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October 20, 2021

By mail & email (ghartman@co.oneida.wi.us)

Sheriff Grady M. Hartman
Oneida County Sheriff
2000 E. Winnebago St.
Rhineland, WI 54501

Re: Ban on incoming personal correspondence

Dear Sheriff Hartman:

I write regarding the Oneida County Jail's policy, posted on its website, that "As of September 3, 2019, personal correspondence for inmates will not be accepted."

I request, pursuant to Wis. Stat. §§ 19.31 *et seq.*, that you provide any documents relating to or reflecting the Sheriff's and the Jail's contracts or agreements with Inmate Canteen, TW Vending and/or Turnkey Corrections to provide services (such as email and text services) for people in the jail to communicate with people in the community. Wisconsin law requires that requested documents be produced "as soon as practicable and without delay." Wis. Stat. § 19.35(4)(a). Wisconsin Department of Justice policy is that 10 days is ordinarily a reasonable time for response to an open records request. Wisconsin Department of Justice, *Wisconsin Public Records Law Compliance Outline* at 13 (Oct. 2019).

I also ask you to change the policy to allow people in the jail to receive personal written correspondence. As the United States Supreme Court has long recognized, prisoners and their correspondents in the outside world have First Amendment protected rights to communicate with one another by mail. *Procunier v. Martinez*, 416 U.S. 396 (1974) (overruled in part on other grounds by *Thornburgh v. Abbott*, 490 U.S. 401 (1989)); *Turner v. Safley*, 482 U.S. 78 (1987). "[T]he use of the mails is almost as much a part of free speech as the right to use our tongues . . ." *Procunier*, 416 U.S. at 422 (Marshall, J., concurring) (quoting *Milwaukee Social Democratic Publ. Co. v. Burlison*, 255 U.S. 407, 437 (1921) (Holmes, J., dissenting))).

In addition to protecting the First Amendment rights at stake, facilitating written correspondence generally benefits jail security. As the Supreme Court noted, "[c]orrespondence with members of an inmate's family, close friends, associates and organizations is beneficial to the morale of all confined persons and may form the basis of good adjustment in the institution and the community." *Procunier*, 416 U.S. at 413, n. 13 (quoting policy of Assoc. of State Corr. Adms. (1972)).

While some restrictions on mail to people in custody may be justified by security concerns and other “legitimate penological interests,” *Turner*, 482 U.S. at 89, a complete refusal to deliver written correspondence to all people in the jail is clearly unconstitutional. Courts, including the United States Court of Appeals for the Seventh Circuit, which hears appeals from Wisconsin’s federal courts, have struck down much less restrictive regulations of prisoner mail. For example, in *Lindell v. Frank*, the Court of Appeals struck down a ban on newspaper or magazine clippings and photocopies sent through the mail. 377 F.3d 655, 659-60 (7th Cir. 2004). If a ban on sending clippings and photocopies violates the First Amendment, surely a complete ban on written mail is also unconstitutional.

While the jail appears to allow personal communication by email and text, for a price, these alternatives are not reasonable substitutes for paper mail for many correspondents. Some family members and friends, particularly older people and people with lower incomes, may not have access to the technology for sending and receiving emails and texts. In addition, a family member or friend could not send clippings, photocopies or other written materials via email or text, at least not without first taking a photograph of it and paying 31 cents per page, in addition to the cost of the email to which the photos would be attached. To the extent the jail has any legitimate security or administrative problems with processing postal mail, a complete ban is surely an “exaggerated response,” and thus unconstitutional. *Lindell*, 377 F.3d at 657, 660. Indeed, we are unaware of any other jail or prison in Wisconsin or elsewhere that has adopted such a complete ban on postal mail to people in custody.

Please send the requested records to the ACLU of Wisconsin at the above address or by email to ldupuis@aclu-wi.org. Please advise us at your earliest convenience of your intentions with regard to allowing people in custody to receive personal mail. If you would like to discuss this matter, you can reach me at (414) 272-4032, extension 212. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Dupuis", with a stylized flourish at the end.

Laurence J. Dupuis
Legal Director
ACLU of Wisconsin Foundation

David C. Fathi
Director
ACLU National Prison Project