

EXHIBIT 4

HON. JEFFREY RAMSDELL
Noted for Hearing: August 26, 2005, at 10:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

Plaintiffs,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY; GTE
NORTHWEST INC.; CENTURYTEL
TELEPHONE UTILITIES, INC.; NORTH-
WEST TELECOMMUNICATIONS, INC.,
d/b/a PTI COMMUNICATIONS, INC.; U.S.
WEST COMMUNICATIONS, INC.; T-NETIX,
INC.,

Defendants.

NO. 00-2-17565-5 SEA

DECLARATION OF TARA HERIVEL
IN SUPPORT OF PLAINTIFFS'
RESPONSE TO T-NETIX'S MOTION
FOR SUMMARY JUDGMENT

I, TARA HERIVEL, hereby declare that:

1. I am personally familiar with the facts set forth in this declaration.

If called to testify about any of these matters, I could and would competently testify thereto.

2. Sometime after August 26, 1997 and before January 1999, I received at least one inmate-initiated telephone call from Airway Heights Corrections

1 Center, near Spokane, Washington. That call was from inmate Don Miniken. I
2 received the call in my apartment in Seattle, Washington.

3 3. I have been unable to find a copy of my telephone bill for that time
4 period, and I have been told that Qwest/US West does not provide copies for bills that
5 far in the past.

6 4. Mr. Miniken and I discussed, among other things, a lawsuit that he
7 brought entitled *Miniken v. Walter*. That lawsuit resulted in an order dated August 26,
8 1997, which was subsequently published in the Federal Supplement. See *Miniken v.*
9 *Walter*, 978 F. Supp. 1356 (E.D. Wash. 1997). We discussed this decision in our
10 telephone conversation.

11 5. I subsequently published an article in the Washington Free Press,
12 in their January-February 1999 issue. A copy of the article is attached to this
13 declaration. I quoted Mr. Miniken several times in the article, and those quotes were
14 taken from my telephone conversation with him.


15 6. In a declaration that I had filed in the WUTC phase of this case
16 dated May 11, 2005, I stated that the fact that I had published an article in January-
17 February 1999 led me to believe that the inmate-initiated telephone call from Mr.
18 Miniken occurred sometime between October and December 1998. I was recently able
19 to locate some notes I took for this same article in July 1998. Based on the date of these
20 notes and my recollection of when I resided at the apartment where I received Mr.
21 Miniken's phone call, my best estimate of when I received the telephone call is
22 somewhere between June and December 1998.

23 7. I do not recall hearing any rate disclosure information before I
24 accepted the inmate-initiated telephone call from Mr. Miniken.

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I declare under penalty of perjury and in accordance with the laws of the State of Washington that the foregoing is true and correct.

Signed this 7th day of August, 2005, at Seattle, Washington.


TARA HERIVEL

CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on August 15, 2005, I served a copy of the foregoing document on counsel of record as indicated below:

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DATED: August 15, 2005, at Seattle, Washington.

Handwritten signature of Tara Herivel

The War of Speech

Censorship spreads through Washington's prisons

by Tara Herivel, Free Press contributor

If there's one ideal Americans rally behind with gusto, it's freedom of speech. From left to right, Americans are loath to infringe on the right to holler, scribble, or purchase this or that inflammatory speech. We strut our free speech stuff during Banned Book Week, create endless television mini-series lambasting McCarthyism, and generally feel pretty good about separating truth from muck in the marketplace of ideas. There's always a lurking exception. American prisoners represent that exception to expansion of First Amendment rights for all.

Without public hoopla or discussion, the Washington Department of Corrections (DOC) has cooked up a draconian new policy whose purpose is to "limit inmate access to the public." Beginning in January, inmates will no longer be able to communicate with other inmates, purchase stamps, or receive publications that are not paid for out of their own inmate trust accounts. (Prisoners' trust funds usually consist of the pay prisoners receive for labor for the prison industry, which amounts to change per hour after various administrative costs are extracted.) Prisoners will also be banned from sending photocopies, unless the correspondence meets the narrow definition of legal mail.

Under the new policy, prisoners are able to receive a small number of pre-paid envelopes per week, with severe restrictions on types of legal correspondence they may send. According to David Fathi of Columbia Legal Services, essential legal filings will be banned, such as an inmate's legal response to a

motion to dismiss. The inability to send vital filings could toss an indigent inmate's suit right out of court.

Other provisions of the policy disallow a bizarre variety of types and content of incoming mail: from gang symbols to stickers, to padded, laminated or musical greeting cards larger than 8" x 10", virtually no mail is left unmolested by the policy. Though provisions like these aren't new, they're still bizarre.

Publications which are viewed as a "threat to peneological objectives" are bannable, as are cash and personal checks sent to inmates, which will be returned to the sender at the inmate's expense. Telephone books will be removed from most prisoners' access, phone use limited to 20 minutes at a time. When an inmate places an outgoing call, the person receiving the call will first hear this recorded message: "Working together for safe communities," followed by notification that he or she should disconnect immediately if the call is unexpected.

Free enterprise, yes; free speech, no

Never one to miss an enterprising opportunity, the private company Greater Seattle Printing has contracted to sell the pre-stamped, pre-paid envelopes prisoners must now purchase out of their trust funds to send correspondence, at a rate of 41.5 cents per envelope. Because Washington State directs it to its coffers 35 percent of all incoming money to prisoners, the price of each envelope will effectively total 64 cents -- a formidable mark-up for strapped-for-cash inmates.

When asked to explain the policy's purpose, DOC staff mumble this mantra: limit inmate access, reduce prison staff workload, limit access, reduce workload, limit, reduce . . . As to specifics of the incantation, prison staff are hesitant to elaborate. Associate Superintendent Dennis Thaut of the Washington State Reformatory at Monroe maintains that the prison mailroom's workload is tremendous, the problem of excess mail ongoing. Security is the central issue purportedly behind the ban on inmate to inmate correspondence. Thaut expressed concern that "intelligence" regarding violent orchestrations may be sent between prisoners. When asked whether

inmate to inmate correspondence has created a great problem, Associate Superintendent Thaut said, "It's not the volume. If there's one major incident, that's enough." Thaut could not recall a specific example of such a major incident, and admitted that "any time you see changes like this you can track it back to some kind of abuse, though [the effects of the policy] are more far-reaching than just the abusers."

The DOC follows the lead of nearly a dozen other states in severely restricting inmates' communication. Policies are constructed with little or no outside review, enacted, and then litigated against. With a long history of censorship, the DOC expects litigation against the new policy, and will get it. Often, such litigation is instigated by the prisoners themselves, sometimes with success.

In 1996, the Washington legislature considered broadening censorship in prisons by limiting prisoners' access to certain publications. Though the legislation ultimately did not pass, the DOC began to censor a wide variety of materials, including radical political literature and sexually explicit materials.

Paul Wright is an inmate at the Washington State Reformatory at Monroe and co-editor of the prisoner civil liberties magazine Prison Legal News (PLN). Wright stopped receiving MIM Notes, a small Maoist newspaper that he and four or five other prisoners in the state subscribed to. Wright believes MIM was targeted for disposal because, as a radical communist publication, it advocates revolution via the violent overthrow of the government. And, MIM calls prison officials pigs. Next came censorship of alternative papers like The Stranger, censored because of its "sexually explicit" phone sex ads buried in the back pages of the paper. Other materials dumped in the DOC's waste basket included a copy of Feminism, Censorship and Pornography (perhaps because of the randy innuendo invoked by the word "pornography"). Under the bulk mail ban, PLN was also restricted. Prisoners across the state and country stopped receiving their subscriptions to magazines like PLN, as sister prisons joined Censor Fever.

The censorship was not limited to publications alone. Institutions like Airway Heights Correction

Center in Spokane began rifling through prisoners' mail. Don Miniken, a prisoner at Airway Heights, filed suit against the DOC when his PLN subscription disappeared. Then Miniken's legal correspondence began arriving opened. "A mistake," claimed prison staff when questioned. Miniken contacted the ACLU, whose publication from their Prison Project was also scrapped by prison staff.

Miniken has represented himself *pro se* for numerous censorship suits against the DOC, which has not escaped the watchful eye of Airway Heights' staff. After he filed his suit against Airway Heights for junking his PLN subscription, Miniken began receiving bogus written reprimands, he was transferred from unit to unit, and his privileges were severely restricted.

When asked what gain is made by censoring these materials, Don Miniken summed it up as social control. "The DOC has been trying to get at PLN for years. And what people don't realize is that litigation like this, for prisoners' civil liberties, is helping Joe Blow on the street. Soon as they take away our rights, it impacts people on the outside."

Searching for sex in all the wrong places

Meanwhile, back at the Washington State Reformatory in Monroe and the Washington State Penitentiary in Walla Walla, low-level prison employees were going through publications page-by-page, scouring them for sexually explicit material as a basis to censor the publications. One may pause to consider the dedication of the prison staff, forced by state policy to spend countless hours rooting doggedly through such materials. One may also wonder whether such time spent indeed reduces prison staff workload -- one of the primary objectives of the new policy going into effect this month. Associate Superintendent Dennis Thaut agreed that the new policy may in fact increase prison staff's workload.

The DOC extended its censorship activities by banning all bulk mail and sexually explicit materials. Bulk mail, a term no longer used by the post office but employed by the DOC, effectively means all materials sent by third class, or, all non-profit

political literature. Sexually explicit material is defined even more ambiguously as publications exhibiting any sexual act that "appears forceful or threatening, where one of the partners is dominating a submissive partner," any act of penetration, or depiction of "excretory bodily functions."

Mickey Gendler is a Seattle-based ACLU cooperating attorney now representing Miniken in the suit against the Airway Heights bulk mail ban. Gendler also is co-counsel with Seattle attorney Joe Brigham, representing a small group of prisoners (including Paul Wright) in a suit against the DOC for its censorship of political and sexually explicit literature. Gendler described the DOC's policy restricting sexually explicit materials: "You get Playboy, where some guy's writing fantasy stuff like, 'I slid it in,' and that means penetration, so it gets censored. The definition also prohibits any depiction of an excretory bodily function. So, if I had a baseball book, and it said, 'The pitcher spat on the ground before throwing strike one,' it would violate the sexually explicit definition. And, if one part of the [publication] is bannable, the whole publication is thrown out." Paul Wright's copy of Great American Plays of the Twentieth Century was banned under the policy, but, as he says, "Perhaps Eugene O'Neill is a bit much."

Alternative magazines, questionable plays, and sex-like publications are not the only publications currently banned by the DOC. Subscriptions bought by Mom for Time magazine are censored under the current policy. The DOC has reaffirmed its prohibition of publications that are not purchased by the prisoners out of their trust funds with the upcoming policy.

The DOC insists it was trying to cut down on "junk mail" with the bulk mail ban. This argument did not impress Judge Quackenbush of Spokane, who recently struck the bulk mail ban down as unconstitutionally vague. Other prisoners are filing similar suits across the state and country based on the same issues; there seems a chance yet to extend the First Amendment's free speech protections to Washington prisoners.

As the new policy creeps into effect, a small group

of diligent inmate activists and even smaller group of ethical attorneys position themselves for battle. David Fathi expresses "mystification" that the Washington DOC labors so earnestly to alienate prisoners. After all, most inmates will return to the outside.

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