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Ohio Mail and Visitation Prison Regulations and the Evolving Recognition of Prisoners' Rights

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COMMENTS

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Dynamic changes have occurred in recent years in the area of prisoners' rights. The antiquated view that prisoners were without any rights—that prisoners were "slave[s] of the State"—has been replaced by the more progressive view that a prisoner retains all rights of an ordinary citizen except those rights expressly or necessarily taken from him by law. As will be seen below, the areas of mail rights and visitation rights have been particularly dynamic.

In light of the changing views regarding prisoners' rights, one may wonder what the current Ohio regulations regarding mail and visitation within prisons are; and more importantly, how well these regulations have kept pace with the newly-evolving court decisions on prisoners' rights. In considering these questions, the following discussion will selectively consider the Ohio Department of Rehabilitation and Correction Administrative Regulations, paying attention only to those considered of particular interest or those paralleling regulations that have been the subject of litigation in other states. It should be noted that there are few Ohio cases in the general area of prisoners' rights. Consequently, most of the comparisons will be with standards evolving in other jurisdictions.

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1 Several factors have been offered as explanations for the recent dynamic nature of prisoners' rights. These factors include the increased use of the 1871 Civil Rights Act (42 U.S.C. §1983), which was finally declared not to require exhaustion of state remedies in 1968; the increased emphasis on inmate rehabilitation; the recent judicial trend to expand the constitutional rights of disadvantaged groups including blacks, students, welfare recipients, servicemen, draftees, women, juveniles, and mental patients; the modification of habeas corpus relief to include other more flexible remedies than "total release"; and the increased use of federal courts because of the erosion of the "hands-off" and "federal abstention" doctrines.

See Hollen, Emerging Prisoners' Rights, 33 Ohio St. L.J. 1, 5-9 (1972).

2 Ruffin v. Commonwealth, 62 Va. (21 Gratt.) 790, 796 (1871). The context of the quote is as follows: "[A convicted felon] has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State."


Incoming Mail — Administrative Regulation 814

A leading case considering the constitutional rights of incarcerated individuals relating to use of the mail was the 1970 case of *Palmigiano v. Travisono*, decided by the Federal District Court of Rhode Island. Palmigiano and other inmates of the “awaiting trial” section of a Rhode Island prison brought a §1983 action alleging, *inter alia*, that state prison officials arbitrarily and capriciously opened, read, and censored incoming and outgoing mail, and that such actions were unconstitutional. In considering whether to issue a temporary restraining order, Judge Pettine identified the factors generally involved in prison censorship. Juxtaposed to the need for prison security and the need for orderly administration were the prisoners' first amendment rights to free speech and to petition for redress of grievances, the “outsider's” first amendment right to free speech (to communicate with the inmate), and the fourth amendment right to be free from unreasonable searches and seizures. In balancing these factors, the judge developed certain standards which can be compared with Ohio prison regulations relating to incoming mail.

Regarding the reading of incoming mail, paragraph 1 of Administrative Regulation 814 states, in effect, that there shall be no reading, copying, or censorship of incoming first class letters, nor shall there be any quantitative limits on incoming letters. In comparing this rule with the standards of *Palmigiano*, it appears that the Ohio rule is somewhat more liberal. *Palmigiano* allowed reading of all incoming mail except that from an approved addressee list (and apparently that from public officials and attorneys); in contrast, the Ohio rule generally prohibits all reading.

As a qualification to the general prohibition against the reading of incoming first class mail, paragraph 7 of the Ohio regulation allows such reading in special circumstances — where the Managing Officer has “reasonable belief” that the writing constitutes “clear and im-

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7 317 F.Supp. at 780. Since constitutional rights were involved, the federal court had jurisdiction under 28 U.S.C. § 1343 (1962).
8 317 F.Supp. at 785-86, 791-92. It should also be noted that where the correspondence is between an inmate and his attorney during preparation for a criminal trial, the sixth amendment right to effective counsel is involved. *Id.* at 789.
9 STATE OF OHIO, DEPARTMENT OF REHABILITATION & CORRECTION, ADMINISTRATIVE REGULATION 814.
10 317 F.Supp. at 790. The justification for allowing the prison officials to read most incoming mail was to allow the officials to check for hard core pornography and highly inflammatory writings.
minent danger to institutional security." To the extent this provision allows the reading of mail from public officials or attorneys, the Ohio regulation is more restrictive than the standards of *Palmigiano* which allowed no such reading of this special category of mail.\(^\text{11}\) However, the standards set forth in the Ohio case of *Jones v. Wittenberg*\(^\text{12}\) allow the routine reading of all incoming mail for prisoners under sentence.\(^\text{13}\) Thus, even applied to mail from public officials and attorneys, paragraph 7 is not in conflict with existing Ohio case law, although it does contrast with the standards of some other jurisdictions as has already been noted.

Use of such language as "reasonable belief" and "imminent danger to institutional security" suggests the possibility that this rule could be subject to abuse. There are, however, various procedural safeguards appearing in the rule. The authority to read letters in these special circumstances can only be granted by the Director of the Department of Rehabilitation and Correction.\(^\text{14}\) The decision must be based upon a written application from the Managing Officer documenting his reasons for believing that the letter constitutes a clear and imminent danger; the authority to read, when granted, is limited to correspondence between the inmate and other specific persons and is limited to a specific time period.

Regarding the mere *inspection* of incoming mail (in contrast to reading or censorship discussed above), paragraph 2A of Ohio Administrative Regulation 814 states, in effect, that all incoming mail shall be opened and inspected for contraband except mail from courts, attorneys, or public officials. This provision is identical to the standard set forth in *Palmigiano*.\(^\text{15}\) However, paragraph 2B goes on to allow prison officials to inspect mail from courts, attorneys, or public officials whenever the inspection is made in the presence of the inmate-addressee. This latter provision is more restrictive than *Palmigiano*, where Judge Pettine did not authorize any such inspection of this special mail. It should be noted, nevertheless, that Ohio case law does support this provision, for the standards set forth in *Jones v. Wit*-

\(^{11}\) *Id.* at 788-89.


\(^{13}\) *Id.* at 719.

\(^{14}\) STATE OF OHIO, DEPARTMENT OF REHABILITATION & CORRECTION, ADMINISTRATIVE REGULATION 814, paragraph 7. It would appear that this authority can not be delegated, since nothing is said about the Director’s “designee.” Contrast this fact with the authority given to the Managing Officer “or his designee” by paragraph 3 of the same rule.

\(^{15}\) 317 F.Supp. at 790. Rather persuasive testimony regarding the need for inspection of mail was given by Mr. Ed W. Cass, Deputy Regional Director of the Federal Bureau of Narcotics and Dangerous Drugs, to the effect that one drop of an L.S.D. solution placed upon a piece of paper could give a sixteen hour “trip” to a person (inmate) later ingesting that paper. *Id.* at 783.
allow inspection of all incoming letters or parcels for prisoners under sentence.\textsuperscript{17}

**Outgoing Mail — Administrative Regulation 814(a)**

Regarding the justification for opening, reading, and censoring outgoing mail, prison officials have argued that such measures are necessary to protect the public from confidence schemes;\textsuperscript{18} to protect the public from criminal conspiracies between inmates and persons on the outside;\textsuperscript{19} and to protect the outside community from insulting, obscene, or threatening letters.\textsuperscript{20} Juxtaposed to these factors are the first amendment guarantees of freedom of speech, noted earlier,\textsuperscript{21} and some aspects of the fourth amendment right to be free from unreasonable searches and seizures.\textsuperscript{22}

Paragraph 1 of Administrative Regulation 814(a) provides, generally, that first class letters shall not be opened, read, copied, or censored. This general prohibition is qualified to allow such actions where there is "clear and imminent danger to institutional security."\textsuperscript{23}

These provisions are more restrictive than the standards of *Palmitgiano*, which required a search warrant before outgoing first class mail could be opened.\textsuperscript{24} This requirement of a search warrant was based largely upon the fact that prison officials generally did not monitor the conversations between inmates and visitors; since the officials thereby implicitly conceded no compelling state interest for monitoring conversations, there would not be a compelling state interest for monitoring outgoing correspondence.\textsuperscript{25} Although the Ohio provision is more restrictive than *Palmitgiano*, the provision is gen-

\textsuperscript{17} Id. at 719.
\textsuperscript{18} 317 F.Supp. at 784. As an example of such a scheme, a prison official in *Palmitgiano* cited an instance in which a prisoner had attempted to send letters to parents of men killed in Viet Nam, stating that he had known the son, had taken pictures of the son, and now needed money to develop the pictures.
\textsuperscript{19} Id.
\textsuperscript{20} Id.
\textsuperscript{21} Id. at 786.
\textsuperscript{22} Id. at 791-92, although it was stated that the full sweep of the fourth amendment obviously could not apply in a prison or jail context. Judge Pettine also noted the applicable significance of the sixth amendment right to effective counsel in cases where the inmate and attorney are in the process of preparing for a criminal trial. Id. at 789.
\textsuperscript{23} This qualification is identical to the qualification discussed earlier regarding incoming first class mail. The same requirement of "reasonable belief" and the same procedural safeguards are applicable. See note 14 supra, and accompanying text.
\textsuperscript{24} 317 F.Supp. at 791.
\textsuperscript{25} Id. But see Morales v. Schmidt (7th Cir. 1973) (unreported) reproduced in S. KRANTZ, THE LAW OF CORRECTIONS AND PRISONERS' RIGHTS — CASES AND MATERIALS 334 (1973) where a "reasonably necessary" test was advanced rather than the "compelling state interest" test.
erally compatible with other cases such as *Woods v. Yeager*\(^\text{26}\) which allowed prison officials to examine all outgoing correspondence unless addressed to courts or to attorneys.\(^\text{27}\)

Paragraph 2 states that there shall be no limits upon the number of letters that an inmate may send and that there shall be no restrictions as to whom letters may be addressed. This provision is somewhat more liberal than the standards of *Palmigiano* which gave a presumption of validity to the Rhode Island provision limiting correspondence to an approved addressee list of seven persons.\(^\text{28}\) Other recent cases, however, have stated that an inmate has a right to send mail to anyone without restriction as to length or volume.\(^\text{29}\) The Ohio provision seems to reflect these more recent developments.

Paragraph 3A prohibits an inmate from sending obscene, threatening, or "criminal letters."\(^\text{30}\) This provision is not in conflict with any case law, but one can wonder whether this provision is even necessary. As described in the rule, such acts would already be prohibited by existing law; furthermore, since there is generally no opening and reading of outgoing mail anyway, one wonders how such a rule can be effectively enforced.

Paragraph 3B prohibits an inmate from corresponding with anyone not wishing to receive mail. Although no cases considering such a provision could be found, one can question what overriding state interest justifies such a rule.\(^\text{31}\)

**Publications — Administrative Regulation 814(b)**

A key case dealing with the rights of an inmate to receive publications was the 1972 district court case of *Laaman v. Hancock*.\(^\text{32}\) Laaman, an inmate at the New Hampshire State Prison, had subscribed to a publication entitled the *Strawberry Grenade* and had ordered a book entitled *Guerrilla Warfare & Marxism*.\(^\text{33}\) The prison

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\(^{26}\) 463 F.2d 223 (3d Cir. 1972).

\(^{27}\) Id. at 224. The court, citing *Sostre v. McGinnis*, 442 F.2d 178 (2nd Cir. 1971), noted that examination of correspondence not addressed to attorneys or the courts, is a reasonable exercise of prison management discretion with which federal courts will not interfere. However, even the *Woods* opinion does not support application of this Ohio provision to court or attorney mail.

\(^{28}\) 317 F.Supp. at 791. Judge Pettine allowed the presumption of validity so long as the criteria used in the preparation of such lists were rationally related to the purposes of confinement and to institutional security.


\(^{30}\) Letters that contain the planning of criminal conduct, or letters whose contents would violate federal or state law.

\(^{31}\) If the justification is merely to reduce the administrative burden of handling complaints, the author seriously questions whether this constitutes a compelling state interest.


\(^{33}\) Id. at 1267.
Classification Committee, in reviewing these publications, found that certain issues of the Strawberry Grenade and the book Guerrilla Warfare & Marxism were "inciting and inflammatory." Consequently, these materials were withheld from the inmate. In its consideration of the §1983 action brought by Laaman, the court developed certain standards that can also be compared with the Ohio prison regulations relating to publications.

Paragraph 3 of Administrative Regulation 814(b) provides that obscene and inflammatory materials can be excluded from the institution. Publications are considered obscene if patently offensive to prevailing community standards regarding sexual matters and utterly devoid of redeeming social value. Publications are considered inflammatory if their presence would constitute a clear and present danger of inciting criminal activity.

These Ohio regulations conform to the standards of Laaman provided procedural due process safeguards are met. Thus the manner of determining whether a publication is obscene or inflammatory becomes very important.

Paragraph 5 describes the process by which such determinations are made in Ohio. Publications are screened initially by the prison mail office. Suspect publications are then forwarded to the Managing Officer, or his designee, for review. If the Managing Officer considers the publication obscene or inflammatory, he must forward the publication to the Screening Committee in Columbus, and notify the inmate of his actions. The inmate is afforded an opportunity to state his arguments to the Committee in writing. The Committee then makes its recommendations to the Director who makes the final determination. If the publication is to be excluded, the inmate is so advised in writing and the reasons for the exclusion are stated.

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34 Id.
35 Id.
37 Laaman v. Hancock, 351 F.Supp. 1265, 1268 (D. N.H. 1972). Regarding obscene materials, however, there is at least an issue as to whether prison officials can properly interfere with an inmate's mere possession (as opposed to sale) of obscene literature in light of the Supreme Court decision of Stanley v. Georgia, 394 U.S. 557 (1969).
38 The membership of the Ohio Publication Screening Committee is to include at least an attorney, a person experienced in the area of literature, a full-time departmental employee and a non-departmental employee. Paragraph 4 of ADMIN. REG. 814(b). This quest for diversity comports with the Laaman suggestion that a screening committee be composed of psychiatric experts, wardens, librarians, chaplains, and perhaps inmates. Laaman v. Hancock, 351 F.Supp. 1265, 1268 (D. N.H. 1972). One can wonder, however, whether the rationale for using a single, broadly based, statewide committee to determine the issue of obscenity might have been discredited by the recent case of Miller v. California, 413 U.S. 15 (1973), with its emphasis on local community standards of obscenity rather than national standards.
39 Note how the procedural due process requirements of notice, opportunity to object, and a decision by an unbiased body, that were set forth in Sostre v. Otis, 330 F.Supp. 941 (S.D. N.Y. 1971), are met point-by-point in the Ohio procedure.

http://engagedscholarship.csuohio.edu/clevstlrev/vol23/iss1/37
Generally, the above procedure compares favorably with Laaman.40 There may, however, be a problem with time limits. Although the Ohio procedure requires action within certain maximum time periods at each step, when these time periods are cumulated it seems that the final decision may not be reached until eighteen days after the publication arrives.41 Laaman, on the other hand, implied that minimum due process would require a decision within seven days.42

Regarding the number of publications that can be received by an inmate, paragraph 1 establishes the limitation of reasonableness. In Laaman the limitation of reasonableness was upheld upon the justification that it limits the burden of examining incoming materials.43

Attorneys' Visits — Administrative Regulation 815

Paragraph 1 of Administrative Regulation 815 discusses visits by attorneys during regular visiting hours. It states that such visits are to be allowed provided the attorney is the attorney of record for the inmate, or that the attorney is visiting upon the request of the inmate or his family.

The above provision is consistent with the recent Louisiana case of Elie v. Henderson44 wherein the court considered the refusal of the warden to grant an attorney's request to interview some twenty-one named inmates. Elie stated that reasonable restrictions upon attorney consultations were permitted, such reasonable restrictions including the requirement of a bonafide attorney-client relationship or the requirement that the consultation be at the request of the inmate.45

Paragraph 2 deals with visits on weekends or after regular visiting hours during the week. It requires advance notice of any request ranging from one day (in the case of a weekend visit), to a "reasonable time" before the end of visiting hours (in the case of an extension thereof). The provision also sets forth the policy that such requests shall be "liberally" granted.

These notice conditions would most probably meet the "reasonable restrictions" test of Elie, since the prison administration may need time to find a place for the visit and to make the necessary security arrangements for that place. The policy of "liberally" granting requests, however, does imply a possible standards problem.

41 Mail office — 1 day, Managing Officer — 3 days, Screening Committee — 14 days. Paragraph 5 of ADMIN. REG. 814(b).
42 Id. at 1268.
43 Id. at 968. Restrictions of this type are justified, at least in part, upon the ground that an attorney should not be allowed to solicit clients within the institution.
Paragraph 4 provides for the curtailment or banning of visits during a formally declared state of emergency at the institution. Discretionary exceptions are allowed if an inmate’s court date is approaching or if the need for legal assistance was created by the emergency itself. Assuming no abuse of discretion regarding the exceptions, this provision seems compatible with the line of cases holding that other constitutional rights can be curtailed during emergencies. 46

Paragraph 5 provides that conversations between the inmate and attorney are not to be monitored. This provision comports with privileged communications arguments and is also consistent with the rationale of cases holding that inmate-attorney mail cannot be read or even opened. 47

Paragraph 7 provides that the attorney may not visit over three clients at any one time. This provision is somewhat more liberal than the standard of Elie, that attorneys visit inmates only one at a time. 48

News Media Visits and Interviews — Administrative Regulation 813

A key case in the news media area is the 1972 New York case of Burnham v. Oswald 49 wherein inmates of Attica and newsmen sought a declaratory judgment regarding Attica rules and regulations prohibiting private interviews between newsmen and inmates. 50 In considering these rules and guidelines, the court laid down certain standards which can be compared with the Ohio regulations. 51

Paragraphs 1 and 2 of Administrative Regulation 813 provide that requests for visits (as distinguished from interviews) 52 with consenting inmates shall be granted unless there is a clear and present danger to security, an unreasonable interference with orderly administration, or danger to reporters. These standards for press visits comport almost verbatim with the standards for interviews enumerated in Burnham. 53


50 Id. at 883.

51 The court noted the interest of the press in full and accurate reporting, the right of the prisoner to communicate with the press, and the right of the public to know what goes on within prison walls. Id. at 885-86. The court then held that the state interests in security, discipline, and orderly administration were insufficient to justify absolute administrative discretion over interviews. Id. at 887.

52 The distinction seems to be that interviews involve a planned meeting for a particular purpose in which the interviewer is able to enumerate specific inquiries in advance. A visit, on the other hand, is more informal with discussion occurring more or less spontaneously.

53 342 F.Supp. 880, 887 (W.D. N.Y. 1972). Burnham did not mention the “danger to reporters” exception, but Burnham did mention an additional exception where the inmate had clearly abused his right of access to the press. Id.
Regarding personal interviews of specific inmates, paragraph 5A provides that such interviews will be allowed upon the approval of the inmate and his attorney of record if legal action is pending, and upon the approval of the Managing Officer. Paragraph 5B then provides that the Managing Officer shall approve an interview unless there would be detrimental effects upon the inmate or other inmates, unless legal action or parole review is pending, unless the interview would present a clear and present danger to security, or unless the interview would disrupt the orderly administration of the institution.

These provisions regarding interviews are more restrictive than the Burnham standards noted above—more restrictive in the sense that the Managing Officer is given broader discretion to deny the request. On the other hand, the Ohio provision is more liberal than some cases which have concluded that the denial of a press interview is completely within the discretion of prison officials, the rationale being that a prisoner’s ability to correspond with the press sufficiently satisfies any constitutional rights involved.54

Paragraph 5D provides that interviews may not be verbally monitored. This Ohio provision is more lenient than the Burnham standard. Burnham permitted verbal monitoring of the interview and set forth as the only safeguard the requirement that there be no reprisals because of anything said by the inmate.55

Paragraph 5E provides for an appeal to the Director in the event an interview is denied. This provision is similar to the requirement of Burnham that either a newsman or an inmate aggrieved by an adverse decision be given an opportunity to appeal.56 The Ohio provisions are silent, however, on the matter of notice to the inmate that a request for an interview has been made; Burnham, on the other hand, required such notice.57

Regarding the suspension of visiting and interviewing rights, paragraph 5F allows such a suspension during a state of emergency.

54 E.g., Smith v. Bounds, Civil No. 2914 (E.D. N.C., Mar. 10, 1972) cited in S. KRANTZ, THE LAW OF CORRECTIONS AND PRISONERS’ RIGHTS—CASES AND MATERIALS 405 (1973). The Ohio provision should also be compared with federal prison policy prohibiting press interviews. Although the court in Washington Post Co. v. Kleindienst, 357 F.Supp. 770 (1972) found that the absolute ban on interviews was unjustified, the later case of Seattle-Tacoma Newspaper Guild v. Daggert, Civil No. 9557 (W.D. Wash., May 5, 1972) upheld the federal policy, stating that prisoners have no right to a press interview where press visits were allowed. Comment, A Prisoner-Press Interview Right, 11 AM. CRIM. L. REV. 273, 279-80 (1972).

55 Burnham v. Oswald, 342 F.Supp. 880, 889 (W.D. N.Y. 1972). In justifying the monitoring of interviews, the Burnham court relied upon Sostre v. McGinnis, 442 F.2d 178, 202-03 (2d Cir. 1971), where the court held that the risk of plotting escapes or transferring contraband justified opening and reading all inmates’ mail. Burnham, supra at 889.

56 342 F.Supp. at 888.

57 Id.
This provision is consistent with the earlier case of *Burnham v. Oswald,* which upheld Attica’s exclusion of newsmen during the riot of 1971.

**General Visiting — Administrative Regulation 810**

With regard to the standards for general visitation, few cases considering this area can be found. A recent study also notes that courts have generally placed no limitation upon an official's discretion to grant or deny general visitation. In light of the scarcity of judicially-created standards in this area, some of the Ohio regulations will be compared to visitation regulations proposed in 1973 by the Boston University Center for Criminal Justice.

Paragraph 2 of Administrative Regulation 810 provides for the establishment of an approved visitors list for each inmate. The Model Rules and Regulations also include a provision for an approved visitors list. Paragraph 3 provides that family members and four friends may be placed upon the approved list. Similarly, the Model Rules and Regulations allow for family and friends, but they place no quantitative limits on the number of friends.

Paragraph 4 provides for the exclusion of a visitor where there is reasonable ground to believe the visit would create “clear and probable danger” to security, that the visitor has a past record of disruptive conduct, that the visitor is under the influence of alcohol or drugs, that the visitor is directly related to the inmate's prior criminal behavior, that the visit will be detrimental to the inmate's rehabilitation, or where the visitor refuses to submit to search or show proper identification. The provision goes on to state, *inter alia,* that the mere

59 Hollen, *Emerging Prisoners' Rights,* 33 OHIO ST. L.J. 1, 65 (1972). See Walker v. Pate, 356 F.2d 502 (7th Cir. 1966), where the prison officials were allowed to prevent visits by a prisoner's wife who had a criminal record; United States ex rel. Raymond v. Rundle, 276 F.Supp. 637 (E.D. Pa. 1967) where prison officials were allowed to deny visiting privileges to prisoners on death row. But see Rowland v. Wolff, 336 F.Supp. 257 (D. Neb. 1971), wherein the court noted that the arbitrary and capricious application of existing visiting regulations would not be allowed.
60 The lack of standards in this area probably occurs because the courts have generally failed to consider general visitation privileges to be constitutional rights. E.g., Rowland v. Wolff, 336 F.Supp. 257 (D. Neb. 1971), where Judge Urbom stated “I am confident that the plaintiff has no constitutional right to visitation from his sisters.” Contrast this situation regarding general visitation with press and attorney visitation where obvious first and sixth amendment rights are involved. It should be noted, however, that to the extent prisoners have rights to rehabilitation and to the extent visitation with family and friends is essential to rehabilitation, there may be grounds for developing standards in this area.
62 Id. REGULATION Ic-6.c.
63 Id.
fact that the visitor is a convicted felon will not be reason alone for excluding the visitor. Generally, these Ohio provisions compare well with the spirit of the Model Rules and Regulations.

Conclusion

For the most part, the mail and visitation regulations promulgated by the Ohio Department of Rehabilitation and Correction compare favorably with the newly evolving recognition of prisoners' rights. In a few instances the Ohio regulations are even more liberal than the standards set forth in the most recent cases. These more liberal regulations include Paragraph 1 of Administrative Regulation 814 which generally prohibits the reading of all incoming first class letters (in the absence of clear and imminent danger to institutional security), rather than merely prohibiting the reading of mail from an approved list; and Paragraph 5D of Administrative Regulation 813 which prohibits news media interviews from being verbally monitored.

There are some instances, however, where the Ohio regulations are more restrictive than would be acceptable under recent decisions in other jurisdictions. These more restrictive provisions include paragraph 2B of Administrative Regulation 814, which allows inspection of attorney-client mail if the inspection is in the presence of the inmate; paragraph 7 of Administrative Regulation 814, which provides a clear and imminent danger test for the reading of mail from public officials and attorneys, rather than prohibiting all reading of this special category of mail; paragraph 1 of Administrative Regulation 814(a), which incorporates a clear and imminent danger test for opening outgoing first class mail, rather than requiring a search warrant; and paragraph 5C of Administrative Regulation 813, relating to the conditions warranting the exclusion of press interviews. Nevertheless, even these more restrictive provisions are not in conflict with court decisions of this jurisdiction at the present time.

The fact that Ohio mail and visitation prison regulations generally compare favorably with the requirements of prisoners' rights case law may be viewed with favor or disfavor depending upon one's perspective. If one accepts the role of prisons in Ohio's correctional system, then one may look upon the seemingly up-to-date regulations as a sign of progress and health within these institutions. On the other hand, if one takes the view that the prison as an entity no longer has a place in any progressive correctional system, and that prisons must ultimately be completely replaced by other approaches such as community-based corrections, then one may view the up-to-

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64 The Ohio provision is more lenient than some provisions that have been upheld such as that in Walker v. Pate, 356 F.2d 502 (7th Cir. 1966), where a wife was excluded solely because of her past criminal record.

65 See Model Rules and Regulations, supra note 61, Regulation 1c - 6.d.
date regulations as "boiler plate" which simply make an already antiquated institution more immune from attack through the courts.

Finally, regardless of one's perspective, the real issue is whether or not prisoners' rights are adequately recognized in practice, not whether or not they are recognized in administrative regulations. Thus, the conclusion that Ohio prison regulations regarding mail and visitation seem to recognize the newly evolving rights of prisoners is a rather hollow conclusion in itself, unless the spirit and intent of the regulations are present in actual practice within the high walls of Ohio prisons.66

Donald L. Uchtmann†

Appendix

Mr. Christopher Conybeare of the Catholic-Lutheran-Episcopal-Methodist (CLEM) Justice Project has maintained some contact with inmates in state institutions although his principal emphasis relates to municipal and county institutions. Regarding state institutions, his general comment was that interpretation and application of the foregoing regulations is, in the final analysis, left to individuals, and that much depends upon their attitude and personality regardless of what the regulations may say in fact. Regarding letters, Mr. Conybeare specifically stated that during the past three months he had mailed three letters to one inmate of Lucasville who had been critical of the institution; none of these letters had been received. Also, three or four letters had been sent from the inmate to Mr. Conybeare during that period, but only one had been received.

Ms. Jo Ann Bray of the Peoples' Bussing Program, Inc. of Cleveland has had contact with prison visitation policies as a result of her work in organizing the bussing of visitors from population centers to the prisons. In addition to the problem of visitation caused by remoteness (a problem made even more acute by the fuel crisis and gasless Sundays), Ms. Bray noted that the proper identification provision of paragraph 4D, ADMINISTRATIVE REGULATION 810 can be a problem. She related one incident where a Cleveland man travelled to Lucasville but was not allowed to visit because the correction official refused to accept the driver's license presented as identification, saying "that's not good enough." She stated generally that problems with visitation often depend upon "who was calling the shots" on any particular day; and that whenever abuses are brought to the attention of supervisors it was easy for the supervisor to explain that the officer

66 In an attempt to gain insight into actual practices within Ohio prisons, the author conducted several interviews with persons having repeated contact with Ohio prisons within the past year. Summaries of these interviews are reported in the following appendix.

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had just been "over-zealous" or had simply "gotten the wrong impression." Ms. Bray did comment that conversations generally were not monitored, and that there was a positive trend toward less troublesome visitation.

Mr. Hal Steinhart has had contact with prison censorship policies through his endeavors as editor of the *Ohio Connections*, the short-lived, first state-wide prison newspaper which had its birth and death during 1973. Mr. Steinhart indicated that *Ohio Connections* had been censored to some extent in state institutions at Lebanon, Marysville, and Chillicothe, and that delivery was delayed at Lucasville. A witness in the mail room at Chillicothe reportedly stated that the newspaper issues were destroyed in the mail room without being screened according to the procedure of paragraph 5E, *Administrative Regulation 814 (b)*. Mr. Steinhart also stated that some of the inmate subscribers who never received the issues did not receive notice of confiscation as is also specifically required by paragraph 5B.

Mr. R. Raymond Twohig of Columbus, Ohio, has had contact with prison practices as one of the few Ohio attorneys involved in prisoners' rights litigation and as an activist in the organization of prisoners' unions. Generally, Mr. Twohig is of the opinion that the *Ohio Department of Rehabilitation and Correction Regulations* were written for "public consumption." In the area of mail, he indicated that prisoners generally feel that all mail is being read, that such opinions are partly the result of the ever-present atmosphere of distrust engulfing the inmates and prison officers, and that it is difficult to pinpoint just what does take place. Mr. Twohig was the attorney for, and a party to correspondence dealing with, the Ohio Prison Labor Union and was of the opinion that a great deal of this correspondence had either been read or xeroxed, for a prison administrator introduced much of this correspondence as exhibits before a Congressional committee. Regarding the screening of publications, Mr. Twohig noted that publications were being withheld; black literature composed the greater part of the screened publications and Mr. Twohig was skeptical as to whether such material could honestly be called "inciting."

Regarding press interviews and visits, Mr. Twohig made the general comment that such media access to Ohio prisons is typically unavailable whenever anything newsworthy develops. He noted that paragraph 2 of *Administrative Regulation 813*, which provides in part that news media can be excluded whenever the visit would endanger the safety of the reporter, was a barrier to news media access. He also pointed out that paragraph 5A, which requires attorney approval for a personal interview, can be particularly troublesome. For example, in Lucasville, almost all the inmates compose a class of plaintiffs in a single pending suit; thus, hardly a single in-
mate can be interviewed without the specific consent of the attorneys handling that action.

Regarding visits by attorneys, Mr. Twohig commented that he had personally had some difficulty getting approval for weekend visits, the policy of "liberally" granting requests notwithstanding. He also was of the opinion that the provisions banning attorney visits during emergencies had been abused: he contrasted the lengthy eighteen day emergency in Lucasville during 1973 (May and June — a time when prisoners were in their cells and order was being maintained) with the legitimate emergency lasting only a few days in Attica during 1971 (a time when the prison was actually in the hands of the inmates).

As a final comment, Mr. Twohig noted that even if the visitation and mail regulations have been promulgated in good faith by the Department, there remains the problem of effectively changing the habits and practices of guards and administrators who had done things the "old way" for many, many years.