

## Books as the Site of Magic:

Prisoners' Right to Read

Cynthia M. Haiken  
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I just love books. And when I got locked up, I think books became magic. You know, books weren't really magic when I was a child. They were just something that I just really - I enjoyed reading. I thought it was important. But when I got locked up, it became magic. It became a means to an end. I began to recognize that - so before I went to prison, school was where I got educated, and I didn't really think of the books that I read as adding to my education, *per se*. I just thought that this is what you do, like, as a human being in the world. I thought that stories were great. But once I got locked up, books became the site of magic. It became the way in which I experienced the world, but more importantly, I think it became the way in which I learned about what it means to be human and to be flawed and to want things that you can't have.<sup>i</sup>

In 2010, three men were put on trial for a triple-homicide home invasion that took place in Cheshire, Connecticut in 2007. One of the defendants, Stephen Hayes, was already in prison for a prior conviction. As part of the trial, Hayes' defense team requested that the names of the books Hayes had checked out of the prison library during his incarceration not be admitted as evidence because the books contained plots that were "criminally malevolent in the extreme."<sup>ii</sup> Although the motion was granted and the names of the books were never released, the defense request caused Connecticut lawmakers to question why a prison library would own books containing criminal plots and, if they did, why they would permit prisoners to read them. The defense motion prompted State Senator John Kissel to meet with Department of Corrections Commissioner Leo Arnone to "discuss the removal of books containing graphic violence" from Connecticut prison libraries. Kissel and Arnone announced that they would conduct a review to examine how prison libraries handle collection development and to reconsider the existing balance between prison security and First Amendment concerns.<sup>iii</sup> Although Deborah Caldwell-Stone, deputy executive director of the ALA's Office for Intellectual Freedom, noted that "somebody that is moved to commit a crime has much more going on in their lives than simply having read a few comic books or a novel," Kissel stated that "common sense is on our side."<sup>iv</sup>

The First Amendment to the Constitution of the United States provides in pertinent part that "Congress shall make no law...abridging the freedom of speech..." The Founding Fathers believed that an informed citizenry was the only means to ensure effective democracy and that

people must share ideas and have access to information in order to govern themselves. The freedom to read is a core component of creating an informed citizenry, and the mandate of any library is to provide access to books and other materials to assist in the full access by the members of the library community to ideas and information. While prisoners do not cease to be citizens when they become inmates, it has long been accepted that they must relinquish certain rights as part of their incarceration. Although virtually every major prison in the United States has a library, there is no consistency in collection development policy for these libraries, and the Supreme Court has granted prison administrators broad discretion to determine whether certain materials should be banned from prison libraries for security reasons. Prison librarians are thus caught between their mandate to provide their library patrons with books and other materials and the authority of prison administrators to maintain security and order within the prison community.

In their earliest incarnation, prison libraries were initially focused on providing inmates with a moral compass. They contained predominately or exclusively Bibles and other religious materials. In 1870, the First National Prison Congress was convened and articulated a commitment to the rehabilitation of prisoners and to educate them in religion, letters and industry.<sup>v</sup> Prison libraries in the first half of the 20<sup>th</sup> century took on this educative role, providing items of more general interest and also serving a recreational function. In the 1960s and 70s, prisoners started to demand and receive access to information and reading materials related to the outside world. At the same time, prison librarians began to envision a role for themselves as instruments of positive social change.<sup>vi</sup> Today, the prison library is generally believed to have four potential purposes: rehabilitation, deterrence, retribution, and protection of society.<sup>vii</sup>

The Supreme Court has repeatedly held that a prisoner does not lose all of his or her constitutional rights during the period of incarceration and that prisoners are protected from unconstitutional action on the part of prison authorities.<sup>viii</sup> Moreover, claims of a denial of a fundamental freedom under the First Amendment are subject to close scrutiny by the courts.<sup>ix</sup> Thus, many courts have overturned decisions of prison officials denying access to literature on First Amendment grounds.<sup>x</sup> Courts generally accept the premise that certain literature may pose a clear and present danger to the security of a prison or to the rehabilitation of prisoners, and that on that basis censorship may be permitted.<sup>xi</sup> But in the absence of a real danger of disruption, a person's right to read has generally not been found to be lost upon incarceration.<sup>xii</sup>

In recent years, however, the Supreme Court has permitted prison administrators broad discretion to determine when the danger from certain reading materials outweighs a prisoner's right to read. In *Procunier v. Martinez*, the Court stressed the importance of the preservation of Constitutional rights but noted that some latitude is essential to proper discharge of an administrator's duty. The Court held that limitations may be necessary to protect one or more legitimate government interests unrelated to the suppression of expression, provided that the limitation be only what is "necessary or essential to the protection of the particular governmental interest involved."<sup>xiii</sup> Subsequent cases began to give more deference to prison administrators who dealt with inmates on a day-to-day basis.<sup>xiv</sup> In *Turner v. Safley*, the Court held that it was permissible to impinge on an inmate's constitutional rights if the infringement was reasonably related to legitimate penological interests, provided that those interests are neutral and objective and not content-based.<sup>xv</sup> Justice O'Connor wrote that while the Constitution continues to protect inmates during the period of incarceration, the Court felt that a cautious judicial review of prison regulations was warranted.<sup>xvi</sup> Two years later, in *Thornburgh v. Abbott*, the Court upheld

restrictions on incoming publications that were deemed to be “detrimental to the security, good order, or discipline of the institution or [that] might facilitate criminal activity.”<sup>xxvii</sup> More recently, in *Beard v. Banks*, the Court upheld the denial of access to newspapers or magazines for inmates in the most restrictive level of a Pennsylvania prison on the basis that the denial of access incentivized inmates to comply with prison rules.<sup>xxviii</sup> The opinion describes reading as a privilege that serves the interests of the penal system when it is denied to uncooperative prisoners and dismisses the notion that reading may have rehabilitative purposes.<sup>xix</sup> Justice Stevens, in dissent, states that prisoners should receive suitable access to social, political, aesthetic, moral and other ideas which are central to the development and preservation of individual identity.<sup>xx</sup>

In a similar vein, courts have narrowed prisoners’ access to reading materials that pertain specifically to legal rights. *Johnson v. Avery* held in 1969 that prisoners have a fundamental right to legal access.<sup>xxi</sup> The State of Massachusetts interpreted the decision as a mandate for prisons to provide inmates with access to legal materials in prison libraries.<sup>xxii</sup> In *Bounds v. Smith*, the Supreme Court held that a prisoner’s right of access to the courts requires prison authorities to assist inmates in preparing and filing legal papers by providing adequate law libraries or adequate assistance from people trained in the law.<sup>xxiii</sup> However, in *Lewis v. Casey*, the Court held that inmates must demonstrate actual injury due to lack of access to law libraries and that the right of access to courts did not carry with it a parallel right to a law library.<sup>xxiv</sup>

As the case law demonstrates, a prisoner’s right to read is a balancing act between the rights of all citizens to the protections of the First Amendment and the need for prison security and protection. Deprivation of Constitutional rights is permitted to ensure the reasonable security of the prison population and reasonable protection of the public. The tension lies in determining

what types of limitations are reasonable. The right to read and to have access to information and protection against censorship are rights afforded to all library patrons. The ALA's Library Bill of Rights states that "books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves."<sup>xxv</sup> A prison library therefore must serve the information needs of the inmate population. While principles relating to fair information practices form a part of any library, the ALA has acknowledged that prisoners' right to intellectual freedom may be subject to certain restrictions on materials that could threaten the safety of the correctional facility. In an interpretation of the Library Bill of Rights focusing on Prisoners' Right to Read, the ALA notes that "learning to be free requires access to a wide range of knowledge, and suppression of ideas does not prepare the incarcerated of any age for life in a free society...the correctional library collection should reflect the needs of its community...only those items that present an actual compelling and imminent risk to safety and security should be restricted." There is a disconnect between the ALA viewpoint embodied in the Library Bill of Rights that access to information is the cornerstone of a functioning democracy and the belief that information can be harmful to prison authority and security. In this sense, efforts to ban prisoners' reading materials are similar to censorship activities that increase at times when security fears are high. "Efforts to control the flow of information into and within correction facilities are fueled by a fear of informational harm."<sup>xxvi</sup> It can be very hard to develop a compromise position based on legitimate penological interests and non-punitive sensibilities.

Viewpoints differ significantly over the role of the prison library and its essential purpose. At one end of the spectrum is the view that the sole purpose of a prison library is to advance the state's goals and objectives.<sup>xxvii</sup> This viewpoint rejects the notion that inmates have the same basic rights to library service as the general public. It is a rehabilitative model that

would limit reading materials to items that have “the real or potential use [to contribute] to responsible and constructive change.”<sup>xxviii</sup> In this model, entire genres and subjects would be excluded from a prison library, including all fiction materials. At the other end of the spectrum is a public library model that starts from the dual premises that there is no difference between library service to inmates and library service to free members of society and that inmates generally have the same reading interests and need for access to information as free individuals.<sup>xxix</sup> This concept is embodied by the ALA Library Standards for Adult Correctional Institutions, which provides inmates with the right to read and have free access to information. In the public library model, reading materials and library services are provided based on the needs and interests of the inmates. In this model, prison libraries can provide an important means of self-improvement, and books can also help alleviate boredom and tension. Books provide resources for education as well as rehabilitation programs, as well as means to legal information. In addition, prison libraries offer the opportunity to develop literacy skills. In this sense it is not only a public library but also a law library and a school library.

The ALA takes the position that the Library Bill of Rights is part of any library, including prison libraries. It has specifically confirmed its commitment to intellectual freedom for prisoners despite their incarceration.<sup>xxx</sup> As the ASCLA notes, “library services are intended to ensure the inmates’ right to read and their right to free access to information.”<sup>xxxi</sup> Librarians are thus important stakeholders in preserving the right of prisoners to read and have access to information. The purpose of prison administration is to maintain security and order within the prison community, and to the extent those goals conflict with access to information, the authority of those administrators will trump the efforts of librarians to provide open access to information. Thus, those administrators are also stakeholders in the debate over appropriate reading materials

for prisoners, with a typically less expansive view of the rights of prisoners to access to reading materials and other information. The prisoners themselves are a key stakeholder in this debate, as it is their rights that are directly impacted, as well as their access to information. Prisoners are information poor, and they possess a “genuine human need for information” which an adequate prison library can provide.<sup>xxxii</sup> As one inmate noted, “the people in here are starving for information.”<sup>xxxiii</sup>

In addition, there is conflict over the use of taxpayer dollars to fund prison libraries: “To spend tax revenues on library services for thieves, rapists and murderers has the appearance of taking egalitarian principles of library access to extremes.”<sup>xxxiv</sup> The idea that well-stocked libraries might be provided for convicted criminals is often met with hostility. Thus, local and national politicians become stakeholders in the debate over access to books for prisoners. They must choose how taxpayer dollars are spent and also balance competing interests of preservation of rights and security of citizens. The public is a stakeholder as well. Although censorship is generally condemned as a violation of First Amendment rights, there is also a public sense of fear that unfettered access to information by prisoners could lead to security and safety issues.<sup>xxxv</sup>

Despite the tensions and varying viewpoints, principles relating to fair information practices must be considered in any library regardless of the status of the library’s patrons. Incarcerated persons generally have the same reading interests and information needs as individuals who are not in prison, but they are disadvantaged by not having physical access to public libraries. Lehman (2000) notes that inmates use libraries up to ten times more often than people who are not in prison.<sup>xxxvi</sup> The challenge is to provide information freely in a tightly controlled environment containing rules and regulations governing all aspects of prisoners’ daily life. Prisoners are denied the most significant source of information available today, namely



access to the Internet. Shirley's 2007 article lists other, less obvious examples of censorship in prison libraries, including the banning of hardcover books because contraband might be hidden in the books' spines, banning graphic novels where women might be skimpily dressed, and banning books on starting a business, because those books might give prisoners ideas on scams.<sup>xxxvii</sup> Although prison administrators often ban a wide range of reading materials, prisoner access to televisions is generally not restricted, despite the prevalence of violent shows and other information available on TV. These examples demonstrate that there is often a lack of rational and coherent principles underlying a decision to permit or deny prisoners access to information. Prison librarians must work in partnership with other prison staff to find a compromise position along this spectrum that balances security needs with basic intellectual freedom principles.

“Correctional libraries are not independent agencies, nor are their patrons free human beings bearing all democratic rights thereto...Correctional libraries...fall under the absolute authority of a nonlibrary agency. The art of bringing the public library model into this environment consists of honoring the spirit of ALA's highest ideals while following the correctional facility's rules.”<sup>xxxviii</sup> The prison environment may be hostile towards information, but prison libraries can still strive to develop and maintain a collection policy that is based on library principles focused on serving the community. To do this, librarians working in prisons must forge alliances with prison administrators and work to frame the prison library as a community information and cultural center. As Stearns (2004) notes, “the lack of understanding between librarianship and corrections has at times broken out into overt hostility.”<sup>xxxix</sup> Prison librarians must take the lead in creating understanding and a sense of partnership. Each prison library should develop its own collection policy that is based on the demographics of the prison population and the perceived information needs of the members of the prison community. If

possible, this policy should be developed in conjunction with the prison's security staff as well as its educators. In draft form, this policy should be submitted to prison administrators for review and comment. By working together to create an approach to inclusion and exclusion, librarians and administrators may be able to avoid conflict. It is inevitable that choices will need to be made that entail censorship, but the establishment of realistic objectives may help to contain the scope of that censorship.

It is the goal of everyone who works in a prison to protect the institution, but censorship can become a slippery slope. It is already a struggle to balance ALA principles with the policies of a correctional institution. If a prisoner's right to read is not respected, the prison library collection will contain a narrow range of prison-approved materials rather than a collection based on a library's assessment of patron interests. Prison librarians must start by understanding the federal and state law limiting prison library collections policies. They should also understand the limits of a librarian's authority inside the particular institution they serve. In that context, they can work with other members of the community to develop and have approved a selection policy that may stand up to subsequent challenge. Librarians should also consider developing procedures for responding to challenges to materials in the prison library that responds to challenges in a respectful but informed manner. In doing so, they can point to the Library Bill of Rights and question whether the inclusion of a particular item poses a genuine threat to prison security. The ASCLA's collection standards for prison libraries include: the greater of 500 book titles or 15 titles per inmate, up to 2500 inmates; the greater of 50 magazine titles or one title per every ten inmates; a range of newspapers based on the regions represented by the prison population; 100 audio recording titles plus one title for every five inmates; and the greater of 20 video recording titles or one title for every 30 inmates. To achieve these minimum standards,

librarians will need to balance legitimate goals with prison authoritativeness and achieve a degree of participatory democracy.

In theory, the process of collection development in a prison library should be based on the same principles of librarianship that guide public libraries. Providing library service to inmates fulfills the democratic mission of the public library because it allows a wholly segregated group of people to have access to information that most Americans take for granted. Prison administrators have broad discretion to determine when security concerns outweigh access to reading materials. Prison librarians must engage in an open dialogue with those in authority to ensure the operation of the prison library in accordance with ALA standards. As Vogel wrote in 2009, “neither the Patriot Act nor the seemingly endless layers of restriction created to maintain a knowledge void within the facility should dim the librarian’s enthusiasm for operating a library according to the principles of a democratic society.”<sup>xli</sup> Although choices will have to be made, the prison librarian can attempt to ensure that those choices are made against a rational backdrop that understands the importance of reading in the lives of prisoners. “Reading and information can help to free us all from our past or places where we might not want to be in life. And the ticket, of course, is a library card.”<sup>xli</sup>

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## Endnotes

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- <sup>ii</sup> Glaberson 2010.
- <sup>iii</sup> Goldberg 2010.
- <sup>iv</sup> *Ibid.*
- <sup>v</sup> Sweeney 2010, 28.
- <sup>vi</sup> Stout & Turitz 1977, 500.
- <sup>vii</sup> Barrone 1977, 293.
- <sup>viii</sup> *See, e.g., Cooper v. Pate, Warden*, 378 U.S. 546 (1964).
- <sup>ix</sup> *Ibid.* *See also Fortune Society v. McGinnis*, 319 F. Supp. 901 (S.D.N.Y. 1970).
- <sup>x</sup> *Walker v. Blackwell*, 411 F.2d 23 (5<sup>th</sup> Cir. 1969); *Fortune Society v. McGinnis*, 319 F. Supp. 901 (S.D.N.Y. 1970);
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- <sup>xii</sup> *Ibid.*
- <sup>xiii</sup> *Procunier v. Martinez*, 416 U.S. 396, 413-414 (1974).
- <sup>xiv</sup> *See, e.g., Pell v. Procunier*, 417 U.S. 817 (1974); *Bell v. Wolfish*, 441 U.S. 520 (1979); *Wilson v. Bass*, 370 F. Supp. 2d 782 (N.D. Ind. 2005).
- <sup>xv</sup> *Turner v. Safely*, 482 U.S. 78 (1987).
- <sup>xvi</sup> *Ibid.*, at 85.
- <sup>xvii</sup> *Thornburgh v. Abbott*, 490 U.S. 401, 403 (1989).
- <sup>xviii</sup> *Beard v. Banks*, 548 U.S. 521 (2006).
- <sup>xix</sup> *Ibid.*, at 524.
- <sup>xx</sup> *Ibid.*, at 527.
- <sup>xxi</sup> *Johnson v. Avery*, 393 U.S. 483 (1969).
- <sup>xxii</sup> Darby 2004.
- <sup>xxiii</sup> *Bounds v. Smith*, 430 U.S. 817 (1977).
- <sup>xxiv</sup> *Lewis v. Casey*, 518 U.S. 343 (1996).
- <sup>xxv</sup> Library Bill of Rights (1939, 1996).
- <sup>xxvi</sup> Vogel 2009, 43.
- <sup>xxvii</sup> Coyle 1987, 78.
- <sup>xxviii</sup> *Ibid.* at 97.
- <sup>xxix</sup> *See, e.g., Vogel* 2009, 43; Darby 2004.
- <sup>xxx</sup> Prisoners Right to Read (2010, 2014). *See also Turner and O’Lore v. Estate of Shabazz*, 482 U.S. 342 (1987).
- <sup>xxxi</sup> Library Standards for Adults Correctional Institutions (1992). *See also Conrad* 2012, 421.
- <sup>xxxii</sup> Suvak 1973, 9.
- <sup>xxxiii</sup> Clark & MacCreaigh 2006, 6.
- <sup>xxxiv</sup> Stearns 2004, 50.
- <sup>xxxv</sup> Vogel 1997.
- <sup>xxxvi</sup> Lehman 2000.
- <sup>xxxvii</sup> Shirley 2007.
- <sup>xxxviii</sup> Clark & MacCreaigh 2006, 15.
- <sup>xxxix</sup> Stearns 2004, 63.
- <sup>xl</sup> Vogel 2009, 56.
- <sup>xli</sup> Grunenwald 2014.