

## Is Farinsky Breaking The Law?

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Question: Can a prison government official knowingly take rights away from an inmate based on their own opinions and prejudices?

That's the question I'm laying down, and I'll provide case laws to establish my point.

Here's my scenario: Staff member Ms. Farinsky, of the Education Department here at USP Tucson, confiscated several printed documents from an inmate. Those letters were clearly addressed to, amongst others, Georgetown Law, the NAACP Legal Defense Fund, and Congresswoman Ann Kirkpatrick.

Farinsky refused to give the inmate ANY of those documents back because she felt it was "inappropriate". By her definition, it was based purely on her opinion of what the inmate was writing. She didn't agree to what he was saying, so to her, it was "inappropriate".

Is this legal?

Let's establish a very obvious fact here; inmates STILL retain rights afforded by the Constitution. If it were not so, then officers could simply kill all the inmates, or simply starve them to death.

If you can understand the extreme, then we can all agree, there are rights. But it goes much further; inmates do have numerous rights, including the First Amendment. Yes, there may be some limitations, but it's still there.

The First Amendment gives inmates the right to petition the government for redress of grievances, as well as the freedom (with reasonable limitations in prison) of speech and press.

Did Farinsky break the law by confiscating a letter to a congresswoman?

A case law gives light to this: In McNAMARA v. MOODY, it's said that prison officials violated an inmate's constitutional right by refusing to mail a letter to a prisoner's girlfriend. As stated, "the court held that censorship must be limited to concrete violations, such as escape plans, plans for disruption of the prison system or work routine, or plans for importing contraband."

Simply put, it's not an officer or staff's call to decide, under normal and reasonable circumstances whether an inmate can mail a letter. This opens the door to prejudice acts, possibly what Farinsky did. Those letters she confiscated posed no threat to anyone; she simply disagreed with what was written. The 1st Amendment seems quite clear that the inmate has a right to write to a government official, and to address a grievance.

Further proof is the case law LeVIER v. WOODSON, where prison officials were in clear violation of the 1st Amendment because they were preventing letters (complaints about prison conditions) to the state governor, the attorney general and the attorney working for the state's pardon agency.



Is this any different from what staff member Farinsky of the Education Department is doing? If what Farinsky is doing is wrong, then it is a clear violation of that inmate's First Amendment right, and thus, illegal.

The issue of an inmate's freedom of speech does have limitations. Obviously, no inmate is justified if they write about clear dangers and obstructions to the prison security and overall maintenance of the institution. In order to successfully censor an inmate's mail, the letter must qualify CLEARLY of the prison interest.

The problem here, as in the case with Farinsky, is that often staff censor and confiscate inmate's works NOT because the inmate is promoting a government interest, but simply because the staff member doesn't like what the inmate wrote.

So, if I'm writing about how the Atlanta Falcons SHOULD have won the Superbowl, and if Farinsky is a Patriots fan, she might, by her own prejudice, censor my letter- which obviously, she has no right to do.

To use the Federal Regulations' idea, "Prisons may NOT censor inmate correspondence simply to eliminate unflattering or unwelcome opinions- or factually inaccurate statements. It must further the government interest of security, order and rehabilitation."

So, if Farinsky, of her own personal prejudice, choose to censor and confiscate letters of complaint to legal venues, the press, elected government officials or anyone in particular, simply because she doesn't agree with the writer- it is illegal.

That's against the law.

It's established that broad scopes of censorship are in fact invalid when they "magnify grievances or unduly complain, or defamatory or 'otherwise inappropriate' because there has to be concrete proof that what was written could lead to a riot or disruptive behavior in the prison". The prison has to clearly establish why the suppression is necessary- and they must also give the inmate a Confiscation Notice, expressing WHY they took the documents.

So, did Farinsky break the law by confiscating personal letters of an inmate designated to go to elected government officials, the NAACP, to Georgetown Law and other people? Did she violate that inmate's First Amendment rights?

In CAVEY v. WILLIAMS, the warden was ordered by the courts to pay compensatory and punitive damages to the inmate for violating his 1st Amendment rights when he punished him for a letter he wrote criticizing prison policies. That is as much a denial as the outright refusal to mail such letters.

So again, is Farinsky breaking the law by confiscating an inmate's documents, simply because she claims it's "inappropriate"?

What does the law say?