

Fourteenth Amendment in the censorship by defendants of publications mailed or brought to them. With respect to all issues raised by the Complaints in these cases, except those issues specifically reserved in Paragraph 1 below, the parties are in agreement that it is fair and appropriate that the cases be settled and that the following Stipulation for Entry of Partial Final Judgment be entered as an order of the Court.

For these reasons,

IT IS HEREBY STIPULATED by and between the undersigned attorneys for the plaintiffs and the undersigned attorneys for the defendants herein, subject to approval by the Court after notice is given to the plaintiff class, that the following agreement shall constitute the terms and conditions of a Partial Final Judgment by Consent in this case.

1. Members of the plaintiff class are entitled to receive the publications whose censorship has been challenged by plaintiffs in this action and which are listed in Attachment A to this Stipulation. Nothing in this Stipulation resolves the rights of members of the plaintiff class to receive the publications listed in Attachment F, and the parties reserve their rights to present this issue to the Court for resolution.

2. Guideline 3 of defendants' Directive 4572 shall be revised to read as follows:

The publication should not incite, or actually result in, violence based on race, religion, creed or nationality. "Incite," for purposes of this guideline, means to advocate, expressly or by clear implication, acts of violence.

3. Guideline 6 of defendants' Directive 4572 shall be revised to read as follows:

The publication should not incite, or actually result in, disobedience towards law enforcement officers or prison personnel. "Incite," for purposes of this guideline, means to advocate, expressly or by clear implication, acts of disobedience.

4. Guideline 7 of defendants' Directive 4572 shall be revised to read as follows:

The publication should not give instruction in the use or manufacture of firearms, explosives, and other weapons, or depict or describe their manufacture. Mere depictions of the use of hunting and/or military weapons which reasonably would not affect the safety and/or security of the facility are not prohibited.

5. Guideline 8 of defendants' Directive 4572 shall be revised as follows:

The publication should not provide instruction by word(s) or picture(s) regarding martial arts skills. Martial arts includes, but is not limited to, aikido, judo, karate, jiu-jitsu, kung fu, and tai chi chu'an. Publications which discuss martial arts without providing instruction are acceptable.

6. Guideline 9 of defendants' Directive 4572 shall be revised to read as follows:

The publication should not

- (a) Contain information which appears to be written in code;
- (b) Depict or describe methods of lock picking;
- (c) Depict or describe methods of escape from correctional facilities;
- (d) Depict or describe procedures for the brewing of alcoholic beverages or the use of manufacture of drugs; or
- (e) Depict or describe methods or procedures for smuggling prison contraband.

7. Publications mailed, brought by visitors, or otherwise delivered to Auburn and Clinton inmates shall be delivered to them in the ordinary course of mail or package delivery unless they are to be reviewed by the facility media review committee (FMRC).

8. No publication shall be referred to the FMRC unless there is a reasonable good faith belief that it violates one of DOCS' media review guidelines as set forth in defendants' Directive 4572 and as modified by this Stipulation.

9. When a publication is referred to the FMRC, it shall be delivered to the FMRC promptly, usually by the end of the next working day after the publication's arrival at the facility. A notice advising the inmate addressee of this action shall be placed in the institutional mail at the same time as the publication is delivered to the FMRC. This notice shall be in the form provided in Attachment B.

10. The FMRC shall render a decision on the acceptability of the publication and send either the publication or a copy of an adverse decision to the inmate

within eight working days of its arrival at the institution. The decision shall be in the form provided in Attachment C. When the FMRC disapproves a publication, the inmate shall be permitted to select one of the following methods of disposition:

(a) Appeal to the Central Office Media Review Committee (COMRC). The inmate shall not be entitled to appeal unless he chooses this option within 60 days of the FMRC decision.

(b) Receive the publication with the objectionable matter removed or blotted out. This option shall be available only if the objectionable portions of the publication constitute eight or fewer individual pages or if they constitute a single chapter, article or section of any length. This option need not be made available if the publication is in a form other than a book, magazine, or newspaper, and if removing or blotting out portions would present physical difficulties.

(c) Have the publication sent to a person of the inmate's choice, either immediately or after 60 days.

(d) Have the publication destroyed after 60 days.

If the inmate does not make a choice among these options within 60 days of the FMRC decision, the facility may dispose of the publication in any manner.

11. When the FMRC disapproves a publication, the

decision shall also be sent to the sender of the publication, where the sender is known, at the same time as it is sent to the inmate. The FMRC shall enclose with the decision a notice informing the sender that he or she may appeal the decision to the COMRC within 60 days of the date of decision. This notice shall be in the form provided in Attachment D. After the passage of six months from the date of entry of this Stipulation as a judgment of the Court, defendants may be relieved from their obligation to notify senders other than publishers upon a showing to the Court that this obligation constitutes an unreasonable burden.

12. No publication shall be denied to any inmate unless it violates the plain language of one or more of the guidelines in defendants' Directive 4572, as modified by this Stipulation.

13. When a publication is disapproved by the FMRC, the FMRC shall give in its decision a brief statement of reasons explaining why the publication is deemed to violate one or more of the media review guidelines contained in Directive 4572. The statement shall not merely quote or paraphrase the guideline. The statement of reasons shall identify by page number, article title, and location on the page the allegedly objectionable language. The FMRC shall not state

that a publication is unacceptable in its entirety. Defendants' Directive 4572 shall be revised to contain the following statements:

The following is not an acceptable statement of reasons:

"This publication incites' disobedience towards law enforcement personnel on page 10."

The following is an acceptable statement of reasons:

"This publication incites inmates to commit assaults on correctional officers in the article 'Prison Rebellion Now' on page 10, near the bottom."

14. When an inmate elects to appeal the FMRC's disapproval of a publication, the FMRC shall send it to the COMRC at the facility's expense by the end of the next working day after receiving notice of the appeal. Appeals shall be transmitted by first class mail or other equally prompt means of delivery.

15. When an inmate appeals a FMRC decision, the COMRC shall render a decision on the acceptability of the publication within three weeks of the date on which the inmate gives notice of his decision to appeal. The COMRC shall consider any statements timely submitted to it by the inmate, by the sender of the publication, or by counsel for the inmate or sender.

16. When an inmate appeals a FMRC decision and the

publication is approved by the COMRC, it shall be sent directly to the inmate by first class mail, or by other equally prompt means, by the end of the next working day after the COMRC decision. A copy of the decision shall be mailed to the chairperson of the FMRC which initially disapproved the publication and to the sender of the publication.

17. When an inmate appeals a FMRC decision and the publication is disapproved by the COMRC, it shall be returned to the FMRC, with a copy of the decision, and a copy of the decision shall be mailed directly to the inmate and to the sender of the publication by first class mail, or by equally prompt means, by the end of the next working day after the COMRC decision. The decision shall be in the form provided in Attachment E. After the passage of six months from the date of entry of this Stipulation as a judgment of the Court, defendants may be relieved from their obligation to notify senders other than publishers upon a showing to the Court that this obligation constitutes an unreasonable burden.

18. The sender of a publication may appeal a FMRC decision by writing to the COMRC and enclosing the notice of decision. If no inmate has appealed the denial of the same publication, the sender's appeal must be accompanied by a copy of the publication. The COMRC shall decide the appeal

within three weeks of receiving it and, if the publication is approved, shall include the publication in its weekly list of approved literature (see Paragraph 19). Notice of the decision shall be sent to the sender, and the sender's copy of the publication returned, by the end of the next working day after the decision.

19. The COMRC shall, on a weekly basis, prepare a list of all the publications it has approved in the past week, and shall mail a copy of that list to each chairman of each FMRC. The chairman of the FMRC shall determine whether the names of any publications previously disapproved by the FMRC appear on the list, and whether the FMRC still possesses any such publication pursuant to an inmate choice to have it retained by the facility for 60 days (see Paragraph 10(c),(d)). In the event any approved publication is still in the FMRC's possession, the FMRC shall immediately send it to the inmate.

20. When a disapproved publication is returned by the COMRC to the FMRC, the FMRC shall permit the inmate to select one of the following methods of disposition:

(a) Receive the publication with the objectionable matter removed or blotted out. This option is available only if the objectionable portion is eight individual pages or less, or a single chapter, article, or section of any length. This option may not be available if the publication

is not a book, magazine or newspaper and the material would be physically difficult to remove.

(b) Have the publication sent at the inmate's expense to a third party of the inmate's choice. This third party may be any unincarcerated person, including but not limited to the inmate's family or attorney.

(c) Have the publication destroyed.

(d) Retain the publication for up to 60 days in order to permit the inmate to obtain counsel for a legal challenge to the disapproval of the publication or to permit it to be picked up by one of his visitors.

21. No member of the COMRC or FMRC shall cause any information about publications received or sought by an inmate to be placed in the inmate's parole file.

22. Defendants shall institute a training program designed to instruct all present and future members of the FMRCs and the COMRC in the requirements of defendants' Directive 4572 as modified by this Stipulation. No person shall serve on the COMRC or a FMRC without first attending this training program, except that substitutes may be used for short periods of time in case of the unforeseeable absence of trained members.

23. The COMRC shall utilize its best efforts to inform FMRC members of the proper application of defendants' media review guidelines, as follows:

(a) The COMRC shall prepare a booklet consisting of no fewer than ten articles which were disapproved by a FMRC and subsequently approved by the COMRC. These articles shall be selected from among the publications submitted by plaintiffs' counsel in connection with this action. The booklet shall explain why the articles and others like them do not violate any of the media review guidelines.

(b) Defendants shall revise Directive 4572 to include the following paragraph, and shall periodically update the list of periodicals in it to reflect their experience with other, similar publications:

Publications which discuss different political philosophies and those dealing with criticism of Governmental and Departmental authority are acceptable as reading material provided they do not violate the above guidelines. For example, publications such as Fortune News, The Militant, The Torch/La Antorcha, Workers World, and Revolutionary Worker shall generally be approved unless matter in a specific issue is found to violate the above guidelines.

(c) When it comes to the attention of the COMRC that a FMRC is consistently or repeatedly disapproving a type of publication that does not violate the guidelines, the COMRC shall communicate that fact to the chairperson of the FMRC and shall instruct him or her in the correct application of the guidelines.

24. Defendants shall maintain copies of each notice of

referral to the Auburn or Clinton FMRC (Attachment B), of each FMRC disposition notice (Attachment C), of each COMRC disposition notice (Attachment E), of each call-out list for media review purposes for the Auburn package room, and of all COMRC records of receipt of media review materials and of dates of COMRC decisions, and shall provide these records to plaintiffs' counsel at defendants' expense on a monthly basis. In addition, plaintiffs' counsel shall have the right:

a. to inspect any other records in the custody of DOCS (with the exception of those which are privileged pursuant to Rule 501, Federal Rules of Evidence, or are pending internal investigative documents or portions thereof) pertaining to publications, or the censorship of publications, sent to members of the plaintiff class;

b. to inspect, upon 24 hours' notice, but no more frequently than once every three months, those portions of DOCS premises connected with the media review process, including the FMRC offices and those portions of the package rooms used for storage of publications and/or media review purposes at Auburn and Clinton, and the offices of COMRC;

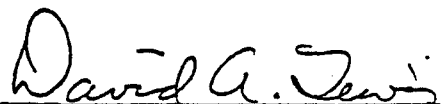
c. with one business day's notice to defendants' counsel, to communicate with any employee of DOCS involved in the media review process to convey or obtain information regarding defendants' state of compliance with this agreement, or to attempt to resolve informally any problems in obtaining full compliance with this agreement.

The provisions of this paragraph shall continue in ef-

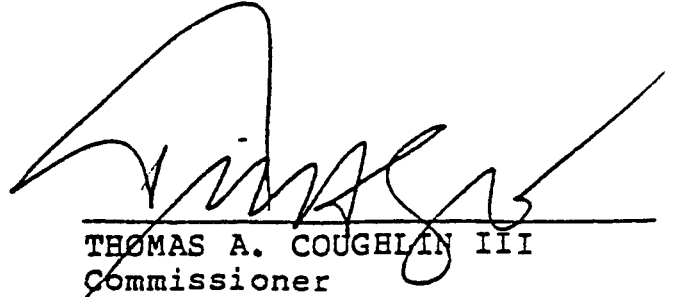
fect for a period of 18 months from the entry of this Stipulation as a Judgment of the Court. This provision is without prejudice to the defendants' right to seek shortening of this time upon a showing of substantial, consistent compliance with the terms of this Stipulation and to the plaintiffs' right to seek extension of this time upon a showing of non-compliance.

25. The provisions of this Stipulation are effective upon entry of this Stipulation as a Judgment of the Court.

Dated: New York, New York
October 12, 1983


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Dated: Albany, New York
October 12, 1983



THOMAS A. COUGHLIN III
Commissioner
New York State Department
of Correctional Services
Albany, New York 12224

ATTACHMENT A

1. Illusions of Justice: Human Rights Violations in the United States, by Lennox S. Hinds
2. Cointelpro: The FBI's Secret War on Political Freedom, by Nelson Blackstock
3. The Iron Fist and the Velvet Glove: An Analysis of the U.S. Police, by the Center for Research on Criminal Justice
4. Coming from Behind to Make Revolution, by Bob Avakian
5. Charting the Uncharted Course: Proletarian Revolution in the U.S., by the Revolutionary Communist Party, U.S.A.
6. Fortune News, August/September 1981
7. The Militant, vol. 45, no. 36
8. The Militant, vol. 45, no. 41
9. The Militant, vol. 45, no. 47
10. The Militant, vol. 45, no. 48
11. The Militant, vol. 46, no. 1
12. The Militant, vol. 46, no. 2
13. The Militant, vol. 46, no. 21
14. The Militant, vol. 46, no. 22
15. The Militant, vol. 46, no. 23
16. The Militant, vol. 46, no. 27
17. The Militant, vol. 46, no. 29
18. Gay Community News, vol. 9, no. 20
19. Gay Community News, vol. 9, no. 21
20. Gay Community News, vol. 9, no. 22

21. Gay Community News, vol. 9, no. 23
22. Gay Community News, vol. 9, no. 24
23. Gay Community News, vol. 9, no. 26
24. Gay Community News, vol. 9, no. 43
25. Gay Community News, vol. 9, no. 44
26. Gay Community News, vol. 9, no. 45
27. Gay Community News, vol. 9, no. 50
28. Gaycon Press Newsletter, no. 25
29. Red Dragon Newsletter 8
30. The Torch, vol. 8, no. 8
31. The Torch, vol. 9, no. 2
32. The Torch, vol. 9, no. 4
33. The Torch, vol. 9, no. 5
34. POS RIP Newsletter, vol. 1, no. 5
35. POS RIP Newsletter, vol. 1, no. 8
36. Workers World, vol. 24, no. 3
37. Workers World, vol. 24, no. 20
38. Revolutionary Worker, vol. 3, no. 47
39. Revolutionary Worker, vol. 3, no. 49
40. Revolutionary Worker, vol. 3, no. 50
41. Revolutionary Worker, vol. 4, no. 1
42. Revolutionary Worker, vol. 4, no. 2
- 43-47. Revolutionary Worker, vol. 3, nos. 39,
41, 45, 46 and 48

48. The Burning Spear, vol. 8, no. 7
49. The Burning Spear, vol. 8, no. 8
50. The Burning Spear, vol. 8, no. 9
51. The Burning Spear, vol. 8, no. 10
52. The Burning Spear, vol. 8, no. 11
53. The Burning Spear, vol. 8, no. 12
54. The Burning Spear, vol. 9, no. 1
55. The Burning Spear, vol. 9, no. 2
56. The Burning Spear, vol. 9, no. 3
57. Unity, vol. 5, no. 7
58. Bulldozer, no. 4 (Spring, 1982)
59. Bulldozer, no. 5 (Winter, 1983)
60. Corrections Magazine, December 1982
61. No More Cages, vol. 3, no. 6 (Oct.-Nov., 1982)
62. Red Dragon, no. 11 (July/September, 1982)
63. Revolutionary Worker, vol. 4, no. 17 (August 27, 1982)
64. Revolutionary Worker, vol. 4, no. 19 (September 10, 1982)
65. The Gay Paper, vol. IV, no. 8 (August, 1982)
66. Gay Community News, vol. 10, no. 5 (August 14, 1982)
67. Gay Community News, vol. 10, no. 6 (August 21, 1982)
68. Gay Community News, vol. 10, no. 13 (October 16, 1982)

69. Gay Community News, vol. 10, no. 18
(November 20, 1982)
70. Alyson Fall Catalog 1982
71. RFD, Issue 32 (Fall, 1982)
72. The Gay Paper, vol. IV, no. 9 (September, 1982)
73. Workers World, vol. 24, no. 37 (September 10,
1982)
74. Socialism and the Fight for Lesbian and Gay
Liberation, by Paul Carson
75. Torch Supplement on Gay Liberation, June 1979
76. Documents of Struggle: Gay Liberation Through
Socialist Liberation
77. Covert Action, no. 13
78. Covert Action, no. 16
79. Covert Action, no. 17
80. Intercontinental Press, vol. 20, no. 20
81. The People's Newsletter, vol. 6, no. 2
82. The People's Newsletter, vol. 6, no. 3
83. The People's Newsletter, vol. 6, no. 4
84. The People's Newsletter, vol. 6, no. 5
85. The People's Newsletter, vol. 6, no. 6
86. The People's Newsletter, vol. 6, no. 7
87. The People's Newsletter, vol. 6, no. 8
88. The People's Newsletter, vol. 6, no. 9
89. The People's Newsletter, vol. 6, no. 10
90. The People's Newsletter, vol. 7, no. 5

91. The Torch, vol. 10, no. 2 (February 15-
March 14, 1983)
92. The Torch, vol. 10, no. 3 (March 15-
April 14, 1983)
93. Breakthrough, vol. VII, no. 1 (Winter 1983)

ATTACHMENT B

CORRECTIONAL FACILITY
MEDIA REVIEW COMMITTEE

REFERRAL NOTICE

DATE _____

INMATE NAME

NUMBER

CELL LOCATION

The following publication _____
(Title)

(Author, Date or Volume & Number)

has arrived at the Facility addressed to you and has been held for review by the Facility Media Review Committee. You are invited to submit a written statement in support of the admission of the publication. Address your comments to _____, Chairperson of the Facility Media Review Committee, promptly, since the Committee must reach a decision usually within eight working days of the date of this notice.

ATTACHMENT B

|| a letter in support of your appeal to the facility media

ATTACHMENT D

CORRECTIONAL FACILITY
MEDIA REVIEW COMMITTEE

NOTICE TO SENDER OF DISAPPROVAL OF PUBLICATION

The attached Disposition Notice indicates that a publication you sent to an inmate of this facility has been found unacceptable for receipt by inmates by the facility Media Review Committee, pursuant to guidelines established by the Department of Correctional Services. The reasons for rejection of your publication are stated on the notice.

The decision rejecting this publication may be appealed by the inmate to whom you sent it, or by you, or both. You may appeal the decision by sending a copy of the Disposition Notice, a letter explaining why you think the decision was mistaken, and a copy of the publication, to the Central Office Media Review Committee, Department of Correctional Services, Bldg. 2, State Campus, Albany, New York 12226. If you know that the inmate is appealing the rejection, you need only send an appeal letter, since the Committee will already have a copy of the publication. You should file your appeal promptly, since if the inmate also appeals, the appeal may be decided in as little as three weeks and your submission may not be considered. You must appeal within 60 days of the date of the decision.

If you or the inmate prevails on appeal, the inmate will have the right to receive the publication. In that case, the inmate will be given any copy of the publication still in possession of the facility or the committee. The inmate may, however, have disposed of the publication in some fashion. In that case you may send the inmate another copy. The copy you sent to the Committee will be returned to you for this purpose.

The media review guidelines are as follows:

1. In general, the materials should be acceptable for regular mailing in the United States.
2. Publications which, taken as a whole by the average person applying contemporary community standards, appeal to prurient interest, and which depict or describe in a patently offensive way sexual intercourse, sodomy, sexual bestiality, sadism, masochism, excretion or necrophilia, and which taken as a whole lack serious literary, artistic, political or scientific value are obscene and are unacceptable.

ATTACHMENT D (continued)

3. The publication should not incite, or actually result in, violence based on race, religion, creed or nationality. "Incite," for purposes of this guideline, means to advocate, expressly or by clear implication, acts of violence.
4. Any publication which advocates, with intent to accomplish, and presents a clear and immediate risk of the violent overthrow of the existing form of government of the United States or the State of New York is unacceptable [see Penal Law § 240.15].
5. Any publication which advocates and presents a clear and immediate risk of lawlessness, violence, anarchy, or rebellion against governmental authority is unacceptable.
6. The publication should not incite, or actually result in, disobedience towards law enforcement officers or prison personnel. "Incite," for purposes of this guideline, means to advocate, expressly or by clear implication, acts of disobedience.
7. The publication should not give instruction in the use or manufacture of firearms, explosives, and other weapons, or depict or describe their manufacture. Mere depictions of the use of hunting and/or military weapons which reasonably would not affect the safety and/or security of the facility are not prohibited.
8. The publication should not provide instruction by word(s) or picture(s) regarding martial arts skills. Martial arts includes, but is not limited to, aikido, judo, karate, jiu-jitsu, kung fu, and tai chi chu'an. Publications which discuss martial arts without providing instruction are acceptable.
9. The publication should not
 - (a) Contain information which appears to be written in code;
 - (b) Depict or describe methods of lock picking;
 - (c) Depict or describe methods of escape from correctional facilities; or
 - (d) Depict or describe procedures for the brewing of alcoholic beverages or the use or manufacture of drugs.

ATTACHMENT F

1. Blood in My Eye, by George L. Jackson
(Patrick Arguello Press reprint, 17 pp.)
2. The Man They Called a Monster, by Paul Wilson
3. Sets of stickers containing the following messages:
 - a. "Nuclear-free zone"
 - b. "Stop the arms race, not the human race"
 - c. "U.S. out of El Salvador"
 - d. "The Moral Majority is neither"
 - e. A picture of a nuclear power plant with a red stripe across it, in the style of prohibitory traffic signs
 - f. "In Germany they first came for the Communists and I didn't speak up because I wasn't a Communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the trade unionists, and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics, and I didn't speak up because I was a Protestant. Then they came for me--and by that time no one was left to speak up."--Pastor Martin Niemoller.

Dumont v. Coughlin



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