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Comment and Correspondence

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COMMENT AND CORRESPONDENCE

CAN THE FREE PRESS SURVIVE ITS POSTAL NIGHTMARE?

To the Editors:

Senator Barry Goldwater's article, "Can a Free Press Survive Its Postal Nightmare?", published last year in the *Journal of Legislation*,* is a cogent and comprehensive analysis of the serious threat unbridled second class postal rate increases pose American magazines and newspapers and, ultimately, American democracy itself.

In a very carefully reasoned way he argued for appropriating public funds to stretch out the period in which scheduled postage increases would take effect, thus mitigating somewhat the impact of those onerous increases. His is an especially compelling analysis because it flows not from a narrow self interest but from a lucid understanding of the role of a free press in our society. Moreover, as he himself admits, few people can accuse him of habitually giving easy or uncritical support of public spending.

The phasing funds were in fact authorized, but the storm clouds of ever-mounting postal increases have hardly blown away. And because they remain fixed on the near horizon, we should take to heart the essentials of Senator Goldwater's appraisal, which is as fresh as the day he wrote it.

Senator Goldwater advanced six broad arguments for funding the phasing program, each persuasive in its own right, and taken together, a piece of fine scholarship. He quite correctly identifies the new U.S. Postal Service structure as the source of the "postal nightmare" that is spawning "alarming rate increases." Marshalling much evidence to show that publishers have gone to extraordinary lengths to accommodate postal increases in this decade, he recognizes that such tactics as reducing the frequency of publication and boosting circulation prices serve to stint free communication to a point where the printed word may be accessible and affordable only to the rich.

The trend is antithetical to the flow of American history and the intention of the Founding Fathers and their heirs. Indeed Congress, in reconstituting the Post Office, invoked the principle that a basic obligation of mail service is "to bind the Nation together through personal, educational, literary, and business correspondence of the people." This and other provisions, wrote Senator Goldwater, are "clear evidence that Congress placed a higher value on the benefits of communication than it did on achieving a strict self-sustaining basis for the Postal Service." Unfortunately, that historical perspective is not as widely accepted as it should be.

Citing French philosopher Jean-Francois Revel, Senator Goldwater makes the irrefutable case that "a basic component of America's technological and economic leadership is tied to our concern with keeping the greatest number of people abreast of varied ideas and information. Thus, it is the American public at large, and the premise that our Republic will be self-governed by an informed citizenry, that will suffer if the burden of postage costs stifles the circulation of the printed word through the mails."

*Barry M. Goldwater, *Can a Free Press Service Its Postal Nightmare?* 3 J. Legis. 5 (1976).

I have read no stronger nor more thoughtful brief for protecting the printed media in our nation from the depradations of excessive postal rate increases, and I commend your publication for printing it.

Andrew Heiskell
Chairman of the Board
Time Incorporated

New York, March 29, 1977

To the Editors:

I wish to comment upon and pursue several of the points raised by Senator Barry M. Goldwater in his article published last year in the *Journal of Legislation*.

I should say at the outset that my familiarity with the Senator's views predates the article; indeed, Senator Goldwater has been a stalwart in support of legislation aimed at easing the impact of lately horrendous postage increases on publishers – including publishers of second-class, non-profit, religious-oriented publications.

As special counsel to The Catholic Press Association, Associated Church Press, Evangelical Press Association and the American Jewish Press Association, I share many of the views articulated in the aforesaid article. However, the Senator expressly confines his support to "... a limited and temporary public solution to the financial emergency of the printed media". The non-profit, religious-oriented press cannot stop at this. It must have permanent and substantial relief and protection from spiraling postage cost increases – increases already aggregating, when implemented, approximately four times the increases of the for-profit press.

Since the very early legislative days of our various postal enactments, Congress has uniformly secured for non-profits and preferred mailers – religious, labor, science, veterans, agricultural, etc. – an easing of otherwise applicable rates of postage so as to insure that the organs of these important contributors to our moral climate and fibre be preserved. Journals of expression of views of these several groups were considered to be essential to the continuance of a healthy exchange of ideas and commentary.

When Congress enacted the Postal Reorganization Act of 1970, it provided therein eight factors by which the Commission should judge the reasonableness of proposed postage rates. In so doing, I believe the Congress fully intended to afford the Postal Rate Commission the necessary flexibility to continue the theretofore historical niche provided non-profit publishers of the religious media.

However, neither the Commission nor the courts have interpreted the legislation thusly. The recourse, then, must be for the Congress, in this session, to restore the previously-unassaulted concept – well described by Senator Goldwater – that the United States Postal Service is just that: a "service" and not a profit-oriented business.

Charles Emmet Lucey, on behalf of
The Catholic Press Association
Associated Church Press
Evangelical Press Association
American Jewish Press Association

Washington, D.C., January 7, 1977

Editor's Note: Mr. Lucey is a senior partner in the law firm of Harrison, Lucey & Sagle, Washington, D.C.

UNDOCUMENTED ALIENS

To the Editors:

It was most interesting to review the very excellent article, "The Rodino Bill on Illegal Aliens: A Legislative Note"; by Robert J. Taylor, published in the 1976 edition of the Journal of Legislation.*

The reference to H.R. 8713 as the "Rodino Bill" is not entirely accurate inasmuch as the proposal which was reported out by the House Immigration Subcommittee was in reality a "committee bill" sponsored by Rep. Joshua Eilberg. Mr. Rodino declined to become the principal sponsor but did agree to be listed as a co-sponsor.

Mr. Taylor has outlined well the causes of the "illegal alien" problem which has its roots in socio-economic factors – the disparity of income levels between the United States and Mexico and the extended separation of families from the Western Hemisphere due to the lack of an equitable system of admitting immigrants from that Hemisphere.

Correspondingly, he has presented proposed solutions ranging from the open-border concept to the tightening up on the issuance of temporary visas to the imposition of sanctions against employers who knowingly hire the alien who is not authorized to work.

If the author were to review the matter today, he would find much the same "illegal alien" problem, but would also note that the scene has changed somewhat. For example:

- (1) The Immigration Act was amended on October 20, 1976 (P.L. 94-571) to extend the preference system to the Western Hemisphere, an action which will facilitate family reunion and, hopefully, will reduce that cause of illegal entry. (On the other hand, that same amendment imposed a ceiling of 20,000 visas annually upon Mexico, cutting by more than 50 percent the possible annual lawful immigration from that country.)
- (2) As the 1972 amendments to the Social Security Act requiring screening of applicants vis-a-vis right to work are more fully implemented, more undocumented aliens are finding it difficult to obtain work since they lack the social security card.
- (3) Since the Supreme Court, on February 25, 1976, decreed in *De Canas v. Bica*** that is lawful for the state in the exercise of regulating employment to enact legislation penalizing the employer who knowingly hires the undocumented alien, six states and one city (Las Vegas) have enacted such legislation, and bills are pending in at least 19 other states and one city (New York City) with the same objective in mind. Such action on the part of individual states can only lead to a chaotic erosion of the civil rights of the United States and unlawful aliens.

*Note, *The Rodino Bill on Illegal Aliens: A Legislative Note*, 3 J. Legis. 39 (1976).

**424 U.S. 351 (1976).

The Carter Administration intends to make this immigration issue a high priority item. On the very day of this writing, top officials of the Administration, including Attorney General Griffin Bell and Secretary of Labor Ray Marshall, are meeting to begin shaping a new policy which will ultimately affect not only the illegal alien but also employees and native-born workers. Both officials have spoken favorably of some form of amnesty coupled with employer sanctions. Secretary Marshall has stated that such penalties could not be imposed unless the government developed some sort of employment identification cards. It is in this latter area that the solution to the problem lies. The proposed sanctions will result in discrimination against minority groups in hiring practices. Only an *employment* identification card which *must* be produced by *every* job applicant can offset the possibility of discrimination. In order to obtain sanctions, will its proponents agree to the employment identification card? Unless such an agreement is reached along with a generous amnesty provision, the prospects for sanctions legislation in this Congress are as remote now as they were in past Congresses.

I do hope that you will continue to follow the deliberations on these issues and that you will have the opportunity to review for your readers newly-enacted legislation which will reflect not only the justice but also the humanitarianism of our great republic.

Donald G. Hohl
Associate Director
Migration and Refugee Services
United States Catholic Conference

Washington, D. C., April 6, 1977

To the Editors:

Robert J. Taylor, in his paper, "The Rodino Bill on Illegal Aliens: A Legislative Note" (Vol. 3, 1976), very correctly identifies the primary thrust of the bill [H. R. 8713, 94th Cong., 2d Sess. (1976)] as placing the burden of enforcing the illegal alien laws on the private employer. This would, of course, place an impossible burden on employers. Not too long ago the Border Patrol, in a raid on a migratory farm worker camp in Florida, rounded up a group of undocumented Mexican workers and deported them. The whole operation was accomplished in a few hours before dawn. The only problem was that among those deported was a U.S. citizen of Mexican descent whose lack of English was sufficient to get him deported. If the U.S. Border Patrol can make such a mistake, what chance does a private citizen have of not making the same mistake. It may well be that this country is going to have to choose between a positive system of identification cards for every legal resident citizen and non-citizen, and control of the illegal alien problem.

Even more serious at the present time is the burden placed by the government on social agencies. The *Manzo* case* in Arizona has served to alert us to the

*United States of America v. Mary Margaret Cowan, aka "Margo Cowan," et al., No. CR-76-530-TUC-WCF (U. S. District Court for the District of Arizona) (Unpublished Agreement). See also: United States of America v. El Concilio Manzo, M-76, Case No. 165 and C.A. No. 76-2053 (9th Cir.).

fact that the mere exercise of Christian charity to our brothers and sisters in need may lead to Federal prosecution on the charge of aiding and abetting illegal aliens. It would seem that the government now requires us to question clients as to their emigration status before giving them help. Clearly, the thrust of the Rodino bill would do nothing to relieve this burden.

The increasing complexity of legislation in this area, the arbitrary actions of government officials, the casual approach, or even non-existence of due process in many cases, all point up the need for social agencies, Churches and others interested in human rights to have the freedom and protection from interference and even harrassment in the carrying out of their mission. To allow less than this is a denial of the founding principles of this nation.

In this regard, the case of the Haitian refugees is one that calls for attention. An unknown number of Haitian men and women have landed from small vessels in South Florida during the past two or three years. Some 1800, apprehended either on landing or approaching the coast, have claimed political asylum under the United Nations Protocol on Refugees. This claim has been generally denied by the U.S. Immigration and Naturalization Service, and deportation or exclusion proceedings have been initiated by this Service against the new arrivals. With the help of Church groups, appeals have been filed in the Federal courts — appeals which will take at least two more years to resolve. Meanwhile, many of these men are being held in Texas or Florida jails pending \$1,000.00 bail and all claimants have been denied the temporary work permits usually given to aliens appealing deportation or expulsion.

The serious question here is the process used by the U.S. Immigration Service in handling applicants under the United Nations Protocol on Refugees, a treaty to which the U.S. is a signatory. It is extremely difficult to distinguish between those who leave their country for political reasons and those who leave for economic reasons. They are so intertwined that there seems to be no clear resolution of the motivation involved. However, it would appear that the U.S. Government has no difficulty in deciding this issue when the refugee is from a left wing dictatorship. He is a political refugee. But if he is from a right wing dictatorship, such as Haiti, he is presumed to want to come here for economic reasons and so must prove that there are political reasons as well. I think that this may well merit a special paper, and I suggest this to you.

Monsignor Bryan O. Walsh
Archdiocesan Director
The Catholic Charities
of the Archdiocese of Miami

CONTROLLING THE LEGISLATORS: STARRING BILLS IN NEW YORK

To the Editors:

I recently had occasion to read the May, 1976 issue of the Notre Dame Journal of Legislation, and am writing to compliment the board of editors for a fine, comprehensive publication.

Fredric M. Carlin's review of *Empire State Report** referred to the power of the State Senate's majority leader to star bills, and, by so doing, to prevent their being considered by the Senate. The Democratic minority of the State Senate has long believed that this power has been exercised in an arbitrary and undemocratic manner, and concurs with the New York State Bar Association in calling for its abolition.

In theory, the process of starring bills enables the majority leader to permit the Senate to consider bills lacking controversy, thus supporting the effective management of the legislative process. In reality, however, this power is not exercised in a manner oriented toward legislative management, but rather is exercised primarily for political purposes. It must be stopped.

The individual interests of the citizens of a state are represented by their legislators. Any action which prohibits, or diminishes, the powers of a legislator to present an idea, a bill, a proposal, a resolution, not only diminishes that legislator's individual effectiveness, but, more importantly, discriminates against the legitimate interests of the constituents represented. The process of starring bills is antiquated and counterproductive.

I found the May, 1976 Journal of Legislation a very impressive publication and extend my continued best wishes to the editors for your continued scholarly efforts in reviewing legislation and the legislative process.

Manfred Ohrenstein
Minority Leader
New York State Senate

Albany, N.Y., April 22, 1977

The author replies:

By starring bills, the majority leader of New York's State Senate precludes action on them, of any nature. He can prevent a Governor's bill from being considered, can discipline State Senators of the majority leader's party who oppose him on unrelated legislative or political matters, can use the starring process to thwart consideration of bills introduced by minority members of the Senate, can preclude consideration of bills passed by the State Assembly.

Fred Ohrenstein, a respected legislator and legislative leader, correctly points out that the theoretical basis for this power is a desire to enable the State Senate speedily to consider bills which lack controversy. The process makes sense as a theoretical technique for the administration of a legislative body. As Mr. Ohrenstein accurately says, however, this power, in practice, "is exercised primarily for political purposes."

*Review, *Empire State Report*, 3 J. Legis. 64 (1976).

The New York State Bar Association's comprehensive study, which recommended the abolition of this power to star bills, is a positive suggestion for the enhancement of the legislative process. By abolishing this power, legislators will be enabled to set forth their views on matters of public policy without having to cater to the political needs of the majority leader.

I agree totally with Fred Ohrenstein's letter: this power to star bills must be stopped.

Fredric M. Carlin

UNETHICAL DEBT COLLECTION

To the Editors:

I have read with interest the May, 1976 issue of the *Notre Dame Journal of Legislation* which contained a note, "Unethical Debt Collection: Problems, Prescriptions, and a Congressional Proposal," by Thomas J. Quinn.* I certainly agree with Mr. Quinn's statements about the present lack of effective civil remedy whereby a consumer could stop abuse from a debt collector and the lack of uniformity in state laws.

Since H.R. 10191 was introduced on October 9, 1975, the legislation has undergone significant changes. For instance, the legislation (now H.R. 5294) provides that the enforcing agency, the Federal Trade Commission, shall not prescribe implementation regulations. This should benefit both debt collectors and consumers who will not have to interpret complicated implementation regulations, as has occurred with respect to the Truth in Lending Act's Regulation Z. Also, the potential time-consuming and expensive burden that H.R. 10191 imposed through its proposed recordkeeping and disclosure sections has been eliminated since those sections have been deleted and replaced by a simple validation of debts section.

However, although two years have passed, the need for this legislation has increased rather than decreased. Last year alone, according to the American Collectors Association, 3.9 billion dollars in debts were turned over to its members. For far too long debt collectors have been collecting money from consumers by use of harassment, abuse and deceptive tactics.

Frequently consumers are sent phony legal documents, are harassed by threats of contact with their employer or false threats of legal action. They are harassed by phone at home and at work. If these tactics do not work, threats of bodily harm or death are sometimes made.

It is not just the individual who owes a valid debt who receives this outrageous treatment, others such as a person contacted through mistaken identity or through mistaken facts, and his friends, relatives and neighbors—all are subject to the tactics of the disreputable debt collector.

This legislation is needed because at present there is no effective regulation of debt collectors. State laws do not and cannot regulate interstate debt collection practices. The overall quality of State law in this area is not good.

*Note, *Unethical Debt Collection: Problems, Prescriptions and a Congressional Proposal*, 3 J. Legis. 50 (1976).

Thirteen states have no debt collection laws at all and another eleven states have laws which contain no or few prohibited practices. The result is twenty-four states with an estimated population of over 80 million have virtually no protection from collection abuse for their citizens.

Also, presently there is no federal debt collection law per se. The federal laws that can be construed to relate to debt collection practices have not been successful in stopping debt collection abuse.

H.R. 5294 reflects both the legitimate need of reputable debt collectors to contact consumers in a reasonable manner and the legitimate need of consumers to be protected from harassment and deception. I am hopeful this important and needed legislation will be enacted into law this year.

Frank Annunzio, Chairman
Subcommittee on Consumer Affairs
Committee on Banking, Finance and Urban Affairs
U. S. House of Representatives

LOBBYING ACTIVITIES BY CHARITABLE ORGANIZATIONS

To the Editors:

As you know, remedial legislation was passed by Congress and approved by the President on October 4, 1976, as part of the Tax Reform Act of 1976, PL 94-455. The legislation is substantially as described in the article, "Restrictions on Lobbying Activities by Charitable Organizations: Proposed Legislative Remedies" in your May, 1976 Journal.*

The Mental Health Association is eminently pleased with the remedial legislation. The most helpful single aspect is that we now know where we stand: what is lobbying and how much we may do. As your article pointed out, neither of these perimeters was defined in the law before the 1976 amendments and all units of our Association – national, state and local – lived in constant jeopardy of losing their tax exempt status, a veritable death sentence.

For the most part, the amendments are very clear. There are some gray areas with respect to affiliated groups, communications with members and non-members, and criteria for membership. We hope the Treasury Department's implementing regulations will clarify these. To help our affiliates understand the new law, we have prepared "A Layman's Guide to Lobbying Without Losing Your Tax Exempt Status."

In short, we see the new law as a tremendous boon to all public charities eligible to come under it.

Mrs. Wilbur Pell
President
The National Association for
Mental Health, Inc.

Arlington, Virginia

*James A. Moore, Barbara J. Washburn, Eugene Goldman, *Restrictions on Lobbying Activities by Charitable Organizations: Proposed Legislative Remedies*, 3 J. Legis. 17 (1976).

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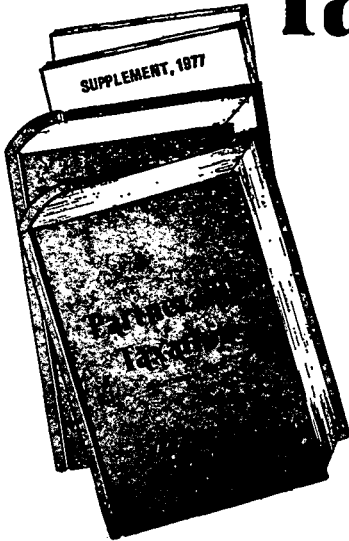
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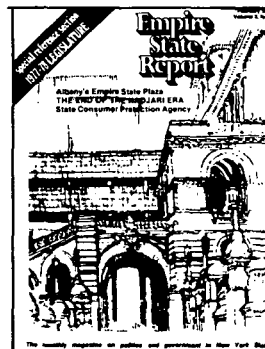
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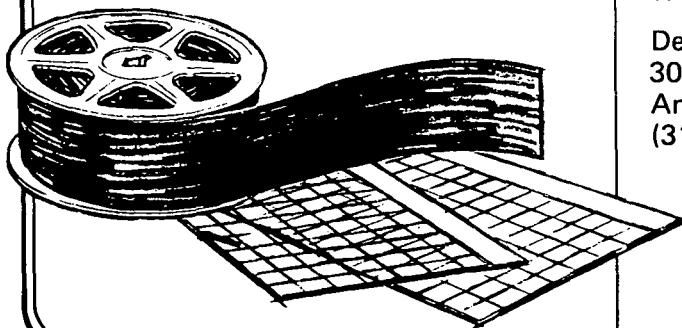
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