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FOR
FREEDOM
OF THE
PRESS

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Rules Unit
Office of General Counsel
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Re: Proposed Rule concerning Limited Communication for Terrorist Inmates

To Whom It May Concern:

The Reporters Committee for Freedom of the Press submits this letter in response to the request for comments concerning the Bureau of Prison's proposed new regulation that would limit particular inmates' communication opportunities.

We recognize the importance of national security and Federal law enforcement agencies' efforts to protect the United States from terrorist-related activity. We believe, however, that the proposed new rule limiting "terrorist" inmates' communication improperly infringes on inmates' First Amendment rights, and urge the Bureau to withdraw it. The regulation would be poor public policy and likely fail a constitutional challenge as it: (1) applies to persons who have not been convicted of a crime; (2) completely bars prisoners from communicating with the media; and (3) provides no means of review of a decision to limit inmates' communication. Further, the rule is unnecessary in light of current law that allows monitoring of prisoner communications for illegal activity.

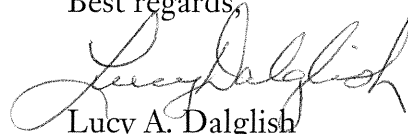
The media's role of public watchdog depends on its access to information about government operations, such as prisons. For the news media to perform its role accurately and fairly, it is essential for prisoners to be able to communicate outside prison walls. Without this communication, significant stories about prison conditions and prisoner treatment would never have been written. See, e.g., Dannie Martin, *Doing Time with Disease*, S.F. Chron., June 12, 1994, at 4 (calling attention to feces-contaminated drinking water at Terminal Island Federal Prison); Dannie M. Martin & Peter Y. Sussman, *Committing Journalism – The Prison Writings of Red Hog* (W.W. Norton & Co. 1995) (stories about Kevin Sherbondy, sentenced to 15 years for "possession" of a firearm he owned for decorative purposes, in a weekly column brought significant attention to Sherbondy's case, and 9th Cir. Court of Appeals overturned his sentence); Seth Rosenfeld, *State's Top Prison Too Cruel, Judge*

Says, S.F. Examiner, Jan. 11, 1995 (public outcry after media reports of inmate being boiled alive led to class-action litigation and, ultimately, a court ruling finding conditions at Pelican Bay prison unconstitutional); Vincent Schiraldi, *Prison Bureaucrats Hide Abuses by Banning the Press*, S.F. Examiner, Feb. 5, 1996 (same); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995) (“dry words on paper cannot adequately capture the senseless suffering and sometimes wretched misery that defendant’s unconstitutional practices [at Pelican Bay] leave in their wake.”); Bob Minzesheimer, *The Written Word Unshackled*, USA Today, April 20, 2004 (strong public reaction to cancellation of prison rehabilitation writing program and denial of royalty fees and prize money to prisoners led to reestablishment of program and return of money earned); William Yardley, *Inmate Can Keep Money Earned from a PEN Literary Award*, N.Y. Times, April 17, 2004 (the rehabilitation program was reinstated, Connecticut’s Attorney General explained, because communicating with the public gives “prisoners the right and opportunity to express themselves and to rehabilitate in the best sense of the word.”). See also *In re: Rules Adoption Regarding Inmate Mail*, 120 N.J. 137, 152 (striking down regulation censoring outgoing correspondence to media, public officials, and government agencies, saying, “[o]utgoing correspondence to public officials, government agencies and media representatives may contain personal grievances concerning the institution, conditions of confinement and unlawful or criminal activity.”).

The Comments of the American Civil Liberties Union concerning the proposed rule’s improper ban on inmate communications with the media outline the legal infirmities that plague this regulation, and we adopt them by reference. The right of prisoners to communicate with the press is critical to ensure public monitoring of publicly funded institutions. Accordingly, we urge the Bureau to withdraw the proposed rule.

Please call me if you have questions.

Best regards,



Lucy A. Dalglish
Executive Director