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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re JAMES CRAWFORD, Petitioner, On Habeas Corpus.	A131276 (Del Norte County Super. Ct. No. HCPB 10-5298)

Petitioner James Crawford, an inmate housed at Pelican Bay State Prison and a validated gang member, attempted to send a letter through the prison mail system. The letter was addressed to a newspaper and argued that certain California inmates (including petitioner) should be recognized as political prisoners. Prison officials confiscated the letter after concluding it threatened prison security because in it petitioner refers to himself as a "New Afrikan Nationalist Revolutionary Man" and because it could contain hidden messages promoting gang activity.

There is no evidence in the record supporting the contention that the letter promotes gang activity, contains coded messages, or otherwise poses a threat to prison security. We therefore conclude that confiscation of the letter violates petitioner's First Amendment right to free speech, grant the petition for writ of habeas corpus, and order that petitioner's confiscated letter be sent to the addressee.

BACKGROUND

I. *Facts From The Record Below*

Petitioner placed a two-page letter addressed to "JR" care of the "San Francisco Bay View National Black Newspaper" (newspaper) in the Pelican Bay State Prison mail system and prison officials confiscated it. The letter was apparently written in response to an article authored by JR regarding political prisoners in the California prison system. Petitioner took issue with the article because it "recognized only three political prisoner[s] throughout the State of California." There are, according to petitioner, "many" prisoners, like himself, in solitary confinement "because of [their] political beliefs as a New Afrikan Nationalist Revolutionary 'Man.' "

The letter was intercepted by Correctional Officer J. Silveira, who is "responsible for monitoring the mail of Black Guerrilla Family (BGF) members or associates incarcerated at Pelican Bay State Prison." Silveira confiscated the letter and issued a Stopped Mail Notification, a check-box form. In doing so, he checked the box "[p]romotes gang activity" and in the field "Additional Information" explained the basis of the confiscation: "REFERS TO HIMSELF AS A NEW AFRIKAN NATIONALIST REVOLUTIONARY 'MAN.' HE IS REFERING TO 'N.A.R.N.' IDEOLOGY CREATED BY THE BLACK GUERILLA FAMILY."

Before filing his petition for writ of habeas corpus here, petitioner first exhausted his administrative remedies by taking his challenge to the highest level, the Director's Level Appeal. He began the process by first filing a grievance with the prison staff asking that the letter be delivered as addressed; the usual levels of review were by-passed and petitioner's challenge was sent directly to the respondent, Acting Warden Greg Lewis (warden). The warden refused to send the letter, instead holding it pending "further investigation of gang activities." The sole basis for this decision was the warden's conclusion that the letter "is contraband" because in it petitioner is "referring to his beliefs as being that of the N.A.R.N., which has been well established as a BGF ideology." In arriving at that conclusion, the warden relied on information provided by

Lieutenant Wise, who "reviewed the mailing in question." Wise, according to the warden, said that "N.A.R.N. ideology [was] created by the Black Guerilla Family (BGF) prison gang members and is recognized by gang investigators throughout the state as being exclusively utilized by inmates who associate themselves with the BGF prison gang." Neither party has included any report by Wise explaining the basis for this statement.

Petitioner followed the administrative procedures by appealing the warden's decision, seeking a Director's Level Appeal Decision. (Cal. Code Regs, tit. 15, § 3084.7.) The Director found that the letter was properly confiscated. Again, the sole basis for confiscating the letter was that petitioner referred to himself as a " 'New Afrikan Nationalist Revolutionary Man' " and that "use of this language shows his allegiance and loyalty as a soldier for the BGF." This warranted the confiscation, the director concluded, because, "[e]xcept as authorized by the warden, inmates shall not possess or have under their control any matter of a character tending to incite murder, riot, or any form of violence. The appellant's mail was properly considered contraband based [on] the gang activity information included within the letter."

Petitioner next filed a petition for writ of habeas corpus in Del Norte County Superior Court contending that his letter was not gang-related and that confiscating it violated his First Amendment right to free speech.[1] The court summarily denied the petition stating that "[t]he Department of Corrections may rely upon the expertise of it's staff, in recognizing gang-related correspondence." Petitioner filed a new petition for writ of habeas corpus here and we ordered the warden to show cause why the petition should not be granted. The warden filed his response, a traverse, and petitioner replied by filing a return. (See Cal. Rules of Court, rule 8.386.)

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[1] A petition for writ of habeas corpus is the proper vehicle for this claim: "Habeas corpus may be sought by one lawfully in custody for the purpose of vindicating rights to which he is entitled while in confinement." (*In re Arias* (1986) 42 Cal.3d 667, 678.)

II. *Sliveira's Declaration in Opposition to the Petition*

With his traverse, the warden submitted a declaration from Silveira. The declaration is short, consisting of barely three pages with the third page containing only two lines of text. The first page sets forth Silveira's expertise and his opinion about the BGF. In detailing his expertise, Silveira explains his background as a correctional officer and experience with prison gangs, which consists of his work in the Institutional Gangs Investigations unit at Pelican Bay State Prison for the past year and a half. During that time Silveira has investigated, monitored, and documented gang behavior, including BGF. He goes on to explain that he has been trained to identify and investigate prison gangs in general and the BGF in particular. This training includes conducting cell searches of BGF members and associates, investigating BGF gang activity in prison, validating inmates as members or associates of prison gangs, and debriefing former members and associates who want to disassociate from their gang.

Without providing any explanation or evidence in support, Silveira asserts that "BGF is a recognized prison gang whose members participate in and direct criminal activity" and that BGF members have a long history of assaulting inmates and correctional officers. Silveira states that the "BGF is [not] a political or cultural organization with a purely political agenda" as it claims, but rather is a prison gang whose "ideology and activities have led to institutional security breaches statewide, including at Pelican Bay." Although he does not provide any further explanation or any examples of prior incidents supporting this conclusion, Silveira states that the gang has a history of using "sophisticated codes so that seemingly innocuous writings contain messages about gang activity."

Silveira next addresses petitioner and his reason for intercepting the letter. In two paragraphs Silveira explains that petitioner is "a validated BGF member" and that he intercepted "the letter because it promotes gang activity": "In the letter I confiscated, Crawford refers to himself as a 'New Afrikan Nationalist Revolutionary Man.' Based on my training and experience, this phrase refers to the BGF ideology of New Afrikan

Revolutionary Nationalism (NARN). And Crawford's description of himself in the letter shows that he is a BGF member or associate. BGF members and associates use this ideology as part of coded messages to try to promote and engage in BGF gang activity undetected by correctional officers and outside law enforcement agencies. [¶] . . . Crawford's letter would pose a serious threat to the security of Pelican Bay [State Prison] and other institutions if mailed. In his letter Crawford referenced BGF ideology and identified himself as a BGF member or associate. My training and experience lead me to believe that Crawford's letter also contained coded messages about gang activity, and that Crawford was trying to promote BGF ideology via the confiscated letter. Crawford addressed the envelope containing his letter to the *San Francisco Bay View*, a newspaper. The newspaper could have published Crawford's letter, or the letter could have been copied and distributed to gang associates, members, or sympathizers inside and outside of prison. The BGF relies on third parties to distribute letters employing coded messages directing gang activity or promoting gang membership. Letters referencing BGF ideology also aid in recruitment for associated street gangs, including the Bloods and the Crips. Distribution of BGF ideology to California prison inmates or members of the public could lead to violence inside any California prison or expand promotion of and membership in an organization responsible for criminal activity."

III. *The Declarations in Support of the Petition*

Petitioner's return to the order to show cause includes two supportive declarations. His own declaration says that "[t]he purpose of my April 11, 2010 letter to JR was purely political" and that in it he "did not communicate about any illegal or gang activity, either expressly or through a code." Rather, his letter was urging that "more prisoners in California [should be recognized] as political prisoners, especially New Afrikan prisoners in Pelican Bay State Prison."

The second declaration is an expert opinion from James T. Campbell, a professor at Stanford University whose research focuses on African-American history. From reading a copy of the confiscated letter, Campbell concludes petitioner "is rooted in a

political tradition with deep roots in African-American intellectual and political history" and the language he "uses to communicate his ideas reflects a thorough immersion in and understanding of this history and ideological tradition." According to Campbell, "the terms 'New Afrika' and 'New Afrikan' are consistent with the movement in the 1960s and 1970s to allow African-Americans the right of self-determination to decide whether to form a Republic of New Afrika in the South. The Republic of New Afrika was one of the movements that popularized the usage of Afrika with a 'k.' " In Campbell's opinion the letter reflects political rhetoric: "[a]s is characteristic of Black Nationalist thought in American history, Mr. Crawford's letter does not appear to trace back to a single source but rather reflects a synthesis of a range of ideologies and movements stretching over the entirety of American history, with particular emphasis on the Black Nationalist movements of the 1960s and early 1970s." Although Campbell acknowledges that he has no personal knowledge of petitioner or what petitioner might be trying to communicate through the confiscated letter, his expert opinion is that petitioner "is a serious political thinker using terms such as 'New Afrikan' and 'New Afrikan Nationalist Revolutionary Man' that were ubiquitous in Black urban life in the 1960s and 1970s and that to my knowledge have no particular connection to prison gangs."

DISCUSSION

Petitioner argues that confiscation of his letter violates his First Amendment right to free speech because such confiscation does not further the penological interests of prison security. This is so, petitioner contends, because the only evidence offered in support of the confiscation is "conclusory opinions and unsubstantiated speculation." We agree.

I. *First Amendment and Prisoners*

Where the facts are not in dispute, violations of the First Amendment are reviewed de novo. (*Bose Corp. v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485, 499.) "The requirement of independent appellate review reiterated in *New York Times Co. v. Sullivan* [(1964) 376 U.S. 254] is a rule of federal constitutional law. . . . It reflects a deeply held

conviction that judges—particularly Members of this Court—must exercise such review in order to preserve the precious liberties established and ordained by the Constitution." (*Id.* at pp. 510-511.)

Freedom of speech is first among the rights which form the foundation of our free society. "The First Amendment embodies our choice as a Nation that, when it comes to such speech, the guiding principle is freedom—the 'unfettered interchange of ideas'—not whatever the State may view as fair." (*Arizona Free Enterprise Club v. Bennett* (2011) ___ U.S. ___ [131 S.Ct. 2806, 2826].) "The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. . . . [¶] All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests." (*Roth v. United States* (1957) 354 U.S. 476, 484.) As recently noted by Chief Justice Roberts, "[t]he First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.' [Citation.] That is because 'speech concerning public affairs is more than self-expression; it is the essence of self-government.' [Citation.] Accordingly, 'speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.' " (*Snyder v. Phelps* (2011) 562 U.S. ___, ___ [131 S.Ct. 1207, 1215.)

Indeed, the measure of our resolve as a society to protect free expression must be our willingness to tolerate unpleasant speech by those speaking from the margins of political opinion. As Justice Kennedy has pointed out, "[t]he First Amendment is often inconvenient. But that is beside the point. Inconvenience does not absolve the government of its obligation to tolerate speech." (*International Soc. for Krishna Consciousness, Inc. v. Lee* (1992) 505 U.S. 672, 701 (concurring opinion of Kennedy, J.).) To that end, the First Amendment allows the burning of our flag because "[i]f there

is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." (*Texas v. Johnson* (1989) 491 U.S. 397, 414.) Similarly, the First Amendment allows Nazis to march in a primarily Jewish neighborhood and people to protest military funerals with hateful messages. (See *National Socialist Party v. Skokie* (1977) 432 U.S. 43 and *Snyder*.)

These protections apply to prisoners as well. While " '[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the consideration underlying our penal system' " (*Pell v. Procunier* (1974) 417 U.S. 817, 822), prisoners nonetheless retain many of the rights afforded under the Constitution as "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." (*Turner v. Safley* (1987) 482 U.S. 78, 84 (*Turner*).) To that end, prisoners retain their First Amendment rights to the extent it is not inconsistent with their status as a prisoner or inconsistent with the legitimate penological objectives of the corrections system. (*Pell*, at p. 822.) Regarding First Amendments rights, prisoners retain their right to the freedom of speech unless the warden can prove that exercising that right would constitute a threat to prison security. (*Procunier v. Martinez* (1974) 416 U.S. 396, 413 (*Procunier*).) As the United States Supreme Court explained in *Thornburgh v. Abbott* (1989) 490 U.S. 401 (*Thornburgh*), *Procunier*, and *Turner*, evaluation of this right as it relates to the confiscation of mail involves two different tests, depending on whether the mail is incoming or outgoing.

In *Thornburgh*, the Supreme Court distinguished between incoming and outgoing mail, observing that prison security implications with the latter "are of a categorically lesser magnitude than the implications of incoming materials." (*Thornburgh*, *supra*, 490 U.S. at p. 413.) The court explained that dangerous or inflammatory "outgoing correspondence . . . cannot reasonably be expected to present a danger to the community *inside* the prison. (*Id.* at pp. 411-412.) "Dangerous outgoing correspondence is more likely to fall within readily identifiable categories: examples noted in [*Procunier*]

including escape plans, plans relating to ongoing criminal activity, and threats of blackmail or extortion." (*Id.* at p. 412) On the other hand, "[o]nce in prison, material of this kind reasonably may be expected to circulate among prisoners, with the concomitant potential for coordinated disruptive conduct. Furthermore, prisoners may observe particular material in the possession of a fellow prisoner, draw inferences about their fellow's beliefs, sexual orientation, or gang affiliations from that material, and cause disorder by acting accordingly." (*Ibid.*)

In *Procunier* the court allowed censoring outgoing inmate mail only if it "further[s] an important or substantial governmental interest unrelated to the suppression of expression," such as "security, order, [or] rehabilitation." Regulation of this type of correspondence must be "no greater than necessary or essential to the protection of the particular governmental interest involved." (*Procunier*, *supra*, 416 U.S. at p. 413.) "This does not mean, of course, that prison administrators may be required to show with certainty that adverse consequences would flow from the failure to censor a particular letter. Some latitude in anticipating the probable consequences of allowing certain speech in a prison environment is essential to the proper discharge of an administrator's duty. But any regulation or practice that restricts inmate correspondence must be generally necessary to protect one or more of the legitimate governmental interests identified above." (*Id.* at p. 414.)

Incoming mail is more easily censored. In *Turner* the court stated that incoming mail may be censored when four elements were met: (1) whether there is a " 'valid, rational connection' between the prison regulation [censoring the mail] and the legitimate governmental interest put forward to justify it"; (2) "whether there are alternative means of exercising the rights that remain open to prison inmates"; (3) "the impact accommodation of the asserted constitutional right will have on guards and other inmates and on the allocation of prison resources generally"; and (4) the "absence of ready alternatives." (*Turner*, *supra*, 482 U.S. at pp. 89-90.)

This area of the law has been settled for over two decades with *Thornburgh* and *Procunier* controlling outgoing mail and *Turner* controlling incoming mail, yet the warden urges us to apply the more restrictive test for incoming mail articulated in *Turner* to outgoing mail if it is "gang-related." He argues that gang-related outgoing mail is just as dangerous as incoming mail "because prison gangs originated within the prison system and their influence extends beyond one institution." We do not see justification for such a rule.

While we recognize that gang influence extends through many if not all prisons, we do not see how that fact provides us with the legal authority to ignore binding Supreme Court precedent that places the type of speech at issue here "the highest rung of the hierarchy of First Amendment values." (*Snyder v. Phelps*, *supra*, 562 U.S. at p. ___ [131 S.Ct at p. 1215].) The controlling United States Supreme Court authorities do not make any special exceptions for outgoing mail if it is gang-related, nor does the warden cite any case that does. Nor does the warden explain how outgoing mail will affect internal security without it first coming back into prison facilities. And if such mail re-enters the prison, it is subject to the more restrictive test, undermining any need to apply that more restrictive test to outgoing mail.

Additionally, the warden's argument must also be placed in perspective. He is arguing the difference between two competing legal standards, whether he must show that confiscating the mail is "no greater than is necessary or essential to the protection" of prison security as required by *Procunier*, *supra*, 416 U.S. at page 413, as opposed to whether there is a rational connection between the confiscation and threat to prison security as required by *Turner*, *supra*, 482 U.S. at pages 89-90. While there is a difference between these two tests, even the more lenient *Procunier* test only allows prison officials to confiscate outgoing letters that have been shown to pose legitimate threats to prison security.

II. *Was The Letter Properly Intercepted?*

In an attempt to satisfy the outgoing mail standard articulated in *Procunier*, the warden argues that by preventing petitioner from mailing the letter, CDCR "staff thwarted his attempt to promote the BGF by forwarding BGF ideology outside the prison." The warden's argument is flawed for two reasons. First, the argument is based solely on the unsupported assertions and speculative conclusions in Silveira's declaration. The declaration is incompetent as evidence because it contains no factual allegations supporting those assertions and conclusions. Second, even if the declaration could properly be considered, it does not establish that the letter posed a threat to prison security.

An expert declaration, to be competent evidence, must have factual support. "Declarations must show the declarant's personal knowledge and competency to testify, state facts and not just conclusions, and not include inadmissible hearsay or opinion." (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761.) Indeed, expert opinion without facts on which it is based is incompetent evidence because "[a]n opinion is only as good as the facts and reasons on which it is based." (*Id.* at p. 763.) " ' "Like a house built on sand, the expert's opinion is no better than the facts on which it is based." ' " (*In re Alexander L.* (2007) 149 Cal.App.4th 605, 612.) This is so because "[t]he value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed." (*Pacific Gas & Electric, Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135.) "Where an expert bases his conclusion upon assumptions which are not supported by the record, upon matters which are not reasonably relied upon by other experts, or upon factors which are speculative, remote or conjectural, then his conclusion has no evidentiary value." (*Ibid.*)

The declaration here has no evidentiary value because Silveira's conclusions are unsupported and, as far as we can tell from this record, are based solely on speculation or conjecture. The declaration says that when petitioner refers to himself as a "New Afrikan Nationalist Revolutionary Man" it "shows that he is a BGF member or associate." But

there is no evidence in the declaration that ties a "New Afrikan Nationalist Revolutionary Man" to the BGF. What Silveira does state is that "[b]ased on my training and experience, this phrase refers to the BGF ideology." But he does not explain the training or experience that leads him to this conclusion. Without any such factual basis, the conclusion is not evidence.

Silveira also says in his declaration that "BGF members and associates use . . . code[d] messages to try to promote and engage in BGF gang activity undetected by correctional officers and outside law enforcement agencies" and that "[m]y training and experience lead me to believe that Crawford's letter also contained coded messages about gang activity." Again, he states no facts to support this conclusion. He does not cite to any prior instance where BGF members used coded messages and he cannot point to any code in petitioner's letter. Indeed, he tacitly admits there is no evidence of coded messages by stating that such coded messages are "undetected by correctional officers." (*Ibid.*)

The portion of Silveira's declaration regarding the ultimate question in this case—whether the letter threatens prison security—is similarly flawed. He concludes that petitioner's "letter would pose a serious threat to the security of Pelican Bay and other institutions if mailed" because petitioner "referenced BGF ideology and identified himself as a BGF member or associate." This, too, is not supported by any factual underpinning. Silveira does not explain what the so-called BGF ideology is or how that ideology threatens prison security. The declaration is devoid of any explanation of BGF ideology or examples of how that ideology has threatened prison security in the past. In short, Silveira's entire declaration is, as the court stated in *In re Alexander L.*, *supra*, 149 Cal.App.4th at page 612, as unreliable as " 'a house built on sand.' " The declaration is incompetent and cannot be considered.

Even if the declaration were to be considered, the warden does not show that confiscation of the letter was either "necessary" or "essential" to protecting prison security, as required by *Procunier*. The warden argues that the letter threatens prison

security because it references BGF ideology; but this argument is flawed. As noted above, we do not know what gang ideology petitioner is purportedly promoting because Silveira does not define or explain the so-called "BGF ideology." The record of the administrative proceedings below and the declaration by Silveira here both presume a BGF ideology, but never explain the ideology itself or how that ideology threatens prison security. For this reason alone, the warden fails to meet its burden under *Procunier*.

Nor has the warden shown how the letter promotes the so-called BGF ideology. Silveira's declaration contains no explanation how petitioner's reference to himself as a "New Afrikan Nationalist Revolutionary Man" promotes an ideology. In fact, Silveira's assertion is illogical; he opines that petitioner shows he is a BGF member by referring to himself as a "New Afrikan Nationalist Revolutionary Man" and then that, by referring to himself as a "New Afrikan Nationalist Revolutionary Man," petitioner is promoting gang activity. Assuming it is true that petitioner is a BGF member because he identified himself as a "New Afrikan Nationalist Revolutionary Man," it does not follow that petitioner is promoting the gang by that identification. The warden does not attempt to explain how a prisoner's statement to someone outside the prison system to the effect of "I am a gang member" promotes the gang.

Similarly, interception of the letter is not justified by the assertion that the letter contains coded messages, because this argument is based on speculation. The warden asserts that "BGF members often use sophisticated codes to communicate messages about gang activity via seemingly innocuous writings." In doing so, the warden points to no evidence in support of this speculation and, as noted above, opinion based on speculation has no evidentiary value. (*Pacific Gas & Electric, Co. v. Zuckerman*, *supra*, 189 Cal.App.3d at p. 1135.) Nonetheless, the warden argues that, "[r]estricting a gang-related letter ensures that messages promoting prison-gang activity are not transferred to other inmates or members of the public through third parties." The only way to prevent the mailing of these "seemingly innocuous" letters that allegedly contain sophisticated coded messages would be to confiscate all outgoing mail sent by gang members. The

First Amendment prohibits such an extreme step. Even prisoners who are gang members retain rights of expression and those rights cannot be taken away by a governmental agency simply speculating, without any evidence whatsoever, that what it concedes to be "seemingly innocuous" is not.

This case is similar to the situation described in an unpublished order by Judge Susan Illston of the United State District Court. In *Harrison v. Institutional Gang of Investigations* (N.D.Cal. Feb. 22, 2010, No. C 07-3824 SI) 2010 WL 653137 (*Harrison*), a prisoner brought a civil rights action because, among other things, confiscation of an outgoing letter that prison officials claimed promoted the BGF gang. In defending the suit, the Attorney General moved for summary judgment, arguing that the letters threatened prison security because they referenced "Black August," promoted "the New Afrikan Revolutionary Nationalism," and were addressed to the New Afrikan Collective Think Tank, the George Jackson University and the New Afrikan Institute of Criminology. (*Id.* at p. *3.) Unlike here, there was evidence presented to support the position that the letters posed a threat to prison security: "Defendants presented evidence that Black August is observed and promoted by BGF, and is a time during which BGF members advocate retaliation against correctional officers and others. Defendants presented evidence that the New Afrikan Revolutionary Nationalists, the New Afrikan Collective Think Tank, the George Jackson University and the New Afrikan Institute of Criminology promote BGF." (*Id.* at p. *6.)

Judge Illston nonetheless found there was not sufficient evidence to justify confiscation of the letter, observing that "[d]efendants take a very expansive view of what might 'promote' a prison gang's illicit activities and apply it with gusto when the First Amendment requires a more nuanced approach." (*Harrison, supra,* WL 653137 at p. *6.) Defendants "appear to contend that a categorical ban on things related to Black August is proper, as they have not identified any particular statement about Black August in Harrison's mail that actually 'might be thought to encourage violence.' " (*Ibid.*, citing *Procunier, supra*, 416 U.S. at p. 416.) As such, Judge Illston found that "[d]efendants

have failed to meet their burden to show that the confiscation of Harrison's outgoing mail was no greater than necessary to protect the asserted interest of prison security and safety" and denied summary judgment. (*Harrison*, at p. *6.)

Just as the assertion that promoting Black August is a threat to prison security must be supported by evidence to justify confiscation, so must the assertion that petitioner threatens prison security by referring to himself as a "New Afrikan Revolutionary Man." Without any evidence showing the letter to promote violence or otherwise threaten security, the confiscation violates the First Amendment. (*Procunier*, *supra*, 416 U.S. at p. 416.) Because he did not present any facts to support confiscating the letter, respondent has left us no choice but to conclude that the confiscation was neither "necessary" nor "essential" to prison security. (*Ibid.*)

DISPOSITION

The petition for writ of habeas corpus is granted and petitioner's confiscated letter is ordered to be sent to the addressee.

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Lambden, J.

We concur:

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Kline, P.J.

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Richman, J.