SUPREME COURT OF THE UNITED STATES

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No. 99–1613

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ROBERT SHAW, ET AL., PETITIONERS
v. KEVIN MURPHY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[April 18, 2001]

JUSTICE GINSBURG, concurring.

I agree with the Court that the Ninth Circuit erred in holding that the First Amendment secures to prisoners a freestanding right to provide legal assistance to other inmates. I note, furthermore, that Murphy does not contest the prison's right to intercept prisoner-to-prisoner correspondence. But Murphy's §1983 complaint does allege that the prison rules under which he was disciplined– rules forbidding insolence and interference with due process hearings– are vague and overbroad as applied to him in this case.* The Ninth Circuit passed over that charge when it ruled, erroneously, that an inmate's provi-

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*The rule forbidding insolence defines "insolence" as "[w]ords, actions or other behavior which is *intended* to harass or cause alarm in an employee." Mont. State Prison Policy No. 15–001, Inmate Disciplinary Policy, Rule 009 (App. 10) (emphasis added). The policy includes the following examples of insolence: "Cursing; abusive language, writing or gestures *directed to* an employee." *Ibid.* (emphasis added). The disciplinary report citing Murphy for violating the rule against insolence contains no finding that Murphy's letter was "directed to" Officer Galle or that the letter was "intended to harass" Officer Galle. App. 52. Although Murphy undoubtedly knew that his letter to Tracy would be read by prison officials, there is no record evidence contesting Murphy's sworn statement that he "did not believe that Officer Galle would read the letter." Murphy Affidavit ¶10 (App. 88).

sion of legal assistance to another inmate is an activity specially protected by the First Amendment. 195 F. 3d 1121, 1128 (1999). The remand for which the Court provides should not impede Murphy from reasserting claims that the Court of Appeals so far has left untouched.