



Literature Locked Up:

How Prison Book Restriction Policies Constitute the Nation's Largest Book Ban

September 2019

With over two million Americans incarcerated, the book-restriction regulations within the United States carceral system represent the largest book ban policy in the United States.

The reality of book banning in American prisons is systematic and comprehensive. State and federal prison authorities censor content with little oversight or public scrutiny. Often the ultimate decision-maker about a person's right to read is housed in the prison mailroom.

Books in American prisons can be banned on vague grounds, with authorities striking titles and authors believed to be detrimental to "rehabilitation" or somehow supportive of criminal behavior. Such grounds are so arbitrary and so broad that they often operate as sweeping bans. Literature on civil rights and landmark works rightly critical of the American incarceration system—titles like *The New Jim Crow* and *Race Matters*—are often subject to bans.

And increasingly, prisons are limiting incarcerated people's abilities to order books directly, arguing that such book deliveries represent a security threat. As a result, thousands of incarcerated people across the country are seeing their access to books dramatically restricted, regardless of the books' content.

This phenomenon presents a particular challenge when it comes to reporting and analysis. There is very little public visibility into how these policies are considered, adopted, implemented and reviewed. As such, advocates for access to literature in prisons must often review a disparate set of state, county, and even individual facility-level practices, with varying degrees of public accessibility or transparency, to gain even a partial view of how book banning procedures play out on a national level.

To highlight this issue of prison book censorship, PEN America has produced this issue brief outlining the troubled state of the right to read in U.S. prisons. The right to read is one that implicates our fundamental human and constitutional rights. Research clearly indicates that access to literature reduces recidivism and better prepares individuals to thrive when they return to free society. Meaningful access to literature is essential for incarcerated people, where the written word is a rare source of information, education, and recreation, and a window to the wider world.

The goal of this brief is not to demonize prison officials or to belittle legitimate security concerns. It does aim to demonstrate, however, that the book restrictions in American prisons are often arbitrary, overbroad, opaque, subject to little meaningful review, and overly dismissive of incarcerated people's right to access literature behind bars. The result is a book banning system that fails incarcerated people, and fails to live up to our democratic and Constitutional ideals. As

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both a practical and a moral matter, it is time to re-evaluate the state of the right to read within American prisons.

Definitions

This brief uses the term “**prison officials**” or “**prison authorities**” to refer broadly to state, county, and federal officials involved in promulgating book restriction policies. Such authorities are often officials within the state departments of corrections, and our use of this term includes ground-level corrections officers.

We use the term “**prison**” to refer broadly to various sites of detention and incarceration. This includes prisons, jails, or other sites related to our criminal justice system which are used to house individuals either awaiting disposition of criminal charges or those who in the post-conviction stage. While this document briefly touches upon jails specifically, a full review of the differences in access to literature between jails and prisons is beyond the scope of this paper, and PEN America expects that jails in particular may be subject to additional pressures against the right to read that are not enumerated here.

We use the terms “**incarcerated person**” and “**incarcerated people**,” to refer to those affected by these censorship limitations.¹ Note that people who have not been convicted of a crime but nonetheless held in jail or other pre-trial detention sites are also likely to be affected by these policies.

¹ For further discussion on the terminology to refer to people behind bars, *see e.g.* Blair Hickman, “Inmate. Prisoner. Other. Discussed.” The Marshall Project, <https://www.themarshallproject.org/2015/04/03/inmate-prisoner-other-discussed>

Section I: Content-Based Bans

While the specific rules vary from state to state, prison officials generally have broad latitude to ban books based on their content, including the prerogative to develop their own rationales for why a book should be blocked. They usually do so on one of several grounds:²

- Sexual content, nudity, or obscenity
- Depictions of violence or language perceived to encourage it
- Depictions of criminal activity or language perceived to encourage it
- Depictions of escape or language perceived to encourage it
- Encouragement of “group disruption” or anti-authority attitudes or actions
- Racial animus or language perceived to encourage hatred

For purposes of this brief, we refer to these types of bans as content-based. While all these categories may encompass areas of legitimate concern, they can be—and in practice often are—construed so broadly that they essentially serve as convenient justifications for arbitrary bans. Further, prison officials are allowed to block books even outside these categories so long as the text is “detrimental to the security, good order, or discipline of the institution.”³ This type of provision grants officials substantial leeway.

One of the nation’s foremost jurists, Supreme Court Justice Thurgood Marshall, explained how these officials are likely to interpret such broad directives in a 1977 dissenting opinion:

A warden seldom will find himself subject to public criticism or dismissal because he needlessly repressed free speech; indeed, neither the public nor the warden will have any way of knowing when repression was unnecessary. But a warden's job can be jeopardized and public criticism is sure to come should disorder occur. Consequently, prison officials inevitably will err on the side of too little freedom.⁴

This is not merely a hypothetical concern. Groups that exist to provide books to incarcerated people have noted that “With enough time and ingenuity, prison officials and their lawyers can

² See e.g. Dan Slater, “Texas Prisons Banned My Book About Texas Prisoners,” Slate, Sept. 27, 2016, <https://slate.com/news-and-politics/2016/09/texas-prisons-banned-book-policy-is-a-national-disgrace.html>. For examples of the rules which lay out these criteria, see e.g. Florida Administrative Code Rule 33-501.401, Admissible Reading Material, Effective Date 11/22/2010, available at <https://www.flrules.org/gateway/RuleNo.asp?ID=33-501.401>; Illinois Administrative Code Chapter 20, Subchapter E, Part 525, Subpart C, available at <https://www2.illinois.gov/idoc/Documents/visitation.pdf>; New Hampshire Department of Corrections Policy and Procedure Directive 5.26, Inmate Mail Service, Effective Date 9/15/17, <https://www.nh.gov/nhdoc/policies/documents/5-26.pdf>; Texas Department of Criminal Justice Board Policy BP-03.91 (Rev. 3), Uniform Offender Correspondence Rules, Aug. 23, 2013, <https://www.documentcloud.org/documents/4266743-TDCJ-Books-Policy.html>; Commonwealth of Pennsylvania – Department of Corrections – Procedures Manual, Inmate Mail and Incoming Publications, DC-ADM 803, Effective Date 10/3/18, <https://www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/803%20Inmate%20Mail%20and%20Incoming%20Publications.pdf>

³ Thornburgh v. Abbott, 490 U.S. 401, 407 (1989); see also Nila Bala, “There’s a war on books in prisons. It needs to end,” *The Washington Post*, Feb. 08, 2018, https://www.washingtonpost.com/opinions/theres-a-war-on-books-in-prisons-it-needs-to-end/2018/02/08/c31cd122-02b3-11e8-8acf-ad2991367d9d_story.html?noredirect=on

⁴ Jones v. North Carolina Prisoners’ Labor Union, 433 U.S. 119 (1977) (Dissenting). Internal citations omitted.

usually imagine some way in which some aspect of a particular written work might conceivably have some marginal effect on prison order or security.”⁵

The results have been wide-ranging, from perverse to absurd to constitutionally troubling, with bans being applied in ways that defy logic. As just a few specific examples:

- **Texas** has banned books by Pulitzer Prize winners Alice Walker, Robert Penn Warren, and John Updike; National Book Award winners Joyce Carol Oates and Annie Proulx; Nobel Prize winners Pablo Neruda and Andre Gide; and even George Orwell and former Senator Bob Dole.⁶
- Officials at one prison in **Ohio** prevented a book donation group from sending a biology textbook to an incarcerated person, labeling the anatomical drawings as “nudity”.⁷
- **Arizona** has banned “Dragonology: The Complete Book of Dragons,” “E=MC²: Simple Physics,” and “Sketching Basics.”⁸
- In **Tennessee**, officials refused to allow the literary non-profit Books Through Bars to send a book about the Holocaust to an incarcerated person, citing as justification the fact the book included a photo of the nude bodies of victims.⁹
- Although they later reversed their decision, officials at a **federal prison** in Colorado prevented a prisoner from receiving President Barack Obama’s *Memoirs—Dreams from my Father* and *The Audacity of Hope*—saying the books were “potentially detrimental to national security.”¹⁰ Federal officials have previously attempted to ban Jewish texts including Rabbi Harold Kushner’s *When Bad Things Happen to Good People*.¹¹
- In **New York**, one prison attempted to ban a book of maps of the Moon, claiming the book could “present risks of escape.”¹²

These examples—and there are many, many more from which to choose—help illustrate the arbitrary and irrational nature of our nation’s approach to book access in our prisons.

Who Censors?

Prison systems function as a hierarchy, meaning officials at multiple levels can act as censors and block incarcerated people’s access to books. It also means that with so many overlapping and conflicting bans, it’s difficult to get a full accounting of just how many titles and authors are banned in U.S. prisons.

⁵ Brief for Amici Curiae Prison Books Clubs, *Prison Legal News v. Secretary, Florida Department of Corrections*, No. 18-355, (Oct. 18, 2018) <https://tinyurl.com/yxp7fvvo> (“Prison Books Clubs Amicus”)

⁶ Id.

⁷ Jeremy Pelzer, “Ohio’s prisons agency vows to lift restrictions on book donations to inmates,” *Cleveland.com*, May 16, 2019, <https://www.cleveland.com/politics/2019/05/ohios-prisons-agency-vows-to-lift-restrictions-on-book-donations-to-inmates.html>

⁸ Corrina Regnier, “What Do Batman and The Onion Book of Known Knowledge Have in Common? Censorship, the ACLU, and Arizona Prisons,” *ACLU*, Sept. 30, 2015, <https://www.aclu.org/blog/prisoners-rights/what-do-batman-and-onion-book-known-knowledge-have-common-censorship-aclu-and>

⁹ Prison Book Clubs Amicus.

¹⁰ Id.

¹¹ Id.

¹² Id.

The first type of content-based censorship often occurs in the prison mailroom or in the prison library—on the **individual level**. In the prison mailroom, individual officers are empowered to decide whether a book will be allowed to reach its intended recipient, or not.¹³ Often, individuals in a position to implement content-specific book bans do so without formal processes and on the basis of their personal beliefs and biases.¹⁴ Their decisions may be accompanied by official explanations or meaningful oversight. Often they are not.

The second type of censorship occurs at the **prison-wide level**. Individual prisons may create their own institution-specific rules about which books are allowed. As a result, certain books may be allowed in one prison and banned in another.

The third type of censorship occurs at the **statewide level** (or in the case of the federal Bureau of Prisons, the **federal level**). State departments of correction may have a list of banned books, which often include thousands of banned titles. Such lists often codify and formalize the practices of prison mail rooms towards certain books, turning institution-wide norms into an automatic statewide ban. For example:

- The state of Texas has an official banned list of over 10,000 banned books, and public reporting has indicated that the list may now include over 15,000 titles.¹⁵ The statewide list reportedly includes such books as Salman Rushdie’s *Satanic Verses*, Alice Walker’s *The Color Purple*, and books on the Civil Rights Movement.¹⁶
- Florida has a list of over 20,000 banned books. The nonprofit organization Books to Prisoners has noted that this list includes “Klinton dictionaries [and] a coloring book about chickens.”¹⁷
- Kansas has had a list of over 7,000 banned books, including “self-help books,” as well as “bestselling literary works, such as Margaret Atwood’s *The Handmaid’s Tale*.”¹⁸ After the Human Rights Defense Center obtained and published the list in May 2019, the acting secretary at the Kansas Department of Corrections announced that he would abolish the list and replace it with a new policy for reviewing obscene materials.¹⁹

¹³ See, e.g., Texas Civil Rights Project, *Banned Books in the Texas Prison System: How the Texas Department of Criminal Justice Censors Books Sent to Prisoners*, 2011, 8 (https://www.prisonlegalnews.org/media/publications/texas_civil_rights_project_prison_book_censorship_report_2011.pdf) (“If the publication is on the [banned] list, the prisoner receives it. If not on the list, the mailroom officer decides if the book has ‘objectionable’ content.”)

¹⁴ See e.g., Tammi Arford, “Captive Knowledge: Censorship and Control in Prison Libraries.” PhD diss., Northeastern University, 2013, 143 (<https://repository.library.northeastern.edu/files/neu:1905/fulltext.pdf>); Christopher Zoukis, “Censorship in Prisons and Jails: A War on the Written Word,” *Prison Legal News*, Dec. 4, 2018.

¹⁵ See “Banned Books List”, Books to Prisoners, <http://www.bookstoprisoners.net/banned-book-lists/> (“11,851 titles were banned in Texas by 2012 . . . in November 2017, *The Dallas Morning News* obtained a second list of banned books which indicated that more than 10,000 books were still banned . . . These bans, as other news coverage indicates, at times may have exceeded 15,000 titles.”)

¹⁶ Dianna Wray, “Texas State Prisons: You Can’t Read *The Color Purple* but *Mein Kampf* is Fine,” Sept. 28, 2016, <https://www.houstonpress.com/news/texas-state-prisons-you-cant-read-the-color-purple-but-mein-kampf-is-fine-8808379>; Banned Books List”, Books to Prisoners, <http://www.bookstoprisoners.net/banned-book-lists/>

¹⁷ “Banned Books List”, Books to Prisoners, <http://www.bookstoprisoners.net/banned-book-lists/>

¹⁸ Sherman Smith, “Corrections secretary eliminates banned book list for Kansas prisons, deploys new policy,” *Topeka Capital-Journal*, Aug. 21, 2019, <https://www.cjonline.com/news/20190821/corrections-secretary-eliminates-banned-book-list-for-kansas-prisons-deploys-new-policy>

¹⁹ *Id.*

Only a minority of states have made their prison banned book lists available.²⁰ And even those states normally only disclose their lists as the result of Freedom of Information Act (FOIA) requests from journalists or advocacy groups – requests for which they are legally obligated to respond. The public is not updated when lists are updated or altered, meaning that the publicly-available versions of these lists are mere snapshots in a timeline of censorship.

Even FOIA requests may fail to illuminate the full scope of a prison’s book banning practices. Prison officials may fail to fill out official notifications that the book has been rejected, or claim that such official notifications are “inmate property” and thus cannot legally be disclosed to others.²¹

The fact that there is so little visibility into the book banning practices of our prisons means that there are likely even more outrageous restrictions than those catalogued here, but without any formal disclosure or notification, the public is mostly unaware. To this day, even the most dedicated advocates for book access in American prisons have only limited visibility into which books are blocked and which are allowed.

Literature on Civil Rights Often Arbitrarily Banned

Perhaps most controversially, prisons systems frequently place bans on literature that discusses civil rights, historical abuses within America’s prisons, or criticisms of the prison system itself, often on the grounds that such titles advocate disruption of the prison’s social order.

As former *Wall Street Journal* reporter Dan Slater—whose own book, a cautionary tale about two young men who fell into a life of crime, is banned in Texas prisons—wrote in 2016, “Books that are critical of the prison system . . . tend to fare poorly, even if written by Nobel Prize nominees, such as Sister Helen Prejean or Harvard Law School professors like Charles Ogletree.”²²

The categories of banned content seem to say much more about the implicit—or explicit—biases that go into these decisions than they say about prison safety. Texas’ banned list, for example, includes books that were banned for their “racial content” and even “deviant criminal sexual behavior.”²³ In 2011, the non-profit Texas Civil Rights Project documented how the Texas Department of Criminal Justice even used censorship abbreviations of “M/H” and “W/H” to mark when books depicted homosexual activity, for use in evaluating whether the book would be allowed.²⁴ In 2019, New Hampshire reportedly banned *Coming Out of the Concrete Closets*, a survey

²⁰ See “Banned Books List”, Books to Prisoners, <http://www.bookstoprisoners.net/banned-book-lists/>; Publications: Mail -> Banned Book Lists, Prison Legal News, <https://www.prisonlegalnews.org/news/publications/tag/banned-book-lists/>

²¹ Correspondence with Michelle Dillon, Public Records Manager and Development Coordinator, Human Rights Defense Center & Former Program Coordinator, Books to Prisoners, Sep. 9, 2019.

²² Dan Slater, “Texas Prisons Banned My Book About Texas Prisoners,” Slate, Sept. 27, 2016, <https://slate.com/news-and-politics/2016/09/texas-prisons-banned-book-policy-is-a-national-disgrace.html>

²³ Id.

²⁴ Texas Civil Rights Project, *Banned Books in the Texas Prison System: How the Texas Department of Criminal Justice Censors Books Sent to Prisoners*, 2011, (https://www.prisonlegalnews.org/media/publications/texas_civil_rights_project_prison_book_censorship_report_2011.pdf)

on the experiences of LGBTQ+ incarcerated people, because the text depicts “unlawful sexual practice.”²⁵

Even apparently neutral rationales are often employed in ways that raise the clear specter of racial discrimination. Author Dan Slater writes that Texas’ ban against books that encourage anti-authority behavior such as prison strikes, for example, “permits the prison to ban pretty much any book about civil rights that uses the word ‘nigger.’ Tragically, it has been used repeatedly for just that purpose.”²⁶

One prominent—and recent—example of such a ban involves the book *The New Jim Crow* by civil rights lawyer Michelle Alexander. *The New Jim Crow* examines the phenomenon of mass incarceration and argues that our incarceration practices represent a continuation of our country’s racist policies of the past. After its release, the book was banned in prisons in North Carolina, Florida, Michigan, and New Jersey.²⁷

Jarrett Adams, a criminal and civil rights attorney who himself was formerly incarcerated after being wrongfully convicted at 17, expressed to PEN America the importance of access to these types of books specifically: “Those books tell people who are incarcerated not to give up. I would not be where I am today if it weren’t for having been able to read certain books that addressed systemic racism and mass incarceration.”²⁸ And yet, books about racism, injustice, and civil rights have frequently been subject to bans across the country. As a set of recent examples:

In May 2019, public reporting revealed that the **Arizona** Department of Corrections had banned *Chokehold: Policing Black Men*, a book on racial injustice in the criminal justice system, written by Georgetown Law School professor Paul Butler.²⁹

Also in May 2019, the non-profit Human Rights Defense Center obtained a list of titles banned from **New Hampshire** state prisons, as well as the rationale for their bans.³⁰ As outlined above, the ban included a book on LGBTQ+ incarcerated people, as well as titles such as:

- *Prison Nation*, a book examining the prison-industrial complex, banned for “security threat group/white supremacy.”

²⁵ Kelly Jensen, “New Hampshire Prisons Ban Books Critical of Prison System, Award Winners,” BookRiot, May 28, 2019, <https://bookriot.com/2019/05/28/new-hampshire-prisons-ban-books/>

²⁶ Dan Slater, “Texas Prisons Banned My Book About Texas Prisoners,” Slate, Sept. 27, 2016, <https://slate.com/news-and-politics/2016/09/texas-prisons-banned-book-policy-is-a-national-disgrace.html>

²⁷ Jonah Engel Bromwich, “Why Are American Prisons So Afraid of This Book?” *The New York Times*, Jan. 18, 2018, https://www.npr.com/why-are-american-prisons-so-afraid-of-this-book-/17270981?comment_order=forward

²⁸ Interview with Jarrett Adams, criminal and civil rights attorney, Sept. 19 2019.

²⁹ Aris Folley, “Arizona Prisons Ban Inmates from Reading Book on Racism in Criminal Justice,” The Hill, May 22, 2019, <https://thehill.com/blogs/blog-briefing-room/news/445139-arizona-prisons-ban-inmates-from-reading-book-on-racism-in>

³⁰ Mark Hayward, “Topics too dangerous for NH prisons: Attica, tattoos, Ramen noodles,” *New Hampshire Union Leader*, June 1, 2019, https://www.unionleader.com/news/crime/topics-too-dangerous-for-nh-prisons-attica-tattoos-ramen-noodles/article_128631e6-f158-5e74-bb1a-e352117b80ae.html

- *The Factory: A Journey Through the Prison Industrial Complex*, about a formerly incarcerated person's time behind bars and the school-to-prison pipeline, banned for "encourag[ing] activities that may lead to group disruption."
- *Blood in the Water*, a Pulitzer Prize-winning book about the Attica uprising, banned for "security concerns-encourag[ing] group disruption."³¹

In June 2019, the ACLU and the Thurgood Marshall Center at Howard University asked Michigan's Department of Corrections to remove the book "Black Skin, White Masks," from the critical race theorist Frantz Fanon, from its banned list. The book has been barred from state libraries since 2000, with officials alleging it "advocates racial supremacy."³²

In January 2019, Illinois corrections officials pulled some 200 books from bookshelves at Danville Correctional Center, many that addressed issues of racism or diversity. The books—which had been available through a University of Illinois program—included titles such as *Race Matters* by Cornell West, *Colored People: A Memoir* by Henry Louis Gates, Jr., and *My Daddy Is in Jail*, a children's book.³³ One prison official reportedly said that the "racial stuff" within the books was the reason for their removal.³⁴ Public outcry forced the prison to return the books to its library and led the state corrections department to make—in its own words—"long overdue" revisions to its review procedures.³⁵

Such arbitrary policies may contribute to a sense of alienation among incarcerated people, who receive the message that critical information is being deliberately kept from them. The quote from one formerly incarcerated person in Michigan, who ordered *The New Jim Crow* only to find that the prison's mailroom staff had prevented him from receiving the book due to its "racial content," is illustrative: "I feel like the reason why they tried to reject it is because they didn't want me to have that kind of knowledge."³⁶

The Review Process and Rubber-Stamp Censorship

³¹ The author of "Blood in the Water," historian Heather Thompson, sued the Illinois Department of Corrections last year for similarly prohibiting the book from reaching incarcerated people, saying "My book underscores the sanctity of both correctional officer and prisoner lives, and covers an important event in American history that I have the right to share with any American who wants to learn about our country's past." Kevin Gosztula, "Illinois Department of Corrections Sued for Censoring Book on Attica Uprising," Shadowproof, Sept. 13, 2018, <https://shadowproof.com/2018/09/13/illinois-department-corrections-sued-censoring-book-attica-uprising/>

³² Sharda Sekeran, "Frantz Fanon's Daughter to Michigan Prisons: Take 'Black Skin, White Masks' Off the Banned Book List," ColorLines, Jul. 26, 2019, <https://www.colorlines.com/articles/frantz-fanons-daughter-michigan-prisons-take-black-skin-white-masks-banned-book-list>; <https://fenton.egnyte.com/dl/6qdzTHJ5j0/>

³³ Dara Sharif, "It's 'Racial': Illinois Prison Banned Books on Black History and Empowerment From Inmate Program," Aug. 16, 2019, The Root, <https://www.theroot.com/it-s-racial-illinois-prison-banned-books-on-black-hi-1837321399>; Peter Nickeas, "It's the racial stuff: Illinois prison banned, removed books on black history and empowerment from inmate education program," *Chicago Tribune*, Aug. 15, 2019, <https://www.chicagotribune.com/news/ct-illinois-prison-books-removed-inmate-education-20190815-6xlrnfwmovdxnbc3ohvsx6edgu-story.html>

³⁴ Peter Nickeas, "It's the racial stuff: Illinois prison banned, removed books on black history and empowerment from inmate education program," *Chicago Tribune*, Aug. 15, 2019, <https://www.chicagotribune.com/news/ct-illinois-prison-books-removed-inmate-education-20190815-6xlrnfwmovdxnbc3ohvsx6edgu-story.html>

³⁵ Id.

³⁶ Jonah Engel Bromwich, "Why Are American Prisons So Afraid of this Book?," *The New York Times*, Jan. 18, 2018, https://www.nytimes.com/2018/01/18/us/politics/why-are-american-prisons-so-afraid-of-this-book-17270981?comment_order=forward

Book-banning decisions are rarely reviewed and, when they are reviewed, commonly rubber-stamped by other corrections officials.

The U.S. Supreme Court has established that prisons must offer an administrative appeals process where the reviewer was not involved in the original censorship decision.³⁷ But there is no requirement that this reviewer be independent of the prison system, nor are there any other meaningful criteria regarding the reviewer's qualifications. The result is a review system that fails to operate as a serious check on prison censorship.

Some states appoint review officers, normally department of corrections officials, to review their colleagues' decisions.³⁸ Others have created review committees, which are commonly staffed primarily or exclusively by career corrections officers.³⁹

Paul Wright, the executive director of the Human Rights Defense Center—an organization which has geared much of its mission around fighting prison book bans—shared with PEN America his concerns about prison review committees. “These groups are not anything like what a normal person would understand to be a review body for censorship—that this is any kind of body composed of independent people who are versed in literature and constitutional law.”⁴⁰ The result is that these committees are far more likely to uphold the censor's decision than to reverse it.

In Florida, for example, the Human Rights Defense Center has noted that the state's Literature Review Committee upholds approximately 75 percent of censorship decisions—this, in a state with over 20,000 banned books.⁴¹ The committee, Wright says, often ignores or downplays a book's overall significance. “They often don't review the whole book. The mailroom censor will just send them a photo-copy of the ‘offending page’. So they are not looking at these books in any overall context.”⁴² Another set of statistics comes from Texas, with its own 10,000+ banned books list: in 2018, only 187 out of the 1,378 books submitted for review were approved, for an appeal rate of 13.57%.⁴³

It is important to acknowledge that a literature review committee's appeal rate only tells one part of the story: a state with more rational policies towards censorship, for example, may have a lower

³⁷ *Procunier v. Martinez*, 416 U.S. 396, 427–28 (1974)

³⁸ *E.g.* Illinois (see Section 525.220 of the Illinois Administration Code Publications Review Officer)

³⁹ *See e.g.* Vicky Ludas Orlofsky, “Windows Not Walls: Defending Incarcerated Peoples' Right to Read,” Intellectual Freedom Blog, Sept. 11, 2019 (In which a Colorado prison librarian shares her experience on the committee interpreting the allowable materials policy: “There was a lot of pressure to conform – and in those rooms I was often the youngest, the only woman, and I didn't wear a uniform”); “Dianna Wray, “Texas State Prisons: You Can't Read *The Color Purple* but *Mein Kampf* is Fine,” Sept. 28, 2016, <https://www.houstonpress.com/news/texas-state-prisons-you-cant-read-the-color-purple-but-mein-kampf-is-fine-8808379> (describing Texas's review system)

⁴⁰ Interview with Paul Wright, Founder and Executive Director, Human Rights Defense Center, August 26, 2019.

⁴¹ Statistics provided by the Human Rights Defense Center on Sept. 11, 2019, upon review of publicly available information: 1991–2011 list: 3,361 out of a listed 12,443 entries listed as approved (successful appeal rate of 27%)
2012–current list: 2,452 out of a listed 10,316 entries listed as approved (successful appeal rate of 23.77%)

⁴² Interview with Paul Wright, Founder and Executive Director, Human Rights Defense Center, August 26, 2019.

⁴³ Statistics provided by the Human Rights Defense Center on Sept. 11, 2019, upon review of publicly available information.

appeal rate during review. As well, the rate of successful internal appeals reveals nothing about the road-blocks that incarcerated people may have to surmount in order to file a successful appeal in the first place. But, Michelle Dillon, the Public Records Manager for the Human Rights Defense Center, notes that one clear red flag is the fact that some states have “a low rate of [book] approval by a publication review committee combined with an extraordinarily high number of books in total that appear on the list—that says that something has gone wrong.”⁴⁴

Florida’s Literature Review Committee also serves to exemplify how little we know about these review bodies. The *Tallahassee Democrat*, reporting on Florida’s book banning practices this August, concluded “It was unclear who serves and how many members are on the committee. The DOC did not answer inquiries about the committee from the *Tallahassee Democrat*.”⁴⁵

Even when prison review procedures include reviewers with a background in library studies, for instance, that is no guarantee that the review mechanism will operate as a substantial check on prison censorship. Dillon, who also served as the former program coordinator for the Books to Prisoners book-donation organization in Seattle, shares the example of Washington state’s committee as a better-than average-but still flawed review model.

“It has two department of corrections people [on the Committee], but also one prison librarian. The prison library system in Washington operates independently of the DOC, as it is headed by the secretary of state. The downside is,” she continues, “since it is always two-to-one, the librarian will always get out-voted. It’s better than average, the best [review] system I know of . . . but it’s still not a good system.”⁴⁶

The decisions of these review bodies are also opaque. To PEN America’s knowledge, only two states—Washington and Pennsylvania—have review committees that offer the results of their reviews online for public awareness and oversight.⁴⁷

Prison literature review systems may vary widely in their composition and attitude towards book accessibility, but overall, the internal review system for these book bans fails to operate as any significant check on overbroad censorship.

⁴⁴ Correspondence with Michelle Dillon, Public Records Manager and Development Coordinator, Human Rights Defense Center & Former Program Coordinator, Books to Prisoners, Sept. 11, 2019.

⁴⁵ James Call, “Banned behind bars: 20,000 books can’t be read by Florida inmates; the list may surprise you,” *Tallahassee Democrat*, Aug. 9, 2019, <https://www.tallahassee.com/story/news/politics/2019/08/09/banned-behind-bars-20-000-books-cant-read-florida-inmates/1934468001/>

⁴⁶ Interview with Michelle Dillon, Public Records Manager and Development Coordinator, Human Rights Defense Center & Former Program Coordinator, Books to Prisoners, August 26, 2019.

⁴⁷ Correspondence with Michelle Dillon, Public Records Manager and Development Coordinator, Human Rights Defense Center & Former Program Coordinator, Books to Prisoners, Jul. 19, 2019.

Section II: Content-Neutral Bans

In recent years, with the stated aim of blocking contraband from entering prisons, many states and the federal prison system have attempted to dramatically restrict book deliveries to incarcerated people or shut down such deliveries entirely. Such policies are often implemented as part of a “Secure Vendor” program, by which the prison allows incarcerated people to purchase packages only from certain pre-approved vendors.

Because these restrictions are based not on the content of certain books but instead aimed at restricting books-as-packages, PEN America considers them to be **content-neutral bans** on books. Such content-neutral bans are actually far more damaging to incarcerated people’s right to read than content-specific bans. In particular:

- Incarcerated people are forced to pay for every book that they receive directly, instead of receiving free books from book-access organizations, friends, or family. The costs for these books can be difficult or even prohibitive for the average incarcerated person to pay.
- Restrictions that prevent friends or family from sending books to incarcerated people cut off an important emotional connection between those incarcerated and those who care about them.
- Organizations that supply books to incarcerated people—such as Books Through Bars or Books to Prisoners—play a vital role in the overall access to literature for incarcerated people around the country. Cutting off incarcerated people’s access to such organizations has an immediate, tangible, and damaging effect on their right to read.
- Forcing incarcerated people to buy books from pre-approved vendors gives these vendors a monopoly over an entire population; such vendors can get away with charging above-market prices because their supposed customers have no other choice.⁴⁸

Such content-neutral restriction policies appear to be getting worse in recent years according to David Fathi, head of the National Prison Project at the American Civil Liberties Union (ACLU):

Publisher-only or vendor-only rules have existed for at least 20 years in some systems. But what seems to be occurring—and this is my intuitive sense as someone who pays attention to this—is that we’re seeing more restrictive versions of those rules today. So, it might have been [in the past] that you had to order a book directly from a publisher or bookstore. Now we are seeing rules that say ‘here’s the one approved vendor, and if that vendor doesn’t have the book you want, too bad.’ What seems to be new--and what is now proliferating--are these more restrictive rules that not only say it has to be directly from a vendor, but that it has to be the specific vendor[s] the officials have chosen.⁴⁹

⁴⁸ See generally Taylor Elizabeth Eldridge, “The Big Business of Prisoner Care Packages,” The Marshall Project/Vox, Dec. 21, 2017, <https://www.themarshallproject.org/2017/12/21/the-big-business-of-prisoner-care-packages> (noting pricing issues with secure-vendor-approved packages generally).

⁴⁹ Interview with David Fathi, Director, National Prison Project, ACLU, August 20, 2019.

Over the past several years, there has been a new wave of attempted content-neutral book restriction policies across the country. Examples of such content-neutral bans, either attempted or fully implemented, within the past two years alone include:

New York: In December 2017, the New York State Department of Corrections and Community Supervision rolled out Directive 4911A, which declared that incarcerated people could receive books only from five (later six) pre-approved vendors.⁵⁰

The nonprofit Books Through Bars examined the catalogue offerings of the first five pre-approved vendors under this initiative. They found that the entire catalog included: “five romance novels, fourteen bibles and other religious texts, twenty-four drawing or coloring books, twenty-one puzzle books, eleven guitar, chess, and how-to books, one dictionary, and one thesaurus.”⁵¹

Directive 4911A was a pilot program, affecting approximately 4,000 people in three upstate New York prisons. If the directive had been expanded to include the entire state, these book restrictions would have affected more than 46,000 people.⁵² After public outcry, New York Governor Andrew Cuomo suspended the directive in January 2018.⁵³

The Federal Prison System: In 2018, two separate federal prisons—with over 1,000 people each—unveiled a policy preventing incarcerated people from receiving any books from outside sources, including publishers, bookstores, online retailers, book clubs, or friends and family. Under the policy, people incarcerated at these facilities would also be required to pay a 30 percent markup when ordering a book, in addition to shipping costs.⁵⁴ Public outcry led federal officials to rescind the policy in May of that year.⁵⁵ Prior to the policy’s suspension, a third federal facility in Florida, holding over 7,000 people, had reportedly intended to implement the same policy.⁵⁶

Ohio: Throughout much of 2018 and 2019, at least eight state prisons in Ohio refused to accept any used or damaged books into the facility. Ohio has one of the largest state prison systems in the

⁵⁰ “New York State’s Efforts to Restrict Access to Books in Prisons Shows Troubling Disregard for Right to Read,” PEN America, Jan. 8, 2018, <https://pen.org/press-release/new-york-restricts-books-prisons-right-read/>

⁵¹ Books Through Bars, Statement Against 4911A, Jan. 3, 2018, <https://booksthroughbarsnyc.org/wp/wp-content/uploads/2018/01/Statement-against-4911A.pdf>

⁵² New York State Department of Corrections and Community Supervision, About DOCCS, <http://www.doccs.ny.gov/> (“The New York State Department of Corrections and Community Supervision [...] is responsible for the confinement and habilitation of approximately 46,375 individuals under custody held at 54 state facilities.”)

⁵³ Vivian Wang, “Cuomo Halts a Controversial Prison Package Policy,” *The New York Times*, Jan. 12, 2018, <https://www.nytimes.com/2018/01/12/nyregion/prison-package-policy-suspended.html>

⁵⁴ “Restrictive Policy in Various Federal Prisons Represents a Misguided and Destructive Disregard for the Right to Read,” PEN America, May 2, 2018, <https://pen.org/press-release/restrictive-policy-prisons-misguided-disregard-right-to-read/>

⁵⁵ Ann E. Marimow, “Federal prisons abruptly cancel policy that made it harder, costlier for inmates to get books,” *Washington Post*, May 3, 2018, https://www.washingtonpost.com/local/public-safety/federal-prisons-abruptly-cancel-policy-that-made-it-harder-costlier-for-inmates-to-get-books/2018/05/03/1b3efcde-4ed8-11e8-b725-92c89fe3ca4c_story.html

⁵⁶ “Restrictive Policy in Various Federal Prisons Represents a Misguided and Destructive Disregard for the Right to Read,” PEN America, May 2, 2018, <https://pen.org/press-release/restrictive-policy-prisons-misguided-disregard-right-to-read/>

nation, incarcerating approximately 50,000 people.⁵⁷ These restrictions occurred despite the presence of a state-wide policy that allowed for book-donation groups to send such materials. After public reporting in 2019 elevated the issue, Ohio's Department of Rehabilitation and Corrections stated that it would set up a new policy that would allow book donation groups—though not family or friends—to again be allowed to send used books.⁵⁸

Pennsylvania: In September 2018, the Pennsylvania Department of Corrections announced that people incarcerated in state prisons would no longer be allowed to directly receive physical books from any outside source.⁵⁹ Instead, the state system was switching to e-books, meaning that incarcerated people would instead need to purchase a digital tablet from prison telecommunications company GTL.⁶⁰

One tablet costs \$149, not including tax, although incarcerated people in Pennsylvania may make as little as 19 cents an hour for their work.⁶¹ GTL offers only approximately 8,500 titles. This includes public-domain works such as *Moby Dick* and *The Federalist Papers*, which are digitally available for free through Project Gutenberg, but for which people using GTL's tablets must pay. One reviewer of GTL's catalogue noted that "*The Autobiography of Malcolm X* didn't make the cut, though *The Autobiography of Tony Bennett* did. Anne Frank's *The Diary of a Young Girl* isn't available, but interested parties can download *Diary of a South Beach Party Girl*."⁶² After sustained public concern, officials revised the policy and allowed book orders to resume, through a centralized security processing center.⁶³

⁵⁷ Randy Ludlow, "Departing prisons director: Ohio has too many behind bars," *The Columbus Dispatch*, Aug. 28, 2018, <https://www.dispatch.com/news/20180828/departing-prisons-director-ohio-has-too-many-behind-bars>; Jeremy Pelzer, "Ohio's prisons agency vows to lift restrictions on book donations to inmates," *Cleveland.com*, May 16, 2019, <https://www.cleveland.com/politics/2019/05/ohios-prisons-agency-vows-to-lift-restrictions-on-book-donations-to-inmates.html>

⁵⁸ Pelzer, "Ohio's prisons agency vows to lift restrictions on book donations to inmates," *Cleveland.com*, May 16, 2019, <https://www.cleveland.com/politics/2019/05/ohios-prisons-agency-vows-to-lift-restrictions-on-book-donations-to-inmates.html>

⁵⁹ Id.

⁶⁰ Pennsylvania Department of Corrections, <https://www.cor.pa.gov/Inmates/Pages/Tablets.aspx>; Pelzer, "Ohio's prisons agency vows to lift restrictions on book donations to inmates," *Cleveland.com*, May 16, 2019, <https://www.cleveland.com/politics/2019/05/ohios-prisons-agency-vows-to-lift-restrictions-on-book-donations-to-inmates.html>

⁶¹ Samantha Melamed, "One review of Pa. prisons' pricey ebooks: 'Books that are available for free, that nobody wants anyway,'" *The Philadelphia Inquirer*, Sept. 21, 2018, <https://www.inquirer.com/philly/news/pennsylvania-department-corrections-books-through-bars-philly-new-jim-crow-malcolm-x-20180921.html>; see generally Wendy Sawyer, "How much do incarcerated people earn in each state?," Prison Policy Initiative, April 10, 2017, <https://www.prisonpolicy.org/blog/2017/04/10/wages/>

⁶² Samantha Melamed, "One review of Pa. prisons' pricey ebooks: 'Books that are available for free, that nobody wants anyway,'" *The Philadelphia Inquirer*, Sept. 21, 2018, <https://www.inquirer.com/philly/news/pennsylvania-department-corrections-books-through-bars-philly-new-jim-crow-malcolm-x-20180921.html>

⁶³ Samantha Melamed, "Under Pressure, Pa. Prisons Repeal Restrictive Book Policy," *The Philadelphia Inquirer*, Nov. 2, 2018, <https://www.inquirer.com/philly/news/pennsylvania-book-ban-doc-books-through-bars-wetzel-20181102.html>

Maryland: In May 2018, the *Washington Post* reported that Maryland prison officials had imposed a new policy prohibiting people in prison from directly receiving books from any source other than two prison-approved vendors.⁶⁴ Such policies would have affected approximately 18,000 people.⁶⁵

The ACLU, reviewing the offerings of the vendors, found that books absent from their catalogues included *To Kill a Mockingbird* by Harper Lee, *I Know Why the Caged Bird Sings* by Maya Angelou, the Harry Potter series, and the complete works of Langston Hughes and Martin Luther King, Jr.⁶⁶ After public outcry, the policy was rescinded in June 2018, with the State Public Safety and Correctional Services Secretary declaring that “The department strongly believes it can continue prioritizing the safety and security of its correctional facilities while fostering the rehabilitative component of corrections through literature.”⁶⁷

Washington State: In March 2019, Washington state’s department of corrections quietly implemented a new policy banning used publications within state prisons, with only three narrowly enumerated exceptions. After public outcry, the policy was rescinded the next month.⁶⁸ The policy would have affected over 17,000 people.⁶⁹

Georgia: In May, the sheriff of Chatham County imposed a new policy for its detention center that not only banned people from receiving books directly, but also removed the books that people already possessed.⁷⁰ The only remaining books available were through the center’s book cart, which

⁶⁴ “Maryland’s New Prison Policy on Access to Literature a Step in the Wrong Direction,” PEN America, May 29, 2018, <https://pen.org/press-release/maryland-policy-access-books-prison-wrong-direction/>; Ann E. Marimow, “To cut prison drug smuggling, Maryland is restricting inmates’ access to books,” *Washington Post*, May 27, 2018, https://www.washingtonpost.com/local/public-safety/maryland-imposes-new-limits-on-book-orders-for-prisoners/2018/05/24/7783c62e-5e90-11e8-9ec3-49d6d4814c4c_story.html?noredirect=on&utm_term=.247505d495eb

⁶⁵ Christine Zhang, “Maryland’s Prison Population Drops to 1980s Levels, Continuing a Multiyear Decline,” *The Baltimore Sun*, Apr. 24, 2019, <https://www.baltimoresun.com/news/crime/bs-md-prison-population-vera-20190423-story.html>

⁶⁶ ACLU Calls on Prison System to Reverse Rule Severely Limiting Access to Books in Violation of First Amendment, ACLU-Maryland, May 31, 2018, <https://www.aclu-md.org/en/press-releases/aclu-calls-prison-system-reverse-rule-severely-limiting-access-books-violation-first>; Lauren Lumpkin, “Maryland prisons rescind controversial policy that advocates say restricted inmate book access,” *The Baltimore Sun*, June 12, 2018, <https://www.baltimoresun.com/maryland/bs-md-maryland-prisons-overturn-book-policy-20180612-story.html>

⁶⁷ Lauren Lumpkin, “Maryland prisons rescind controversial policy that advocates say restricted inmate book access,” *The Baltimore Sun*, June 12, 2018, <https://www.baltimoresun.com/maryland/bs-md-maryland-prisons-overturn-book-policy-20180612-story.html>; see also Ann E. Marimow, “In a reversal, Md. Prison Officials Lift Limits on Access to Books for Inmates,” *Washington Post*, June 11, 2018, https://beta.washingtonpost.com/local/public-safety/in-a-reversal-md-prison-officials-lift-limits-on-access-to-books-for-inmates/2018/06/11/bd37a182-6dad-11e8-bf86-a2351b5ece99_story.html

⁶⁸ Joseph O’Sullivan, “Washington corrections officials reverse ban, will allow prisoners to get used books in the mail,” *The Seattle Times*, Apr. 10 2019, <https://www.seattletimes.com/seattle-news/politics/washington-corrections-officials-reverse-ban-will-allow-prisoners-to-get-used-books-in-the-mail/>

⁶⁹ Washington State Department of Corrections, Population/Caseload v. Forecast Report, Aug. 2019 <https://www.doc.wa.gov/docs/publications/reports/400-RE001.pdf>

⁷⁰ Shelby Copeland, “ACLU says Georgia sheriff is illegally denying books to prisoners,” CNN, Apr. 11, 2019, <https://www.cnn.com/2019/04/11/us/georgia-county-jail-book-ban-trnd/index.html>; Re: New Policy Banning All Books and Publications at Chatham County Detention Center, ACLU-Georgia, Apr. 10, 2019, https://www.acluga.org/sites/default/files/field_documents/aclu_lettertochathamcountysheriff_countyattorney.pdf

appears to contain only a few dozen titles at any given time.⁷¹ After a letter from the ACLU, Chatham County authorities reportedly rolled back the policy.⁷²

It is important—and encouraging—to note that public outcry has been successful in pushing prison officials to revise or revoke these programs. David Fathi of the ACLU notes that public response is “enormously useful. Prisons and jails get away with a lot of what they do just because people aren’t watching. These are closed institutions, and they house politically powerless and unpopular people. So when you can get public attention, the prison system is often exposed as a paper tiger. Not every time, but often enough.”⁷³

Still, programs like these exist in other states,⁷⁴ and the trend whereby prison officials attempt to roll out such content-neutral book bans continues. Additionally, while public outcry may be effective, it may take months or even years for the general public to even learn about a new prison policy that restricts access to books. Formal procedures, when implemented, tend to go into effect with a great deal of secrecy. Packages may be returned without explanation as prisons change their policies without providing notice.⁷⁵ And particularly in states without meaningful disclosure or review requirements, many bans may go entirely unnoticed.

In short, we cannot rely on public outcry alone to roll back the restrictions that prison officials are increasingly implementing. We need action from our elected and appointed officials, and a shift towards book access policies that explicitly incorporate incarcerated people’s access to literature as a primary goal.

The Rationale for Content-Neutral Bans

Prison authorities commonly invoke security concerns as the rationale for these book restrictions, arguing that books can be used to smuggle contraband into the prison. Supposedly, these concerns have grown because certain types of newly-popular drugs—most notably suboxone and synthetic marijuana—can reportedly be smuggled within or through the pages of a book. But authorities have offered very little evidence that this problem is widespread enough to warrant such a restrictive response.

In Washington state, for example, prison officials attempted to justify their new restrictions—which would have affected approximately 17,000 people—by citing 17 incidents of contraband

⁷¹ Shelby Copeland, “ACLU says Georgia sheriff is illegally denying books to prisoners,” CNN, Apr. 11, 2019, <https://www.cnn.com/2019/04/11/us/georgia-county-jail-book-ban-trnd/index.html>; Re: New Policy Banning All Books and Publications at Chatham County Detention Center, ACLU-Georgia, Apr. 10, 2019, https://www.acluga.org/sites/default/files/field_documents/aclu_lettertochathamcountysheriff_countyattorney.pdf

⁷² Interview with David Fathi, Director, National Prison Project, ACLU, August 20, 2019.

⁷³ Interview with David Fathi, Director, National Prison Project, ACLU, August 20, 2019.

⁷⁴ See e.g. Michigan Department of Corrections Policy Directive 05.03.118, at “Prisoner Incoming Mail,” para. Z, available at https://www.michigan.gov/documents/corrections/05_03_118_645850_7.pdf

⁷⁵ See, e.g., Sarah Fowler, “Books banned at Mississippi prisons,” *Clarion Ledger*, December 12, 2017, (<https://www.clarionledger.com/story/news/local/2017/12/12/books-banned-mississippi-prisons/919185001/>).

involving books within the Washington prison system.⁷⁶ Upon his revocation of the policy, however, Assistant Secretary of Prisons Rob Herzog admitted, “Concerns about contraband introduction led me to issue the original directive. After conducting further review, the data does not support continuing the restriction on donated used books.”⁷⁷

Through an inquiry from the *Seattle Times*, it was revealed that prison officials had primarily gathered this data by conducting an internal database search with keywords such as “book” and “contraband.”⁷⁸ Among these 17 incidents were:

- An incident report where an inmate was “booked” for possessing “contraband”;
- An incident report where an Officer “Booker” discovered “contraband”;
- An incident report where an inmate reported finding a shank lying on a bookshelf.⁷⁹

Of the 17 incidents, the *Seattle Times* concluded, “a dozen of those instances didn’t actually involve books at all.” In fact, only three of the 17 reported instances actually involved the discovery of contraband in books, and zero of these instances indicated that the books were used to actually smuggle contraband inside the prison.⁸⁰

In New York, after the state rolled out its pilot initiative to restrict books, a Department of Corrections and Community Supervision spokesperson acknowledged that the Department did not keep statistics on contraband found in books, and pointed more generally to a recent observed increase in package-room contraband to justify the directive.⁸¹ In Maryland, officials justified their intended vendor-only restrictions by claiming that investigators had uncovered 660 strips of suboxone in 44 incidents since 2015.⁸² The formerly-incarcerated writer Reginald Dwayne Betts, a Maryland native, responded to these justifications by saying “They’re using a nuclear weapon instead of a scalpel to deal with their security issue.”⁸³

In Pennsylvania, state officials had justified the switch to costly and catalogue-specific e-readers by arguing that the policies were necessary to prevent contraband from entering its facilities. But when the DOC published examples of contraband drugs they had intercepted in letters and

⁷⁶ Joseph O’Sullivan, “Washington corrections officials reverse ban, will allow prisoners to get used books in the mail,” *The Seattle Times*, Apr. 10, 2019, <https://www.seattletimes.com/seattle-news/politics/washington-corrections-officials-reverse-ban-will-allow-prisoners-to-get-used-books-in-the-mail/>

⁷⁷ State of Washington Department of Corrections, UPDATED-Used Publications, Apr. 10, 2019, <https://assets.documentcloud.org/documents/5816599/Updated-Used-Publication-Memo-4-10-19.pdf>

⁷⁸ Joseph O’Sullivan, “Corrections officials’ claims of contraband in used books mailed to Washington inmates don’t add up,” *The Seattle Times*, Apr. 10, 2019, <https://www.seattletimes.com/seattle-news/politics/corrections-officials-claims-of-contraband-in-used-books-mailed-to-washington-inmates-doesnt-add-up/>

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Daniel A. Gross, “New York Makes it Harder for Inmates to Get Books,” *The New Yorker*, Jan. 9, 2018, <https://www.newyorker.com/books/page-turner/new-york-makes-it-harder-for-inmates-to-get-books>

⁸² Ann E. Marimow, “In a reversal, Md. prison officials lift limits on access to books for inmates,” *Washington Post*, June 11, 2018, https://beta.washingtonpost.com/local/public-safety/in-a-reversal-md-prison-officials-lift-limits-on-access-to-books-for-inmates/2018/06/11/bd37a182-6dad-11e8-bf86-a2351b5ece99_story.html

⁸³ David McFadden, “Inmates’ advocates press Maryland to scrap book restrictions”, AP News, June 2, 2018, <https://www.apnews.com/a1f817fd705542de957ff71d5350b879>

books,⁸⁴ Jodi Lincoln of the book-donation organization Book ‘Em noted that “none of [them] came from free book organizations.” While it is important to protect staff and inmates from exposure to contraband, Lincoln argued, “the DOC is purposefully exaggerating the risk to push their draconian policies.”⁸⁵

Prison advocates have consistently argued that a focus on package-screening processes—such as hiring, training, and oversight for mail-room screeners—would be far more effective in blocking contraband, without the need to infringe on the right to read for an entire population of incarcerated people.⁸⁶ The security rationale for these sweeping bans further strains credulity when it comes to blocking incarcerated people from ordering books from commercial booksellers like Amazon. While there have been a few reported cases of people impersonating commercial vendors or of slipping contraband into book packages from such vendors, these appear to be very few and far between.⁸⁷ David Fathi of the ACLU says, “The allegation that massive amounts of drugs are being smuggled in through books sent by Amazon or Barnes and Noble, and that’s why [prisons] have to limit you to a specific vendor” represents “the idiocy du jour” of prison policies towards book access.⁸⁸

Without public visibility, prison officials have broad discretion to invoke “security” and “contraband” in ways that may have little bearing on reality. Prison officials certainly have an obligation to ensure the safety of everyone in their facilities. However, the general public must evaluate these security claims with a critical eye, when these claims are used to degrade the right of access to literature for thousands of Americans.

Prison Libraries: Not an Answer on Their Own

Corrections officials may respond to criticisms over their content-neutral book bans by noting that these bans only affect packages sent directly to incarcerated people and not the content of prison libraries.⁸⁹

⁸⁴ Pennsylvania Department of Corrections, Examples of Drug Introduction into Facilities, <https://www.cor.pa.gov/Initiatives/Documents/PA%20DOC%20Drug%20Finds.pdf>

⁸⁵ Jodi Lincoln, “Incarcerated Pennsylvanians now have to pay \$150 to read. We should all be outraged,” *Washington Post*, Oct. 11, 2018, https://beta.washingtonpost.com/opinions/incarcerated-pennsylvanians-now-have-to-pay-150-to-read-we-should-all-be-outraged/2018/10/11/51f548b8-cbd9-11e8-a85c-0bbe30c19e8f_story.html?noredirect=on. See also Emily Nagin, “The Underground Group Supplying Pittsburgh’s Prisoners With Books,” LitHub, July 24, 2019, <https://lithub.com/the-underground-group-supplying-pittsburghs-prisoners-with-books/> (noting that the examples of contraband-smuggling that PA DOC provided “seem designed to titillate and shock. Drugs transferred from a vagina to a carton of *chocolate milk*?”)

⁸⁶ Daniel A. Gross, “New York Makes it Harder for Inmates to Get Books,” *The New Yorker*, Jan. 9, 2018, <https://www.newyorker.com/books/page-turner/new-york-makes-it-harder-for-inmates-to-get-books> (quoting Bianca Tylek of the Corrections Accountability Project); Correspondence with Michelle Dillon, Public Records Manager and Development Coordinator, Human Rights Defense Center & Former Program Coordinator, Books to Prisoners, Sept. 16, 2019 (“the focus needs to be on detection techniques in the mail rooms, not on continuing to punish the many innocent book readers because of the supposed culpable few who may be trying to use these objects as vessels”).

⁸⁷ Correspondence with Michelle Dillon, Public Records Manager and Development Coordinator, Human Rights Defense Center & Former Program Coordinator, Books to Prisoners, Sept. 16, 2019 (“The reported number of cases is clearly vanishingly small, if these are the only points of evidence that can be found despite an obvious motivation of prisons to divulge all incidents that may have occurred”)

⁸⁸ Interview with David Fathi, Director, National Prison Project, ACLU, August 20, 2019.

⁸⁹ E.g. Karla Starr, “When Did Used Books Become Contraband?” *Seattle Weekly*, Aug. 14, 2007, <https://www.seattleweekly.com/news/when-did-used-books-become-contraband/> (quoting a state official at Airway Heights Correction Center justifying their approved vendor restriction policies by saying “We have a library, it’s not like [incarcerated people] don’t have access to any books.”)

However, the nation's prison libraries are under-funded, under-resourced, under-staffed, and under-stocked. On their own, our prison libraries are insufficient to address the incarcerated population's need for access to literature.

Deborah Caldwell-Stone, Interim Director of the American Library Association's Office for Intellectual Freedom, described to PEN America that "This is an observation I've made drawing from 18 years of this work: Prison libraries lack resources and institutional support, and are subject to arbitrary censorship at the drop of a hat."⁹⁰ James LaRue, the former Director of the Office for Intellectual Freedom, offered similar comments, noting: "There is no consistent funding mechanism to ensure anything like parity across various prison libraries. It comes down to how amenable the administration is and how persuasive the librarian is. It is a battle every minute . . . libraries are not a priority for prisons."⁹¹

The American Library Association has a recommended set of standards for adult correctional institutions.⁹² They suggest a minimum of 15 books per person, or at least 5,000 titles for smaller institutions.⁹³ In 2000, U.S. prison libraries held only 7 books per prisoner, according to one estimate.⁹⁴ Since then, with the dramatic increase in mass incarceration over the past two decades, it is widely understood that prison library book acquisitions have fallen even further behind this standard, although comprehensive data is unavailable.⁹⁵ As one reporter notes, many of our nation's carceral sites "have libraries that are understocked and outdated. Others might not have a library at all, or at least not one that's accessible to all inmates."⁹⁶

This is particularly the case for jails, which are more likely to hold incarcerated people with short sentences or pre-trial detainees. Jeanie Austin, a librarian who has both worked in and studied library services for people who are incarcerated, explained to PEN America that "there is a difference between library services in prisons and public library services in jails . . . library services in jails reflect the design of the jails as short-term facilities. Often, there is no designated space for recreational library materials in local level jails."⁹⁷

Public librarians inside New York's infamous Rikers Island jail complex, for example, circulate books from a single cart that they work to restock frequently. As one journalist noted, this means

⁹⁰ Interview with Deborah Caldwell-Stone, Deputy Director, American Library Association Office for Intellectual Freedom, Sept. 18, 2019.

⁹¹ Interview with James LaRue, former Director, American Library Association Office for Intellectual Freedom, Sept. 18, 2019.

⁹² Library Standards for Adult Correctional Institutions, Association of Specialized, Government, and Cooperative Library Agencies (A Division of the American Library Association), <http://www.ala.org/asgcla/resources/librarystandards>

⁹³ Id.

⁹⁴ Communicating with Prisoners – Public Interest Analysis, U.S. Prison Library Statistics About 2000 (including a "Prison Libraries and Book Holdings and Circulation after 1980" dataset).

⁹⁵ Id.

⁹⁶ Monica Humphries, "For Prisoners, Reading is So Much More than a Pastime—It's a Way to Change Their Lives," NationSwell, Mar. 28, 2019, <http://nationswell.com/nyc-books-through-bars-prison-education/>

⁹⁷ Correspondence with Jeanie Austin, Jail and Reentry Services Librarian, San Francisco Public Library, Sep. 11, 2019.

that “With roughly 8,000 inmates spread out among the complex’s 10 jails, getting your hands on even one book can feel like finding a treasure.”⁹⁸

While this is grossly insufficient to the scale of incarcerated peoples’ needs, Austin tells PEN America that even a single book cart can represent a “win” for librarians working in jails, writing: “A book cart may be measly (believe me, I push one to around 500 people in the [San Francisco] jails on a good week), but even a book cart service was not designed by jail officials and is often the result of individual libraries (in most instances public libraries not employed by the facility) negotiating with jail officials to make at least some room for recreational / non-legal materials.”⁹⁹

Prison librarians—like any other librarians in under-resourced locations—may find themselves “hustling” for book donations to sufficiently stock their shelves.¹⁰⁰ Meanwhile, funds for prison libraries are often on the chopping block when state officials cut budgets. In **Illinois**, for example, an Illinois Newsroom investigation found that, in 2017, the Illinois Department of Corrections (IDOC) spent a total of \$276 on new books. For a system with 28 facilities, that’s less than ten dollars per prison.¹⁰¹

Illinois Newsroom noted that funding for prison library books had been dropping for years: “The state prison system spent roughly \$750,000 each year on books in the early 2000s. In 2005, spending on books dropped to \$264,000. In the last five years, IDOC spent a total of roughly \$140,000 on reading materials. That figure represents a 96 percent decrease from what was spent on books between 2000 and 2005.”¹⁰²

As another example, the state of **Maryland** has approximately 129,000 books in its libraries, or approximately 7 books per incarcerated person.¹⁰³ The state spends approximately \$16,000 per year for new books – for an incarcerated population of more than 17,000 people.¹⁰⁴ Maryland’s former head prison librarian has stated that “budget, staff shortages and the lack of interest and pushback from the prison authorities made it difficult to make the library standards more than just a document.”¹⁰⁵

⁹⁸ Monica Humphries, “For Prisoners, Reading is So Much More than a Pastime—It’s a Way to Change Their Lives,” NationSwell, Mar. 28, 2019, <http://nationswell.com/nyc-books-through-bars-prison-education/>

⁹⁹ Correspondence with Jeanie Austin, Jail and Reentry Services Librarian, San Francisco Public Library, Sep. 11, 2019.

¹⁰⁰from p E.g. Jake Rossen, “Cell Service: Inside the World of Prison Librarians,” Mental Floss, Jan. 11, 2018 (Like public librarians, [prison librarian] Hart organized book clubs, wrangled donations, and set up a shelf full of recommended reading . . . Hart set about improving the library by opening up interlibrary loans—where inmates could request books from public libraries—and ‘hustling’ for book donations from local merchants and other sources.”)

¹⁰¹ Lee V. Gaines, “Illinois Prison System Spent Less Than \$300 on Books Last Year,” Illinois Newsroom, Apr. 16, 2018, <https://www.nprillinois.org/post/illinois-prison-system-spent-less-300-books-last-year#stream/0>

¹⁰² Id.

¹⁰³David McFadden, “Inmates’ advocates press Maryland to scrap book restrictions,” AP News, June 2, 2018, <https://www.apnews.com/a1f817fd705542de957ff71d5350b879>; Christine Zhang, “Maryland’s prison population drops to 1980s levels, continuing a multiyear decline,” *The Baltimore Sun*, April 24, 2019, <https://www.baltimoresun.com/news/crime/bs-md-prison-population-vera-20190423-story.html>

¹⁰⁴ Id.

¹⁰⁵ Stephen Dark, “Why Prison Libraries Matter for Inmates, Jailers and Book Donors,” *Deseret News*, May 31, 2018, <http://www.ilovelibraries.org/article/why-prison-libraries-matter-inmates-jailers-and-book-donors>

In **Georgia**, an investigation this year by the *Atlanta Journal-Constitution* analyzed the book catalogues at 12 state prisons. Among their findings: four prisons had less than four books per person, with the prison library at one prison offering fewer than 2,000 books for approximately 1,000 prisoners.¹⁰⁶ “Years of zero funding for prison libraries in Georgia and a reliance on donations to stock the shelves contributed to the poor state of book availability in the state,” they noted. Their investigation also found that “Although nearly two-thirds of Georgia inmates are black, more than half of libraries have no books on Martin Luther King Jr., and two-thirds of them don’t have anything on Malcolm X.”¹⁰⁷

The *Journal-Constitution* spoke with a Department of Corrections Board Member who said that books in Georgia prisons were viewed as a luxury, and that limiting incarcerated people’s access to books was “a common tactic” among some correctional officials.¹⁰⁸ Finally, the *Journal-Constitution* notes that prison libraries only began receiving a dedicated budget two years ago to replace lost or deteriorated books.¹⁰⁹

Beyond budget shortfalls and catalogue insufficiencies, incarcerated people often have very limited access to these libraries.¹¹⁰ “One of our witnesses for a case against Kansas DOC [Department of Corrections],” Paul Wright recalls, “was an older gentleman. He testified that he only had access to the prison library two hours a week. And because the cell block he was in was furthest from the library, and because he couldn’t walk very fast, literally by the time he reached the prison library, all the materials had been claimed by someone else. And by the time those people were done, there was no time left.”¹¹¹

Prison officials may roll out book restriction policies without any corresponding effort to ensure library resources meet incarcerated people’s needs. In Washington, for example, when officials banned used publications, the *Seattle Times* noted that the state’s prison library system “did not have extra funding or a plan to fill the void” left by the policy.¹¹²

Prison libraries play an essential role in ensuring incarcerated people’s access to literature. But on their own, they are not sufficient to allow incarcerated people the right to read. There is no

¹⁰⁶ Nicholas Thieme, “Georgia Prison Libraries Short on Books and Titles, AJC Analysis Finds,” *The Atlanta Journal-Constitution*, May 11, 2019, <https://www.ajc.com/news/crime--law/georgia-prison-libraries-short-books-and-titles-ajc-analysis-finds/aKi5FxMIcLpYY92JoOBjPL/>

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id. As another state example, see Kristi Eaton, “Oklahoma’s Prison Libraries Struggle to Meet Demand,” NonDoc, Apr. 11, 2019, <https://nondoc.com/2019/04/11/oklahoma-prison-libraries-need-books/>

¹¹⁰ E.g. Karla Starr, “When Did Used Books Become Contraband?” *Seattle Weekly*, Aug. 14, 2007, <https://www.seattleweekly.com/news/when-did-used-books-become-contraband/> (explaining that “how long a library is open for and how much access inmates have aren’t the same thing” at Airway Heights Correctional Center, a Washington State prison facility)

¹¹¹ Interview with Paul Wright, Founder and Executive Director, Human Rights Defense Center, August 26, 2019.

¹¹² Joseph O’Sullivan, “Washington Correction Officials Reverse Ban, Will Allow Prisoners to Get Used Books in the Mail,” *The Seattle Times*, April 10, 2019, <https://www.seattletimes.com/seattle-news/politics/washington-corrections-officials-reverse-ban-will-allow-prisoners-to-get-used-books-in-the-mail/>

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adequate substitute to ensuring that incarcerated people have the option to receive books directly from a diversity of sources.

Section III: Obstacles to Legal Challenges

While incarcerated people have their constitutional rights restricted, they still have First Amendment rights that, in theory, protect their access to literature.¹¹³ In practice, however, federal and state-level legislation has made it nearly impossible for incarcerated people to fight book bans on constitutional grounds.

Federal legislation places a series of roadblocks before incarcerated people who would file First Amendment claims on their own, while publishers have little incentive to fight for incarcerated people's access to their titles. If a claim reaches a court, judges are allowed to apply a legal standard of review that gives the benefit of the doubt to the prison, not the prisoner. In short, we cannot expect the courts to act as a significant check on overbroad and arbitrary prison censorship.

Incarcerated People Struggle to Bring a Claim to Court

Before incarcerated people can consider bringing a claim in federal court, they must first exhaust *all* available administrative remedies, a complicated undertaking known as the “exhaustion requirement.”¹¹⁴ This means they need to follow all of a prison's internal policies for bringing a complaint, and take their complaints through all available levels of appeal.

This exhaustion requirement is the result of the Prison Litigation Reform Act, or PLRA,¹¹⁵ a law passed by Congress in 1996 with the explicit goal of decreasing the availability of judicial relief for incarcerated people.¹¹⁶ The draconian exhaustion requirement has become “the highest hurdle” to individual plaintiffs seeking justice from behind bars,¹¹⁷ as the statute has been stunningly effective in driving down prison litigation in federal court.¹¹⁸ Since the PLRA's passage, many states have enacted comparable statutes that similarly limit access to state courts.¹¹⁹

There is effectively no limit on the internal procedures that a prison can devise. Prisons may—and often do—implement unreasonably short filing deadlines, extend timelines as a stalling tactic, create multiple layers of review, or craft procedural dead ends.¹²⁰ These systems are difficult to

¹¹³ *Turner v. Safley*, 482 U.S. 78, 84 (1987); *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989); *King v. Fed. Bureau of Prisons*, 415 F.3d 634, 637 (7th Cir. 2005).

¹¹⁴ 42 U.S.C. § 1997e(a)–(b).

¹¹⁵ Prison Litigation Reform Act, 42 U.S.C. § 1997e (2012).

¹¹⁶ *See, e.g.*, Margo Schlanger, *Inmate Litigation*, 116 *Harv. L. Rev.* 1555, 1565–68 (2003) (describing legislative aims of PLRA and perceptions of frequent and frivolous litigation by incarcerated people).

¹¹⁷ *Id.* at 1649.

¹¹⁸ In the first five years after the passage of the PLRA, there was a 43% decrease in litigation even as the prison population rose by 23%. Schlanger, *supra* note 7, at 1694. Recent data analysis has shown that litigation continued to decline, then plateaued around 2007. Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Enters Adulthood*, 5 *UC Irvine L. Rev.* 153, 156 (2015).

¹¹⁹ Many of these were passed around the same time as the PLRA, as state legislatures feared that the heightened federal standards would lead to an influx of prison litigation in state court. For more information and a detailed breakdown of state statutes, see Schlanger, *supra* note 7, at 1635–36.

¹²⁰ *See, e.g.*, Darryl M. James, *Reforming Prison Litigation Reform: Reclaiming Equal Access to Justice for Incarcerated Persons in America*, 12 *Loy. J. Pub. Int. L.* 465, 480 (2011); Schlanger, *supra* note 7, at 1650 (“Essentially, then, the sky's the limit for the procedural complexity of difficulty of the exhaustion regime.”).

navigate, and courts will seize on any error—like sending the grievance to the wrong contact person, or writing a letter to the right person but failing to complete the proper form¹²¹—as a reason to dismiss the claim, regardless of the underlying merits.

These procedural hurdles can include forcing prisoners to pay for the costs of their internal appeal. In Kansas, for example, prisoners must pay to ship a copy of the contested book to Kansas Department of Corrections headquarters if they want to appeal a ban.¹²² Michelle Dillon notes that the approval rate for such challenged books in Kansas has been “abysmally low, because no prisoner could afford to appeal a book.”¹²³

David Fathi, director of the National Prison Project for the ACLU, notes that the PLRA has barred many otherwise-meritorious prisoner claims, explaining that under the statute, “cases get thrown out of court for nothing to do with the merits. You can have the most meritorious case in the world, and if you didn’t exhaust [internal administrative remedies], that’s it. You’re thrown out of court.”¹²⁴

The PLRA has had a major effect on incarcerated people’s ability to advocate for their own First Amendment rights. Professor Brittany Friedman of Rutgers University’s Program in Criminal Justice explains that, in the past decades, “In many of these lawsuits you do see the subject of literature—what can we actually read? That comes up time and time again in prisoner lawsuits. And so this Act in 1996 significantly reduced the number of suits to challenge issues such as the right to read certain books, the right to read in general in prison . . . this law is really the hammer slamming down on litigation trying to disrupt this abusive power, in terms of what and how someone can engage with literature.”¹²⁵

Further, incarcerated people may choose not to go through this process out of fear of retaliation. One study of people incarcerated in Ohio found that 70 percent of inmates who filed grievances experienced retaliation, and 87 percent of the entire population agreed with the statement, “I believe staff will retaliate or get back at me if I use the grievance process.”¹²⁶ The prison staff similarly recognized that retaliation was “commonplace.”¹²⁷ For someone incarcerated, challenging literary censorship may come at a grave cost.

¹²¹ For additional examples, see Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America’s Jails and Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. Pa. J. Const. L. 139, 148 (2008).

¹²² Sherman Smith, “Corrections secretary eliminates banned book list for Kansas prisons, deploys new policy,” *Topeka Capital-Journal*, Aug 21, 2019, <https://www.cjonline.com/news/20190821/corrections-secretary-eliminates-banned-book-list-for-kansas-prisons-deploys-new-policy>

¹²³ Correspondence with Michelle Dillon, Public Records Manager and Development Coordinator, Human Rights Defense Center & Former Program Coordinator, Books to Prisoners, Sept. 9, 2019.

¹²⁴ Interview with David Fathi, Director, National Prison Project, ACLU, August 20, 2019.

¹²⁵ Black Agenda Radio, “Slavery is Model for US Prison Book-Banning,” Sept. 9, 2019, <https://soundcloud.com/user-208734627/slavery-is-model-for-us-prison-book-banning>

¹²⁶ James E. Robertson, “*One of the Dirty Secrets of American Corrections*”: Retaliation, Surplus Power, and Whistleblowing Inmates, 42 U. Mich. L. Reform 611, 613–14 (2009) (<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1259&context=mjlr>).

¹²⁷ *Id.*

Thus it is no surprise that much of the litigation on book banning in U.S. prisons occurs not on behalf of incarcerated people, but on behalf of the book publishers and distributors. In challenging these book banning decisions, David Fathi of the ACLU explains, “We will represent the author, or the publisher. In those cases, there’s no exhaustion requirement.”¹²⁸

But this litigation is rare. Publishers have very little financial incentive to wage a protracted and expensive legal battle for the access rights of an incarcerated person who ordered their book. Furthermore, publishers and authors often are seldom aware that their book has been censored. Only some states mandate that the sender be informed that their book was never delivered to its recipient.¹²⁹ Others have no such disclosure requirement.

The Human Rights Defense Center has filed dozens of legal claims against prison officials in more than 30 states for book bans. But it is able to do so, in large part, because the organization is the publisher of a series of magazines and books focusing specifically on incarcerated people’s rights and the prison system. These publications are often blocked by prison officials; as publisher, the Center has standing to bring First Amendment claims against these prisons.

The center’s director Paul Wright notes that, as a publisher that is explicitly geared as an organization to take on the issue of book restrictions in American prisons, his organization is an exception:

Publishers, for the most part, have been totally absent from this discussion. As one publisher of a major magazine once put it to me: Publishers don’t view prisoners as part of their reading market, and they don’t give a crap if prisoners can read. Especially commercial publishers, for whom the advertising demographic is everything. Prisoners just don’t even factor into that. If anything, it drives their advertising statistics down. Publishing is a business in this country, and that’s part of the problem.

We routinely fight for the right [as a publisher] to be notified, to get our due process notice when our materials are censored. But we’ve had judges—I have literally sat in the courtroom where the judge is like ‘Okay, so you get a notice that your magazine has been censored. Except for the Human Rights Defense Center, what publisher in America cares?’ And, of course, we argue that it doesn’t matter if no other publisher in America cares. We care, and we’re the ones sitting in the courtroom.¹³⁰

Courts Defer to Prison Administrators

A court will evaluate the merits of a prison censorship case with a standard of review that is deferential to prison administrators. For the small number of cases that reach this stage, the challengers face an uphill climb under this standard. The seminal 1987 case *Turner v. Safley*¹³¹

¹²⁸ Interview with David Fathi, Director, National Prison Project, ACLU, August 20, 2019.

¹²⁹ E.g. Illinois, Title 20, Section 525.230, at (c).

¹³⁰ Interview with Paul Wright, Founder and Executive Director, Human Rights Defense Center, August 26, 2019.

¹³¹ 482 U.S. 78 (1987).

established a “reasonableness” test for evaluating the decisions of prison administrators, meaning that courts will uphold restrictions on an incarcerated person’s constitutional rights so long as the restrictions are reasonably related to the interests of incarceration. This means that the bar is incredibly low for prison administrators, who normally justify their decisions—including their decisions about banning literature—broadly through invocations of “security”.¹³²

For example, a prison in Pennsylvania implemented a number of severe policies, one of which restricted access to newspapers, magazines, and photographs for people in long-term solitary confinement. When challenged in the 2006 case *Beard v. Banks*,¹³³ the administrators justified this policy by arguing that the restrictions would “motivate better behavior,” provide an incentive to move out of solitary, and minimize property access to decrease the risk of contraband and weapon use.¹³⁴ The U.S. Supreme Court found these arguments convincing and upheld all challenged policies, building on decades of jurisprudence deferring to prison administrations. One dissenter was Justice Stevens, who wrote, “What is perhaps most troubling about the prison regulation at issue in this case is that the rule comes perilously close to a state-sponsored effort at mind control.”¹³⁵

Why We Must Fight for a Right to Read in American Prisons

Access to literature in prison offers incarcerated people:

- A link to the outside world: incarcerated people can read material that allows them to follow—and participate in—broader societal conversations
- The opportunity to further their education behind bars: to develop sharpened literacy, learn specific skills, deepen their knowledge of a specific issue, and better prepare for life upon re-integration. Reading is often a gateway to attending classes offered by the prison, beginning to write one’s own professional and/or personal work, and/or mentoring others through official programs and/or informal connections.
- Beyond education, reading opens worlds of possibilities, offering soft skill-building such as empathy, self reflection, the ability to reimagine and reshape one’s identity, and socio-emotional personal development.
- A connection to their families and communities: for parents to read the same books that their children are reading, for example.¹³⁶
- Entertainment and diversion: books offer an invaluable way to simply pass the time, and to cope with the stress and pressures of incarceration. In the words of one incarcerated

¹³² See e.g., *Thornburgh v. Abbott*, 490 U.S. 401, 415 (1989).

¹³³ 548 U.S. 521 (2006).

¹³⁴ *Id.* at 531 (internal quotation marks omitted).

¹³⁵ *Beard v. Banks*, 548 U.S. 521, 552–53 (2006) (Stevens, J., dissenting)

¹³⁶ See e.g. “Prison Library Offers A Place To Escape”, NPR News, May 29, 2011, <https://www.npr.org/2011/05/29/136765589/prison-library-offers-a-place-to-escape>; Tyler Wetherall, “How Sharing Books with My Dad in Prison Made Life Bearable for Both of Us,” LitHub, June 4, 2019, <https://lithub.com/how-sharing-books-with-my-dad-in-prison-made-life-bearable-for-both-of-us/>

person: “[Books] are our safety net . . . Realities can almost be too much. Books offer a way out, an escape.”¹³⁷

Jonathan Rapping, founder of Gideon’s Promise, an advocacy organization for public defenders shared with PEN America that access to literature implicates “The right to engage intellectually, to debate, to learn,” saying that “all this is essential to human dignity. We have an obligation to demand a criminal justice system that does not refuse to allow people the ability to develop their mind.”¹³⁸

Deborah Caldwell-Stone of the American Library Association, offered similar sentiments: “Prison officials seem to define reading as a radical act, and yes, one can see it that way. It’s also a deeply redeeming act. How do we expect prisoners to reform, to change and rebuild their lives, without giving them access to literature? the freedom to read should be as applicable inside of prison as outside of prison.”¹³⁹

For more than four decades, PEN America has run a national Prison Writing Program that supports the work of incarcerated writers. Over the years, we have corresponded with hundreds if not thousands of incarcerated people, some of whom have shared their stories on what specific works of literature has meant to them. Below are just a few examples:

"All Alone In The World: Children of the Incarcerated by Nell Bernstein is brilliant. It is an awakening. In her book, Bernstein breaks down the many components of incarceration that affect children: (caretaker) arrest, sentencing, visiting, grandparents, grandparents, foster care, reentry, and legacy (the big picture)... This book is the roadmap to a more compassionate future.” -Elizabeth H., Shakopee Correctional Facility (Minnesota)

"Tom Henry and his Code Electrical classes, Electrical Examination Preparation Manuals single handedly provide inspiration to life-long-learning, a means to achieve a worthwhile goal, hours of purposeful journeying into a side of life that would otherwise be so hard to understand, most people would never even attempt it."

- Woody S., Evans Correctional Institution (South Carolina)

“At sixteen, when I was tried, prosecuted, and incarcerated in the adult criminal justice system, I thought my life was over. The court believed I may be a threat to myself, and as a result placed me on suicide watch. At that point, I didn’t understand life or what it had to offer. Then, quite unexpectedly, an officer appeared and left me with a tattered copy of *October Sky*, a memoir by Homer H. Hickman Jr. I read the book in one sitting, astonished by the inspiring tale of normal kids struggling to come together to overcome seemingly insurmountable obstacles, all the while catalyzing a dying city to unite for one last common cause. By the time I finished, I realized that I

¹³⁷ Stephen Dark, “Why Prison Libraries Matter for Inmates, Jailers and Book Donors,” *Deseret News*, May 31, 2018, <http://www.ilovelibraries.org/article/why-prison-libraries-matter-inmates-jailers-and-book-donors>

¹³⁸ Correspondence with Jonathan Rapping, founder and president, Gideon’s Promise, Sept. 17, 2019.

¹³⁹ Interview with Deborah Caldwell-Stone, Interim Director, American Library Association Office for Intellectual Freedom, Sept. 18, 2019.

not only wanted to be an accomplished writer, but that life is what we put into it — not what we get out of it."

- Brandon B., John B. Connally Unit (Texas)

"The book that began my positive self evolution in my incarceration: Philip Roth's *The Human Stain*. Though the story was about a mixed-race academic who hid his African-American heritage from his peers, it had a message that stuck with me: "Every major change in life means saying 'I don't know you' to somebody." Like a sock in the gut, that line made me realize how crucial it was to the survival of my integrity that I leave behind everything and everyone that didn't support my positive transformation. I have never regretted that choice."

- Benjamin F., Valley State Prison (California)

"A volunteer from the outside led a group in here based on the book: *Houses of Healing: A Prisoner's Guide to Inner Power and Freedom* by Robin Casarjian. This self-help book operates on the idea that you have to unpack the baggage before you can put it away. You can't move past a traumatic childhood without re-living it on some level. There can be no recovery without the difficult work of re-parenting the wounded child within. There can be no rehabilitation without owning your behavior and the anger behind it. This book is a must-read for any incarcerated person who had a rough childhood and, from my experience, that is most of us."

- Richard G., SCI Graterford State Correctional Institution (Pennsylvania)

Sending books to prisoners also allows for a shared human connection. Dan Schafer, a member of New York's Books Through Bars collective, said to PEN America: "It's also about getting a package. Somebody is caring about you in particular. People say 'when I see my name called at mail call, I really look forward to it.' We have people whom we send packages to, who have no family. It's a gesture of humanity. This is particularly the case when we send to someone in solitary: just the message that someone knows that they're there, and is willing to reach out to them."¹⁴⁰

There is also a significant body of evidence that clearly indicates the connection between literature, education, and rehabilitation. A meta-analysis by the RAND Corporation in 2018, for example, found that incarcerated people who participated in education programs were 28% less likely to return to incarceration than those who did not.¹⁴¹ The RAND authors concluded that "Every dollar invested in correctional education saves nearly five in reincarceration costs over three years."¹⁴²

In Massachusetts, people who participated in a "Changing Lives Through Literature" reading program had remarkably lower recidivism rates than the rest of the incarcerated population.¹⁴³ The program's creator, English professor Bob Waxler, concluded that the program could achieve these

¹⁴⁰ Interview with Dan Schaffer, member, Books Through Bars collective, September 11, 2019.

¹⁴¹ Robert Bozick, et al, "Does Providing Inmates with Education Improve Postrelease Outcomes?" RAND.org, July 3, 2018, https://www.rand.org/pubs/external_publications/EP67650.html

¹⁴² Id.

¹⁴³ Ephrat Livni, "To reduce recidivism rates, give prisoners more books," *Quartz*, Oct. 1, 2016, <https://qz.com/796369/to-decrease-recidivism-rates-give-prisoners-more-books/>

results because “reading teaches empathy, complexity, how to face shame, and how to build personal dignity.”¹⁴⁴

Ultimately, however, the argument for the right to read in American prisons is not one of rehabilitation, or economics, or social cohesion. It is a moral argument. As a country, we deserve better than prison policies that view access to books only through the lens of potential risk, that formalize people’s biases and prejudices, and that treat incarcerated people as less deserving of literature than others.

Perhaps the greatest articulation of this moral need comes from Supreme Court Justice Thurgood Marshall, who wrote:

When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor is his quest for self-realization concluded. If anything, the needs for identity and self-respect are more compelling in the dehumanizing prison environment. Whether an O. Henry writing his short stories in a jail cell or a frightened young inmate writing his family, a prisoner needs a medium for self-expression. It is the role of the First Amendment and this Court to protect those precious personal rights by which we satisfy such basic yearnings of the human spirit.¹⁴⁵

¹⁴⁴ Id.

¹⁴⁵ *Procunier v. Martinez*, 416 U.S. 396, 427–28 (1974) (internal citations omitted).

RECOMMENDATIONS

The American Library Association has promulgated, and PEN America supports, the “Prisoners’ Right to Read: An Interpretation of the Library Bill of Rights.”¹⁴⁶ These principles include the following:

- “Correctional librarians should be allowed to acquire materials that meet written selection criteria and provide for the multi-faceted needs of their populations without prior correctional agency review. They should be allowed to select from a wide range of sources in order to ensure a broad and diverse collection. Correctional librarians should not be limited to acquiring or purchasing from a list of approved materials or vendors.
- Correctional librarians should make all reasonable efforts to provide sufficient materials to meet the information and recreational needs of incarcerated people who speak languages other than English.
- Material with sexual content should not be banned unless it violates state and federal law.
- People who are incarcerated or detained should have the ability to obtain books and materials from outside the prison for their personal use.”

PEN America believes that the ALA’s “Prisoners’ Right to Read” continue to serve as an ideal starting point for guidelines that should be adopted not only by prison librarians but by all prison officials who have authority over incarcerated people’s access to literature. As these principles focus most squarely on library services, however, PEN America has additional recommendations.

State and federal officials with oversight over book restriction practices in their prisons should:

- **Implement periodic review** of their book restriction policies, including periodic review of specific banned titles to re-consider their potential admissibility.
- **Develop more explicit policies** governing book restrictions, to reduce the over-broad nature of these policies as well as their arbitrary application by prison officials.
- **Ensure that prison officials strongly consider the literary, educational, and rehabilitative merit** of any evaluated book before determining its admissibility.
- **Make any “banned book list” available and easily accessible** to the public.
- **Provide explicit statements in correctional training materials** for employees about the basic right to read and access to books, publications, and legal materials for individuals who are incarcerated.

All states should **review their policies for both notification and appeal** of a banned book. Both the sender and the intended recipient of a book should be timely informed if that book is restricted, with a timeframe for review that allows for sufficient time to appeal the decision.

States with publication review committees should additionally mandate that the results of committee decisions be publicly accessible; that such committees have a diverse composition; and that committee members include a significant portion of trained librarians, First Amendment-

¹⁴⁶ “Prisoners’ Right to Read: An Interpretation of the Library Bill of Rights,” American Library Association, June. 29, 2010, <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/prisonersrightoread>

knowledgeable professionals, and additional subject matter experts. Ideally, review committees will be staffed at least in part by people with backgrounds outside the correctional system. States without such publication review committees should evaluate what additional steps they can take to make publication review more meaningful and transparent.

Additionally, PEN America has called upon Congress—specifically the House and Senate Judiciary Committees—to **convene federal hearings** on the state of Americans’ right to read in prison.¹⁴⁷

PEN America also calls upon publishers to **assert their and their authors’ rights to have their books read by incarcerated people**, particularly upon any notification that their books have been blocked.

One important avenue for establishing the legal rights of incarcerated people is legislative change. It is clear that the Prison Litigation Reform Act has failed to live up to its stated purpose of stopping only frivolous litigation and has instead become an active hindrance to incarcerated people’s fundamental rights. PEN America joins organizations including Human Rights Watch,¹⁴⁸ the American Bar Association,¹⁴⁹ the Commission on Safety and Abuse in America’s Prisons,¹⁵⁰ and the National Prison Rape Elimination Commission¹⁵¹ in calling for **the repeal or reform of the PLRA**.

All of these proposed changes fall under a broader rubric: The public must refuse to merely accept the catch-all excuse of “security” as adequate justifications for any and all book restrictions within our prisons. PEN America does not claim that all books should be allowed in a prison setting. We do claim, however, that restrictions on book access in our prisons—restrictions which collectively affect over 2 million people—have gone far too far.

There are positive ways to incorporate access to literature into the daily realities of our prisons. In Brazil and Italy, incarcerated people can actually shave several days off their sentences, for each book they read.¹⁵² Individual judges in the United States have offered similar incentives to

¹⁴⁷ “Tell Congress: Stop the largest book ban in America,” Action Network, <https://actionnetwork.org/petitions/tell-congress-stop-the-largest-book-ban-in-america?source=pen-america&referrer=group-pen-america&redirect=https%3A%2F%2Fpen.org%2Fseptember-2019-petition%2F>

¹⁴⁸ Human Rights Watch, No Equal Justice: The Prison Litigation Reform Act in the United States, 2009 (<https://www.hrw.org/report/2009/06/16/no-equal-justice/prison-litigation-reform-act-united-states>)

¹⁴⁹ American Bar Association, Criminal Justice Section, “Report to the House of Delegates: Recommendation,” approved by the House of Delegates February 12, 2007.

¹⁵⁰ John J. Gibbons; Nicholas deB. Katzenbach, Confronting Confinement - A Report of the Commission on Safety and Abuse in America's Prisons, 22 WASH. U. J.L. & POL'Y 385, 562 (2006).

¹⁵¹ See, e.g., Letter from Reggie B. Walton, chairman, National Prison Rape Elimination Commission, to Representatives Bobby Scott (DVA) and Randy Forbes (R-VA), January 24, 2008.

¹⁵² See e.g. Husna Haq, “Can books help to redeem prisoners?” *The Christian Science Monitor*, May 14, 2014, <https://www.csmonitor.com/Books/chapter-and-verse/2014/0514/Can-books-help-to-redeem-prisoners>; “Reading offers Brazilian prisoners quicker escape,” *Reuters*, June 26, 2012, <https://www.reuters.com/article/us-brazil-prison-reading/reading-offers-brazilian-prisoners-quicker-escape-idUSBRE85O0WR20120625>

incarcerated people,¹⁵³ showing that the relationship between prisons and books does not have to be antagonistic. But that is not the overall state of play today.

Instead, book restriction policies are almost uniformly overbroad, arbitrary, under-examined, under-challenged, and maximally restrictive well past the point of reason. This will remain the case unless readers and writers push for a meaningful commitment to the right to access literature and other materials in prison.

As a society, the U.S. must articulate and defend the right to read in prison. Otherwise the nation's largest book banning policy will remain unchallenged.

¹⁵³ Husna Haq, "In Brazil's prisons, inmates shorten sentences by reading," *The Christian Science Monitor*, June 26, 2012, <https://www.csmonitor.com/Books/chapter-and-verse/2012/0626/In-Brazil-s-prisons-inmates-shorten-sentences-by-reading>

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