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Letter from Loretto "The Rights Letter"

Hello again from the Federal Correctional Institution at Loretto, PA. One common misnomer about prison is that prisoners give up all rights when they enter the gates. This simply isn't true. We all still have the rights granted to us by the Constitution, whether the Bureau of Prisons or the prison administration like it or not.

I have learned first-hand that the prison administration's greatest perceived threat is my freedom of speech, and particular "Letters from Loretto." Let me explain.

A few months ago, I submitted a Freedom of Information Act request on myself to the Bureau of Prisons. Most of the 257 pages of material they sent me was worthless. But included in those 257 pages were five pages marked "FOIA Exempt: Do Not Release to Inmate." These pages outlined the BOP's decision after my first Letter from Loretto to place me in what is called Central Inmate Monitoring. This designation put me under a microscope that, in the end, was only petty harassment. A side note: There's no reason to shake me down looking for these documents. I've sent them all to my attorney.

Corrections officers (COs) open all incoming mail for all prisoners, ostensibly to check for contraband. In my case, and in the cases of several other high-profile prisoners, this incoming mail is also read. I know this because several COs have

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commented to me about things people have written to me privately. The BOP rationalizes this invasion of privacy in Regulation 540:14:

540.14 General correspondence.

(a) Institution staff shall open and inspect all incoming general correspondence. Incoming general correspondence may be read as frequently as deemed necessary to maintain security or monitor a particular problem confronting an inmate.

I would think that by now they would be tired of reading 2500+ times that I'm a hero.

I don't care if my incoming mail is opened. I've had several DANGEROUS incoming items confiscated already, such as stamps, envelopes, and a New Yorker magazine. But two weeks ago I started getting letters like this:

- Peter M. of Beaver Springs, PA wrote, "John, your last letter, received Dec. 31, was opened and taped back together again! What gives?"

- Joanne P. of Chicago wrote, "John, I was surprised that your last letter to me had been slit open, then taped closed on the side."

- Chris S. of Olympia, WA turned my first letter from Loretto into a graphic and sent it to me. This letter and graphic were rejected by the warden with a form saying, "Your correspondence to the above-named inmate is being returned. This correspondence was not delivered to the inmate because the Letters from Loretto pamphlet could jeopardize the secure and orderly running of the institution." Chris responded to my next letter with, "Two days after my

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rejected packet reached me, your letter arrived, the envelope cut open and refastened with tape. So much for pretensions of privacy."

I guess nobody cares about Regulation 540.14(c) (1), which says:

(c) (1) Outgoing mail from a sentenced inmate in a minimum or low security level institution may be sealed by the inmate and, except as provided for in paragraphs (c)(1)(i) through (iv) of this section, is sent out unopened and uninspected. Staff may open a sentenced inmate's outgoing general correspondence:

(i) If there is reason to believe it would interfere with the orderly running of the institution, that it would be threatening to the recipient, or that it would facilitate criminal activity;

(ii) If the inmate is on a restricted correspondence list;

(iii) If the correspondence is between inmates (see § 540.17); or

28 CFR § 540.17 refers to Section 9 of this Program Statement.

(iv) If the envelope has an incomplete return address.

This opening of my outgoing mail is clearly a violation of BOP regulations, and I demand an investigation and remedial action.

A second violation of BOP regulations is from the warden's rejection of Chris S.'s Letter from Loretto pamphlet. Regulation 541(d) says:

(d) The Warden may reject correspondence sent by or to an inmate if it is determined detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if it might facilitate criminal activity. Correspondence which may be rejected by a Warden includes, but is not limited to, correspondence which contains any of the following:

(1) Matter which is nonmailable under law or postal regulations;

(2) Matter which depicts, describes, or encourages activities which may lead to the use of physical violence or group disruption;

This includes any printed material individually identified as placing that inmate, another inmate, or staff at risk of assault or other safety concerns.

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(3) Information of escape plots, of plans to commit illegal activities, or to violate Bureau rules or institution guidelines;

(4) Direction of an inmate's business (See § 541.13, Prohibited Act No. 408). An inmate, unless a pre-trial detainee, may not direct a business while confined.

This does not, however, prohibit correspondence necessary to enable an inmate to protect property and funds that were legitimately the inmate's at the time of commitment. Thus, for example, an inmate may correspond about refinancing an existing mortgage or sign insurance papers, but may not operate a mortgage or insurance business while in the institution.

§ 541.13, Prohibited Act No. 408, refers to Chapter 4 of the Program Statement **Inmate Discipline and Special Housing Units**.

(5) Threats, extortion, obscenity, or gratuitous profanity;

(6) A code;

(7) Sexually explicit material (for example, personal photographs) which by its nature or content poses a threat to an individual's personal safety or security, or

to institution good order; or

(8) Contraband. (See § 500.1 of this chapter. A package received without prior authorization by the Warden is considered to be contraband.)

In addition, Regulation 540.13 states that a prisoner must be notified of his right to appeal the warden's rejection of his incoming mail. I was not notified of that right, which is a violation of regulations. I demand an investigation and remedial action.

A third violation of BOP regulations concerns my incoming mail. Subsection 3.7 (Delivery) states that for incoming mail,

3.7 DELIVERY

After all inspections are completed, re-close each letter (staple, tape, etc.), finish sorting, and prepare for delivery as directed by local procedures. Caution will be taken when re-closing letters with a stapler to ensure contents are not stapled. Incoming correspondence will be delivered daily Monday through Friday. Delivery of letters may not be delayed and ordinarily will be made within 24 hours of receipt, excluding weekends and holidays.

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All of my mail comes on a Monday. On the most recent Monday I received 42 letters, then nothing the rest of the week. The previous week, I received 35 letters on Monday, then nothing the rest of the week. The staff is holding my mail, inspecting it, reading it, (photocopying it?), and giving it to me once a week. This is a violation of regulations. I demand an investigation and remedial action.

A fourth violation of BOP regulations is in the handling of my legal mail. Regulation 540.18 says,

§ 540.18 Special mail.

(a) The Warden shall open incoming special mail only in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail. The correspondence may not be read or copied if the sender is adequately identified on the envelope, and the front of the envelope is marked "Special Mail — Open only in the presence of the inmate".

I have received three legal letters from my attorney, Washington superlawyer Mark MacDougall, whom the Washington Post described as one of the city's "legal titans," since I arrived here. All three letters met BOP regulations for legal mail to the smallest detail. Yet all three were opened and riffled through by prison staff outside my presence. (Many prisoners, including this one, believe that this treatment of legal mail is a cheap and underhanded tactic used by the BOP to get an upper hand in court cases. Prison staff open legal mail outside the presence of the prisoner searching for "contraband," then report on the contents to the Justice Department.)

As an aside, BOP regulations state further that,

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Inmate Systems Managers shall ensure that copies of the instruction sheet for special mail handling of incoming attorney-client correspondence are provided as admission and orientation hand-outs and are placed in inmate housing areas, attorney visiting rooms, and other locations accessible to inmates.

These "notices" are not posted anywhere. They simply don't exist. I believe this is yet another way to keep prisoners ignorant of regulations so that staff can read their legal mail with impunity.

I won't even go into the four-day delay on both my incoming and outgoing email. I stopped using email for anything important when a Special Investigative Service (SIS) officer tried to chat me up about about the contents of an email exchange between my wife and me. Was it supposed to be cute? A message of some sort? I found it to be amateurish. Even more troubling was when I sent an email to a friend, saying that when I get out of prison we should explore business opportunities in South Africa. Two days later a newly-arrived prisoner said, "Hey, I heard you're interested in doing business in South Africa. I've done a lot of business there. We should talk." No thanks. Can you say "RAT?"

This is the same SIS that pitted me against a Muslim prisoner last year, telling each of us that the other was going to undertake a violent act against him. (I mentioned this in my first Letter from Loretto.) Again, there was never any investigation, just a cover-up. This is despite the fact that SIS's actions violated federal law. Title 18, Section 245 (2) (b) (1) (B) of the US Code

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says,

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with--

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from--

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

shall be fined under this title, or imprisoned not more than one year,

SIS's actions were in violation of federal law. I demand an investigation and remedial action.

So what is the BOP so afraid of? Simply put, they're afraid of the free flow of information, as protected by the Constitution. Indeed, in those FOIA documents I mentioned earlier, it wasn't my "crime" that put me on the BOP's radar. It was that first Letter from Loretto and its resulting press coverage. Specifically, the documents cautioned, "PUBLICITY - Inmate has broad access to the press. Attached are articles in which inmate has been mentioned." The BOP is afraid of you knowing what the prison system is really like. They're afraid of the public disclosure that they don't bother to follow their own rules. They're afraid that you'll learn that they can violate the law with impunity. They're afraid of "Letters from Loretto."

On July 18, 2013, a senior prison administrator, under threat of "disciplinary action," demanded in writing that I refrain from using Legal Mail / Special Mail to send out my Letters from Loretto. (The memo, which I was forced to sign, also disingenuously warned that I was not permitted to have members of the media come to the prison for social visits. I had never done any

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such thing.)

What the memo failed to mention was that in the BOP's Regulation 540.20, entitled, "Inmate Correspondence with Representatives of the News Media," it says specifically that,

§ 540.20 Inmate correspondence with representatives of the news media.

(a) An inmate may write through "special mail" to representatives of the news media specified by name or title (see § 540.2(b)).

It doesn't get much more clear than that. I write letters from Loretto, send them to Firedoglake, and remain completely within BOP regulations.

The story doesn't end there, however. On August 30, 2013, I was forced to sign the attached memo. I was not permitted to send a copy to my attorney or to seek his advice beforehand. The memo "reminded" me that I am legally obligated to clear everything I write for publication with the CIA's Publications Review Board (PRB). SIS was now demanding that I give all future letters from Loretto to them, and THEY would send it on to the CIA.

Once I got a copy of the memo, I sent it to my attorney, Mark MacDougall at Akin, Gump, and Strauss. He immediately called it "illegal, unconstitutional, and unenforceable." He instructed me to ignore it. The truth is, I've always sent my letters from Loretto to PRB for clearance (even though the 4th Circuit Court of Appeals ruled in U.S. versus Marchetti that PRB clearance is unnecessary if the publication has nothing to do with

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intelligence.) I can only conclude that this was yet another amateurish and ham-handed attempt to read Letters from Loretto before publication, to stop them from being published, or to intimidate me from publishing future letters. It didn't work.

The more important issue here is the BOP's refusal to police its own people and policies. Where is the Inspector General? Why is there not a procedure, short of going to the courts, for the investigation of staff wrongdoing? And why does nobody seem to care when prison staff either ignore regulations or have no idea what those regs. are?

In my view, the BOP is a microcosm of the larger Justice Department. In the BOP, if you're an insider who does something wrong, don't worry! Nothing will happen to you. You get a pass. Similarly, if you're the Assistant Attorney General and you're implicated in the Fast and Furious gunrunning scandal - not a problem! You can keep your job until you're ready to return to your \$5 million-a-year law practice. Isn't it good to be an insider?

Either way, the rest of us must remain vigilant in the face of governmental wrongdoing. We have to continue to blow the whistle! We have to continue to demand action in the face of government waste, fraud, abuse, and illegality. Even if we have to do it from behind bars.

To learn more about my case, please visit www.defendjohnk.com.

Best regards,

John