



P.O. Box 28004 • Raleigh, North Carolina 27611-8004

Phone (919) 834-3390 • Fax (866) 511-1344

March 6, 2008

VIA ELECTRONIC AND U.S. MAIL

Curt W. Euler, Assistant City Attorney
Asheville City Attorney's Office
P.O. Box 7148
Asheville, NC 28802

Re: Asheville Police Department's New Measures Regarding Prostitution

Dear Mr. Euler,

Thank you for speaking with me yesterday about the Asheville Police Department's (APD) new plan to disseminate names and photos of individuals arrested on prostitution charges. Specifically, it is my understanding that the photos, names, and cities of residence of individuals charged with prostitution and solicitation of prostitution will now appear online in a newly created police blotter posted on the City of Asheville's website. Apparently, the information will also air on the Asheville Channel Bulletin Board (Charter cable channel 11). We have also learned that APD has also initiated a plan to send postcards to the owners of vehicles that are spotted cruising in areas known for high prostitution and drug activity. The American Civil Liberties Union of North Carolina Legal Foundation (ACLU-NCLF) has concerns about the constitutionality of these programs, as well as their practical implications.

With regard to the posting of arrestees' names and photos on the police blotter and on the government access channel, it appears that this practice violates the arrestees' right to be free from punishment prior to conviction. In *Bell v. Wolfish*, the United States Supreme Court held that, "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). When I spoke with you today, you indicated that the purpose of these programs is to serve as a deterrent to crime. You also mentioned that there is a "shame factor" in having one's picture posted on a police blotter. However, the Supreme Court has explicitly held that "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives" that can justify adverse conditions of detention for pretrial detainees, *Bell*, 441 U.S. at 539 n. 20, 99 S.Ct. 1861, and has classified deterrence as one of "the traditional aims of punishment." *Id.* at 538, 99 S.Ct. 1861 (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)). See also *Demery v. Arpaio*, 378 F.3d 1020, 1033 (9th Cir. 2004) (holding that the placement of webcams in a pretrial detention center violates the Fourteenth Amendment substantive due process rights of pretrial detainees by subjecting them to punishment). Thus, while it is true that a newspaper could publish this information, it is critical to look at the *police*

department's purpose for doing so. Based on our discussion yesterday, it appears that the purpose is punitive and therefore unconstitutional.

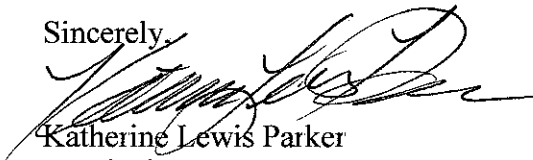
We have similar concerns with regard to the practice of sending postcards to the owners of vehicles that are seen cruising in areas known for prostitution and drug activity. This practice is perhaps even more egregious since these individuals have not been arrested. In addition to the concern that this program imposes punishment on these individuals (see above analysis), we have concerns that this practice violates individuals' fundamental right to travel. *See e.g., State v. Dobbins*, 277 N.C. 484, 497, 178 S.E. 449, 457 (1971) (noting that "the right to travel upon the public streets of a city is a part of every individual's liberty, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by the Law of the Land Clause, Article I, s 17, of the Constitution of North Carolina").

Further, you and I discussed scenarios in which individuals might drive slowly through these areas for neutral, or even positive purposes, such as to ask for directions, or to give out food to the homeless, or to provide suspected prostitutes with information they might seek about getting help. Would these individuals also receive postcards? We would be interested in reviewing the policies and procedures in place to protect the privacy and due process rights of such individuals.

Again, thank you for your consideration of this matter. If you disagree with our legal analysis or wish to provide us with more factual information, please let me know. Otherwise, we strongly recommend that you reconsider implementation of these programs.

We would appreciate receiving a response to this letter by Friday, March 20, 2008.

Sincerely,



Katherine Lewis Parker
Legal Director