded that the Secretary's justification for the regulation was more than adequate.**

**NOTE: This case reinforces the view that courts generally will give substantial deference to the professional judgment of prison administrators. However, in county facilities in which the majority of inmates are pre-trial detainees whose guilt or innocence has not been adjudicated, courts may be more inclined to find that a particular administrative response is overly harsh or not reasonably related to valid penological interests. Consequently, it is important to consider this fact when adopting restrictive, and even punitive, measures within the institution. Your reasoning should be documented, including the specific occurrences that led to promulgation of the regulation.**

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