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High Court Ruling Asked In Case of 'Mail Covers'

The Supreme Court has been asked to determine whether warrantless inspecting and recording of information on the outside of envelopes sent through the mails is an unreasonable search prohibited by the Constitution.

So-called "mail covers," although never authorized by Congress, have been permitted by postal regulation since 1893. They are widely used: 4,529 were in effect in 1972 alone. Postal inspectors routinely approved requests for them made by federal, state and local law enforcement agencies.

The case before the court involves Dennis R. Choate, a Californian who had been suspected of involvement in cocaine smuggling.

The case dates back to 1972, when the federal Bureau of Customs requested a mail cover of two of Choate's addresses in Balboa and on in Newport.

Granting the request, postal inspectors, over a 30-day period, segregated and examined every piece of mail addressed to Choate and logged every return address.

The bureau based its request entirely on an informant's allegations that Choate in 1971 had been, in the bureau's words, "organizing a large narcotics smuggling ring . . ." The mail cover, the bureau claimed, would "aid and identify the source in South America and other members of the smuggling ring."

The cover produced no mail from South America. Instead, it revealed personal financial information that was turned over to the Internal Revenue Service by Lynn P. Williams, a Drug Enforcement Administration agent assigned to the bureau.

The IRS then made an investigation that led to an indictment of Choate on tax evasion charges. But U.S. District Court Judge Warren J. Ferguson dismissed the indictment on the ground that the mail cover was a search and seizure in violation of the Fourth Amendment, and that the evidence derived from the cover consequently had to be suppressed.

Last March, however, the 9th U.S. Circuit Court of Appeals reversed, 2 to 1, holding that a mail cover instituted as part of a criminal investigation isn't a "search" under the Constitution. There is "no reasonable expectation" that information on the out-

side of mail "will remain unobserved," the court said.

Similarly, Solicitor General Wade H. McCree Jr., in a brief opposing Choate's petition for Supreme Court review, contended that there is "no legitimate privacy interest in such information that would be protected by the Fourth Amendment."

In the dissenting opinion, Circuit Court Judge Shirley M. Hufstedler wrote that a mail cover "exposes the personal life of the subject before law enforcement agencies in a manner unobtainable even through surveillance of his movements," and "provides a data bank which is a potent investigative tool."

She added:

"It is possible to learn the identities, addresses and frequency of contact of most of a person's correspondence through a one-month mail cover, including banks, creditors, affiliations with religious, political, educational and voluntary organizations, publications received, accountants and friends.

"Because many of these correspondents maintain files on the addressees which can be discovered by the investigating agency, a mail cover used in combination with other techniques simply makes the subject's life an open book to investigators."