

Will the Supreme Court Strike a Blow Against Prison Censorship?

Nina Bala

October 29, 2018

Access to the monthly magazine *Prison Legal News* (PLN) is one of the few ways prisoners learn about criminal justice issues, including their rights as prisoners. Most incarcerated individuals across America have access to the publication.

The exception? Every prisoner in Florida.

Since 2009, the Florida Department of Corrections (FDOC) has banned every issue of PLN, claiming that the advertisements in the magazine raise security concerns. FDOC's blanket ban on PLN makes Florida an outlier. No other state, county or even our federal government has a de facto ban on PLN because of its ads.

Nevertheless, the U.S. Court of Appeals for the 11th Circuit upheld the ban. Soon, the Supreme Court will have a chance to weigh in. Reversing the ban will not only benefit both prisoners and society, it will ensure that the First Amendment is upheld.

PLN has a subscription base of more than 10,000 people and contains over 70 pages of useful information related to prisoners' rights every month. PLN's reporting has had a significant impact on changing prison policy for the better and exposing abuses. The magazine has covered issues like solitary confinement, the Prison Rape Elimination Act, visitation and medical care in prisons.

In addition, PLN's reporting has led to real and direct change. When PLN revealed the exorbitant rates families had to pay to call their loved ones in prison, the Federal Communications Commission responded by instituting changes to the policy in 2013 and 2015.

We know the economic and social costs of mass incarceration are astronomical. Allowing publications like PLN behind bars improves literacy and learning, which leads to better outcomes for prisoners when they re-enter society. Many prisoners struggle with literacy — more so than average citizens.

Promoting education behind the bars is one of the lowest-cost ways to reduce prisoners' chances of reoffending, and it's therefore vital to public safety. After all, 95 percent of prisoners are eventually released back into society.

Ensuring that we are releasing educated returning citizens is in all of our interests.

Access to books and other reading materials within prison also creates hope. Legal publications in particular can help prisoners confront injustice and provide them self-efficacy — the sense that they and their actions have value. Though public defenders may help with direct appeals, most prisoners cannot afford an attorney after that stage and must represent themselves in civil and habeas petitions.

With decreasing access to law libraries, PLN and materials like it can be immensely valuable in promoting access to courts.

On the legal front, we should be suspicious of any government that censors a publication that criticizes its policies.

In this case, PLN has reported directly on abuses in Florida prisons, so it is far from surprising that Florida's corrections department would disfavor the publication. However, the First Amendment requires courts to apply a more rigorous review when the government is trying to silence speech of which it disapproves.

While it might be more convenient for FDOC to place a de facto ban on every issue of PLN because it does not like the stories that are being reported, convenience does not make this decision legal.

Of course, there are security concerns in prison that necessitate restrictions on reading materials.

As I have written in the past, “regulations make sense when it comes to books that instruct readers how to make weapons, incite riots or escape prison.” But we must look at these restrictions with the utmost scrutiny. The scope of the First Amendment does not depend on the whim of the government. And when a blanket ban exists, we should be even more wary.

Last week, several center-right organizations — including the R Street Institute, the Cato Institute, Americans for Prosperity, Reason Foundation and the Rutherford Institute — have submitted an amicus brief on the issue, noting the importance of ensuring the First Amendment is adhered to behind bars, and the substantial benefits of allowing prisoners to access publications like PLN.

We hope that the Supreme Court will grant review on this issue. After all, improved access to reading materials in prison benefits us all.

For additional information, see also, *The Crime Report*: “The Silencing of Prison Legal News”