

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES R. SCHULTZ,

Plaintiff,

v.

BRADLEY HOOVER and  
KENNETH MILBECK,

Defendants.  
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OPINION AND ORDER

10-cv-581-bbc

This long-running case is before the court on the last remaining issue: whether defendants Bradley Hoover and Kenneth Milbeck violated plaintiff James R. Schultz's rights under the First Amendment by issuing and affirming a conduct report for his use of an unauthorized title in his outgoing correspondence. All of the other matters that plaintiff raised in his original and supplemental complaints have been resolved in previously issued orders.

I conclude that defendants are entitled to summary judgment on this last claim; they have shown that censoring outgoing mail to enforce the prohibition upon the use by prisoners of unauthorized titles furthers an important or substantial government interest

unrelated to the suppression of expression and is generally necessary to protect that interest.

From the facts proposed by defendants and unopposed by plaintiff, I find that the following are both undisputed and relevant.

#### UNDISPUTED FACTS

Plaintiff James R. Schultz is an inmate who has been in the custody of the Wisconsin Department of Corrections at all times relevant to this action. Defendant Bradley Hoover is employed by the department as a captain at Stanley Correctional Institution; defendant Kenneth Milbeck is employed at the same institution as a corrections unit supervisor.

On September 26, 2009, Deputy Warden Tim Haines and Security Director Reed Richardson informed defendant Hoover that plaintiff had written a letter to the clerk of the Wisconsin Supreme Court and had signed it “James R. Schultz, Special Agent, Piety Global Int’l, Inc.” Defendant Hoover asked the clerk whether Piety Global International, Inc. was a group recognized by the supreme court. The clerk told him it was not and that he had never heard of it. Thereafter, defendant Hoover issued Adult Conduct Report #206857 to plaintiff for violating Wis. Admin. Code § DOC 303.31 (False Names and Titles). This regulation declares it an offense for an inmate to use a title other than Mr., Mr., Miss, or Mrs., as appropriate. The department treats the regulation as applying in all situations, even when the title is not necessarily fraudulent. Defendant Hoover did not punish plaintiff for

his involvement with Piety Global, but for his use of a title that was prohibited under Wis. Admin. Code DOC § 303.31.

Plaintiff's hearing on his conduct report took place on October 16, 2009 before defendant Milbeck, who served as the hearing officer. Milbeck read the conduct report, evaluated all of the evidence and reached the conclusion that the report was credible and correct. He found plaintiff guilty of violating § 303.31 for calling himself a "special agent" in correspondence with the state supreme court and he imposed a penalty of five days' loss of dayroom privileges. Plaintiff did not appeal the hearing decision. Defendant Milbeck punished plaintiff for his use of an unauthorized title, not for being a member of Piety Global.

Daniel Westfield is Security Chief, Division of Adult Institutions. Among his responsibilities are the development, coordination and implementation of security policies and procedures for the division. Section 303.31 was implemented to insure the safety of the public and the institutions by making it more difficult for inmates to engage in criminal activities from within the institution. Inmates have been known to hatch schemes designed to manipulate members of the public for the inmates' financial gain and to use titles to make them seem more credible or hold themselves out as something they are not.

Westfield is aware of an instance in which an inmate held himself out as an entrepreneur, soliciting "investors" in an "e-procurement" system he was marketing. In

another instance, an inmate prepared letters soliciting funds for a non-existent organization that supposedly helped find housing for persons with AIDS or HIV; he used the title “Reverend” in signing his fundraising letters. Another Wisconsin inmate established a fake website advertising “Carlingford University,” which recruited students for two years before his fraud was uncovered. He, too, used titles to make himself seem more credible to prospective students.

In addition to its concerns about schemes targeting an unsuspecting public, the Department of Corrections fears that allowing inmates to use titles would boost the influence of particular inmates within the prison system, helping them to intimidate other inmates. These titles could spread among the system because inmates are allowed to send mail to inmates in other institutions, as well as to inmates in the same institution but in another housing unit.

## OPINION

Defendants begin their brief by noting that the law in this circuit is not clear about whether Procunier v. Martinez, 416 U.S. 396 (1974), or Turner v. Safley, 482 U.S. 78 (1987), determines the constitutionality of institutional limits on outgoing mail of inmates. In Koutnik v. Brown, 456 F.3d 777, 784 (7th Cir. 2006), the court of appeals held that censorship of outgoing mail was governed by Procunier, but in a later case, Woods v.

Commissioner of the Indiana Dept. of Corrections, 652 F.3d 745 (7th Cir. 2011), the court of appeals relied on Turner in gauging the constitutionality of a regulation that applied to both incoming and outgoing mail. (That regulation prohibited inmates from advertising for pen pals in outgoing mail and receiving materials from websites and publications that allowed advertising for pen pals.)

It is not necessary to resolve this question to decide this case. Under either standard, it is clear that plaintiff's rights were not violated by the conduct report he received for holding himself out as a special agent in his correspondence with the state supreme court. Under Turner, the court must consider four factors when evaluating a prison regulation: (1) Is there a valid, rational connection between the regulation and a legitimate government interest? (2) Are there alternative ways of exercising the constitutional right? (3) What is the impact of the accommodation of the asserted constitutional right on guards, inmates and institution resources? and (4) Are there ready alternatives to the prison regulation that can be provided at *de minimis* cost to the institution? Turner, 482 U.S. at 89-91. In applying these factors, the court may not substitute its own judgment for that of prison officials, but must "accord substantial deference" to their professional judgment. Jackson v. Frank, 509 F.3d 389, 391 (7th Cir. 2007) (citing Overton v. Bazzetta, 539 U.S. 126, 132 (2003)).

In this instance, the regulation prohibiting the use of titles is rationally connected to a legitimate governmental interest: making it harder for prison inmates to engage in schemes

to defraud members of the public or to try to increase their apparent prestige and influence within the prison. It is also a legitimate and neutral regulation, that is, it is applied without regard to the content of the expression. Turner, 482 U.S. at 89. So far as the record shows, the prohibition applies to *any* unauthorized title, not just to those that the prison thinks are likely to be used to defraud or to increase an inmate's status among his peers.

Second, prohibiting the use of a title in outgoing mail does not prevent an inmate from using the mail. This form of communication still remains open to him; the only limitation is that he cannot use a title.

Third, accommodating an inmate's asserted right to use a title in situations in which no fraud or personal influence is involved would have an adverse impact on guards, inmates and resources. It would be unduly burdensome for the prison to allow some inmates to use titles or to let inmates use certain titles but not others or to prohibit titles only when they were being used to defraud. In addition, it would be bound to result in greater and more intrusive scrutiny of inmate mail.

Finally, the absence of readily available alternatives argues in favor of the regulation. Plaintiff has not suggested any and I can think of none.

Under Procunier, 416 U.S. at 413-14, courts are to analyze limitations under a two-prong test: (1) does the regulation further an important or substantial governmental interest unrelated to the suppression of expression? And is it no greater than is necessary or essential

to the protection of the particular governmental interest involved *or* is it generally necessary to an important governmental interest? The prohibition on titles passes both tests. It furthers a substantial governmental interest in reducing fraud schemes directed at the public and it restrains one opportunity for inmates to increase their influence over other inmates. It is a minor restriction that is no greater than necessary to protecting the governmental interests at stake.

#### ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants Bradley Hoover and Kenneth Milbeck is GRANTED. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 4th day of May, 2012.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge