

Opening of Prisoners Privileged Legal Mail

by Timothy Muise

The September 11th attacks were the most tragic event I have witnessed in my lifetime. I was stunned and shocked as I watched the events unfold. Our country will never be the same. Massachusetts state prisoners donated over \$10,000 to relief organizations, an incredible amount compared to the meager funds prisoners have access to. I think it shows that the majority of those men and women who are incarcerated are compassionate human beings who have fallen victim to the evils of poverty, drugs, and various other social plagues.

Civil liberties may well end up being the biggest "victim" in the aftermath of September 11. Racial profiling was a hotbed for many civil libertarians before the attacks and that issue seemed to be well on its way to being addressed in a manner that may well have reduced its occurrence. That seems to be out the window with the attitudes following the tragedy. Now, if you fit the bill, the "authorities" will scoop you up, toss you in a cage, and ask questions later. "Back in the USSR," so to speak. When civil rights are threatened, many times the testing ground is in our prisons. In the wake of the tragedy this has begun to be the case here in the great Commonwealth of Massachusetts.

In October, the Commissioner of Corrections ordered his agents to start enforcing a mail policy that entailed the opening of privileged legal mail outside of the presence of the addressee. He cited the section of the Code of Massachusetts Regulations, 103

CMR 481, that gave him the authority to promulgate mail procedures. Even a layman reading this section of the CMR can see that nowhere does it give the Commissioner the right to violate rights protected in the United States Constitution. The opening of "legal mail" outside the presence of its addressee has long been held as unconstitutional by every branch of our nation's court system. The Department of Correction took advantage of the aftermath of the attacks to implement this policy under the guise of protecting those of us in its charge. It's a laughable concept when you see the daily abuses and crimes against humanity that are perpetrated against the prisoners placed in the charge of the "Department of Corruption." The Federal Court of Appeals ruled in the case of *Bieregu v. Reno*, 59 F.3d 1445 (3rd Cir. 1995), that "prisons pattern and practice of opening properly marked incoming 'court mail' which is correspondence between inmate and state or federal judge, clerk's office or other courthouse address, outside of inmates presence infringes communication protected by the right to free speech; such practice chills protected expression and may inhibit inmates ability to speak, protest, and complain openly, directly, and without reservation to the court." This pretty much says it all. The Commissioner of Corruption is well aware of these protected rights and is just using the events after the attack to circumvent court pleadings, reports of abuse, complaints, and the like that prisoners must voice through the mail system. We are the testing ground. It starts here then moves out to the free world. This concept must be recognized by

the citizens who care little of what happens behind prisons walls. The stripping of rights never starts at the top of society, that is a fact.

This may seem inconsequential to most people who are outside of prison walls, but I would like to point out that the first rights stripping moves of Adolph Hitler seemed the same to the people of that time. This country is the model for the free world. To let the tragic events of the 11th of September cause us to backslide would give unwarranted power to the event and the evil monsters who were behind it. We are better than that as a society and stronger as a nation founded on unshakable principles. We must stop the foundation from being laid upon which our protected rights will begin to be stripped unnoticed to most. Racial profiling can't be tolerated. Prisoner's protected rights cannot be violated. The Constitution must stand ever-strong, especially in the wake of the tragedy. "That is the United States of America", I was told by my grandfather.

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Editors note:

On November 14, 2001, Massachusetts Correctional Legal Services filed a Complaint in the Suffolk Superior Court on behalf of six named prisoners seeking an order that the Commissioner's decision to suspend the privileged mail regulations violates the constitutional and statutory rights of all prison-

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