

Crime, Justice & America

The premier magazine for the Criminal Justice System

Federal Court AFFIRMS CJA's First Amendment Rights!

On April 13, 2005, the Northern District of the United States District Court ruled on a Preliminary Injunction motion that *Crime, Justice & America* has a right to be distributed inside jail facilities, and inmates have a right to receive it.

“...the Supreme Court has held in no uncertain terms that prisoners have a right to receive information while incarcerated. *Turner*, 482 U.S. at 84. Publishers have a corresponding right to send materials to incarcerated persons. *Thornburgh*, 490 U.S. 401; *Clement* 364 F.3d 1148. Accordingly, the Court holds that the publisher Plaintiffs have a right to distribute CJA and that Plaintiff Pablo, an inmate, has a right to receive CJA.”

The Defendant, Sonoma County Sheriff, contended that CJA did not even have standing because of their description of CJA as unsolicited mail. The Court disagreed.

“...The Court has failed to locate any case that supports Defendant's position that a publisher of bulk publications, addressed to identified, but non-subscribing inmates lacks standing to assert injury to its First Amendment freedoms when such mail is not delivered. Moreover, Defendant's position is at odds with cases such as *Sheets v. Moore*, 97 F.3d 164, 168(6th Cir. 1996), where the Sixth Circuit found the constitutionality of a regulation barring the delivery of unsolicited junk mail to inmates turned not on the question of standing but on whether the correctional facility's penological interests outweighed the inmates' constitutional rights (An inmate's First Amendment right to receive mail and a publishers right to reach inmates with their publications are flip sides of the same coin. Therefore, in determining whether a publisher has the right to distribute unsolicited magazines to inmates, case law informing the question of whether inmates have the right to receive such periodicals are instructive). *Sheets* implicitly recognizes that inmates have some cognizable First Amendment interest in receiving unsolicited catalogs, which suggests that publishers have some implicit interest in distributing unsolicited periodicals. That this is so makes sense in that the protection afforded publishers under the First Amendment does not stop at the jail house door just because the targeted audience is comprised of specifically-identified inmates who have not subscribed to the publishers magazine. The First Amendment embraces a publisher's right to distribute literature and necessarily protects an inmate's rights to receive such literature. *Clement v. Cal. Dep't of Corrections*, 364 F.3d 1148, 1151 (9th Cir. 2004) As such, the Court finds that CJA, Inc. has standing to assert a violation of its First Amendment interests here.”

In one alternative resolution of the issues at hand, adopting the CDC regulation about periodicals, the Court describes CJA as follow....”the Court notes, such a regulation would allow the delivery of CJA, which has literary, political, and educational value....”

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