

**ROLL CALL TRAINING**  
**FROM NORTH CAROLINA'S 24/7 POLICE**  
**ATTORNEY LAW FIRM**

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**QUICK TRAINING NOTE:**

SR&S (Ralph Strickland) will be presenting a three-hour seminar entitled “DOMESTIC VIOLENCE and CHAPTER 50B – Principles for Managing Law Enforcement Civil Liability Risks” on Friday, March 14, 2003, in Statesville. The event is hosted by the Iredell County Sheriff’s Office. The seminar will begin at 9 a.m. and conclude at noon. You are invited to attend! If your agency is a client of SR&S, there is no fee. Otherwise, the fee is \$50 per enrollee. The location in downtown Statesville is the Mitchell Community College Continuing Education Building, 701 West Front St. To register, please call SR&S at 336/691-7058.

**TODAY’S ROLL CALL TOPIC: Jail Mail**

**THE CASE:**

*State v Wiley*, North Carolina Supreme Court, June 28, 2002

**YOUR COMMENTATOR: Ralph B. Strickland, Jr.**

**THE WHY OF IT ALL:**

Although this case and my commentary concern the legality of searching inmate mail at local confinement facilities, and the case was decided last year, it is of importance to everyone in law enforcement. Most police officers have never attended any of the classes required for detention officer certification. In fact, many deputy sheriffs have never been certified as a detention officer. Investigative officers need to know the law of search and seizure in jails, and this case will discuss just one narrow issue of that topic: jail mail, incoming or outgoing. Frankly, depending on the policies of the sheriff in their county, detention officers are legally and constitutionally privy to a great deal of information concerning the inmates housed in their facility. The give and take during the average jail day creates, certainly not a friendship, but at least a relationship of *some* mutual understanding and trust between inmates and their jailers. If you are a patrol officer or investigator, you need to cultivate a relationship with your local detention officers, or you will miss much valuable information.

## **THE FACTS:**

Quite simply, the defendant, Wiley, was in the New Hanover County jail charged with murder and awaiting trial. On visiting day his father came to see him, and after their visit, he asked personnel at the jail to give an unsealed letter to his father in the waiting room. The New Hanover Sheriff's policy concerning jail mail required jail staff to read and search incoming and outgoing mail without the words "legal mail" written on the envelopes or not otherwise addressed to an attorney. Accordingly, Deputy Sheriff Ingram Cephas scanned the letter, as it met neither of the exceptions. The deputy testified at the defendant's murder trial that he read the letter to be certain it did not contain contraband, or plans to make a jail break, injure deputies or communicate between cell blocks.

Now, a direct quote from the case: "In New Hanover County, detainees are told of the mail inspection policy when they enter the jail. Deputy Cephas testified that it was common practice for inmates to leave their nonlegal mail unsealed because they are aware of the subsequent examination of their mail by jail officials. While scanning the letter, he testified he saw dates that might have something to do with the case. Cephas made a copy of the letter, gave the original to defendant's father, and gave the copy to investigators." This evidence was used against the defendant at his trial.

## **THE LAW:**

Now, a full discussion of the law on this point is not necessary here (did I hear a sigh of relief among you regular Roll Call readers?). Suffice it to say that this case holds that when a person enters any detention facility, his reasonable expectations of privacy are diminished. He does retain some constitutional rights, of course, but given "the realities of institutional confinement," they cannot practically be as extensive as those of the "unconfined." Here is a quote from the case summarizing the law on point: "When a prisoner or pretrial detainee is made aware that his nonlegal mail will be subjected to official scrutiny before reaching its intended recipient, pursuant to institutional policies to maintain order and safety, the inmate's constitutional rights are not violated by the subsequent examination of such mail because he or she has no reasonable expectation of privacy in it. Furthermore, because the prison officials had the right to examine these letters, "there is no rule requiring them to close their eyes to what they discover." Copying and forwarding such letters thus does not violate Fourth Amendment prohibitions."

## **WHAT FIRST LINE SUPERVISORS AND INVESTIGATORS NEED TO KNOW:**

Do not overlook the possibility of contacting detention officers to ask for their help if you have charged a person with a serious crime and that defendant is confined in their facility. You may tell them to be aware of nonlegal mail sent by or to the inmate and read it for incriminating evidence. Given their facility policy, the detention officers may be in a position to help you. You may request that they make a copy of any letter for you that the inmate sends from the facility, or receives while there (not including privileged "legal mail" or other court or protected government mail).

Note: Of course you could never ask a detention officer to do an act you could not legally do yourself. Any inmate has 5th and 6th Amendment testimonial rights and in most cases cannot be interrogated unless they initiate the interview. There are some narrow and complex exceptions to this; however, a discussion of the scope of such exceptions is greater than the theme of this article.

For any number of valid reasons, never request detention officers to interrogate inmates in any fashion.

Years ago when I taught detention officers in their certification school, I always advised them never to question a detainee about his case, but to listen should he ever voluntarily talk about it in their presence. I told them then that they should be good “listening posts,” and that if moss grew on their north side, we would know they had done a good job.

On the other hand, you may of course ask them to report to you anything the detainee voluntarily says to them (not made in response to interrogation about his case) that may tend to incriminate him. And have them report to you any information that your arrestee may be heard discussing with some other inmate (But Note: never eavesdrop on an inmate’s conversation with his attorney – this is a class 2 misdemeanor!). Your interview of that inmate could reveal the key to your case. One last point: never request of stool pigeons that they interrogate inmates in any fashion. If you ask them, they become your “agent” and are bound by the same legal rules as you. Instead, ask them to become a mere “listening post.” However, you should leave out any reference to moss, I think.

It seems to me that detention officers are an important “source” that is often overlooked by investigators and patrol officers. Keep this resource in mind and use it where you can. Spread the word, and good luck!

Parting Thought: They laughed when I sat down to play the piano. No stool.

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