

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

AMERICAN CIVIL LIBERTIES  
UNION FUND OF MICHIGAN,

Plaintiff,

Case No.

vs.

Hon.

LIVINGSTON COUNTY,  
BOB BEZOTTE in his official capacity  
as Livingston County's sheriff, and  
TOM CREMONTE, in his individual  
capacity and in his official capacity as  
Livingston County's jail administrator,

Defendants.

---

**VERIFIED COMPLAINT**

Daniel S. Korobkin (P72842)  
Michael J. Steinberg (P43085)  
Kary L. Moss (P49759)  
American Civil Liberties Union Fund  
of Michigan  
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Attorneys for Plaintiff

## INTRODUCTION

1. At the height of the Cold War, the United States Supreme Court famously declared that “There is no iron curtain drawn between the Constitution and the prisons of this country.” Unfortunately, as this Complaint demonstrates, the Livingston County Jail is essentially holding its inmates incommunicado from meaningful correspondence from civil rights organizations such as Plaintiff American Civil Liberties Union Fund of Michigan (“ACLU”), thereby denying inmates access to important legal assistance and denying the ACLU the right to communicate with inmates about how they are being treated by their jailers.

2. The Livingston County Jail severely restricts inmate communication with the outside world through a “postcard only” mail policy, which limits all incoming and outgoing mail to one side of a tiny 4-by-6-inch postcard. Although the jail’s written policy purports to make an exception for legal mail, in fact Defendants do not allow ACLU attorneys to write letters to inmates regarding the constitutionality of their conditions of confinement, including letters that would address the constitutionality of the postcard-only policy itself.

3. This already highly restrictive mail policy is thus being applied by Defendants in a self-serving manner that threatens to undermine the role of courts and public interest attorneys in subjecting problematic jail policies to the scrutiny that our system of checks and balances requires. By prohibiting ACLU attorneys

from even informing inmates that they stand ready to provide them with legal advice and assistance in protecting them from unconstitutional jail conditions, Defendants can effectively insulate themselves from successful legal action that might be pursued on behalf of the individuals in their custody. Defendants should not be permitted to use their mail policy as a tool to keep inmates in the dark about the legal help that is available to them by blocking the ACLU's efforts to communicate important legal information.

4. The facts in this Complaint are alarming. Not only are Defendants prohibiting ACLU attorneys from sending letters to individuals who are detained at the Livingston County Jail, they also have:

- a. failed to notify either the ACLU or the inmates to whom the legal mail is addressed that the mail was not being delivered to its intended recipients; and
- b. opened, read, shared, and published legal mail sent by an ACLU attorney to an inmate who no longer resides at the jail.

5. The ACLU, for itself and on behalf of the inmates who are not receiving legal mail sent by ACLU attorneys and do not even know that the ACLU is attempting to contact them, seeks immediate relief from this Court to restore some of the most basic principles of constitutional law to the policies and practices of the Livingston County Jail.

## **JURISDICTION AND VENUE**

6. Jurisdiction is proper under 28 U.S.C. § 1331 because this is a civil action arising under the Constitution of the United States.

7. Venue is proper under 28 U.S.C. § 1391 because this is a judicial district in which a substantial part of the events or omissions giving rise to Plaintiff's claims occurred.

## **PARTIES**

8. Plaintiff American Civil Liberties Union Fund of Michigan ("ACLU") is a not-for-profit 501(c)(3) organization dedicated to protecting the individual rights and liberties that the Constitution guarantees to everyone in this country.

9. Defendant Livingston County is a public municipal corporation organized under the laws of the State of Michigan.

10. Defendant Bob Bezotte is the sheriff of Livingston County. He is being sued in his official capacity.

11. Defendant Tom Cremonte is the jail administrator for Livingston County. He is being sued in his individual capacity and in his official capacity.



## **FACTS**

### **The Postcard-Only Policy**

12. Livingston County Jail is one of a growing number of jails in Michigan and other states to have implemented a controversial “postcard only” policy for inmate mail.

13. Defendants’ website states, “All mail, except bona-fide legal mail, will be by standard white post cards with no pictures. This is both incoming and outgoing mail.” (Exhibit A.)

14. The constitutionality of Defendants’ postcard-only policy is currently the subject of litigation before this Court in *Prison Legal News v. Bezotte*, Case No. 11-cv-13460-DPH.

### **The ACLU’s Prison Reform Work and Opposition to Postcard-Only Policies**

15. Plaintiff ACLU is the Michigan affiliate of a nationwide organization whose mission is to protect and defend the constitutional rights and civil liberties of everyone in the country, including the least popular members of our society.

16. The ACLU works in the courts, legislatures, and our communities to advocate for civil rights and civil liberties for all.

17. The ACLU is not a general legal services organization, but becomes involved in cases—either as an amicus curiae or through its attorneys’ direct representation of parties—when substantial civil liberties issues are involved.

18. The United States Supreme Court has specifically recognized that for the ACLU, litigation is not a technique of resolving private differences, but is instead a form of political expression and political association protected by the First Amendment.

19. Plaintiff and the national ACLU have long been dedicated to protecting the constitutional rights of prisoners.

20. The ACLU has had a national prison project in Washington, D.C. for over 40 years. Through litigation, advocacy, and public education, the national prison project works to ensure that conditions of confinement are constitutional and consistent with health, safety, and human dignity. Its mission includes ending cruel and degrading conditions of confinement, and increasing public accountability and transparency of jails, prisons, and other places of detention. (Exhibit B.)

21. In Michigan, the ACLU has been involved in dozens of prisoners' rights cases, either through direct representation of inmates or as amicus curiae. Recent ACLU cases involving prisoners' rights in Michigan include *Abner v. Saginaw County*, Case No. 05-cv-10323 (E.D. Mich.) (naked detention); *Alame v. Smetka*, Case No. 08-cv-10777 (E.D. Mich.) (mail written in foreign languages); *Bogle v. Raines*, Case No. 09-cv-1046 (W.D. Mich.) (attorney-client telephone calls); *Dowdy-El v. Caruso*, Case No. 06-cv-11765 (E.D. Mich.) (religious meals

and services); *Dunmire v. Isabella County*, Case No. 12-cv-14807 (E.D. Mich.) (sex discrimination and exercise space); *Hadix v. Caruso*, Case No. 92-cv-110 (W.D. Mich.) (ongoing structural reform case involving medical and mental health care); and *Mason v. Granholm*, Case No. 06-cv-73943 (E.D. Mich.) (prisoners' rights under the Michigan Elliott-Larsen Civil Rights Act).

22. In addition to the cases listed above, ACLU attorneys have previously represented Livingston County Jail inmates in challenging the unconstitutional conditions of their confinement. In *Cox v. Homan*, Case No. 00-cv-71310 (E.D. Mich.), ACLU attorneys represented a class of over 100 female inmates who were required to shower and use the toilet in view of male guards, were subjected to cross-gender body searches, and were denied exercise and work opportunities comparable to those that male prisoners received. The case was resolved by a consent judgment in 2004. (Exhibit C.)

23. The ACLU believes that postcard-only mail policies such as the one adopted by Defendants represent a serious threat to the constitutional rights of inmates as well as their families. Attorneys associated with the ACLU affiliates in Colorado and Florida, working with the legal staff of the ACLU's national prison project, have been class counsel in recent or ongoing lawsuits challenging postcard-only mail policies, *see Hamilton v. Hall*, Case No. 10-cv-355 (N.D. Fla.); *Clay v. Pelle*, Case No. 10-cv-1840 (D. Colo.), and the ACLU of Washington

submitted an amicus curiae brief supporting Prison Legal News' challenge to a postcard-only mail policy in the Spokane County Jail, *see Prison Legal News v. Spokane County*, Case No. 11-cv-29 (E.D. Wash.).

24. In Michigan, the ACLU filed an amicus curiae brief in *Prison Legal News v. Bezotte*, *supra*, urging this Court to rule that Livingston County's postcard-only policy is unconstitutional.

25. Apart from the ACLU, concerned citizens have organized around the postcard-only issue:

- a. In Muskegon County, Michigan, a community group that calls itself "Letters Are Better" has formed to advocate an end to a postcard-only policy in the Muskegon County Jail. (Exhibit D.)
- b. The Prison Policy Initiative, a non-profit organization based in Massachusetts, has published a report, *Return to Sender: Postcard-Only Mail Policies in Jails*, documenting the troubling new trend of postcard-only policies in local jails throughout the country. (Exhibit E.)

### **The ACLU Sends Legal Mail to Livingston County Inmates**

26. In *Prison Legal News v. Bezotte*, *supra*, this Court recognized that Defendants' postcard-only policy "robs inmates and non-inmates of the meaningful expression that the Constitution protects." However, the Court declined to enter a

preliminary injunction against the policy because the plaintiff in that case, Prison Legal News, had failed to demonstrate that its own rights were being violated.

27. Recognizing that ending Defendants' postcard-only policy may require inmates themselves to take legal action, the ACLU decided to reach out to inmates who are currently detained by Defendants and are therefore subject to the restrictions of the policy.

28. On February 19, 2014, an ACLU attorney mailed 25 letters in envelopes addressed to individually named inmates at the Livingston County Jail. The envelopes were clearly marked "legal mail," and the attorney's name and Michigan bar number appeared in the return-address portion of the envelope above the ACLU's logo and address. The letters inside the envelopes were also clearly marked "legal mail" at the top, were printed on ACLU letterhead, and were signed by the ACLU attorney who identified himself as such.

29. The content and appearance of the letters is substantially reproduced as Exhibit F to this Complaint.

30. As can be seen from Exhibit F, the ACLU attorney's letters expressed concern that the postcard-only policy is unconstitutional and offered to meet with inmates, upon their request, to provide legal advice or assistance regarding that issue. The letters provided inmates with a form to fill out and return to the ACLU if they wished to request a meeting with an ACLU attorney.

### **Defendants' Censorship of ACLU Legal Mail**

31. The ACLU letters described above were received by Defendants at the jail on or about February 21, 2014.

32. The ACLU has not received any responses to its letters.

33. After mailing the letters, the ACLU became aware of deposition testimony by Defendant Tom Cremona, the jail administrator, regarding Defendants' treatment of legal mail. Relevant portions of the deposition testimony is attached as Exhibit G.

34. As can be seen from Exhibit G:

- a. Defendants do not deliver legal mail sent by an attorney to an inmate unless the mail is sent by the inmate's "attorney of record" in an ongoing court case;
- b. Defendants do not deliver legal mail when an attorney from outside the county writes to four or five inmates; and
- c. Defendants do not deliver legal mail sent by an attorney to an inmate if jail officials conclude that the letter is a "mass mailing."

35. Based on the above testimony, and the fact that no responses were received from the inmates, Plaintiff believes that Defendants did not deliver, and

still have not delivered, any of the ACLU's letters to any of the inmates to whom they were individually addressed.

36. Based on the deposition testimony by Defendant Cremonte, Plaintiff believes that the ACLU's letters remain in Defendants' custody.

37. Defendants did not notify the ACLU that they were not delivering the letters to the inmates to whom they were individually addressed, even though the envelopes and letters were clearly marked "legal mail" and an attorney's name, Michigan bar number, address and affiliation with the ACLU were prominently displayed.

38. Based on the deposition testimony by Defendant Cremonte, and the fact that no inmates have contacted the ACLU, Plaintiff believes that Defendants also did not inform the inmates in their custody to whom the letters were addressed that an ACLU attorney was trying to contact them.

39. At least one of the ACLU's letters was addressed to an inmate named Thomas Isaac.

40. According to Defendants' email attached as Exhibit H, Mr. Isaac apparently no longer resided at the Livingston County Jail when the letter that was addressed to him arrived there.

41. However, Defendants did not mark this piece of mail "return to sender" and turn it over to the United States Postal Service.

42. Instead, as can be seen from the documents attached as Exhibit H, Defendants:

- a. opened the letter;
- b. read the contents of the letter;
- c. sent a scanned copy of the letter via email to the attorneys who represent them in *Prison Legal News v. Bezotte*, under the email subject line “ACLU legal mail”; and
- d. through their attorneys, published the contents of the letter as a public court document accessible via PACER.

### **CLAIMS FOR RELIEF**

43. Under 42 U.S.C. § 1983, state actors are liable at law or equity for their acts or omissions undertaken under color of law which deprive any person of the rights secured by the Constitution and laws of the United States.

44. Defendants are state actors and, at all times relevant to this Complaint, were acting and are acting under color of law.

### **COUNT ONE VIOLATION OF FIRST AMENDMENT (BLOCKING MAIL)**

45. Defendants violated, and continue to violate, the First Amendment, by blocking delivery of legal mail sent by an ACLU attorney and individually addressed to inmates in Defendants’ custody.



46. Defendants' policy and practice of not to delivering legal mail sent by attorneys and individually addressed to inmates in their custody violates the First Amendment.

**COUNT TWO  
VIOLATION OF FIRST AMENDMENT  
(READING AND PUBLISHING MAIL)**

47. Defendants violated the First Amendment by reading the content of legal mail sent by an ACLU attorney and individually addressed to an inmate in Defendants' custody, and by publishing the content of that mail to counsel, to the court, and to the public.

**COUNT THREE  
VIOLATION OF FOURTEENTH AMENDMENT  
(DUE PROCESS)**

48. Defendants violated, and continue to violate, the due process requirement of the Fourteenth Amendment by blocking delivery of legal mail sent by an ACLU attorney and individually addressed to inmates in Defendants' custody, without providing the sender or intended recipient of the letter with notice that it is not being delivered and an opportunity to contest the decision not to deliver it.

49. Defendants' policy and practice of rejecting incoming mail without providing the sender and addressee with notice and an opportunity to contest the decision violates due process.

## **RELIEF REQUESTED**

Based on the foregoing, Plaintiff requests that this Court:

- a. assert jurisdiction over this matter;
- b. enter judgment in favor of Plaintiff and against Defendants;
- c. enter declaratory relief as follows:
  - i. The First Amendment prohibits Defendants from refusing to promptly deliver properly marked legal mail sent by an attorney and individually addressed to an inmate in Defendants' custody;
  - ii. In the event Defendants do not promptly deliver mail addressed to an inmate, due process requires Defendants to take reasonable steps to provide individualized notice and an opportunity to be heard to the intended recipient and to the sender of the mail; and
  - iii. The First Amendment prohibits Defendants from reading, sharing, or publishing the content of legal mail addressed to an inmate without a search warrant or probable cause that the communicative content of the mail poses an imminent threat to jail security;
- d. enter temporary, preliminary, and/or permanent injunctive relief as follows:
  - i. order Defendants to immediately deliver the ACLU's letters currently in Defendants' possession, custody or control to the inmates to whom they are addressed, or, if the inmate is no longer in Defendants' custody, return the letter to the ACLU with a suitable explanation for why it is being returned;
  - ii. enjoin Defendants from refusing to promptly deliver properly marked legal mail sent by an attorney and individually addressed to an inmate in Defendants' custody;

- iii. enjoin Defendants from failing to take reasonable steps to provide individualized notice and an opportunity to be heard to the intended recipient and to the sender of any mail that is individually addressed to an inmate but is not promptly delivered by Defendants to the inmate; and
- iv. enjoin Defendants from reading, sharing, or publishing the content of legal mail addressed to an inmate without either a search warrant or probable cause that the communicative content of the mail poses an imminent threat to jail security;
- e. award Plaintiff damages;
- f. award Plaintiff costs and reasonable attorneys' fees; and
- g. provide any other relief deemed just and equitable.

Respectfully submitted,

/s/ Daniel S. Korobkin

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Attorneys for Plaintiff

Dated: March 24, 2014

**INDEX OF EXHIBITS**

Declaration of Daniel S. Korobkin

- A: Livingston County Jail website
- B: ACLU National Prison Project
- C: *Cox v. Homan* consent judgment
- D: Letters Are Better
- E: *Return to Sender*
- F: ACLU letter to inmate
- G: Cremonte deposition
- H: Cremonte email and attachments

**VERIFICATION**

I verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

Executed on the 24th day of March, 2014.

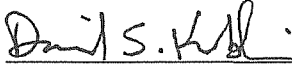
  
\_\_\_\_\_  
Daniel S. Korobkin

Exhibit A

**Livingston  
County**

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Sheriff**150 S Highlander Way  
Howell, MI 48843[Map to our location](#)

Ph: 517.546.2440

Fax: 517.546.1744

Emergencies: Call 911

Tip Line: 517.546.8477

Business Office Hours:

Monday-Friday

8 am - 4 pm

Closed [County Holidays](#)**Livingston County Jail**

Ph: 517.546.2445

Fax: 517.546.1800

Email: [Sheriff Dept](#)

## General Inmate Information

**MAIL** - Inmates are permitted to write to any person outside of our Jail facility. Incoming inmate correspondence must be addressed as follows:

Inmate Name, Resident  
Livingston County Jail  
150 S. Highlander Way  
Howell, MI 48843

- Incoming mail must reflect sender's name and address.
- [REDACTED]
- Mail must be sent via US Postal Service
- Items not allowed: postage stamps, envelopes, blank stationery, jewelry, food, books, magazines, sexually explicit pictures, cash, personal or company check.
- [REDACTED]
- [REDACTED]
- No stickers, glitter, or perfume sprayed postcards.
- Incoming mail deemed inappropriate may be placed in the inmate's property locker.

**INMATE BILLING** - Public Act No. 118 of 1984 allows County Board of Commissioners to seek reimbursement for any expenses incurred in relation to the charges for which a person is sentenced including period of pre-trial detention to the Jail. The Sheriff Department begins billing inmates immediately upon sentencing.

Inmates are required to reimburse the County of Livingston for any and all expenses incurred while incarcerated. This law allows for a fee up to \$60.00 per day for room and board, plus medical expense.

Failure to make payment arrangements within the first 30 days of receipt of an invoice may result in legal action.

**PERSONAL PROPERTY** - If sentenced to prison, an inmate's personal property may be released to a family member Monday through Friday, between the hours of 8:00am and 4:00pm. Unclaimed property will be discarded after 90 days.

**COURT ATTIRE** - Inmates are permitted to wear their own clothing if they are to appear in court for jury trial. Arrangements to have clothing delivered (and picked up following a trial) must be initiated by the inmate.

**POSTING BAIL** - A person who has been arrested and charged with a crime may be required to post bail (bond) before being released from jail. A bond is insurance to guarantee a defendant will appear in court as needed. If a person fails to appear for a court date, the bond may be forfeited to the court and a warrant issued for failure to appear. A bond may be posted by the defendant or by someone on their behalf. Bond amounts for certain misdemeanors are preset by the courts. Felony bonds are set at arraignment by the judge.

Bonds posted at the jail SHALL be in the inmate/defendants name and any monies returned by the court at the conclusion of the case will be returned to the defendant. If someone wishes to post bond and keep the funds in their name, the bond must be paid at the court during court hours.

The jail accepts cash or credit cards for bond payments at the jail lobby. All credit card bonds are processed by Government Payment Service, a third party company. Credit card bond payments may also be posted via phone at (866-370-9574) or online at <https://www.govpaynow.com/gps/user/> using Pay Location Code 5553.

**SURETY BOND** - A bonding company may be used to post a bond for a defendant. Consult your local yellow pages for lists of bonding companies. The jail in no way endorses any particular bond company and does not participate in the contract between a defendant and the bonding company.

Exhibit B



JOIN

RENEW

SEARCH

USA

EHFDXVH IUHHGRP FDQ W SURWHFW IWVHOI

HOME › SMART JUSTICE, FAIR JUSTICE

## ACLU National Prison Project

Share

October 24, 2012

The ACLU National Prison Project is dedicated to ensuring that our nation's prisons, jails, and other places of detention comply with the Constitution, domestic law, and international human rights principles, and to ending the policies that have given the United States the highest incarceration rate in the world. We promote a fair and effective criminal justice system in which incarceration is used only as a last resort, and its purpose is to prepare prisoners for release and a productive, law-abiding life at the earliest possible time. Through litigation, advocacy, and public education, we work to ensure that conditions of confinement are consistent with health, safety, and human dignity, and that prisoners retain all rights of free persons that are not inconsistent with incarceration. Achieving these goals will result in a criminal justice system that respects individual rights and increases public safety for everyone, at greatly reduced fiscal cost.

Our goals include:

**Substantially reducing the incarcerated population, especially among people of color, the mentally ill, and other vulnerable populations.** The human and financial costs of mass incarceration are staggering, and the burden falls disproportionately on the poor and people of color. However, the current fiscal crisis and years of falling crime rates have combined to create the best opportunity in decades to challenge our nation's addiction to incarceration.

**Increasing public accountability and transparency of jails, prisons, and other places of detention.** Because places of detention are inherently closed environments housing the unpopular and the politically powerless, external oversight is critical to guard against mistreatment and abuse. The increasing privatization of detention, which creates financial incentives for both increased incarceration and harsher conditions of confinement, has made public accountability even more important. The federal Prison Litigation Reform Act and its state analogs have significantly reduced judicial oversight of prisons, jails, and juvenile facilities, and resulted in serious abuses going unchecked.

**Ending cruel, inhuman, and degrading conditions of confinement.** Far too many prisoners are held in conditions that daily threaten their health, safety, and human dignity. Denial of adequate medical and mental health care, basic sanitation, and protection from physical and sexual assault are all too common. Tens of thousands of prisoners are held in long-term solitary confinement. The devastating effects of such treatment, particularly on persons with mental illness, are well known.

**Expanding prisoners' freedom of religion, expression, and association.** Prisoners' rights to read, write, speak, practice their religion, and communicate with the outside world are often curtailed far beyond what is necessary for institutional security. Not only are these activities central to the ability of prisoners to retain their humanity, they also contribute to the flow of information between prisons and the outside world and thus provide a vital form of oversight of these closed institutions.

Smart Justice, Fair Justice

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© ACLU, 125 Broad Street, 18th Floor, New York NY 10004  
This is the website of the American Civil Liberties Union and the ACLU Foundation.  
Learn more about these two components of the ACLU.

The ACLU earns a 4-star rating  
from Charity Navigator and  
meets the highest standards of  
the Better Business Bureau's  
Wise Giving Alliance.

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Exhibit C

9

Attach 1-2

UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THERESA ANN COX, TAMARA PATRICK,  
TAMARA PATRICK, and JANE DOE,  
Individually and as representative  
of all similarly-situated former, current  
and future female prisoners at the  
Livingston County Jail,

CLASS ACTION

Plaintiffs,  
vs.

Case No. 00-71310  
Hon. Bernard A. Friedman  
Magistrate Judge Goldman

DONALD D. HOMAN, in his individual and  
official capacity as Livingston County Sheriff,  
KENNETH LEE WRIGHT, in his individual and  
official capacity as Livingston County Undersheriff,  
ROBERT BEZOTTE, in his individual and official  
capacity as Livingston County Undersheriff,  
KENNETH GRIFFIS, in his individual and official  
capacity as Livingston County Jail Administrator,  
Lt. FRED WILLIAMS, in his individual and official  
capacity as Livingston County Jail Administrator,  
WILLIAM PARKMAN, in his individual and official  
capacity as Livingston County Corrections Manager, and  
the BOARD OF COMMISSIONERS FOR THE COUNTY  
OF LIVINGSTON, a public body, jointly and severally,

Defendants.  
and

STATE OF MICHIGAN,  
Intervenor.

FILED  
FEB 19 P2:33  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
DETROIT

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### CONDITIONAL JUDGMENT

At a session of said Court, held in the U.S. Courthouse  
in the City of Detroit, County of Wayne, State of Michigan, on:

---

PRESENT: HON. \_\_\_\_\_  
DISTRICT COURT JUDGE

The court, upon review of the parties' settlement of this matter, enters the following  
conditional judgment.

#### I. THE PARTIES BOUND BY THIS CONDITIONAL JUDGMENT

Defendants Donald Homan ("Homan") and Board of Commissioners for Livingston  
County ("Livingston County") are subject to the continuing jurisdiction of this court for the  
duration of this conditional judgment and are responsible for ensuring compliance with all  
of the equitable relief specified in this conditional judgment and securing the monetary  
relief specified in this conditional judgment.

Upon payment of the monetary relief to plaintiffs' counsel, on behalf of the class, all defendants, except defendants Homan and Livingston County, shall be dismissed from this action with prejudice and without costs.

## **II. NO ADMISSION OF LIABILITY**

This settlement was agreed to by defendants to avoid further litigation and buy enforceable legal peace. This agreement is recognized and accepted by the parties as not constituting an admission of wrongdoing or liability by any defendant. Defendants expressly deny wrongdoing and/or liability.

## **III. CONDITIONAL NATURE OF JUDGMENT**

Upon full completion of defendants' equitable relief obligations set forth in this conditional judgment, this judgment will be dissolved and the court will enter a final order of dismissal with prejudice and without costs as to all parties.

Full completion occurs when the parties have jointly certified to the court that all equitable relief obligations have been met or the court, after conducting a hearing, determines that all equitable relief obligations have been satisfied. A hearing date of June 2, 2004 at 3:00 P.M. is set for this purpose.

## **IV. EQUITABLE RELIEF**

A. The Livingston County Jail will provide two-piece uniforms to female inmates. Female inmates may retain all jail-appropriate undergarments with the exception of underwire brassieres until classified. All classified female inmates will be provided with brassieres and panties if they do not have approved garments upon admission, with not more than two sets to be provided. Additionally, undergarments may be purchased per jail



policies and procedures. The Livingston County Jail will provide these undergarments to indigent inmates.

B. The Livingston County Jail will maintain a shower curtain for females housed in maximum security; in the holding area the window will be partially frosted to cover shower area; a break-away, opaque shower curtain will be installed and maintained in the minimum and medium housing areas for female inmates to ensure privacy while maintaining security.

C. The Livingston County Jail will extend the length of the privacy wall in the holding area surrounding the toilet areas which will enhance what was originally built and approved under Michigan Department of Corrections specifications.

D. Pursuant to current policy, cross-gender body searches will not be conducted by jail personnel. Cross-gender pat-downs will not be done except when a same gender corrections officer is not available on shift. Every effort will be made to have a second officer present or a camera viewing the cross-gender pat-down.

E. The Livingston County Jail will continue to train new personnel in sensitivity training and pursuant to the standards of the Michigan Department of Corrections.

F. The Livingston County Jail will provide trustee assignments to both male and female qualified inmates. Such assignments will not permit gender mixing and may permissibly be based on number of restricted job needs. It is understood that the jail is under no obligation to create additional trustee assignments beyond the normal needs of the facility.



G. The Livingston County Jail shall continue to minimize the amount of time an inmate spends in the holding cell area and limit its use for arraignment, classification, and times when inmates are in need of continuous observation. Inmates who are housed overnight are to be provided a pad or mattress consistent with health and safety concerns.

H. The Livingston County Jail will provide six (6) designated work release beds for female inmates under comparable conditions as provided for male inmates for as long as there is a work release program. Modifications of the jail shall be completed within six (6) months or as soon thereafter as practicable considering the possibility of the unavailability of materials or construction delays. Pending completion of the modifications, the Livingston County Jail shall continue to provide equal access to work release to female inmates by utilizing the maximum security area or other suitable area. When work release is ordered by the courts, the eligibility requirements for work release in the Livingston County Jail shall be applied equally to male and female inmates and shall be included in the Inmate Handbook and copies of same provided to the Livingston County courts, Probation Office and Public Defender's Office.

#### **V. MONETARY SETTLEMENT**

In settlement of all plaintiff class-representative and plaintiff class-member claims, attorney fees, costs and interest, the defendants shall pay to plaintiffs the sum of \$850,000.00. This amount will be paid to plaintiffs' counsel within 14 days of entry of this conditional judgment by the court. Plaintiffs' counsel will hold the amount in escrow pending final approval of the settlement and release of the monies by the court.

The court has reviewed and preliminarily approved the plan of allocation of settlement proceeds submitted by class counsel (exhibit 1) and the notice of settlement of class action (exhibit 2), both of which are incorporated by reference.

## **VI. SCOPE OF CONDITIONAL JUDGMENT**

### **A. ALL ASSERTED AND UNASSERTED CLAIMS**

This conditional judgment resolves all claims that were or could have been brought by plaintiff class representatives, their attorneys, the American Civil Liberties Fund of Michigan and class members eligible to participate in this conditional judgment.

### **B. FULL AND EXCLUSIVE AGREEMENT**

This conditional judgment and any other written agreement endorsed by the parties and incorporated by reference into this document, shall together comprise the full and exclusive agreement of all parties with respect to the matters discussed herein. There have been and there are no representations or inducements to compromise these actions other than those recited or referenced in this conditional judgment.

### **C. BEST EFFORTS TO EFFECTUATE AND DEFEND**

The parties agree to make their best efforts to effectuate as well as defend this conditional judgment from any legal challenge by appeal, collateral attack, objection, or otherwise.

**D. CONTINGENT**

In the event this conditional judgment does not become final, this entire conditional judgment shall become null and void, and the parties agree that the litigation otherwise resolved by this conditional judgment will be reinstated.

**E. FULL AND FINAL RELIEF**

The monetary relief from the settlement funds set forth in this conditional judgment constitutes a full and final payment to all settlement class members, individually or collectively, for any and all alleged claims which are the subject of this conditional judgment. No certified class member may opt-out of this conditional judgment. If a certified class member who objects to being bound by this conditional judgment wishes to be excluded from this class action, she may petition the court for exclusion. The court, upon receipt of the petition for exclusion would issue an order to show cause why the petitioner should not be included in this judgment and settlement. All claims, unless excluded by order of the court, are extinguished by entry of this conditional judgment, including those plaintiff class members who decline to participate in the claims process, object to the specific compensation or do not execute a full release of claims.

**F. EXECUTION OF RELEASE**

Each class member participating in the monetary provisions of this settlement shall execute a release of all claims against defendants prior to the receipt of any settlement funds.

**G. JAIL REIMBURSEMENT CLAIM**

The monies received from this settlement, and any proceeds thereof, shall not be subject to any jail or prison reimbursement claim of defendant Homan or Livingston County and proceeds of this settlement and interest thereon shall not be used to offset costs of any ongoing confinement. This provision precludes defendant Homan or defendant Livingston County from using the proceeds or interest thereof, collected in this action by any class representative or member to satisfy any pending collection action or judgments entered for reimbursement of any costs of confinement in the Livingston County Jail.

**H. EXCLUSIVE ENFORCEMENT**

Nothing in this conditional judgment is expressly or impliedly intended to confer any rights upon any person other than the parties hereto. The right to seek enforcement of this conditional judgment is vested exclusively in the parties.

**VII. CONTINUAL COURT JURISDICTION**

The jurisdiction of the court over this matter shall end upon entry of a final order or dismissal with prejudice. However, any party may petition the court for enforcement of the settlement agreement entered into between the parties.

#### VIII. EFFECTIVE DATE

This conditional judgment will become effective on the 31st day after the court enters its order preliminarily approving the settlement agreement provided no appeals to the Sixth Circuit Court of Appeals have been taken by class representatives or members. If an appeal of the order preliminarily approving the settlement is filed, the conditional judgment will be effective on the 31st day after the appeal is denied or dismissed.



U.S. DISTRICT COURT JUDGE

FEB 19 2004

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00-71310

Attach 1-2

Card jgm.

2/19/04

25 pgs.

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## PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS

### I. OVERVIEW

Retired Wayne County Circuit Court Judge Michael Stacey was appointed by United States District Court Judge Bernard Friedman to conduct settlement discussions between class counsel and representatives of the Livingston County Jail and Livingston County. With the assistance of Judge Stacey, the parties agreed to equitable relief and a monetary settlement of all class representative and class member claims, attorney fees and costs in the amount of \$850,000.00. The agreed-upon equitable relief is described in the conditional judgment entered in this case.

This settlement was agreed to by defendants to avoid further litigation and buy enforceable legal peace. This agreement is recognized and accepted by the parties as not constituting an admission of wrongdoing or liability by any defendant. Defendants expressly deny wrongdoing and/or liability.

Class counsel, with the assistance and approval of class representatives, have developed a plan of allocation which, on February 19, 2004 was preliminarily approved by the court. This plan provides for an allocation of attorney fees and costs, class-representative awards, participation awards for class members and class-member awards known as "pool awards" based on points awarded for "work claims" and "privacy claims". The criteria for awarding points under each of the allocation categories are described below.

A fairness hearing has been scheduled for **April 1, 2004**. This plan of allocation will either receive final approval or be rejected by the court at that time.



## **II. ATTORNEY FEES AND COSTS**

At a hearing held on February 19, 2004, the court preliminarily approved attorney fees in the amount of \$268,727.00 and costs in the amount of \$43,818.00. The court, on that date, preliminarily determined that the award of attorney fees and costs would be fair and reasonable.

## **III. CLASS-REPRESENTATIVE AWARDS**

The class representatives are Theresa Cox, Tamara Patrick and Jane Doe. The court has preliminarily determined that class representatives, because of their level of participation in developing, managing and assisting counsel in resolving this class action, are entitled to participation bonuses in the amount of \$25,000.00 for Theresa Cox, \$15,000.00 for Tamara Patrick and \$15,000.00 for Jane Doe. The class representatives are also entitled to participate in pool awards as described below.

## **IV. CLASS-MEMBER PARTICIPATION AWARDS**

One hundred twenty-four women participated in the prosecution of the class action as class members by providing class counsel with depositions, affidavits or other information necessary to develop, manage and resolve the class action. Class members who provided a deposition or affidavit or both to class counsel will receive a class-member participation award in the amount of \$2,500.00. Class members who returned a questionnaire or who provided information to class counsel will receive a class-member participation award of \$500.00. Attached as exhibit A is a list of class members who,



according to the records maintained by class counsel, are eligible for a class-member participation award. Class members receiving class-member participation awards are also entitled to participate in pool awards as described below. Thirty-three class members will receive a class-member participation award of \$2,500.00, and 91 class members are estimated to receive a class-member participation award of \$500.00. The total amount awarded to class representatives and participating class members is \$183,000.00.

#### **V. CLASS-MEMBER POOL AWARDS**

After attorney fees, costs, class-representative awards and class-member participation awards have been deducted from the settlement amount of \$850,000.00, an estimated pool of \$354,955.00 has been created for allocation to class members based on certain criteria. Points will be awarded to each class-pool award claimant. The value of a point will be determined by dividing the total number of pool points awarded into available pool funds.

In order to receive an award from the class-member pool, a timely short or long claim form, attached to this plan of allocation as exhibit B, must be submitted in accordance with the instructions on the claim form. No class member seeking a class-member pool award shall receive more than 25 pool points.

A class-member pool claims committee will be established to determine the eligibility of claims and to assign points in accordance with the criteria set forth in this plan of allocation. The committee will consist of a chairperson who shall be a retired judge, a representative of the American Civil Liberties Union and a member of the class-counsel team. The selection of the committee members will be reviewed and approved by the court.

The claims committee will be limited to a review of the affidavit, deposition, questionnaire or other information submitted by the claimants who identified themselves as a class member before the settlement of the class action. Claimants who have not previously identified themselves as class members will be required to answer the questions on the long claim form. The information contained in the answers to the long claim form will be verified as necessary by class counsel.

#### **VI. WORK AND PRIVACY CLAIM CRITERIA**

The category of claims to be reviewed by the claims committee are "work" claims and "privacy" claims.

##### **A. CRITERIA FOR WORK CLAIMS**

Work claims consist of claims made by class members regarding an alleged denial or impairment of work release opportunities or denied participation in the jail-inmate worker program. Factors to be weighed by the claims committee include the following:

- 1) The claimant was employed at the time of confinement and denied the opportunity to participate in work release between April, 1997 and March, 1999.
- 2) The claimant was permitted to participate in work release after March, 1999, but under alleged egregious circumstances, including being housed in jail cells with prisoners classified as maximum and higher-security risk, allegedly denying women prisoners the full range of participation in work-release program by limiting the hours and days of participation, allegedly requiring females participating in work release

to be subjected to excessive and intrusive searches, allegedly housing female work-release participants in holding cells for excessive periods of time upon their return from work release prior to processing, allegedly requiring women to sign release forms agreeing to be searched and viewed by male officers while dressing and undressing as a condition of participation in the work-release program.

- 3) The claimant lost a job or experienced economic losses caused by the denial of the work-release opportunity.
- 4) The claimant was denied jail inmate worker assignments or, in comparison with the male jail inmate workers at the time of incarceration, was given allegedly inferior jail inmate worker assignments, including the loss of "good time".

**B. CRITERIA FOR PRIVACY CLAIMS**

Factors to be considered by the claims committee on privacy claims include:

- 1) The claimant was allegedly observed by men while showering or using the toilet, or that the claimant avoided basic hygiene to prevent observation, altered normal dressing, showering or toilet behavior to prevent observation.
- 2) The claimant was allegedly subjected to cross-gender searches or pat-downs.
- 3) The claimant allegedly experienced holding-cell abuses, including being subjected to overcrowded conditions, denied sleeping mats, or was allegedly observed in a nude or semi-nude condition by male

inmates occupying adjacent holding cells, or alleges placement in the holding cells for excessive periods of time.

- 4) The claimant experienced an alleged denial of personal hygiene items, including toilet paper and menstrual pads or that the distribution of the personal hygiene items allegedly occurred in a humiliating manner.

**C. GENERAL CRITERIA**

The claims committee will evaluate the totality of the circumstances of each claimant's experience within the Livingston County Jail and may, in its discretion, determine that substantial points may be awarded for a single factor or incident provided the points awarded do not exceed 25. The claims committee, in awarding points, may consider whether the claimant is receiving any additional compensation as a class representative or is eligible for a class-member participation award.

**VII. CLAIM PROCEDURES**

Notice of preliminary settlement of the class action and approval of this plan of allocation shall be mailed no later than February 23, 2004 to the last-known address of each class member on class counsel's mailing list. The Livingston County jail shall conspicuously post a copy of the conditional judgment, plan of allocation and claim forms in the public areas of the jail and two conspicuous locations within the female housing areas.

Class counsel shall publish a summary of the conditional judgment and plan of allocation in the Livingston County Press, Brighton Argus and Ann Arbor News.

Any class member wishing to participate in the class-member participation or pool-award process shall submit a claim form to class counsel no later than March 22, 2004. Class counsel will review each claim form to determine if the claimant is a class member and eligible for participation in the award process. Any individual determined to be ineligible shall be notified by class counsel with the reason for the determination within 14 days. Individuals determined to be ineligible may appeal that determination to the claims committee by writing to the claims committee within 14 days of receipt of the notice of ineligibility. The claims committee will notify the individual of the decision, and the reasons for the decision, in writing, within 14 days of its receipt of the appeal. The individual may appeal the eligibility decision of the appeals committee by writing to Judge Friedman and shall include his or her reasons for disagreement with the claims committee. The appeal to Judge Friedman must be received by the court within 14 days of the individual's receipt of the claims committee letter of denial.

The claims committee will conduct its evaluations of the eligible claimants and, on or before May 3, 2004, will issue a letter to each claimant notifying them of their eligibility for a class-member participation award and/or the amount of proposed pool points awarded. The claims committee will inform each claimant of the estimated value of a pool point so that upon receipt of the letter each participant in the class-member pool will be able to calculate the approximate amount of his or her award from the class-member pool.

Class members who disagree with either the class-member participation or class-member pool award will be entitled to appeal to the claims committee provided the class member submits to the committee in writing and the reasons for disagreement on or before May 17, 2004. The claims committee will then conduct a review of the disagreement and



issue its final decision no later than May 21, 2004. Any class member dissatisfied with the results of the appeal to the claims committee may request a review by the court in accordance with procedures established by the court.

Any individual claiming to be a class member who does not want to be bound by the conditional judgment entered in this case and wishes to be excluded from this class action, may petition the court for exclusion. The court will, upon receipt of the petition, issue an order to show cause why the petitioner should not be excluded from participation in the action and shall thereafter decide the matter.

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1A

## Summary of Class Member Participants

1	Allan, Deborah	D
2	Allen, Georgianna	Q
3	Allen, Jennifer Lynn	Q
4	Auld, Jill Colleen	Q
5	Ayers, Debra Lynn	Q
6	Babula, Sharon Lucille	Q
7	Bailey, Cari Lynne	Q
8	Behr, Kimberly Gillian	D
9	Blades, Rose Ann	Q
10	Blanton, Shannon	Q
11	Bloomfield, Andrea Laurie	Q
12	Bogasky, Cheryl Ann	Q
13	Bolton, Kimberly Sue	Q
14	Breece, Johanna	Q
15	Brown, Charline	Q
16	Bryant, Penelope May	Q
17	Butt, Cora Jaquelyn	Q
18	Byrd, Latoya	Q
19	Casler, Mary Barbara	A
20	Charlick, Kimberly	D
21	Cleary, Patricia Ann	Q
22	Clever, Janine May	Q
23	Coleman, Dawn	Q
24	Cox, Theresa	CR
25	Crawford, Tracy Leanne	D
26	Creswell, Mary Susan	Q
27	Crofoot, Jacqueline Jo	Q
28	Curtis, Faye Ann	Q
29	D'Alessandro, Roxann	D
30	Damman, Cynthia	Q
31	Danaher, Jennifer	Q
32	Dannenberg, Michele Louise	Q
33	Davis, Floydine Ann	Q
34	Denlar, Colleen Rose	Q
35	Diretto, Melanie Lynn	Q

36	Doe, Jane	CR
37	Ferrall, Michelle Marie	Q
38	Fox, Linda Kay	Q
39	Frakes, Cynthia Lynn	Q
40	Garcia, Carol Lynn	D
41	Gardella, Vicki	D
42	Golombisky, Autumn	Q
43	Grace, Catherine Jeananne	Q
44	Greer, Dixie	Q
45	Grix, Nicole Autumn	Q
46	Haapala, Teresa	D
47	Hamlin, Nycole Kristyn	Q
48	Harris, Emily Theresa	Q
49	Haughton, Jocelyn Karin	Q
50	Hearn Nancy Jean	Q
51	Henderson-Gibbs, Cheryl	D
52	Holfield, Patricia Marie	Q
53	Hosman, Brenda Lynn	Q
54	Houston, Annette Louise	Q
55	Howard, Wendy Nadine	Q
56	Huber, Paula Jeanette	Q
57	Hurley, Tina	D
58	Jaworski, Rene Crista	Q
59	Katz, Jeanne Elaine	Q
60	Kopel, Tamara Lynn	Q
61	Koranovski, Helen Elizabeth	Q
62	Krug, Jani Ann	A
63	Kryza, Kathleen	Q
64	Lintz, Judith	Q
65	Loebhaka, Jill	Q
66	Longo, Lori Sue	Q
67	Lorang, Colleen Denise	D
68	Love, Tanika	Q
69	Lyke, Deborah L.	A
70	Maher, Kimberly Ann	Q



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71	Mahlstedt, Sherry L.	D
72	Mapes, Kimberly	D
73	Marcum, Diane	D
74	Martin, Krista Lynn	D
75	Martin, Renee Marie	Q
76	Mather, Nancy Stanton	Q
77	Maudria, Tamara	D
78	Maxwell, Denise	Q
79	McCann, Michelle	A
80	Miller Rohm, Jennifer	Q
81	Moffett, Suzanne Lee	Q
82	Morgan, Lori	Q
83	Morlock, Tammy	Q
84	Munjoy, Sandra	Q
85	Newberry, Haley	A
86	Newman, Tracey	Q
87	Ozuna, Michelle	Q
88	Pantke, Shirley	Q
89	Parker, Lupita Marian	Q
90	Passalacqua, Alexis	Q
91	Patrick, Tamara	CR
92	Pawlowski, Lisa Marie	Q
93	Pearson, Karen Jean	A
94	Perry, Bridget	Q
95	Pierce, Angela	Q
96	Ragnone, Tanya	A
97	Reynolds, Suzette	A
98	Richard, Lisa Lynn	A
99	Rybak, Cheryl	Q
100	Saunders, Rhonda	Q
101	Sawallich, Roxanne	A
102	Scott, Tanya	Q
103	See, Kelly	Q
104	Shahan, Mary	Q
105	Shollock, Jenniffer	Q
106	Shurtleff, Debra	Q
107	Sievers, Sarah	Q
108	Smith, Kathleen	Q

109	Smyth, Malissa	D
110	Sneed, Katrina	D
111	Stevens, Misty Ann	Q
112	Strayer, Kelly	Q
113	Tester, Jill	Q
114	Toth, Patricia	Q
115	Trantham, Sharon	Q
116	Waddell, Lori	Q
117	Wallace, Sherry	D
118	Warr, Terry	Q
119	Watts-Enyart, Deha	Q
120	Weaver, Marguerite	A
121	Willacker, Deserea	Q
122	Williams, Jacqueline	Q
123	Wilson, Kim	D
124	Wisser, Stacy Lynn	A
125	Young, Tonya	D
126	Zube, Linda	Q
127	Zurlinden, Linda	Q

**KEY TO CHART**

D = deposition  
A = affidavit  
Q = questionnaire or other information  
CR = class representative

**NUMBER OF PARTICIPANTS**

D = 21  
A = 12  
Q = 91  
CR = 3

**127 TOTAL PARTICIPANTS**

February 4, 2004

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**LIVINGSTON COUNTY JAIL CLASS ACTION SHORT CLAIM FORM**

If you have already given us information about your experiences at the Livingston County Jail from March 14, 1997 to the present, you may file a claim for compensation without answering the questions found on the Livingston County Jail Class Action Long Claim Form.

If you have already given us information about your experiences, all you need to do in order to make a claim for compensation is to provide us with your name, current address, telephone numbers and e-mail address. You must sign and date the form and return it to us so that it is received in our offices no later than **March 22, 2004**.

**This claim form must be postmarked on or before March 22, 2004 and mailed to:**

Peggy Goldberg Pitt  
Pitt, Dowty, McGehee, Mirer & Palmer, P.C.  
117 W. Fourth Street, Suite 200  
Royal Oak, Michigan 48067-3804  
(248) 398-9800  
(248) 398-9804 {fax}  
ppitt@pdmm.net {e-mail}

You must fill out this claim form as completely as you can.

1. Last name: \_\_\_\_\_
2. First Name and Middle Name: \_\_\_\_\_
3. Current Address: \_\_\_\_\_  
(street address)  
\_\_\_\_\_  
(city) (state) (zip code)
4. Home Phone: \_\_\_\_\_  
(area code) (phone number)
5. Work Phone: \_\_\_\_\_  
(area code) (phone number)
6. Cell Phone: \_\_\_\_\_  
(area code) (phone number)
7. E-mail Address: \_\_\_\_\_

\_\_\_\_\_  
[Sign here]

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**LIVINGSTON COUNTY JAIL CLASS ACTION LONG CLAIM FORM**

If you were in the Livingston County Jail from March 14, 1997 to the present, and you want to make a claim for damages suffered while in the jail, you must answer all the questions that apply to you. You must fill out this form, unless you have already filled out a questionnaire or given a deposition. If necessary, you may complete your answers on a separate sheet of paper. Be sure to refer to the form question number you are answering and write your name on each attached sheet.

**IDENTIFICATION**

1. Last name: \_\_\_\_\_
2. First Name and Middle Name: \_\_\_\_\_
3. Name(s) you used in the Livingston County Jail (if different than 1 and 2, above):  
\_\_\_\_\_
4. Current Address: \_\_\_\_\_  
(street address)  
\_\_\_\_\_  
(city) (state) (zip code)
5. Home Phone: \_\_\_\_\_  
(area code) (phone number)
6. Work Phone: \_\_\_\_\_  
(area code) (phone number)
7. Cell Phone: \_\_\_\_\_  
(area code) (phone number)
8. E-mail Address: \_\_\_\_\_
9. Date of Birth: \_\_\_\_\_
10. Social Security No. \_\_\_\_\_
11. Dates of Confinement at the Livingston County Jail (if you have been in the jail more than once, provide the beginning and discharge dates for each period of confinement):  
\_\_\_\_\_  
\_\_\_\_\_
12. Name and address of the attorney who represented you on each occasion that led to confinement in the Livingston County Jail:  
\_\_\_\_\_  
\_\_\_\_\_

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WORK CLAIMS

If you have a claim for denial of work release or inmate work privileges, fill out this section of the claim form. If you do not have a denial of work release or denial of inmate work claim, go to the privacy section of this claim form.

13. Were you employed at the time of confinement and denied the opportunity to participate in work release between April 1997 and March 1999?
- ☐ Yes ☐ No

If the answer to this question is yes, please provide us with the name and address of your employer, the position held and your rate of pay:

Name of employer: \_\_\_\_\_

Address: \_\_\_\_\_

Position held: \_\_\_\_\_

Rate of pay: \_\_\_\_\_

14. Describe all efforts made by either you or your attorney to obtain work release. State the name and address of your attorney, and/or any witnesses who will support your claim that you made efforts to secure work release. Attach any documents related to work release.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. If you were allowed work release, were you:

- (a) Housed in maximum security?  
☐ Yes ☐ No
- (b) Denied full participation in work release programs by limiting the hours and/or days of participation?  
☐ Yes ☐ No
- (c) Subjected to excessive and intrusive body searches upon return from work release?  
☐ Yes ☐ No
- (d) Held for long periods of time in the holding cell when returning from work release?  
☐ Yes ☐ No
- (e) Required to sign release forms agreeing to be searched?  
☐ Yes ☐ No
- (f) Viewed by male officers while dressing and undressing as a condition in the work release program?  
☐ Yes ☐ No

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If you answered yes to any of the above questions, please provide the names, addresses and all documentation that support your claim.

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16. Did you, or your attorney, ask the court for work release?  
☐ Yes ☐ No

If you answered yes to this question, please describe what happened. If work release was not asked for, please explain.

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17. Did you lose a job, wages or benefits because of the denial of work release?  
☐ Yes ☐ No

If you answered yes to this question, please tell us the details of when you lost your job or the amount of lost wages. Please us with the names and addresses of all witnesses and documentation in support of your claims of job loss or financial loss.

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18. Were you denied jail inmate assignments or did you lose good time because of unequal jail inmate worker assignments?  
☐ Yes ☐ No

If you answered yes to this question, please provide us with information regarding your claim, including names and addresses of witnesses and all supporting documentation.

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**PRIVACY CLAIMS**

19. Were you observed by male prisoners or male jail staff while showering or using the toilet?  
☐ Yes ☐ No

If you answered yes to this question, please provide us with the dates, circumstances, the names and addresses of all witnesses who will support your claim.

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20. Did you avoid showering or using the toilet in order to prevent observation by men?  
☐ Yes ☐ No



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If you answered yes to this question, please describe the circumstances, and provide us with the names and addresses of all witnesses and documentation in support of your claim.

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21. Were you subjected to searches or pat-downs by male guards?

☐ Yes ☐ No

If you answered yes to this question, please describe the circumstances, the number of times and the type of searches, and the names and addresses of all witnesses and documentation in support of your claim.

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22. Did you experience overcrowded conditions, denial of sleeping mats, blankets or pillows or observed nude or partially nude by male inmates or male staff while in the holding cells of the Livingston County Jail?

☐ Yes ☐ No

If you answered yes to this question, please describe the circumstances, including the amount of time spent in the holding cells and the names and addresses of all witnesses and documentation in support of your claim.

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23. Were you denied personal hygiene items, such as toilet paper and menstrual pads, or did you experience humiliation when asking for or receiving these items from guards?

☐ Yes ☐ No

If you answered yes to this question, please describe the circumstances and provide us with the names and addresses of all witnesses and documentation in support of your claim.

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24. Were you subjected to any verbal or physical sexual harassment by male staff while in the Livingston County Jail?

☐ Yes ☐ No

If you answered yes to this question, please describe in detail the nature of the verbal or physical sexual harassment, and provide us with the names and addresses of all witnesses and documentation in support of your claim.

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**OTHER REQUIREMENTS FOR MAKING A CLAIM**

In order to make this claim, you **must** sign and date this form. Your signature means that you understand that this form will be used in a legal proceeding and that you are swearing that the information contained on this form is true and accurate to the best of your memory.

\_\_\_\_\_  
[Sign here]

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**This claim form must be postmarked or received by us on or before March 22, 2004. Please mailed or deliver the completed form, with supporting documentation to:**

Peggy Goldberg Pitt  
Pitt, Dowty, McGehee, Mirer & Palmer, P.C.  
117 W. Fourth Street, Suite 200  
Royal Oak, Michigan 48067-3804  
(248) 398-9800  
(248) 398-9804{fax}  
ppitt@pdm.net {e-mail}

H:\Pat\MLP\AVACLU\FILE\PLEADINGS\LONG.CLAIM.FORM.wpd



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2

February 19, 2004  
**NOTICE OF SETTLEMENT  
OF CLASS ACTION**

TO: ALL WOMEN IN THE PAST OR PRESENT, WHO HAVE BEEN  
INCARCERATED IN THE LIVINGSTON COUNTY JAIL FROM MARCH 14,  
1997 TO THE PRESENT

1. A lawsuit has been filed by the American Civil Liberties Union Fund of Michigan ("ACLU") on behalf of all women inmates who have served time in the Livingston County Jail after March 14, 1997 and before February 19, 2004, who during their sentence have been allegedly subjected to the conditions described below. The lawsuit entitled Cox, et al. v. Homan, et al. (Docket #00-71310) is pending in the United States District Court - Eastern District of Michigan ("the court") and before the Honorable Bernard A. Friedman ("Judge Friedman").

2. The lawsuit claims that plaintiffs' rights to privacy and equal protection have and are being violated by the acts, policies, and omissions of defendants. The alleged unlawful acts include male officers and inmates viewing women while showering, dressing and using the toilet; degrading language and treatment of women inmates; the denial of equal opportunity for women inmates to participate in work release or jail inmate worker (trusty) programs. Plaintiffs seek injunctive relief to end the alleged violations of plaintiffs' rights and money damages for class members to compensate them for alleged violation of their rights and injuries caused by these alleged violations.

3. The court has certified this action as a class action and has defined the class as set forth above. If you are a woman inmate and claim to have experienced the conditions described in this notice, you will be bound by the final judgment entered in this case. This means that you will not be able to file your own lawsuit seeking damages or compensation for harm caused by the alleged jail conditions described in this notice.

4. On September 17, 2003, the ACLU entered into a settlement agreement with the sheriff of Livingston County, Donald D. Homan ("Homan") and the board of commissioners for Livingston County ("Livingston County") to resolve all equitable and monetary relief.

5. This settlement was agreed to by defendants to avoid further litigation and buy enforceable legal peace. This agreement is recognized and accepted by the parties as not constituting an admission of wrongdoing or liability by any defendant. Defendants expressly deny wrongdoing and/or liability.

6. On February 19, 2004, the court entered a conditional judgment preliminarily approving the agreed-upon equitable and monetary relief and plan of allocation of settlement proceeds which is attached to this notice.

7. The court has scheduled a fairness hearing for **April 1, 2004**, at 10:00 A.M. At that time, the court will hear objections to the terms and conditions of the settlement of the class action. The fairness hearing will be conducted at the following address: 238 T. Levin U.S. Courthouse, Detroit, Michigan 48226 (Judge Bernard Friedman's courtroom.)

8. If you wish to enter objections or comments about the settlement, or the plan of allocation, you must: (1) be a class representative or class member as described above; and, 2) file your written objections or comments with the court and the attorneys for the parties no later than **March 22, 2004**.

9. If the court approves the settlement of this class action, all class representatives and members will be bound by the terms of the settlement unless a petition for exclusion is filed with the court no later than **March 22, 2004**. Upon receipt of a timely petition, the court will issue an order requesting the petitioner to show cause on the date of the fairness hearing, why the petitioner should be excluded from the class.

10. You are entitled to be represented by an attorney of your choice and at your own costs. You should carefully review the terms of the conditional judgment and plan of allocation of settlement proceeds because your participation rights are explained in those documents. If you have questions, you may call, write, fax or e-mail class counsel for assistance. **DO NOT CALL THE COURT.**

Class counsel are:

Michael Pitt  
Peggy Goldberg Pitt  
Deborah LaBelle  
Michael Steinberg

Defense counsel is:

Ruth Mason  
COHL, STOKER & TOSKEY, P.C.  
601 N. Capitol Avenue  
Lansing, Michigan 48933  
(517) 372-9000  
(517) 372-1026 (fax)  
[cst@voyager.net](mailto:cst@voyager.net)

All objections or comments should be mailed or delivered to the court no later than **March 22, 2004**, with copies delivered or mailed to the above attorneys at the same time.

11. This notice shall be mailed to the last-known address of any woman identified by class counsel as a class member, and shall be posted and maintained until further order of the court, in conspicuous locations within the Livingston County Jail, including holding areas, and published in the Livingston County Press, Brighton Argus and Ann Arbor News. The cost of publication shall be borne by the plaintiffs.

12. Questions may be directed to the attorneys representing the class by writing, faxing, calling or e-mailing to:

PITT, DOWTY, McGEHEE, MIRER & PALMER, P.C.  
Michael L. Pitt  
Peggy Goldberg Pitt  
117 West Fourth Street, Suite 200  
Royal Oak, Michigan 48067  
(248) 398-9800  
(248) 398-9804 (fax)  
[ppitt@pdmm.net](mailto:ppitt@pdmm.net)  
[mpitt@pdmm.net](mailto:mpitt@pdmm.net)

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-or-

LAW OFFICES OF DEBORAH LABELLE

Deborah LaBelle  
221 N. Main, Suite 300  
Ann Arbor, Michigan 48104  
(734) 996-5620  
(734) 769-2196 (fax)  
deblabelle@aol.com

---

HON. BERNARD A. FRIEDMAN

DATED: \_\_\_\_\_

3

UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THERESA ANN COX, TAMARA PATRICK  
and JANE DOE Individually and as representative  
of all similarly-situated former, current  
and future female prisoners at the  
Livingston County Jail,

CLASS ACTION

Plaintiffs,  
vs.

Case No. 00-71310  
Hon. Bernard A. Friedman  
Magistrate R. Steven Whalen

DONALD D. HOMAN, in his individual and  
official capacity as Livingston County Sheriff,  
KENNETH LEE WRIGHT, in his individual and  
official capacity as Livingston County Undersheriff,  
ROBERT BEZOTTE, in his individual and official  
capacity as Livingston County Undersheriff,  
KENNETH GRIFFIS, in his individual and official  
capacity as Livingston County Jail Administrator,  
Lt. FRED WILLIAMS, in his individual and official  
capacity as Livingston County Jail Administrator,  
WILLIAM PARKMAN, in his individual and official  
capacity as Livingston County Corrections Manager, and  
the BOARD OF COMMISSIONERS FOR THE COUNTY  
OF LIVINGSTON, a public body, jointly and severally,

Defendants.  
and

STATE OF MICHIGAN,  
Intervenor.

FILED  
2004 APR -7 A 2:11  
U.S. DIST. COURT CLERK  
EASTERN DISTRICT OF MICHIGAN  
DETROIT

PITT, DOWTY, McGEHEE, MIRER & PALMER, P.C.  
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PEGGY GOLDBERG PITT P-31407  
Cooperating Attorneys for ACLU Fund of MI  
Attorneys for Plaintiffs  
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Royal Oak, Michigan 48067  
(248) 398-9800

DEBORAH LaBELLE P-31595  
Cooperating Attorney for ACLU Fund of MI  
Attorney for Plaintiffs  
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(734) 996-5620

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Ann Arbor, Michigan 48109

MICHAEL J. STEINBERG P-43085  
KARY L. MOSS P-49759  
ACLU FUND of Michigan  
Attorneys for Plaintiffs  
60 West Hancock  
Detroit, Michigan 48201



COHL, STOKER & TOSKEY, P.C.  
RUTH MASON P-26432  
Attorney for Defendants Homan,  
Williams, Parkman & Bezotte  
601 N. Capitol Avenue  
Lansing, Michigan 48933  
(517) 372-9000

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THOMAS MATTHEWS P-28414  
Attorney for Defendant Wright  
9812 E. Grand River  
Brighton, Michigan 48116  
(810) 227-7878

KENNETH GALICA P-27275  
Attorney for Defendant Griffis  
33900 Schoolcraft  
#G-1  
Livonia, Michigan 48150  
(734) 261-2400

---

### FINAL CONDITIONAL JUDGMENT

At a session of said Court, held in the U.S. Courthouse  
in the City of Detroit, County of Wayne, State of Michigan, on:

PRESENT: HON. \_\_\_\_\_  
DISTRICT COURT JUDGE

On April 1, 2004, the court conducted a hearing to consider the objections of the class members, and to determine the overall fairness of the settlement as preliminarily approved by the court on February 19, 2004.

It appearing that plaintiffs have satisfied all the terms and conditions of the court's February 19, 2004 conditional judgment and having met all the requirements of due process, and the court having considered the timely objections of class members Tina Hurley, Kimberly Mapes and Diane Marcum,

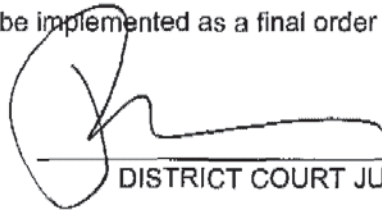


IT IS HEREBY ORDERED that the equitable relief and the monetary settlement as set forth in the plan of allocation is hereby approved as fair and in the best interests of the class.

IT IS FURTHER ORDERED that the objections of Tina Hurley, Kimberly Mapes and Diane Marcum are overruled for the reasons stated on the record.

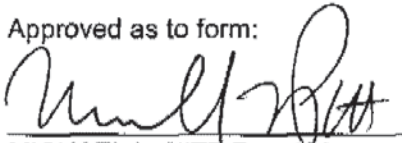
IT IS FURTHER ORDERED that all the terms and conditions of the court's February 19, 2004 conditional judgment are to be implemented as a final order of this court.

APR 7 2004



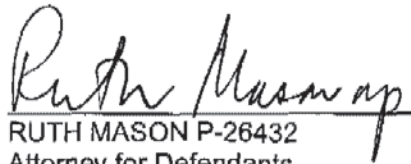
DISTRICT COURT JUDGE

Approved as to form:



MICHAEL L. PITT P-24429



Attorney for Plaintiffs




RUTH MASON P-26432

Attorney for Defendants

Exhibit D


Letters R Better



Letters R Better
About
Like

### About

Grassroots activist group addressing the appalling conditions and rights violations at the Muskegon County Jail.

### Description

Letters are Better formed in January of 2011 after the Muskegon County Jail banned inmates from sending or receiving letters. We are a group dedicated to addressing the appalling conditions and rights violations at the Muskegon County Jail including race, class, and gender discrimination, environmental hazards such as raw sewage and black mold, withholding medical care, and denying legal representation and information. We recognize the current criminal justice system fails to acknowledge inequality, poverty, and racism as the root causes of imprisonment. We believe in a world without jails and prisons. We strive to build communities of responsibility, dignity, and care, to replace the current system of fear, punishment and neglect.

### Basic Info

Joined Facebook 05/23/2011

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[Developers](#)
[Careers](#)
[Privacy](#)
[Cookies](#)
[Terms](#)
[Help](#)

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Exhibit E



# POSTCARD-ONLY MAIL POLICIES IN JAIL

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Leah Sakala

**PRISON**  
POLICY INITIATIVE

<http://www.prisonpolicy.org/>

## ACKNOWLEDGEMENTS

I am extremely grateful to Terry Carter, Michele Deitch, David Fathi, Raha Jorjani, Dan Korobkin, and Benjamin Stevenson for sharing their expertise on jail postcard-only policies with me. Thanks also to Peter Wagner and Aleks Kajstura for their assistance in developing and distributing this report.

## ABOUT THE AUTHOR

Leah Sakala is a Policy Analyst at the Prison Policy Initiative and a graduate of Smith College.

## ABOUT THE PRISON POLICY INITIATIVE

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to demonstrate how the American system of incarceration negatively impacts everyone, not just the incarcerated. The Easthampton, Massachusetts based organization is most famous for its work documenting how mass incarceration skews our democracy. Other projects have included groundbreaking reports about sentencing enhancement zones and the prison telephone industry, and online resources giving activists, journalists and policymakers the tools they need to participate in setting effective criminal justice policy.

## FOR MORE INFORMATION

For more information, including copies of this report and links to additional resources, see <http://www.prisonpolicy.org/postcards/>.

**PRISON**  
POLICY INITIATIVE

PO Box 127 Northampton MA 01061

<http://www.prisonpolicy.org>

# RETURN TO SENDER: POSTCARD-ONLY MAIL POLICIES IN JAILS

by Leah Sakala

February 7, 2013

## INTRODUCTION

Over the past five years, dozens of local jails across the country have followed a harmful new policy trend: mandating that all personal written correspondence to or from jail take place via postcard. The postcard-only trend began in 2007, when controversial Maricopa County Sheriff Joe Arpaio instituted a ban on any incoming non-legal mail except for postcards.<sup>1</sup> Since then, sheriffs from jails in at least 13 states around the country—Arizona, California, Colorado, Florida, Georgia, Kentucky, Kansas, Michigan, Missouri, Oregon, Tennessee, Utah, and Washington—have followed suit by implementing their own postcard-only restrictions on incoming and outgoing mail, radically restricting incarcerated people's ability to communicate with the outside world. Although several jails that implemented postcard-only policies have since rescinded or relaxed their regulations in response to public pressure and litigation, dozens of postcard-only policies still stand, and more are introduced each year.

Postcard-only mail policies are ostensibly crafted to save funds by streamlining the mail screening process and limiting opportunities to introduce contraband into correctional facilities. In practice, they have the perverse effect of deterring written communication between incarcerated people and their communities,<sup>2</sup> straining connections that are essential for both successful reintegration and for preventing reoffending. Social science research has repeatedly documented the significant social and economic value of preserving the community and family support systems that keep formerly incarcerated people from returning to jail. Postcard-only policies run contrary to prevailing correctional standards and best practices, and the vast majority of jail facilities around the country, as well as all other kinds of detention facilities, successfully implement mail security measures without imposing dramatic postcard-only restrictions.

Additionally, postcard-only jail mail policies place a significant burden on the disproportionately black and low-income family members and communities of people incarcerated in jails. Limited visiting hours, exorbitant jail phone rates, and long distances make written communication the only viable way for many families and

community members to stay in touch with people in jail. Postcards are not a sufficient substitute for letters because they significantly restrict expression and communication, and they force people to choose between inappropriately exposing personal information and not communicating at all. Postcards are also far less economically efficient than letters, and each word written on a postcard is about 34 times as expensive as a word written on paper and mailed in an envelope.<sup>3</sup> Mandating that all written communication take place within the limited confines of individual postcards dramatically reduces friends' and family members' ability to communicate with a loved one behind bars.

---

**Jails have very little to gain from postcard-only mail rules, and society has a lot to lose from stifling written communication between incarcerated people and their communities.**

In short, jails have very little to gain from postcard-only mail rules, and society has a lot to lose from policies that stifle written communication between incarcerated people and their communities.

This report recommends that:

- 1) All jails should allow communication via letter and envelope.
- 2) State regulatory agencies that are responsible for jail oversight should prohibit postcard-only mail policies.
- 3) Professional correctional associations should refuse to accredit correctional facilities with postcard-only mail policies.
- 4) Immigrations and Customs Enforcement should refuse to enter into or renew contracts with local jails that violate Immigrations and Customs Enforcement's national detention standards by enforcing postcard-only mail restrictions.
- 5) State departments of corrections and federal agencies should refuse to contract with local jails that have adopted postcard-only mail policies.

## LETTER CORRESPONDENCE IS ESSENTIAL FOR INCARCERATED PEOPLE

Impeding written correspondence stifles one of the three most critical modes of communication between incarcerated people and their families and communities. When someone is put behind bars, postal mail, phone calls, and in-person visits are the three main ways to stay in touch. Mail correspondence is generally the most practical and economical method of communication to and from a correctional facility, and jails have successfully accommodated letter correspondence for centuries. Jail policies that limit incoming or outgoing mail—or both—to postcard format, making exceptions only for “legal” or sometimes “official” mail, constitute a dramatic departure from a long history of jail mail practices.

Contrary to what some jail officials insist, postcard-only policies stifle communication between incarcerated individuals and their communities because alternative forms of contact cannot replace the essential communication that is possible via letter. In-person visits are impossible for many family and community members, particularly when incarcerated people are sent to remote jails outside their communities. Jail visitation hours at many facilities are limited to just a few hours per week in a single time slot specified by jail officials, which can conflict with the employment schedule or childcare responsibilities of potential visitors. Jail phone calling rates are notorious for being prohibitively expensive. With some calls approaching \$1.00 per minute, plus an upfront connection fee, many families, friends, and colleagues who need to stay in touch are unable to afford regular phone contact.<sup>4</sup> With a letter, however, a single 45-cent stamp can efficiently send eight double-sided pages of writing paper in one envelope, placed in a local mailbox whenever the sender’s schedule allows.

Jail officials should be especially concerned about disrupting community ties because the people in jail custody are either serving relatively short sentences, or are still presumed innocent because they have not been tried or convicted.<sup>5</sup> In either case, individuals in jail will shortly return to the community and must resume daily life after experiencing a disruption in family, educational, professional, and other community affairs.<sup>6</sup> In contrast with state or federal prisons, the time an individual spends in jail can range from a few hours to, in most states, no more than a year. Often, sheriffs point to the fact that the average time spent in jail is only 10 or 20 days to justify prohibiting letters, but that “average” ignores the fact that the many people currently in jail are there long enough for letters to be critically important. For example, in the Los

Angeles County jail system, the largest in the county, the majority of people (60%) spend more than a week in jail. The average time served for those who are not released in the first week is nearly three months (87 days).<sup>7</sup> Keeping in touch with family and other members of the community is essential to successfully achieving stability and resuming daily responsibilities after being released from jail.<sup>8</sup>

## POSTCARD POLICIES BURDEN THE FAMILIES AND COMMUNITIES OF INCARCERATED PEOPLE

Postcard-only mail policies constitute a significant burden on the disproportionately black<sup>9</sup> and low-income<sup>10</sup> families and communities of the people incarcerated in jails. Families of incarcerated people face not only the economic and logistical struggle of coping with the loss of an income or main childcare provider, but also with the loss of emotional support and the social stigma of having an incarcerated family member.<sup>11</sup> Increasing the social and economic cost of staying in touch with a loved one behind bars by mandating that all written correspondence take place via postcard exacerbates these challenges.

Postcard-only policies place a particularly acute strain on parent-child relationships. Most incarcerated parents were significantly involved in their children’s lives before their period of incarceration, often as the primary caregiver. Research has documented, for example, the positive parenting exhibited by fathers before their period in jail,<sup>12</sup> and many incarcerated parents resume caregiving responsibilities upon release.<sup>13</sup> Maintaining regular contact provides clear benefits to both children and their incarcerated parents.<sup>14</sup> Because mail is the primary form of communication between incarcerated parents and their children, and the majority of incarcerated parents communicate with their sons and daughters through letters,<sup>15</sup> postcard-only policies severely limit parents’ and children’s ability to stay in touch. Drawings, for example, are a critical form of communication between many incarcerated parents and their pre-literate children, but many jail postcard-only policies prohibit any mail that includes drawings, art, photos, or even colored ink.<sup>16</sup> In these jurisdictions, the only permissible means of communication on paper is handwriting in black or blue ink on one side of a postcard. These examples from successful lawsuits against postcard-only policies in Colorado and Florida jails illustrate the strain jail postcard-only policies put on parents’ relationships with their children:

- Jason Kennedy corresponded regularly with his wife and children via letter, sending drawings to his



mentally disabled eight-year-old daughter. After the jail began to enforce a postcard-only mail policy, he could no longer send his drawings to his daughter. Because his family was neither able to visit regularly nor could afford the expense of extended phone calls, Mr. Kennedy's communication with his family was stifled.<sup>17</sup>

- Amber Hugenot had relied on drawings to communicate with her pre-literate children and express her feelings for them while she was in jail. When the jail instituted a postcard-only policy that included a ban on drawings, her children could no longer receive emotionally important communication from their mother. Too young to understand the postcard-only policy, the children were distressed when they suddenly stopped receiving drawings from their mother.<sup>18</sup>
- Robert Rumpf regularly sent cartoons to his two-year-old niece in order to maintain their relationship while he was incarcerated. When the jail instituted a postcard-only policy, he was prevented from engaging in meaningful communication with her.<sup>19</sup>

Postcard policies also sever communication between incarcerated people and loved ones on the outside who have medical conditions that limit their physical ability to read or write. When a postcard-only policy goes into effect, individuals who are physically unable to communicate in postcard format are effectively barred from written correspondence with an individual in jail, as in the following examples shared during my interviews with civil rights lawyers:

- A man in a Kansas jail with a postcard-only policy was unable to receive any written correspondence from his partner because she suffers from severe carpal tunnel syndrome and is unable to write by hand. She corresponds via letter regularly with other family members by using voice transcription technology. Since the assistive technology is not compatible with a postcard format, the couple was unable to correspond.<sup>20</sup>
- An individual in jail was unable to receive mail from an elderly relative who had arthritis because the relative was unable to write small enough to fit a message into the limited confines of a postcard.<sup>21</sup>

Postcard-only policies prevent families and friends from sharing personal or confidential information with each other. Anyone who wishes to send mail to or from a jail that enforces a postcard-only policy must subject the entire contents of his or her communication to review not

only by mail screeners in the jail, but also to anyone else who happens to view the postcard between the time it is written and the time it arrives in the hands of its intended recipient. Mailroom officials, postal carriers, and anyone at the postcard's origin or destination—including cellmates, other people at the jail, or any family members or coworkers who happen to retrieve the mail—all have access to every word written to or from jail on a postcard.

- In order to fill an eyeglasses prescription, David Clay needed to provide personal information, such as his social security number and date of birth. Because the jail in which he was confined had a postcard-only policy, he was forced to expose private data to anyone who handled or saw the postcard.<sup>22</sup>

Postcard-only policies substantially increase opportunities for inappropriate disclosure of personal information, creating a substantial barrier for individuals, both inside and outside of jail, who must arrange confidential personal affairs.

These privacy concerns prevent family members from communicating sensitive or personal information with each other in a confidential or timely manner. Numerous instances of this harmful chilling effect have been documented, such as the following cases from the successful Colorado and Florida lawsuits:

- While in jail, Lamont Morgan needed to communicate with his wife about parenting concerns, such as their oldest daughter's romantic relationship. The jail's postcard-only mail policy prevented him from writing to his partner because he was concerned that his younger children would inappropriately see the exposed confidential information about their sister.<sup>23</sup>
- Amber Hugenot, who was pregnant while in jail, was concerned about who would care for her child when he or she was born. She needed to communicate with the child's father in order to make appropriate childcare arrangements, but the lack of privacy deterred her from expressing her sensitive questions and concerns with the child's other parent.<sup>24</sup>
- Robert Rumpf, who suffers from a terminal illness, could not privately communicate with his sister about essential and intimate health details. Since the sister lived in another state and could not visit, and Mr. Rumpf could not afford the jail's telephone calling rates, they were unable to discuss critical information about his health.<sup>25</sup>

- Marcie Hamilton wrote to her son and daughter frequently while she was in jail, sending them artwork, poetry, and song lyrics on sheets of paper. She also sent each child individual letters in separate envelopes in order to confidentially discuss sensitive issues of sexual development, sexual orientation, and family planning. When the jail implemented a postcard-only policy, her children could no longer correspond with their mother about personal topics, and could not receive artwork and other meaningful written texts.<sup>26</sup>

As all of these examples show, the lack of confidentiality in postcard communication has serious consequences. In all of these situations, incarcerated people and their families were required to choose between inappropriately disclosing personal information and not communicating at all. Between a rock and a hard place, all chose to forgo critical communication with family members.

Because letter writing is far more economically efficient than postcards, postcard-only policies place an additional economic burden on the low-income communities with disproportionately high incarceration rates.<sup>27</sup> To quantify the additional economic burden of postcard-only policies, I directly compared the cost, in words-per-penny, of sending a message in a letter enclosed in an envelope versus on a postcard.<sup>28</sup> Using standard United States Postal Service rates, I found that every \$0.01 of postage covered 134 words written on double-sided letter-sized writing pad paper. On a postcard, the same \$0.01 pays for only four words. To write eight double-sided pages worth of text on postcards, which could be sent for \$0.45 in an envelope, one would need to send 47 postcards and it would cost more than \$15.00. In other words, relaying information on a postcard is about 34 times as expensive as in a letter. Not only is this a significant increase in upfront cost, but it becomes even more expensive with the additional time required to address and sequentially number all the postcards, and, in some cases, make an additional trip to the post office to obtain the required metered or prepaid postcards.<sup>29</sup> In sum, postcard policies foist a substantial expense on the families that can least afford it.

Mandating that all family mail correspondence take place via postcard places an enormous burden on the children, partners, parents, siblings, and other family members and friends of people who must spend a period of time in a local jail. Postcard-only mail rules ensure that the families and friends of incarcerated people, who have neither been

convicted nor accused of any crime or infraction, are punished as well.

## POSTCARD-ONLY POLICIES HINDER REENTRY AND PROMOTE RECIDIVISM

Postcard-only policies impose a huge social and economic cost not only on the families of incarcerated people, but also on entire communities because they strain the social ties that are essential for facilitating reentry and preventing recidivism. The United States jail population has more than quadrupled since 1980,<sup>30</sup> and much of that growth can be attributed to recidivism.<sup>31</sup> Social science research has found time and again that allowing incarcerated individuals to maintain meaningful connections to sources of support on the outside has a robust association with successful reentry and reduced recidivism rates. As criminal justice expert Joan Petersilia has pointed out,

*Every known study that has been able to directly examine the relationship between a prisoner's legitimate community ties and recidivism has found that feelings of being*

*welcome at home and the strength of interpersonal ties outside prison help predict postprison adjustment.<sup>32</sup>*

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**Postcard-only mail rules ensure that the families and friends of incarcerated people, who have neither been convicted nor accused of any crime or infraction, are punished as well.**

One study, for example, found that formerly incarcerated individuals identified family relationships as the single

most important factor in preventing them from reoffending.<sup>33</sup> Other studies have shown that formerly incarcerated individuals who assume active roles as partners and parents are less likely to return to prison.<sup>34</sup> Relationships cannot thrive, or many even survive, when a major mode of effective communication is banned.

Incarcerated people must be allowed to regularly communicate with their families in order to be able to benefit from a safety net of familial support during the critical period directly following release. Families are the most significant source of housing and financial support for people who are released from correctional facilities, and are also key to employment success and childcare assistance.<sup>35</sup> The nation's leading professional organization for correctional officials, the American Correctional Association, urges correctional facilities to support "successful family and community reunification," and overturn "any local, state, and federal laws and policies that place barriers on the offender's successful reentry."<sup>36</sup>

To resume daily responsibilities and achieve stability upon release, people in jail must maintain connections not only with family, but also with community religious leaders, medical caregivers, social service workers, teachers and educational professionals, work colleagues and supervisors, teammates, and friends. Each of these links are important, as the more varied the connections individuals in jail maintain during the period of incarceration, the lower the chances that they will return to jail after being released.<sup>37</sup>

Steady employment, for example, is one of the strongest predictors that an individual will avoid recidivism. When incarcerated people are prohibited from effectively communicating with current and potential employers, they are less likely to be able to get a job and achieve economic stability after release. It is impossible, for example, to submit a job application or résumé to a prospective employer, or to sufficiently explain an unexpected prolonged absence from work, on a postcard.

- Elizabeth Fritz worked as a restaurant manager prior to her arrest for a misdemeanor. When she learned her release date from jail, she wanted to write to her boss in order to explain her absence and request to return to work when she was released. Because the jail she was confined in had a postcard-only policy, she was unable to confidentially communicate with her supervisor to arrange post-release employment.<sup>38</sup>

The problem of how to keep people from reoffending after release has been squarely established as major national priority,<sup>39</sup> and ensuring that incarcerated people can stay in touch with their communities is essential to bringing down recidivism rates. For example, both major political parties put the issue of recidivism on their agendas in their 2012 party platforms.<sup>40</sup> The Republican 2012 platform even makes the direct link between family connections and reduced reoffending, advocating for “the institution of family-friendly policies ... [to] reduce the rate of recidivism, thus reducing the enormous fiscal and social costs of incarceration.”<sup>41</sup>

Postcard-only jail mail policies are ostensibly implemented to save public resources by streamlining the jail mail screening process, but rational policy analysis requires us to compare any short-term savings with the long-term consequences of recidivism. Even where jail officials have made concrete claims that banning personal mail in envelopes saves personnel time, courts have

rejected their arguments. As one judge wrote in his order for an injunction against a postcard-only policy in a Washington jail, “[a]lthough Defendants’ declarations establish that inspecting postcards is faster than opening and inspecting letters, the time-savings is too modest to demonstrate a significant rational relationship between the postcard-only policy and improving the Jail’s efficiency.”<sup>42</sup> Sheriffs’ departments that are considering implementing postcard-only mail policies have a responsibility to the public to balance vague claims about how suppressing mail may reap cost savings against the significant documented social and economic costs of rising jail populations and increased levels of reoffending.

## POSTCARD-ONLY POLICIES RUN CONTRARY TO CORRECTIONAL BEST PRACTICES

Postcard-only policies run contrary to standard correctional and detention mail practices and established professional best practice guidelines. Immigration and Customs Enforcement’s updated 2011 *National Detention*

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**Sheriffs’ departments should balance vague claims about how suppressing mail may reap cost savings against the significant documented social and economic costs of rising jail populations and reoffending.**

*Standards* specifically include a new stipulation that “[f]acilities shall not limit detainees to postcards and shall allow envelope mailings.”<sup>43</sup> Limiting written personal correspondence strictly to postcards blocks communication and hinders

efforts to facilitate reentry and reduce recidivism, which are widely recognized correctional goals. Corrections and detentions professionals on every level overwhelmingly agree that allowing incarcerated people to preserve meaningful contact with the outside community is an integral component of the correctional system’s mandate to uphold public safety.<sup>44</sup>

The several dozen jails that have implemented postcard policies are in the vast minority in the corrections field, and many jail officials continue to refuse to adopt postcard-only restrictions because of the policies’ harmful effects. For example, shortly after the San Diego jail announced its postcard-only policy, a spokesperson of the Sheriff’s Department of the Los Angeles Jails—the largest local jail system in the United States with an average daily population of over 18,000—told a reporter why his system would not even consider implementing a postcard-only policy: “We believe the mail coming to inmates is as important as their phone calls. If we were to limit the mail, we believe we would see a rise in mental challenges, maybe even violence.”<sup>45</sup>

The Los Angeles Jails spokesperson's concerns are consistent with long-established correctional professional standards that support and encourage contact between incarcerated people and their communities. The American Correctional Association's *Manual of Correctional Standards*, first written in the 1940s, serves as a best-practices guide for correctional policy decisions and procedures. Even early versions of the *Manual* explicitly explained why written letters are an essential part of the correctional process:

To persons confined, letters from home and from friends are often as important as visits. Permission to write friends or relatives affords inmates opportunity to express affection for loved ones and in many instances to release feelings of distress and loneliness. Letters are of such tremendous importance to the inmate that institutions are glad to encourage correspondence as an integral part of the treatment program. Many institutions pay special attention also to inmates who receive no mail and require staff members in the mail office to watch systematically for such cases. Officials then may seek out suitable friends or relatives and encourage them to write, and failing this in cases of unusual need, find interested strangers who are willing to take up correspondence with forgotten inmates.<sup>46</sup>

Postcard-only jail mail policies have the polar opposite effect, discouraging correspondence and impeding meaningful communication between incarcerated people and the outside community. The current version of the American Correctional Association's *Standards for Adult Location Detention Facilities* reiterates the Association's commitment to encouraging correspondence, stating that people in local correctional facilities should be permitted to send an unlimited volume of letters:

When the inmate bears the mailing cost, there is no limit on the volume of letters he/she can send or receive or on the length, language, content, or source of mail or publications, except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security.<sup>47</sup>

Monitoring mail is an essential part of maintaining a secure jail facility, however jails with postcard-only policies unilaterally stifle written correspondence regardless of whether or not jail officials have a reasonable belief that any given letter would present a threat to a facility or to the public. Furthermore, any mail censorship on the grounds of upholding public safety must be weighed against the strong connection that such censorship has with decreased public safety due to lower reentry success and increased recidivism.

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**The several dozen jails that enforce postcard-only mail restrictions dramatically deviate from the mail practices implemented at all other correctional facilities.**

Correctional and legal professional organizations widely agree that allowing incarcerated people to maintain connections with their families should be a particularly high priority. The American Correctional Association, for example, explicitly passed a resolution to "...[reaffirm] its promotion of family-friendly communication policies between offenders and their families through written correspondence, visitation and reasonably-priced phone calls."<sup>48</sup> The American Jail Association, the nation's leading association for local correctional facility professionals, "fully supports programs that encourage offenders to maintain contact with their friends and family and that access should be reasonably priced..."<sup>49</sup> The American Bar Association notes in its guidelines to bring correctional standards in line with legal precedent that, "[m]ail is a crucial method by which prisoners maintain and build familial and community ties."<sup>50</sup> The Bar Association standards include strong language encouraging written correspondence to and from correctional facilities: "Correctional authorities should allow prisoners to communicate as frequently as practicable in writing with their families, friends, and representatives of outside organizations, including media organizations."<sup>51</sup> Postcard-only policies stifle such

communication by presenting practical impediments to meaningful communication and imposing an extra economic burden on people who wish to stay in touch.

Because families are the main source of support for formerly incarcerated individuals directly following release, policies that jeopardize family contact also run contrary to prevailing best practices for facilitating reentry. The Re-Entry Policy Council, a joint project of the U.S. Department of Justice, the U.S. Department of Labor, and the U.S. Department of Health and Human Services, created to facilitate incarcerated individuals' reintegration in the community, recommends that correctional institutions "help to re-establish, expand, and strengthen relationships between prisoners and their families."<sup>52</sup>

The several dozen jails that enforce postcard-only mail restrictions dramatically deviate not only from prevailing industry standards, but also from the mail practices implemented at all other correctional facilities, including the vast majority of local jails and all state and federal prisons. Unlike jails, prison systems confine only individuals who have already been convicted and who are serving longer sentences. But even when budgets are tight, all 50 state departments of corrections, as well as the Federal Bureau of Prisons, successfully screen mail without resorting to extreme postcard-only mandates. The Federal Bureau of Prisons even explicitly states that



outgoing mail from minimum or low security institutions is generally released uninspected,<sup>53</sup> and that incarcerated people are “encourage[d] to correspond.”<sup>54</sup> Blanket bans on any non-legal or official mail that is not in postcard format conflict with standard mail procedure at every level of the U.S. correctional and detention systems.<sup>55</sup>

## POSTCARD-ONLY POLICIES ARE OVERBROAD AND HAVE UNINTENDED CONSEQUENCES

Sweeping postcard policies are particularly inappropriate for jails because of the diversity of functions jails serve and populations they contain. As the National Research Council of the National Academies observed, “The breadth of custodial arrangements accommodated by local jails and the dynamics of the jailed population make jails a critical feature of the justice system—albeit one that defies neat definition and measurement.”<sup>56</sup> For example, jails contain both juveniles and adults, people who have just been arrested and those who have been convicted, people from the surrounding area and those transferred from far away, people facing misdemeanor, criminal, and civil immigration charges, and people being held under local authority and under contract with the state or federal government.

Unilateral postcard-only mail policies preemptively chill all correspondence that jail officials decide is not explicitly of a legal, or in some cases “official,” nature, regardless of how legitimately critical a letter may be for either the sender or the recipient. Crafting a postcard-only restriction that anticipates and makes exceptions for all essential communication to and from the diverse jail population is impossible. Even if such a policy were feasible, the administrative challenge and expense of implementing complex mail screening rules would surely be more of a burden for jail administrators than the process of opening envelopes.

Immigration detainees facing civil charges are one example of a population that is uniquely vulnerable in the face of postcard-only jail mail policies, as more than half of detainees are held in local jail facilities.<sup>57</sup> Unlike defendants in criminal cases, people facing civil immigration charges do not enjoy a right to counsel and most people facing deportation do not have access to a lawyer.<sup>58</sup> Individuals without a lawyer, who appear *pro se* in court, must navigate the entire process, from the period of detention to the aftermath of the outcome, as their own advocates. Postcard-only policies can dramatically hinder civil immigration detainees from advocating on their own

behalf and arranging their affairs, and have the potential to exert a devastating impact on both the process and the outcome of immigration cases.

Because *pro se* immigration case advocacy requires extensive communication with family members, employers, and other community members that postcard-only policies can impede or prevent,<sup>59</sup> Immigrations and Customs Enforcement’s national standards specifically decree that immigration detainees should not be subject to postcard-only mail restrictions.<sup>60</sup> Detained individuals must assemble a significant amount of written information from individuals on the outside, such as letters of support from a doctor or employer, testimony from family members, legal documents such as birth certificates or green cards, and educational documents such as diplomas, degrees, or GED certificates. Even in situations where family and community members are able to travel to the jail facility during visiting hours to assist with *pro se* defense, many facilities do not allow exchanges of paper or documents during in-person visits. In such situations, non-postcard mail is the only way that detained individuals can coordinate their own defense to deportation.

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**Sweeping postcard-only policies cannot be crafted to accommodate all of the essential uses for non-postcard mail to or from a jail facility.**

Additionally, detained individuals are responsible for arranging the logistics of their cases, such as securing witnesses to appear in court, submitting motions, and filling out and submitting any necessary forms and applications, some of which may need input from family members. All of these tasks are impossible to perform from any jail that prohibits people from sending or receiving full sheets of paper in envelopes to or from family and other community members. Although jail postcard policies generally include an allowance for “legal” mail, and a handful of others also provide for other kinds of “official” mail, jail officials have complete discretion to decide what is considered to be a legal or official matter and what is not. Even when letters to and from family members, friends, or colleagues are of the utmost legal importance, they are automatically in jeopardy of being rejected from any jail with a postcard-only policy.

Unobstructed written contact during the period of detention is particularly crucial for parents, grandparents, children, siblings, extended family members or close friends who are facing the possibility of being permanently deported from the United States. Immigration detainees in local jails are frequently involuntarily transferred away from their own communities to remote facilities that contract with Immigration and Customs Enforcement.<sup>61</sup> When individuals are detained far from home in a jail facility

with exorbitant phone calling rates, mail is often only feasible method of communication with family and friends at home.

Impeding immigration case proceedings is just one example of the potential for harm caused by extreme and sweeping restrictions on written correspondence between people in jail and those on the outside. But while policy experts and jail officials can perhaps anticipate many of the mail needs of immigration detainees—and should ensure that facility mail policies accommodate those needs—letters to and from jail serve myriad other unforeseen legitimate purposes, which are as varied as the populations that jails contain. Simply put, sweeping postcard-only policies cannot be crafted to accommodate all of the essential uses for non-postcard mail to or from a jail facility.

## REJECTING POSTCARD-ONLY POLICIES

Although jail postcard-only policies are a relatively recent phenomenon and some jails continue to adopt them, litigation and public pressure have led many of the first facilities that implemented the policies to rescind their postcard-only rules. In the five years since the postcard-only policy trend began, courts, members of the public, advocates, and corrections officials have concluded that the social cost of inhibiting family and community members from communicating with people in jail is simply too high to justify dramatic mail restrictions.

The one instance where a state prison briefly announced—and then indefinitely postponed—plans to implement a postcard-only mail policy illustrates the significant social cost of restricting mail correspondence. In September of 2012, five years after Sheriff Joe Arpaio began the postcard-only policy trend, officials from the New Mexico Department of Corrections announced their intention to implement a radical change in the mail policy at the Southern New Mexico Correctional Facility, a 1,200-person medium security prison near Las Cruces: limit all incoming non-legal mail correspondence to written information on three-by-five-inch postcards.<sup>62</sup> Had it been implemented, this would have been the first postcard-only mail restriction in a state facility. Shortly after the policy was announced, however, corrections workers and family members of incarcerated people alike raised serious concerns about the potential harm of a ban on incoming letters and the policy was indefinitely postponed.

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**To enhance public safety, ensure that tax dollars are used efficiently, promote family stability, and prevent people from returning to jail, the postcard-only mail policy trend must end.**

The news coverage of the New Mexico Department of Corrections' postcard-only policy proposal illustrates how responding to contraband issues with postcard-only mail policies is an approach that is both incomplete and overbroad.<sup>63</sup> When New Mexico Corrections Secretary Gregg Marcantel announced the Department's decision to not implement to policy, he explained that contraband introduced through the mail was only part of a larger problem because prison staff members constitute a significant pipeline for illicit substances entering the prison.<sup>64</sup> Marcantel also recognized that prison staff needed to decide whether or not religious mail would be handled, and that an overall ban on any non-legal mail would likely need to be modified to exempt "certain types of correspondence like information from social agencies that are needed for inmate parole plans..."<sup>65</sup> As the New Mexico example illustrates, postcard-only rules constitute a clumsy policy response to contraband problems, failing to prevent illegal materials from being introduced to the correctional facilities while creating new obstacles for the rehabilitation and reentry programs that deter crime.

While the New Mexico Department of Corrections' postcard-only policy proposal was halted before it could be implemented, dozens of jails across the country that did initially craft and enforce postcard-only policies later abolished, postponed, or relaxed their postcard rules due to both constitutional and practical concerns. Local jail facilities that have overturned, postponed, or had a court-ordered injunction against their postcard-only policies include the Pinal County Jail in Arizona;<sup>66</sup> the jails the Colorado counties of Boulder,<sup>67</sup> El Paso,<sup>68</sup> and Lenawee;<sup>69</sup> the Santa Rosa County Jail in Florida;<sup>70</sup> the Butler<sup>71</sup> county jail in Kansas; the Bates<sup>72</sup> county jail in Missouri; the Oregon county jails of Columbia,<sup>73</sup> Marion,<sup>74</sup> and Benton;<sup>75</sup> and the Washington county jails in Spokane<sup>76</sup> and Yakima.<sup>77</sup> Officials in numerous other county jails have considered implementing postcard mail restrictions, but ultimately decided against banning non-postcard mail.<sup>78</sup> The five years since the jail postcard-only policy trend began have shown that dramatically restricting crucial written communication between incarcerated people and their communities is a destructive and expensive choice.

## CONCLUSION AND RECOMMENDATIONS

Jail postcard-only mail policies constitute a dramatic and unnecessary policy departure from centuries of successful jail mail systems, and are out of step with widely accepted

correctional standards and best practices. The local jails that introduce postcard-only policies are adopting an approach more severe than that imposed even in maximum-security prisons. Postcards are not sufficient substitute for correspondence in envelopes, and jails with postcard-only policies ensure that family members of incarcerated people who wish to communicate with their loved ones are punished as well.

restrictions run contrary to standard mail practice for both state and federal correctional facilities.

Local jails have a legitimate responsibility to preserve security and control spending, but they cannot ignore the significant social damage done by suppressing written correspondence. Mandating that all personal correspondence take place via postcard has a chilling effect on communication necessary to maintain social ties that are key for facilitating reentry and preventing recidivism. To enhance public safety, ensure that tax dollars are used efficiently, promote family stability, and prevent people from returning to jail, the postcard-only mail policy trend must end.

We recommend:

- 1) All jails should allow personal communication via letter and envelope. Jails that currently enforce postcard-only restrictions should revoke their postcard requirements and instead use the predominant mail screening methods implemented by prisons and the vast majority of jails.
- 2) State regulatory agencies that are responsible for jail oversight should prohibit postcard-only mail policies.
- 3) Because leading professional correctional associations unanimously agree on the importance of preserving community connections during the period of incarceration, they should refuse to accredit correctional facilities with postcard-only mail policies.
- 4) Immigration and Customs Enforcement should refuse to enter into or renew contracts with local jails that violate Immigration and Customs Enforcement national detention standards by limiting mail correspondence to postcards only. Such restrictions can dramatically impair detained individuals' ability to handle their cases and maintain contact with their communities.
- 5) State departments of corrections and federal agencies that contract with local jails for additional cell space should refuse to enter into or renew contracts with local jails that have adopted postcard-only mail policies. Such mail

## ENDNOTES

<sup>1</sup> Associated Press, Restricting Mail to Inmates to Postcards, *KTAR*, March 12, 2007. Accessed December 20, 2012 from: <http://ktar.com/?sid=414226&nid=6>; Maricopa County Sheriff's Office, "Inmate Notice," Maricopa County Sheriff's Office Website. Accessed December 20, 2012 from: [http://www.mcso.org/About/FAQ/pdf/jail\\_mail\\_rules.pdf](http://www.mcso.org/About/FAQ/pdf/jail_mail_rules.pdf).

<sup>2</sup> Amicus brief of the Michigan American Civil Liberties Union in *Prison Legal News v. Bezotte*, No. 2:11-cv-13460 (MI 2012), 6.

<sup>3</sup> See page 4 for details on this calculation.

<sup>4</sup> See, for example, Greg Garland, "PSC probing rates for inmate phone calls," *The Advocate*, Sep 27, 2011. Accessed December 20, 2012 from: <http://theadvocate.com/home/928995-79/story.html>; Rob Wildeboer, "Cook County phone contract costs inmates and families," *WBEZ 91.5*, March 14, 2012. Accessed December 20, 2012 from: <http://www.wbez.org/story/cook-county-phone-contract-costs-inmates-and-families-97263>; Milton J. Valencia, "Advocates, families fight jail phone fees," *Boston Globe*, July 13, 2012. Accessed December 20, 2012 from: <http://www.bostonglobe.com/metro/2012/07/12/inmates-families-challenging-costly-phone-bills/SWxp4emcQXp05c0pL2Z2AO/story.html>.

<sup>5</sup> Two jail experts, Martha Lyman and Stefan LoBuglio, vividly analogized that the nation's jail population "flows like a torrential river" with a constantly churning population entering and exiting jail doors in their paper "'Whys and Hows' of Measuring Jail Recidivism" submitted for an Urban Institute Jail Reentry Roundtable, June 27-28, 2006. Accessed December 20, 2012 from: [http://www.urban.org/reentryroundtable/lyman\\_lobuglio.pdf](http://www.urban.org/reentryroundtable/lyman_lobuglio.pdf).

<sup>6</sup> Todd R. Clear, Elin Waring and Kristen Scully, "Communities and Reentry" in *Prisoner Reentry and Crime in America*, Jeremy Travis and Christy Visser, eds. (New York: Cambridge University Press, 2006), 179-208.

<sup>7</sup> In the Los Angeles Jail system, roughly a third of all individuals who are booked are released within three days, and nearly 40% are released within a week. James Austin, et. al., *Evaluation of the Current and Future Los Angeles County Jail Population* (Denver, CO: JFA Associates, 2012). Accessed December 12, 2012 from: [http://www.aclu.org/files/assets/austin\\_report\\_20120410.pdf](http://www.aclu.org/files/assets/austin_report_20120410.pdf).

<sup>8</sup> Joan Petersilia, *When Prisoners Come Home* (New York, NY: Oxford University Press, 2006), 246.

<sup>9</sup> Bureau of Justice Statistics, *Jail Inmates at Midyear 2011* (Washington D.C.: U.S. Department of Justice, April, 2012), Table 6.

<sup>10</sup> See generally Bruce Western, "Chapter 4: Invisible Inequality," in *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006) 85-107.

<sup>11</sup> Christopher Uggen, Sara Wakefield, and Bruce Western, "Work and Family Perspectives on Reentry" in *Prisoner Reentry and Crime in America*, Jeremy Travis and Christy Visser, eds. (New York: Cambridge University Press, 2005), 209-243; Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry* (Washington D.C.: Urban Institute Press), 2005, 126-131.

<sup>12</sup> Petersilia 2006, 228.

<sup>13</sup> Steve Christian, *Children of Incarcerated Parents* (Washington D.C.: National Conference of State Legislatures, March 2009), 2-4; Charlene Wear Simmons, *Children of Incarcerated Parents* (Sacramento: California Research Bureau, 2001), 4. Accessed November 20, 2012 from: <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

<sup>14</sup> Reentry Policy Council, Policy Statement 13 in *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (New York: Council of State Governments Justice Center, 2006), 192.

<sup>15</sup> Margaret diZerega and Sandra Villalobos Agudelo, *Piloting a Tool for Reentry* (New York: Vera Institute of Justice, 2011). Accessed November 12, 2012 from: <http://www.vera.org/download?file=3339/Piloting-a-Tool-for-Reentry-Updated.pdf>; Bureau of Justice Statistics, *Parents in Prison and Their Minor Children* (Washington D.C.: U.S. Department of Justice, August 2008), 6.

<sup>16</sup> See, for example, the policies at the Manatee County, Florida jail (accessed November 13, 2012 from: <http://www.manateesheriff.com/Bureaus/MailGuidlines.aspx>), the Glynn County, Georgia jail (accessed November 13, 2012 from: <http://www.glynncountysheriff.org/data/mail.pdf>), or the Lafayette County Missouri jail (accessed November 13, 2012 from: <http://www.lcsheiff.com/MailProc.htm>).

<sup>17</sup> Second Amended Complaint, *Reynolds v. Hall*, No. 3:10-cv-355 (N.D. Fla.), filed December 4, 2010, 5-6. (Document on file with author.) (Regarding the jail in Santa Rosa Florida.)

<sup>18</sup> Class Action Complaint for Injunctive and Declaratory Relief, *Martinez v. Marketa*, No. 10-cv-02242, filed on September 14, 2010 (opinion issued 2011 U.S. Dist. LEXIS 60711 (D. Colo. June 7, 2011)), 9-10. (Regarding the jail in El Paso County, Colorado.)

<sup>19</sup> Class Action Complaint for Injunctive and Declaratory Relief, *Martinez v. Marketa*, 13-15.

<sup>20</sup> John Hines, personal correspondence to Prison Legal News on February 20, 2012. (On file with author.)

<sup>21</sup> Telephone interview by the author with Lance Weber, Litigation Director of the Human Rights Defense Center, November 6, 2012.

<sup>22</sup> Class Action Complaint for Injunctive and Declaratory Relief, *Clay v. Pelle*, No. 10-cv-01840, filed August 3, 2010 (opinion issued 2011 U.S. Dist. LEXIS 27630 (D. Colo. Mar. 8, 2011)), 5-6. (Regarding the jail in Boulder County Colorado.)

<sup>23</sup> Class Action Complaint for Injunctive and Declaratory Relief, *Clay v. Pelle*, 7-8.

<sup>24</sup> Class Action Complaint for Injunctive and Declaratory Relief, *Martinez v. Marketa*, 9-10.



<sup>25</sup> Class Action Complaint for Injunctive and Declaratory Relief, *Martinez v. Marketa*, 13-15.

<sup>26</sup> Second Amended Complaint, *Reynolds v. Hall*, 6-9.

<sup>27</sup> Prior to their arrest, people in jail are far less likely to be employed than people who are not in jail (29% versus 6% in 2002). Of the incarcerated people who were employed in the month prior to their arrest, most earned less than \$1,000. Doris J. James, *Profile of Jail Inmates, 2002* (Washington D.C.: U.S. Department of Justice, July 2004). Bureau of Labor Statistics, "Employment status of the civilian population by sex and age," Economic News Release, Table A-1 from January 2002. Accessed January 29, 2013 from: <http://www.bls.gov/webapps/legacy/cpsatab1.htm>. See also Todd R. Clear, "The Effects of High Imprisonment Rates on Communities," *Crime and Justice*, Vol. 37 No. 1 (2008), 97-132.

<sup>28</sup> I compared test handwriting samples on writing pad paper versus handwriting samples on the largest allowable U.S. Postal Service regular postcard size. To most closely simulate realistic postcard writing and err on the side of a conservative estimate, the handwriting on the postcard was even smaller than the handwriting on the letter. This calculation does not include the expense of purchasing postcards, paper, or envelopes because of the wide variation between the cost of writing supplies at different facilities.

<sup>29</sup> For examples of postcard-only policies that prohibit stamped postcards, see the Maricopa County Sheriff's Office's policy in Arizona, accessed November 5, 2012 from: [http://www.mcso.org/About/FAQ/pdf/jail\\_mail\\_rules.pdf](http://www.mcso.org/About/FAQ/pdf/jail_mail_rules.pdf), or the policy enforced by the Sheriff's Office in the Douglas County, Georgia jail, accessed December 20, 2012 from: [http://www.sheriff.douglas.ga.us/pdfs/inmate\\_mail.pdf](http://www.sheriff.douglas.ga.us/pdfs/inmate_mail.pdf).

<sup>30</sup> Bureau of Justice Statics, "Key Facts at a Glance: Correctional Populations," Accessed December 31, 2012 from: <http://bjs.ojp.usdoj.gov/content/glance/tables/corr2tab.cfm>.

<sup>31</sup> Michael D. White, Jessica Saunders, Christopher Fisher and Jeff Mellow, "Exploring Inmate Reentry in a Local Jail Setting: Implications for Outreach, Service Use, and Recidivism," *Crime & Delinquency*, Vol. 58 No. 1 (2012), 128.

<sup>32</sup> Petersilia 2006, 245-246. Emphasis in original.

<sup>33</sup> Nancy La Vigne, *Chicago Prisoners' Experiences Returning Home* (Washington D.C.: Urban Institute, 2004). Accessed September 24, 2012 from: [http://www.urban.org/uploadedpdf/311115\\_chicagoprisoners.pdf](http://www.urban.org/uploadedpdf/311115_chicagoprisoners.pdf).

<sup>34</sup> Petersilia 2006, 41-42. See also Christy Visser, "Incarcerated Fathers: Pathways from Prison to Home" *Criminal Justice Policy Review* Vol. 24 No. 1 (January 2013), 9-26.

<sup>35</sup> Margaret diZerega and Sandra Villalobos, 2011.

<sup>36</sup> American Correctional Association, "Public Correctional Policy on Reentry of Offenders," resolution 2001-3, passed August 15, 2001, reviewed and amended Aug. 16, 2006 and August 6, 2011. Published in American Correctional Association, *Public Correctional Policies 2012*, 79. Accessed November 4, 2012 from: [https://www.aca.org/government/policyresolution/PDFs/Public\\_Correctional\\_Policies.pdf](https://www.aca.org/government/policyresolution/PDFs/Public_Correctional_Policies.pdf).

<sup>37</sup> Minnesota Department of Corrections, *Effects of Prison Visitation on Offender Recidivism*, November 2011. Accessed December 3, 2012 from: [http://www.doc.state.mn.us/publications/documents/11-11PrisonVisitationResearchinBrief\\_Final.pdf](http://www.doc.state.mn.us/publications/documents/11-11PrisonVisitationResearchinBrief_Final.pdf).

<sup>38</sup> Class Action Complaint for Injunctive and Declaratory Relief, *Martinez v. Marketa*, 8-9.

<sup>39</sup> Erin A. Orrick et. al., "Testing Social Support Theory: A Multilevel Analysis of Recidivism," *Journal of Criminal Justice*, Vol. 39 No. 6 (November/December 2011), 501.

<sup>40</sup> *Democratic National Platform*, 2012. Accessed October 20, 2012 from: <http://assets.dstatic.org/dnc-platform/2012-National-Platform.pdf>; *Republican Party Platform*, 2012, 38. Accessed October 20, 2012 from: <http://www.gop.com/wp-content/uploads/2012/08/2012GOPPlatform.pdf>.

<sup>41</sup> Republican Party Platform, 2012, 38.

<sup>42</sup> Opinion and order, *Prison Legal News v. Columbia County*, No. 3:12-cv-00071-SI (Opinion issued 2012 U.S. Dist. LEXIS 74030 (D. Or. May 29, 2012)), 19.

<sup>43</sup> Immigration and Customs Enforcement, "5.1 Correspondence and Other Mail" in *2011 Operations Manual ICE Performance-Based National Detention Standards* (Washington, D.C.: U.S. Department of Homeland Security, 2011), 276.

<sup>44</sup> See footnotes 43, 45-53.

<sup>45</sup> Steve Whitmore, quoted in Associated Press, "Ventura County jail limits inmates to postcards," *Ventura County Star*, September 24, 2010. Accessed October 20, 2012 from: <http://www.vcstar.com/news/2010/sep/24/ventura-county-jail-limits-inmates-to-postcards/>.

<sup>46</sup> American Correctional Association, *Manual of Correctional Standards*, (Washington D.C.: American Correctional Association, 1966), 545.

<sup>47</sup> American Correctional Association in Cooperation with Commission on Accreditation for Corrections, *Standards for Adult Location Detention Facilities*, Fourth Edition, 4-ALDF-5B-05, (June 2004). See also American Correctional Association in Cooperation with Commission on Accreditation for Corrections, *2012 Standards Supplement* (June 2012). (Document on file with author.) The standard for prison facilities is very similar, see American Correctional Association in Cooperation with Commission on Accreditation for Corrections, *Standards for Adult Correctional Institutions*, Fourth Edition, 4-4488 (January 2012); American Correctional Association in Cooperation with Commission on Accreditation for Corrections, *2012 Standards Supplement* (June 2012). (Document on file with author.)

<sup>48</sup> American Correctional Association, resolution 2010-1, "Supporting Family-Friendly Communication Policies," passed February 1, 2010. Published in American Correctional Association, *Public Correctional Policies 2012*, 13. Accessed November 4, 2012 from: [https://www.aca.org/government/policyresolution/PDFs/Public\\_Correctional\\_Policies.pdf](https://www.aca.org/government/policyresolution/PDFs/Public_Correctional_Policies.pdf).

<sup>49</sup> American Jail Association, “Adult/Juvenile Offender Access to Telephones” resolution, adopted May 3, 2008. Accessed November 4, 2012 from: <http://www.aca.org/government/policyresolution/view.asp?ID=2&printview=1>.

<sup>50</sup> American Bar Association, Standard 23-8.6 “Written communications,” *ABA Standards for Criminal Justice: Treatment of Prisoners*, 3<sup>rd</sup> edition, (Washington D.C.: American Bar Association, 2011), 266.

<sup>51</sup> American Bar Association, 2011, 264.

<sup>52</sup> Council of State Governments, Reentry Policy Council, Policy Statement 13 in *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (New York: Council of State Governments, January 2005). Accessed January 4, 2013 from: <http://www.reentrypolicy.org/Report/PartII/ChapterII-B/PolicyStatement13/>.

<sup>53</sup> Federal Bureau of Prisons Program Statement, 5265.11 Section 11.c (1), quoted in Declaration of Plaintiffs’ Expert Steve J. Martin, *Clay v. Pelle*, 5-6.

<sup>54</sup> BOP Program Statement, 5265.11 Section 1, quoted in Declaration of Plaintiffs’ Expert Steve J. Martin, *Clay v. Pelle*, 6.

<sup>55</sup> Declaration of Plaintiffs’ Expert Steve J. Martin, *Clay v. Pelle*, 5-6, 9.

<sup>56</sup> National Research Council, *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics* (Washington DC: National Academies Press, 2009), 99.

<sup>57</sup> Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, (New York: Human Rights First, September 2011). Accessed December 7, 2012 from: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>.

<sup>58</sup> U.S. Department of Justice, “FY 2011 Statistical Year Book.” Accessed November 20, 2012 from: <http://www.justice.gov/eoir/statpub/fy11syb.pdf>.

<sup>59</sup> For an overview of *pro se* representation in immigration detention cases, see Political Asylum/Immigration Representation Project, “Self-Help Manual For People Detained by the Immigration Service” (Boston, MA: Political Asylum/Immigration Representation Project, November 2009). Accessed December 5, 2012 from: <http://www.pairproject.org/SelfHelpManualEnglish%20nov09.pdf>. Especially of note is the list of documents on page 23 that are required to file for an EOIR-42A Application for Cancellation of Removal.

<sup>60</sup> Immigration and Customs Enforcement, 2011.

<sup>61</sup> Human Rights Watch, *A Costly Move: Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States* (New York: Human Rights Watch, June 14, 2011). Accessed December 2012 from: [http://www.hrw.org/sites/default/files/reports/us0611webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/us0611webwcover_0.pdf).

<sup>62</sup> Mike Gallagher, “Prison Puts New Postcard Rule on Hold,” *Albuquerque Journal*, September 30, 2012. Accessed November 10, 2012 from: <http://www.abqjournal.com/main/2012/09/20/news/prison-puts-new-postcard-rule-on-hold.html>.

<sup>63</sup> The question of whether or not postcard-only policies more effectively prevent contraband also arose during a lawsuit against a Washington jail’s postcard policy. In the judge’s order for an injunction against the postcard policy, he ruled, “Defendants have failed to offer evidence, or even an intuitive common-sense reason why the postcard-only mail policy more effectively prevents the introduction of contraband than opening and inspecting letters.” Opinion and order, *Prison Legal News v. Columbia County*, 17.

<sup>64</sup> Gallagher, 2012. See, also, for example, Milan Simonich, “Worker at Las Cruces-area prison allegedly supplied cocaine and heroin to inmate,” *El Paso Times*, June 18, 2012. Accessed September 18, 2012 from: [http://www.elpasotimes.com/newupdated/ci\\_20882835/prison-worker-supplied-cocaine-and-heroin-inmate](http://www.elpasotimes.com/newupdated/ci_20882835/prison-worker-supplied-cocaine-and-heroin-inmate); and Adam Camp, “NM Prisons: Police arrest 2nd smuggling employee within 6 weeks,” *KOB Eyewitness News 4*, July 31, 2012. Accessed September 18, 2012 from: <http://www.kob.com/article/stories/S2711525.shtml>.

<sup>65</sup> Gallagher, 2012.

<sup>66</sup> The Pinal County Sheriff’s Department changed its postcard-only policy in the middle of a lawsuit, *Prison Legal News v. Babeu*, No. 2:11-cv-01761-GMS, U.S.D.C. (D. Ariz.). The previous policy was accessed January 8, 2013 from: <http://web.archive.org/web/20080723194445/http://pinalcountyaz.gov/Departments/Sheriff/AdultDetentionCenter/Pages/FAQ.aspx>; the current policy was accessed January 8, 2013 from: <http://pinalcountyaz.gov/Departments/Sheriff/AdultDetentionCenter/Pages/FAQ.aspx>.

<sup>67</sup> Pierrette J. Shields and John Fryar, “Boulder County Commissioners approve jail mail deal with ACLU,” *Longmont Times-Call*, April 12, 2011. Accessed January 8, 2013 from: [http://www.dailycamera.com/404/ci\\_17826218](http://www.dailycamera.com/404/ci_17826218).

<sup>68</sup> American Civil Liberties Union press release, “El Paso County Sheriff Agrees To Stop Suppressing Prisoners’ First Amendment Rights,” December 20, 2010. Accessed January 8, 2013 from: <http://www.aclu.org/prisoners-rights/jail-drops-postcard-only-policy-following-aclu-lawsuit>.

<sup>69</sup> Letter from Jail Commander, Captain Dennis Steenrod to Ronald Rose, June 25, 2012. (On file with author).

<sup>70</sup> American Civil Liberties Union of Florida press release, “Court ends Santa Rosa County Sheriff’s “postcard only” mail policy,” February 14, 2012. Accessed January 8, 2012 from: [http://www.aclufl.org/news\\_events/?action=viewRelease&emailAlertID=3965](http://www.aclufl.org/news_events/?action=viewRelease&emailAlertID=3965).

<sup>71</sup> Letter from Doug Bonney, Legal Director of the ACLU of Kansas and Western Missouri, to Captain Floyd Hunt, October 22, 2012. (On file with author.) As of January 8, 2013, the facility’s current mail policy is available at: [www.bucoks.com/DocumentCenter/View/125](http://www.bucoks.com/DocumentCenter/View/125).

<sup>72</sup> American Civil Liberties Union of Kansas & Western Missouri press release, “Bates County, Missouri, Jail Agrees to Drop Its Postcard-only Inmate Mail Policy,” July 20, 2012. (Document no longer available online, on file with author.) As of January 8, 2013, the current Bates County Jail mail policy is available at: [http://www.batescountysheriff.com/jail\\_mail.aspx](http://www.batescountysheriff.com/jail_mail.aspx).

<sup>73</sup> Nick McCann, “Judge Kills Jail’s Postcard-Only Rule,” *Courthouse News Service*, May 31, 2012. Accessed January 8, 2013 from: <http://www.courthousenews.com/2012/05/31/46976.htm>. As of January 8, 2013, the current policy is available at: <http://www.co.columbia.or.us/sheriff/images/pdfs/j603-r10.pdf>.

<sup>74</sup> Emily Gillespie, “Jail changes mail policy to again accept letters,” *Statesman Journal*, June 29, 2012. Accessed via LexisNexis November 6, 2013. (On file with author.)

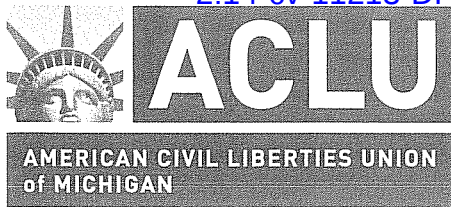
<sup>75</sup> Canda Fuqua, “Change in inmate mail policy has had little effect on Benton jail,” *Corvallis Gazette-Times*, July 4, 2012. Accessed January 8, 2013 from: [http://www.gazettetimes.com/news/local/change-in-inmate-mail-policy-has-had-little-effect-on/article\\_8b138fc8-c55b-11e1-9837-0019bb2963f4.html](http://www.gazettetimes.com/news/local/change-in-inmate-mail-policy-has-had-little-effect-on/article_8b138fc8-c55b-11e1-9837-0019bb2963f4.html).

<sup>76</sup> Matt Clarke, “PLN Wins \$230,000 in Settlement that Ends Spokane, Washington Jail’s Postcard-Only Rule,” *Prison Legal News*, January 2012. Accessed January 8, 2013 from: [https://www.prisonlegalnews.org/\(S\(atpwe2qhlgt1dnfqbk5xqj55\)\)/includes/\\_public/\\_issues/pln\\_2012/01pln12.pdf](https://www.prisonlegalnews.org/(S(atpwe2qhlgt1dnfqbk5xqj55))/includes/_public/_issues/pln_2012/01pln12.pdf).

<sup>77</sup> Author interview with jail official, January 8, 2013. As of January 8, 2013, the current mail policy is available at: <http://www.yakimacounty.us/doc/mailling.htm>.

<sup>78</sup> Multnomah County Sheriff’s Department in Oregon is one example, as detailed in Bill Oram, “Jails to limit inmate mail to postcards only,” *The Oregonian*, December 29, 2009. Accessed January 8, 2013 from: [http://www.oregonlive.com/washingtoncounty/index.ssf/2009/12/jails\\_to\\_limit\\_inmate\\_mail\\_to.html](http://www.oregonlive.com/washingtoncounty/index.ssf/2009/12/jails_to_limit_inmate_mail_to.html).

Exhibit F



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Phone 313.578.6800  
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Email [aclu@aclumich.org](mailto:aclu@aclumich.org)  
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[www.aclumich.org](http://www.aclumich.org)

\*\*\* **LEGAL MAIL** \*\*\*

February 19, 2014

██████████, Resident  
Livingston County Jail  
150 S. Highlander Way  
Howell, MI 48843

Dear Mr. ██████████:

The American Civil Liberties Union of Michigan (ACLU) is investigating the Livingston County Jail's troubling "postcard only" policy for inmate mail, which we believe to be unconstitutional.

In order to learn more about this policy and its effects on inmates and their families, we wish to meet with individuals who may be interested in challenging this policy in court. The purpose of this letter is to find out if you are interested in meeting with an ACLU attorney, or someone who works under the supervision of an ACLU attorney, for the purpose of obtaining legal advice or assistance regarding the Livingston County Jail's postcard-only mail policy. If you are, please fill out the enclosed form and return it to me in the enclosed envelope as soon as possible.

Unfortunately, it is extremely unlikely that we will be able to help you with any other legal issues you may have. Furthermore, it may turn out that we are ultimately unable to represent you in this matter. By filling out the form below, you would be requesting a meeting with an ACLU attorney in order to seek legal advice or discuss the possibility of legal representation.

Sincerely,

Daniel S. Korobkin, Esq.  
Deputy Legal Director, ACLU of Michigan  
2966 Woodward Ave.  
Detroit, MI 48201

\*\*\* LEGAL MAIL \*\*\*

REQUEST FOR MEETING WITH ACLU ATTORNEY

Name: \_\_\_\_\_

Expected Release Date or Trial Date: \_\_\_\_\_

I am concerned that the Livingston County Jail's postcard-only mail policy may be unconstitutional, and I wish to speak with an ACLU attorney, or someone working under the supervision of an ACLU attorney, for the purpose of requesting legal advice or assistance regarding that issue.

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

Exhibit G

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PRISON LEGAL NEWS, a Project  
of the Human Rights Defense  
Center,

Plaintiff,

Hon. Denise Page Hood

vs

Case No. 2:11-CV-13460

LIVINGSTON COUNTY SHERIFF  
BOB BEZOTTE, individually  
and officially, and  
LIVINGSTON COUNTY,

Defendants.

/

Deposition of LT. THOMAS CREMONTE, taken  
in the above-entitled matter before Notary Public,  
Patricia A. Lutz, CSR, CRR, at the McPherson Mansion, 915  
North Michigan Avenue, Howell, Michigan, on Friday,  
January 31, 2014, commencing at about 9:00 a.m.

Page 1



<p>1 APPEARANCES:</p> <p>2</p> <p>3 DANIEL E. MANVILLE, ESQ.</p> <p>4 Associate Clinical Professor</p> <p>5 Michigan State University College of Law</p> <p>6 610 Abbot Road</p> <p>7 East Lansing, Michigan, 48823</p> <p>8 (517) 336-8088</p> <p>9</p> <p>10 Appearing on Behalf of the Plaintiff.</p> <p>11</p> <p>12 T. JOSEPH SEWARD, ESQ.</p> <p>13 Cummings McClorey Davis &amp; Acho, PLC</p> <p>14 33900 Schoolcraft Road</p> <p>15 Livonia, Michigan 48150</p> <p>16 (734) 261-2400</p> <p>17</p> <p>18 Appearing on Behalf of the Defendants.</p> <p>19</p> <p>20 Also Present:</p> <p>21</p> <p>22 Stephanie Blumenau (student)</p> <p>23 Sharron Seaton (student)</p> <p>24</p> <p>25</p> <p>Page 2</p>	<p>1 INDEX OF EXHIBITS</p> <p>2 -----</p> <p>3 EXHIBITS MARKED</p> <p>4 -----</p> <p>5 Exhibit 1 80</p> <p>6 Exhibit 2 95</p> <p>7 Exhibit 3 150</p> <p>8 Exhibit 4 154</p> <p>9 Exhibit 5 155</p> <p>10 Question certified 17</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 4</p>
<p>1 INDEX OF WITNESSES</p> <p>2 -----</p> <p>3 WITNESS PAGE</p> <p>4 -----</p> <p>5 LT. THOMAS CREMONTE</p> <p>6 Examination by Mr. Manville 5</p> <p>7 Examination by Mr. Seward 169</p> <p>8 Re-Examination by Mr. Manville 176</p> <p>9 Re-Examination by Mr. Seward 183</p> <p>10 Further Re-Exam by Mr. Manville 183</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 3</p>	<p>1 Howell, Michigan</p> <p>2 Friday, January 31, 2013</p> <p>3</p> <p>4 DEPOSITION</p> <p>5</p> <p>6 LT. THOMAS CREMONTE</p> <p>7 having been first duly sworn by the Reporter, was</p> <p>8 examined and testified on his oath as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. MANVILLE:</p> <p>11 Q. Would you state your full name for the record.</p> <p>12 A. <b>Thomas Cremonite, C-R-E-M-O-N-T-E.</b></p> <p>13 Q. I assume you have had your deposition taken before?</p> <p>14 A. <b>Yes, I have.</b></p> <p>15 Q. Recently?</p> <p>16 A. <b>I think the last time may be a year ago or</b></p> <p>17 <b>something. About a year ago.</b></p> <p>18 Q. I will still want to go over a few rules so we are</p> <p>19 on the same page. You have probably heard a few</p> <p>20 times in a deposition, let me finish my question and</p> <p>21 I will let you finish your answer. When I feel that</p> <p>22 you have finished your answer, I will move on to my</p> <p>23 next question. If you haven't -- if you have just</p> <p>24 stopped for a minute to think or whatever, if I have</p> <p>25 started another question, just tell me.</p> <p>Page 5</p>

2 (Pages 2 to 5)

<p>1 BY MR. MANVILLE:</p> <p>2 Q. I am just asking -- I could be wrong, like you</p> <p>3 said -- but that is my memory. That's what we were</p> <p>4 told.</p> <p>5 <b>A. The inmates have assigned numbers; it could be put</b></p> <p>6 <b>on the mail. I don't have personal knowledge. I</b></p> <p>7 <b>don't recall that.</b></p> <p>8 Q. Have you ever taken the mail from up front to the</p> <p>9 back?</p> <p>10 <b>A. Sometimes.</b></p> <p>11 Q. What would you do when you get it?</p> <p>12 <b>A. The mail I would take to the back was usually legal</b></p> <p>13 <b>mail or mail that came in and there were special</b></p> <p>14 <b>circumstances but not the general mail.</b></p> <p>15 Q. You would not take that white bin back?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Can you tell me what Kathy does with the mail? I</p> <p>18 assume she probably goes up to Kay's office and then</p> <p>19 gets it, then what does she do with it after she</p> <p>20 gets it in the white bin; do you know?</p> <p>21 <b>A. Yes. What I have observed, again, what Kathy does</b></p> <p>22 <b>is Kathy goes through the mail bin and has all the</b></p> <p>23 <b>inmate mail, separates the inmate mail from our</b></p> <p>24 <b>mail, invoices, billing, whatever. Then at times if</b></p> <p>25 <b>there is mail that is not deemed appropriate or</b></p> <p style="text-align: center;">Page 26</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. Does she take the mail out of that white bin and</p> <p>3 spread it on her desk or does she reach into the</p> <p>4 white bin or does she do both?</p> <p>5 <b>A. Both.</b></p> <p>6 Q. Assuming that there is postcards in there --</p> <p>7 probably every day there is postcards in there;</p> <p>8 would that be accurate?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Does she look at the postcards at all to determine</p> <p>11 whether they meet the criteria to go inside the</p> <p>12 jail?</p> <p>13 <b>A. I am not positive.</b></p> <p>14 Q. My understanding is if you have pictures on the</p> <p>15 postcard, the postcard will not go into the jail?</p> <p>16 <b>A. Is that a question?</b></p> <p>17 Q. Right.</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. And you said "letters," what happens if the letter</p> <p>20 is from an attorney and Kathy has it in front of</p> <p>21 her, she picks it up and it says, "Law Office of</p> <p>22 Daniel E. Manville"?</p> <p>23 <b>A. It comes to me.</b></p> <p>24 Q. Why would it come to you?</p> <p>25 <b>A. I deal with the legal mail with the sergeants, the</b></p> <p style="text-align: center;">Page 28</p>
<p>1 <b>whatever, if there is letters that come in, they go</b></p> <p>2 <b>on my desk, then we have -- I think if someone</b></p> <p>3 <b>sends a letter to an inmate as opposed to a</b></p> <p>4 <b>postcard, we will have it put in their property bag.</b></p> <p>5 Q. My understanding is she had a desk also, like Kay;</p> <p>6 correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. I was told four desks?</p> <p>9 <b>A. They are cubicles, Kathy and I abut.</b></p> <p>10 Q. Actually cubicles with walls that separate the two</p> <p>11 of you. Like here we are sitting across from each</p> <p>12 other and we can see each other?</p> <p>13 <b>A. It is a half wall.</b></p> <p>14 Q. If Kathy is on the phone and you are in your</p> <p>15 cubicle, can you hear her?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. If you were talking to one of the other lieutenants</p> <p>18 in a normal voice and Kathy was at her desk, could</p> <p>19 she hear you?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. So would Kathy, with the mail, does she do it at her</p> <p>22 desk, if you know, the separation that you just</p> <p>23 talked about, reviewing the mail?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Have you observed her actually doing that, going --</p> <p style="text-align: center;">Page 27</p>	<p>1 <b>deputies deliver it personally.</b></p> <p>2 Q. Would all of the legal mail come out of the box at</p> <p>3 that time?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. <b>How do you define "legal mail"?</b></p> <p>6 <b>A. Mail from an attorney to a client that they had in</b></p> <p>7 <b>the jail.</b></p> <p>8 Q. <b>What about mail from the court, is that legal mail?</b></p> <p>9 <b>A. Yes.</b></p> <p>10 Q. <b>What about mail from a public official?</b></p> <p>11 <b>A. I would say probably not.</b></p> <p>12 Q. Can a public official send a regular letter to an</p> <p>13 inmate or do they have to send a postcard?</p> <p>14 <b>A. I know we have had those correspondence come in</b></p> <p>15 <b>before and I know we have opened them in front of</b></p> <p>16 <b>the inmate, yes. We have passed those in the past.</b></p> <p>17 <b>They are very infrequent.</b></p> <p>18 Q. I am talking about, say, from the House of</p> <p>19 Representatives, from the Senate, some type of</p> <p>20 public official like that, if they sent a letter to</p> <p>21 an inmate, would that be treated the same as legal</p> <p>22 mail, open only in their presence?</p> <p>23 MR. SEWARD: That calls for speculation.</p> <p>24 Lack of foundation.</p> <p>25 THE WITNESS: I don't know.</p> <p style="text-align: center;">Page 29</p>

<p>1 BY MR. MANVILLE:  2 Q. You don't know?  3 <b>A. I don't know.</b>  4 <b>Q. How do you determine whether the attorney is</b>  5 <b>representing that inmate or not at the jail?</b>  6 <b>A. If they are a local attorney -- I know all the</b>  7 <b>local attorneys. I know who practices what kind of</b>  8 <b>law. If it is an attorney from out of the county,</b>  9 <b>if it's an attorney where you get four, five pieces</b>  10 <b>of mail, "legal mail," and there are four or five</b>  11 <b>inmates getting them, those I would say are not</b>  12 <b>legal mail.</b>  13 Q. Why do you say that?  14 <b>A. I asked this when we first started getting</b>  15 <b>experience with this stuff, I asked the inmates, do</b>  16 <b>you have a relationship with attorney so and so, and</b>  17 <b>all of them told me no.</b>  18 Q. I understand that. Are inmates basically defining  19 what "legal mail" is at your facility?  20 <b>A. (No verbal response.)</b>  21 Q. Are they telling you how you define legal mail at  22 your facility?  23 <b>A. Inmates?</b>  24 MR. SEWARD: Asked and answered.  25 MR. MANVILLE: No, it wasn't.</p> <p style="text-align: center;">Page 30</p>	<p>1 circuit court whether Attorney Manville is  2 representing Inmate Jones?  3 <b>A. Routinely.</b>  4 Q. You routinely do that. That's one of the ways?  5 <b>A. We routinely do that, find out who the attorney of</b>  6 <b>record is.</b>  7 Q. Say you call the circuit court and the circuit court  8 says no, do you call any of the other courts?  9 <b>A. We call Judicial Aide who keeps track of all the</b>  10 <b>attorneys.</b>  11 Q. Are you aware that there is a Court of Appeals in  12 the state of Michigan?  13 <b>A. Sure.</b>  14 Q. Are you aware that there is a Michigan Supreme Court  15 in the state of Michigan?  16 <b>A. Yes.</b>  17 Q. Do you ever call them to find out whether that  18 person is representing them in either one of those  19 courts?  20 <b>A. No.</b>  21 Q. Do you know that there is a Federal Court system in  22 the Western District and the Eastern District of  23 Michigan?  24 <b>A. Yes.</b>  25 Q. Have you ever called any of those courts to find out</p> <p style="text-align: center;">Page 32</p>
<p>1 BY MR. MANVILLE:  2 Q. Go ahead and answer.  3 <b>A. No.</b>  4 Q. My question to you is how do you determine --  5 besides asking the inmates, how do you determine  6 whether a letter coming in to an inmate, that that  7 attorney is representing them or not?  8 MR. SEWARD: It's been asked and answered.  9 THE WITNESS: We investigate it. We ask  10 the inmate. If the inmate has no relationship with  11 the attorney, yes.  12 BY MR. MANVILLE:  13 Q. If the inmate says they have no relationship, you  14 don't let the letter in. What happens if the inmate  15 doesn't tell you? They don't have to tell you, do  16 they?  17 MR. SEWARD: Objection, compound question.  18 BY MR. MANVILLE:  19 Q. Does the inmate have to tell you whether they have a  20 relationship with an attorney or not?  21 <b>A. I suppose not.</b>  22 Q. Do you write a misconduct ticket if they don't  23 answer your question?  24 <b>A. No.</b>  25 Q. So, do you ever call the circuit court and ask the</p> <p style="text-align: center;">Page 31</p>	<p>1 whether somebody is representing them?  2 <b>A. No.</b>  3 Q. So, would it be accurate that if they are not  4 representing somebody in Livingston County, that you  5 assume that they are not representing them?  6 MR. SEWARD: No, that mischaracterizes his  7 testimony. It assumes facts not in evidence.  8 BY MR. MANVILLE:  9 Q. Go ahead and answer the question, if you can.  10 <b>A. No.</b>  11 Q. You don't?  12 <b>A. No.</b>  13 Q. Then it's like in this case I am an attorney  14 representing PLN outside, but I represent many  15 prisoners and many jail people, but my appearance is  16 only in Federal Court in the Eastern or Western  17 District. But if I come into the jail and see  18 Mr. Jones, you call Livingston County, there is no  19 one representing him. So, according to what you  20 said a minute ago, it seems that my mail to Inmate  21 Jones would not be allowed in because there is  22 nothing showing that I am representing him in  23 Livingston County; is that a fair statement?  24 MR. SEWARD: Objection, in the question  25 you haven't included what he told you earlier,</p> <p style="text-align: center;">Page 33</p>

9 (Pages 30 to 33)

<p>1 that's the basis of my objection.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. MANVILLE:</p> <p>4 Q. How do you determine if I am the attorney of record</p> <p>5 besides the inmate?</p> <p>6 A. Besides talking to the inmate?</p> <p>7 Q. Yes.</p> <p>8 A. That's pretty much it. In your case, mass mailings.</p> <p>9 Q. Now, I am not talking about this case here right</p> <p>10 now.</p> <p>11 A. Oh.</p> <p>12 Q. I told you I am only representing an inmate, a</p> <p>13 single Inmate Jones, in Eastern or Western District</p> <p>14 of Michigan.</p> <p>15 A. No.</p> <p>16 Q. You assumed I was referring to PLN, and I am going</p> <p>17 to ask you about that later.</p> <p>18 A. Okay.</p> <p>19 Q. So, getting back to Kathy, it seems that she pulls</p> <p>20 out an envelope -- would she even pull out the</p> <p>21 envelope of the people that you actually know are</p> <p>22 attorneys representing somebody in Livingston County</p> <p>23 and give them to you?</p> <p>24 A. Yes.</p> <p>25 Q. Then what about magazines? It seems what you are</p> <p style="text-align: center;">Page 34</p>	<p>1 them are no longer in jail, and I determined it to</p> <p>2 be inappropriate for us to deliver them.</p> <p>3 BY MR. MANVILLE:</p> <p>4 Q. If they are not in jail, I agree, it's a little hard</p> <p>5 for you to deliver them. You agree with that;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. But what about for the people that are still there?</p> <p>9 What you have testified to is you have determined</p> <p>10 that for those people that are there, it's</p> <p>11 inappropriate for them to get that magazine; is that</p> <p>12 an accurate statement?</p> <p>13 A. No, that's not accurate.</p> <p>14 Q. Then tell me what's wrong with my statement.</p> <p>15 A. When they come en masse, it creates an undue burden</p> <p>16 on our staff to deliver those, one. Two, they</p> <p>17 were -- there was content in those magazines that I</p> <p>18 felt was inappropriate for the inmates and it would</p> <p>19 have required our staff to cut out a lot of the</p> <p>20 solicitations and the advertisements in each and</p> <p>21 every magazine. We would have to remove staples</p> <p>22 which creates extra work for our staff and we have</p> <p>23 been short and I wasn't going to send those back.</p> <p>24 Q. Like I said, PLN is individually mailed, it is not</p> <p>25 considered bulk mail by any court system, by the</p> <p style="text-align: center;">Page 36</p>
<p>1 saying is that Kay doesn't do anything with</p> <p>2 magazines. That anything that is supposed to go</p> <p>3 inside the jail, she puts it over into this pile and</p> <p>4 she sends it to Kathy or whoever is doing Kathy's</p> <p>5 job; would that be an accurate statement?</p> <p>6 A. Yes.</p> <p>7 Q. So, then, Kathy brings it into the room that you</p> <p>8 guys are all in, whatever she does with the mail,</p> <p>9 does she do anything with the magazines? Is my</p> <p>10 question too vague?</p> <p>11 A. No, I am just -- no. The only magazines that I</p> <p>12 have seen come into the jail that have been brought</p> <p>13 to my attention were magazines that have come in</p> <p>14 bulk.</p> <p>15 Q. Every magazine that PLN had sent is not sent in</p> <p>16 bulk, it is sent as regular mail. So can you tell</p> <p>17 me why PLN magazines have never been given to the</p> <p>18 prisoners?</p> <p>19 MR. SEWARD: Let me object to that</p> <p>20 question because it assumes facts not in evidence.</p> <p>21 Go ahead.</p> <p>22 THE WITNESS: When the magazines have come</p> <p>23 in, they have usually come in a number of them at a</p> <p>24 time, multiple. Most often they come to inmates</p> <p>25 that are in jail and usually a large percentage of</p> <p style="text-align: center;">Page 35</p>	<p>1 post office, or anything else like that, and I know</p> <p>2 he can object to that as facts not in evidence, but</p> <p>3 we have that from the post office and we have that</p> <p>4 by showing the mail, so why are you saying the PLN</p> <p>5 publication is bulk mail? Is the reason because you</p> <p>6 are getting 20 or 30 at a time?</p> <p>7 A. Yes, in part.</p> <p>8 Q. So, correct me if I'm wrong here, but if every one</p> <p>9 has a first class postage mark on them and you get</p> <p>10 30 of them, you are still classifying them as bulk</p> <p>11 mail and you are not letting them go through in</p> <p>12 part, is that not accurate?</p> <p>13 A. (No verbal response.)</p> <p>14 Q. If you don't understand, I can rephrase it.</p> <p>15 A. Yes, rephrase it.</p> <p>16 Q. Let's stop for a minute. This heading is, "Prison</p> <p>17 Legal News," it has volume 24, number 6, June</p> <p>18 2013. I am not asking if you remember the exact</p> <p>19 date, but you have received and reviewed a number of</p> <p>20 these; right?</p> <p>21 A. Yes.</p> <p>22 Q. Not this issue but over the last year, would that be</p> <p>23 accurate?</p> <p>24 A. Yes.</p> <p>25 Q. These you have not let in, would that be accurate?</p> <p style="text-align: center;">Page 37</p>

10 (Pages 34 to 37)

<p>1 as legal mail and it was threats or sent 2 communication, conspiracy, plots, and stuff, to 3 have -- witness tampering, so we are going to 4 verify it's legitimately coming from an attorney. 5 Q. You do that by opening and reading it? 6 A. No, we open it in front of the inmate to make sure 7 that it's from a legitimate law firm. 8 Q. Open it in front of an inmate? 9 A. Right. 10 Q. How does opening it in front of an inmate verify 11 that it's a legitimate law firm? 12 A. In this here (indicating), correspondence from an 13 attorney may be opened in the presence of an inmate; 14 we will verify that it's legal mail. If I saw a 15 legal pad and a bunch of scribbles on there and 16 it's not typed on letterhead from a law office, then 17 I have got an issue with that. 18 Q. All right. But earlier you testified that how you 19 determined whether it's from an attorney or not is 20 by calling the prosecutor's office; right? 21 A. Yes. 22 Q. Calling this Justice Assistance Center, whatever -- 23 I forget what you called it, justice whatever, you 24 can call them and everybody in the county that's 25 representing somebody is listed in there?</p> <p style="text-align: center;">Page 98</p>	<p>1 Q. You have gone to WestLaw, have you ever read the 2 procedure, requirements for the processing of legal 3 mail into a county jail or into a prison? 4 A. I am sure I have. 5 Q. Do you remember what they required? 6 A. I don't recall what it requires. 7 Q. But you recall what they said about postcards; 8 right? 9 A. Yes, because I did specific research into that 10 but -- 11 (A short recess was taken.) 12 MR. MANVILLE: Back on the record. 13 BY MR. MANVILLE: 14 Q. Can you tell me what is meant by the term "bona fide 15 legal mail"? 16 A. Mail that is basically acceptable, that is 17 legitimate. I guess probably legitimate. 18 Q. Is it defined anywhere in your policy? 19 A. No. 20 Q. Because above this you say, Correspondence from 21 attorneys that may be opened in the presence of an 22 inmate, the second thing down. There doesn't seem 23 to be any limitation on mail from attorneys; right? 24 MR. SEWARD: Objection to the question. I 25 am not sure what you are asking.</p> <p style="text-align: center;">Page 100</p>
<p>1 A. The local defense bar. 2 Q. Okay. We talked about the Western and Eastern 3 District, circuit courts, and every county in the 4 state; right? 5 A. Yes. 6 Q. Juvenile and probate in probably every county in the 7 state; right? 8 A. Yes. 9 Q. So an inmate could be in your jail but be charged in 10 a certain court in another county; right? 11 A. Sure. 12 Q. You have had that problem many times? 13 A. Yes, all the time. 14 Q. So an inmate in your jail could have a probate 15 matter in another court; right? In another county? 16 A. Yes. 17 Q. But you don't call any of those circuit courts, you 18 don't call any of those circuit courts to verify 19 whether that attorney is representing them from 20 another county, do you? 21 A. It would depend upon the circumstances. It's all 22 about suspicion. It's understanding inmate 23 behavior, how they manipulate, depending on the 24 case, the specific inmate; there is a lot of 25 variables.</p> <p style="text-align: center;">Page 99</p>	<p>1 BY MR. MANVILLE: 2 Q. Would you agree that your sentence here, 3 "Correspondence from attorneys, as well as court 4 and public officials, may be opened in the presence 5 of an inmate," does not say that the attorney must 6 be representing the inmate? 7 A. It doesn't say that, no. 8 Q. Can you tell me where in any of the jail 9 policies -- we are going to go through the rest of 10 them -- where it says the only mail that comes to 11 an inmate has to be from the attorney of record? 12 A. It doesn't say that. 13 Q. Is that your policy? 14 A. That's our practice, yes. 15 Q. Isn't your practice different from your policy then? 16 A. Not really. The policy is kind of broad. The 17 practice is kind of specific and it is modified from 18 time to time based on need. 19 Q. Let me ask you this, it seems that earlier you said, 20 Well, the reason you would know that you can't send 21 this stuff in is by going to our website, right, in 22 regards to notice? I had asked you some questions 23 about notice. 24 A. Yes. 25 Q. But here, if I go to your website, it says</p> <p style="text-align: center;">Page 101</p>

<p>1 correspondence from attorneys basically are allowed</p> <p>2 in; right? There is no limitation; right?</p> <p>3 <b>A. It doesn't say that, but it could be an</b></p> <p>4 <b>interpretation.</b></p> <p>5 Q. Well, what other interpretation can you get from</p> <p>6 that one sentence, reading that sentence itself?</p> <p>7 <b>A. It just says it could be opened in the presence of</b></p> <p>8 <b>the inmate.</b></p> <p>9 Q. I am not asking about opening. I am saying what in</p> <p>10 this sentence gives anybody an indication that there</p> <p>11 is a special qualification for letters from an</p> <p>12 attorney that must be -- to be treated as legal</p> <p>13 mail, it must be from an attorney of record?</p> <p>14 MR. SEWARD: It's been asked and answered.</p> <p>15 THE WITNESS: It doesn't say that.</p> <p>16 BY MR. MANVILLE:</p> <p>17 Q. Is there anywhere in the policy, in the policy not</p> <p>18 practice, on your website, or somewhere we haven't</p> <p>19 gotten, where it says you must be an attorney of</p> <p>20 record to have your letters treated as legal mail</p> <p>21 and not opened in front of an inmate?</p> <p>22 MR. SEWARD: The same objection, it's been</p> <p>23 asked and answered.</p> <p>24 THE WITNESS: Please rephrase that. Are</p> <p>25 you saying -- please rephrase that.</p> <p style="text-align: center;">Page 102</p>	<p>1 Q. So Prison Legal News is seeking to educate the</p> <p>2 inmate as to their constitutional rights, that's</p> <p>3 what Paul Wright testified to the other day, that's</p> <p>4 one of the purposes of PLN, isn't that dealing with</p> <p>5 an issue personally to the inmate, knowing his</p> <p>6 rights?</p> <p>7 MR. SEWARD: Objection, calls for</p> <p>8 speculation, and the court has indicated -- Judge</p> <p>9 Denise Page Hood -- that those claims have been</p> <p>10 dismissed, and Magistrate Judge Randon yesterday</p> <p>11 said you could make some inquiry into it but not to</p> <p>12 make it prolonged. I don't know if he used that</p> <p>13 word "prolonged" --</p> <p>14 MR. MANVILLE: He said 30 minutes. He did</p> <p>15 say not to run it up to 30 minutes.</p> <p>16 MR. SEWARD: It's now 12:20 and I would</p> <p>17 say probably the bulk of the three hours we have</p> <p>18 been here so far have been legal mail.</p> <p>19 MR. MANVILLE: Once again, you are</p> <p>20 obviously exaggerating about the point; it has not</p> <p>21 been three hours on legal mail. It has been</p> <p>22 covering many areas not just one.</p> <p>23 BY MR. MANVILLE:</p> <p>24 Q. Do you agree with me that informing people of their</p> <p>25 constitutional rights is something of interest to</p> <p style="text-align: center;">Page 104</p>
<p>1 BY MR. MANVILLE:</p> <p>2 Q. I am saying is there anything in writing on your</p> <p>3 website or at the jail -- I am giving you anything</p> <p>4 in writing, notes that you have created, that states</p> <p>5 that only mail from an attorney to not be opened in</p> <p>6 front of the inmate must come from an attorney of</p> <p>7 record?</p> <p>8 <b>A. No, there is nothing that says that.</b></p> <p>9 Q. So, as part of your training of new officers, do you</p> <p>10 tell them or train them, unless the mail is from an</p> <p>11 attorney of record, it's not treated as legal mail</p> <p>12 and you can open it and read it, do whatever you</p> <p>13 want to it?</p> <p>14 <b>A. I can't answer how deputies are trained because I</b></p> <p>15 <b>don't specifically train them.</b></p> <p>16 Q. Okay. Then it's your definition that bona fide</p> <p>17 legal mail, that that would mean mail from an</p> <p>18 attorney who is representing an inmate?</p> <p>19 <b>A. Or mail that's on a legitimate legal matter that</b></p> <p>20 <b>involves the recipient, yes.</b></p> <p>21 Q. The inmate?</p> <p>22 <b>A. The inmate.</b></p> <p>23 Q. So are you saying that if -- involving the inmate,</p> <p>24 how do you define "involving the inmate"?</p> <p>25 <b>A. Subjective.</b></p> <p style="text-align: center;">Page 103</p>	<p>1 them?</p> <p>2 MR. SEWARD: Objection, calls for</p> <p>3 speculation.</p> <p>4 THE WITNESS: It may be something of</p> <p>5 interest but I don't see that as legal mail.</p> <p>6 BY MR. MANVILLE:</p> <p>7 Q. So it seems now you have gone beyond just the normal</p> <p>8 representing of somebody, as having the mail coming</p> <p>9 in from an attorney, to include the aspect that if</p> <p>10 they are writing them, representing them, but it's</p> <p>11 dealing personally with the inmate that you would</p> <p>12 then allow that to be treated as legal mail; right?</p> <p>13 <b>A. If you were to send a -- if you were to send a</b></p> <p>14 <b>postcard, a postcard to an individual inmate and ask</b></p> <p>15 <b>them to write you, would we let that in? Sure. But</b></p> <p>16 <b>when you send 30 postcards to 30 inmates soliciting</b></p> <p>17 <b>stuff, I interpret that as just a solicitation for</b></p> <p>18 <b>business, and if I allow you to do that, why can't I</b></p> <p>19 <b>allow bail bondsmen to do that or somebody else?</b></p> <p>20 Q. But I didn't do that, I sent seven letters to seven</p> <p>21 inmates twice, the first of December and in January,</p> <p>22 we verified it went out, that it was accepted, so we</p> <p>23 have got records of it, and none of them ever got to</p> <p>24 them, so I didn't do 30. So assuming that I am</p> <p>25 right, that I sent seven in December, can you tell</p> <p style="text-align: center;">Page 105</p>



<p>1 me why they weren't delivered?</p> <p>2 MR. SEWARD: Seven what?</p> <p>3 MR. MANVILLE: Seven letters.</p> <p>4 BY MR. MANVILLE:</p> <p>5 Q. Can you tell me why they were not given the letters?</p> <p>6 MR. SEWARD: Previous answer, he said they</p> <p>7 were in the property room.</p> <p>8 BY MR. MANVILLE:</p> <p>9 Q. No, I am asking why they weren't given to them.</p> <p>10 A. I said they were not legal mail. I interpreted that</p> <p>11 as a solicitation for business of some sort.</p> <p>12 Q. Did you read those letters?</p> <p>13 A. No.</p> <p>14 Q. Then how do you know they are solicitation?</p> <p>15 A. I know all of the attorneys, one of them is Raleigh</p> <p>16 Castillo, I know all of his cases and you don't</p> <p>17 represent him.</p> <p>18 Q. Did you call Ingham Circuit Court to find out</p> <p>19 whether I represented him?</p> <p>20 A. I did not.</p> <p>21 Q. Did you call the probate court?</p> <p>22 A. I didn't --</p> <p>23 Q. Did you call any court in the state of Michigan to</p> <p>24 find out whether I represented him?</p> <p>25 A. No.</p> <p>Page 106</p>	<p>1 looked in the lockers, we would find the December</p> <p>2 and January letters in there; right?</p> <p>3 A. They should be in there, yes. I didn't put them in</p> <p>4 there myself but staff did.</p> <p>5 Q. You tell them; right?</p> <p>6 A. Yes.</p> <p>7 Q. Did you reject those envelopes for the same reason?</p> <p>8 A. Yes.</p> <p>9 Q. Did you personally reject them or did Kathy reject</p> <p>10 them?</p> <p>11 A. No, I did.</p> <p>12 Q. So she gave them to you then?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know why she gave them to you?</p> <p>15 A. Yes.</p> <p>16 Q. Why?</p> <p>17 A. Because we get stuff from PLN and we get stuff from</p> <p>18 various churches and we get stuff from bail</p> <p>19 bondsmen, a lot of them trying to solicit business,</p> <p>20 and we get stuff from this place in Vermont,</p> <p>21 supposedly some law clinic from the Prison Legal</p> <p>22 News. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Page 108</p>
<p>1 Q. For any of the other six inmates, did you call any</p> <p>2 court in the state of Michigan to determine whether</p> <p>3 I represented them?</p> <p>4 A. No.</p> <p>5 Q. So you subjectively decided that I was not an</p> <p>6 attorney of record and you rejected the mail; right?</p> <p>7 A. No, I put it in their property --</p> <p>8 Q. You rejected mail that was not delivered to them;</p> <p>9 right?</p> <p>10 A. I rejected -- I treated it like regular -- like</p> <p>11 any other mail that would come in an envelope, but I</p> <p>12 did not treat it as legal mail, correct.</p> <p>13 Q. Did you give him notice that you were not delivering</p> <p>14 it to him?</p> <p>15 A. No.</p> <p>16 Q. Did you give me notice that you were not delivering</p> <p>17 it to him?</p> <p>18 A. No.</p> <p>19 Q. Then in January we sent the seven letters again but</p> <p>20 we put them in a big envelope, 9x12, and we put them</p> <p>21 in a stamped envelope, self-addressed, return to me,</p> <p>22 you rejected those -- not rejected, returned; did</p> <p>23 you put those in their property?</p> <p>24 A. Yes.</p> <p>25 Q. If we went over to the property room today and</p> <p>Page 107</p>	<p>1 [REDACTED]</p> <p>2 Q. Did you turn my letters over to your attorneys?</p> <p>3 A. No, but the attorney is aware of it.</p> <p>4 Q. Did they come and look at it, if you know?</p> <p>5 A. I know they haven't because they are not opened up.</p> <p>6 Q. When you did that, you are aware that those letters</p> <p>7 were from Michigan State University, College of Law,</p> <p>8 Civil Rights Clinic?</p> <p>9 A. Yes.</p> <p>10 Q. It had a stamp on there that said, "Daniel E.</p> <p>11 Manville, Attorney"; right?</p> <p>12 A. Yes.</p> <p>13 Q. In the next sentence down below, "All mail, except</p> <p>14 bona fide legal mail." It says, "Incoming mail</p> <p>15 deemed inappropriate may be placed in the inmate's</p> <p>16 property locker"?</p> <p>17 A. Yes.</p> <p>18 Q. Do they actually have a locker or is it a bag?</p> <p>19 A. It's a bag.</p> <p>20 Q. I just want to be clear. Now, if you would turn to</p> <p>21 Exhibit B. Do you recognize that document?</p> <p>22 A. Yes.</p> <p>23 Q. What is that?</p> <p>24 A. It's in the Inmate Rules book that they get a copy</p> <p>25 of when they come into the jail.</p> <p>Page 109</p>

<p>1 Q. I kind of thought so because it seems to have a 2 whole bunch of stuff written on it. 3 If you turn to the second page, or page 2, 4 the middle column, it says "Mail"; do you see where 5 it's at? 6 <b>A. Yes.</b> 7 Q. And it's kind of similar to the first Exhibit A; 8 right? It says, "Inmate name, resident," the 9 address they are supposed to put on the envelope; 10 right? 11 <b>A. Yes.</b> 12 Q. The very first thing under "Mail" says, "Inmates are 13 permitted to write to any person they choose, 14 outside of this facility"; right? 15 <b>A. Correct.</b> 16 Q. That means they could write to any attorney they 17 want, they don't have to have your permission; would 18 that be accurate? 19 <b>A. Yes.</b> 20 Q. Now, I would like to go down to under "mail," "4," 21 it says; do you know where 3 is? Do you know what 22 happened to 3? 23 <b>A. No, I don't. I think it happened when this was</b> 24 <b>modified or something.</b> 25 Q. Then again it says, "All mail except bona fide legal</p> <p style="text-align: center;">Page 110</p>	<p>1 don't know because I haven't run across that. Would 2 I allow you to send legal mail to one individual 3 inmate without -- 4 MR. SEWARD: Hold on. Finish. 5 THE WITNESS: -- an individual inmate? 6 BY MR. MANVILLE: 7 Q. Okay. 8 <b>A. Sure. When the mass mailings come, obviously it</b> 9 <b>creates problems for that, and I interpret that as</b> 10 <b>kind of a solicitation as opposed to a bona fide</b> 11 <b>legal matter.</b> 12 Q. I appreciate your answer but it has nothing to do 13 with my question. 14 <b>A. I thought that's what you were asking.</b> 15 Q. My question was the inmate in a cell, you said 16 earlier in this deposition, you said that he could 17 send a postcard to my name? 18 <b>A. Okay.</b> 19 Q. My question is, could that same inmate write a 20 letter to me on an 8 1/2x11 sheet of paper, fold it 21 up, then fold another piece of paper around it, tape 22 it, and write on there my name, my address, 23 everything; hand it to the officer, the officer 24 takes it to the tray, and it goes up to your office, 25 can the inmate contact me that way even though I am</p> <p style="text-align: center;">Page 112</p>
<p>1 mail"; right? 2 <b>A. Yes.</b> 3 Q. "Will be by standard 4x6 postcards, no images." 4 Does that mean photographs or that the postcard 5 cannot have images on it, if you know? 6 <b>A. Will you repeat that? I was just reading that at</b> 7 <b>the time.</b> 8 Q. I'm sorry. Where it says "no images"? 9 <b>A. Yes.</b> 10 Q. Does that mean images on a postcard or pictures? 11 <b>A. Images on the postcard too.</b> 12 Q. Let me step back a minute. You said if an inmate 13 had sent out a postcard to Daniel E. Manville, Civil 14 Rights Clinic, asking for us to contact him or write 15 him, does that mean that the inmate could not have 16 written me a letter, folded it up, folded another 17 letter, another piece of paper over it, taped it, 18 put my address on the outside, gave it to the 19 officer to be put on the tray and be taken up to 20 your office, be processed out; are you saying that 21 the inmate has to request me to write him by 22 postcard since I am not the attorney of record? 23 MR. SEWARD: Objection, calls for 24 speculation. It's also compound. 25 THE WITNESS: I don't know. I really</p> <p style="text-align: center;">Page 111</p>	<p>1 not his attorney of record? 2 <b>A. I would say yes.</b> 3 Q. That was my question. 4 <b>A. I would say yes.</b> 5 Q. I was wondering why you misunderstood it before. 6 MR. SEWARD: You didn't ask it that way. 7 MR. MANVILLE: Yes, I did. 8 BY MR. MANVILLE: 9 Q. I didn't get the impression that was an absolute 10 guess. Can you tell me why it wasn't a positive 11 guess that it could be done that way? 12 MR. SEWARD: That mischaracterizes his 13 testimony. 14 THE WITNESS: I said yes. I don't see why 15 not. 16 BY MR. MANVILLE: 17 Q. That's why, you say "why not." 18 <b>A. We haven't come across that. If that happens -- we</b> 19 <b>have stuff go out. If I see a licensed attorney,</b> 20 <b>you should be able to get inmates sending you</b> 21 <b>correspondence.</b> 22 Q. Whether I am the attorney of record or not? 23 <b>A. I would say -- like I say -- yes, I would say we</b> 24 <b>probably do that.</b> 25 Q. You say "probably," that leaves me with the</p> <p style="text-align: center;">Page 113</p>



Exhibit H

Fwd: ACLU legal mail

2:11-cv-13460-DPH-MAR Doc # 159-3 Filed 03/10/14 Pg 2 of 4 Pg ID 4583

**Subject:** Fwd: ACLU legal mail  
**From:** "T. Joseph Seward" <tjseward@cnda-law.com>  
**Date:** Thu, 27 Feb 2014 16:43:40 -0500  
**To:** angela Florence <aflorence@cnda-law.com>

----- Original Message -----

**Subject:** ACLU legal mail  
**Date:** Fri, 21 Feb 2014 18:09:19 +0000  
**From:** Tom Cremonte <TCremonte@livgov.com>  
**To:** T. Joseph Seward (tjseward@cnda-law.com) <tjseward@cnda-law.com>, Lindsey Kaczmarek (lkaczmarek@cnda-law.com) <lkaczmarek@cnda-law.com>

Hello,

Dan Korobkin P72842, from ACLU has sent letters to 25 current and former inmates. Stamped on the letter is "legal mail" with the ACLU name and logo on the upper left corner. We did open one of the letters to an inmate who is no longer her. See attachment.

TC

Lieutenant Tom Cremonte  
Jail Administrator  
Livingston County Sheriff's Department  
150 S. Highlander Way, Howell, MI 48843  
517-546-2445, fax 517-545-9627  
[tcremonte@co.livingston.mi.us](mailto:tcremonte@co.livingston.mi.us)



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\*\*\* **LEGAL MAIL** \*\*\*

February 19, 2014

Thomas Isaac, Resident  
Livingston County Jail  
150 S. Highlander Way  
Howell, MI 48843

Dear Mr. Isaac:

The American Civil Liberties Union of Michigan (ACLU) is investigating the Livingston County Jail's troubling "postcard only" policy for inmate mail, which we believe to be unconstitutional.

In order to learn more about this policy and its effects on inmates and their families, we wish to meet with individuals who may be interested in challenging this policy in court. The purpose of this letter is to find out if you are interested in meeting with an ACLU attorney, or someone who works under the supervision of an ACLU attorney, for the purpose of obtaining legal advice or assistance regarding the Livingston County Jail's postcard-only mail policy. If you are, please fill out the enclosed form and return it to me in the enclosed envelope as soon as possible.

Unfortunately, it is extremely unlikely that we will be able to help you with any other legal issues you may have. Furthermore, it may turn out that we are ultimately unable to represent you in this matter. By filling out the form below, you would be requesting a meeting with an ACLU attorney in order to seek legal advice or discuss the possibility of legal representation.

Sincerely,

Daniel S. Korobkin, Esq.  
Deputy Legal Director, ACLU of Michigan  
2966 Woodward Ave.  
Detroit, MI 48201

**\*\*\* LEGAL MAIL \*\*\***

**REQUEST FOR MEETING WITH ACLU ATTORNEY**

Name: \_\_\_\_\_

Expected Release Date or Trial Date: \_\_\_\_\_

I am concerned that the Livingston County Jail's postcard-only mail policy may be unconstitutional, and I wish to speak with an ACLU attorney, or someone working under the supervision of an ACLU attorney, for the purpose of requesting legal advice or assistance regarding that issue.

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

<p>1 me why they weren't delivered?</p> <p>2 MR. SEWARD: Seven what?</p> <p>3 MR. MANVILLE: Seven letters.</p> <p>4 BY MR. MANVILLE:</p> <p>5 Q. Can you tell me why they were not given the letters?</p> <p>6 MR. SEWARD: Previous answer, he said they</p> <p>7 were in the property room.</p> <p>8 BY MR. MANVILLE:</p> <p>9 Q. No, I am asking why they weren't given to them.</p> <p>10 A. I said they were not legal mail. I interpreted that</p> <p>11 as a solicitation for business of some sort.</p> <p>12 Q. Did you read those letters?</p> <p>13 A. No.</p> <p>14 Q. Then how do you know they are solicitation?</p> <p>15 A. I know all of the attorneys, one of them is Raleigh</p> <p>16 Castillo, I know all of his cases and you don't</p> <p>17 represent him.</p> <p>18 Q. Did you call Ingham Circuit Court to find out</p> <p>19 whether I represented him?</p> <p>20 A. I did not.</p> <p>21 Q. Did you call the probate court?</p> <p>22 A. I didn't --</p> <p>23 Q. Did you call any court in the state of Michigan to</p> <p>24 find out whether I represented him?</p> <p>25 A. No.</p> <p>Page 106</p>	<p>1 looked in the lockers, we would find the December</p> <p>2 and January letters in there; right?</p> <p>3 A. They should be in there, yes. I didn't put them in</p> <p>4 there myself but staff did.</p> <p>5 Q. You tell them; right?</p> <p>6 A. Yes.</p> <p>7 Q. Did you reject those envelopes for the same reason?</p> <p>8 A. Yes.</p> <p>9 Q. Did you personally reject them or did Kathy reject</p> <p>10 them?</p> <p>11 A. No, I did.</p> <p>12 Q. So she gave them to you then?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know why she gave them to you?</p> <p>15 A. Yes.</p> <p>16 Q. Why?</p> <p>17 A. Because we get stuff from PLN and we get stuff from</p> <p>18 various churches and we get stuff from bail</p> <p>19 bondsmen, a lot of them trying to solicit business,</p> <p>20 and we get stuff from this place in Vermont,</p> <p>21 supposedly some law clinic from the Prison Legal</p> <p>22 News. We have got a lot of stuff saying it was</p> <p>23 legitimate legal mail and we have learned it was</p> <p>24 not, so we have taken the position that we put that</p> <p>25 stuff in the property, we turn it over to our</p> <p>Page 108</p>
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