



LGIT'S COMMANDER'S LOG **September 2007**

MONITORING OF A PRISONER'S GENERAL INCOMING MAIL BY PRISON STAFF DOES NOT INFRINGE A *SENDER'S* FIRST AMENDMENT RIGHTS

QUESTION: Does monitoring of a prisoner's general incoming mail infringe upon the sender's First Amendment rights?

ANSWER: No.

**CASE: *Smith v. Bureau of Prisons*
United States District Court for the District of Maryland,
Decided April 11, 2006**

In a recent suit in our United States District Court, the plaintiff, the spouse of a prisoner at FCI Cumberland, claimed that *her* First Amendment rights were violated when staff routinely monitored the mail she sent to her husband. The court rejected the claim and also held that there is no "process" due to such a person in advance of, or in connection with, such monitoring.

The facts in the *Smith* case established that Fernando Smith, a prisoner at FCI Cumberland, was involved in a physical altercation with another inmate in the prison's bakery. He was placed on administrative detention and his family visits were suspended pending the completion of an investigation into the circumstances of the fight in the bakery. Ultimately, Smith was found guilty of several institutional infractions and, among other sanctions imposed, he was recommended for transfer from FCI Cumberland. In connection with the investigation and adjudication of the disciplinary charges, Smith and his wife filed numerous challenges, grievances, and remedy requests.

In the meantime, partly in consequence of the investigation and partly in accordance with customary Bureau of Prisons policy, of which he was aware, Smith had been placed on "mail monitoring". In a letter to Smith from his wife, the wife enclosed photographs of some of the students at her school engaged in a bead-making activity. Included among the photographs were one or more photographs of one or more children of one or more correctional officers and/or staff employed at FCI Cumberland. In addition, the text of the letter referred to a medical condition of one of the children. When the letter and accompanying photographs were intercepted by prison staff performing the mail monitoring on Smith's mail, they alerted the Warden. Thereafter, the Warden wrote to the Superintendent of Schools, complaining that it was inappropriate for Smith's wife to have sent the photos of the children of prison staff to the prison without the consent of their parents. Thereafter, Smith's wife was counseled by her superiors and agreed to be more discerning in the future.

Smith's wife subsequently filed suit, claiming in part that in intercepting and reviewing her correspondence to her husband and in notifying her superiors of the contents of her letter, the Warden and prison staff had violated her rights to free speech guaranteed by the First Amendment and had denied her "due process" under the Fifth Amendment.

The court quickly rejected these claims, stating that the "[m]onitoring of a prisoner's general incoming mail by prison staff does not infringe a sender's first amendment rights and there is no 'process' due to such a person in advance of, or in connection with, such monitoring." The record in the case established that Smith was fully aware that his non-legal mail could be intercepted and screened. In respect to a sender, even a family member, the Fifth Amendment, (and assumedly, the Fourteenth Amendment) due process clause is simply irrelevant to the interception of in-coming general mail. The court also rejected the claim concerning the Warden's complaint to the school because it was not wrongful for the Warden to bring his belief that Smith's wife had engaged in improper conduct to the attention of responsible supervisory officials at the school.

NOTE: It is accepted that an inmate is allowed to send or receive mail consistent with the United States Constitution, federal law and regulations and Maryland law and regulations. In Maryland, restrictions are not allowed to be placed on an inmate's mail for disciplinary reasons unless the inmate specifically abuses this privilege. Further, legal mail should only be opened and inspected in the presence of the inmate. The *Smith* case is limited to the screening of *general* incoming mail. Obviously, the monitoring of incoming legal mail raises additional concerns, including violation of the attorney-client privilege, and thus the requirement that it be opened and screened in the presence of the inmate.

Prepared by John F. Breads, Jr., Director of Legal Services

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although the publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.