NOTES

FREE THEIR MINDS: LEGACIES OF ATTICA AND THE THREAT OF BOOKS TO THE CARCERAL STATE

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Book bans and censorship battles have garnered considerable attention in recent years, but one of the most critical battlegrounds is kept out of the public eye. Prison officials can ban any book that threatens the security or operations of their facility. This means that the knowledge access rights of incarcerated people are subject to the judgments of the people detaining them. This Note focuses on books about Black people in America and books about the history of and conditions in prisons, which are often banned for their potential to be divisive or incite unrest. The result is that Black people, who are already disproportionately victimized by the criminal punishment system, cannot read their own history and the history of the institution imprisoning them.

This Note examines the legal backdrop enabling these book bans. As an example, it highlights the recent ban of Heather Ann Thompson’s Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy in the New York State prison system, including at the Attica Correctional Facility. This Note argues that prison book bans are coeval with attacks on Black history in American schools, and labels both practices as attempts to stifle the democratic engagement of Black people and other marginalized groups. As a guiding thesis, it draws inspiration from the organizers of the Attica prison uprising to assert that this fight is best understood from the vantage point of those most impacted by prison book bans: incarcerated people who are denied the right to read.

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INTRODUCTION

On September 9, 1971, 1,281 incarcerated men took control of the Attica Correctional Facility in upstate New York. The takeover of Attica initiated four days of protest and polemics about the politics of mass incarceration in the United States and the basic civil and human rights of people in prison. On the fourth day, New York Governor Nelson Rockefeller ordered a retaking of the facility. Twenty-nine incarcerated men and nine civilian hostages were gunned down and killed during the ensuing siege. The Attica uprising and its aftermath sparked a nationwide conversation about what we have come to call “the carceral state.” Some saw the Attica rebellion as a vindication of the politics of “governing through crime”,

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3. Thompson, supra note 1, at 155–56.
4. Id. at 187. A tenth civilian hostage was shot during the retaking and died the following month from his injuries. Id. at 249.
5. See id. at 558–62 (recounting the varied responses to the Attica uprising).
Forty-five years after the Attica uprising, historian Heather Ann Thompson published *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy.* The book is considered to provide the most comprehensive history of the events leading up to, during, and after the uprising. In March 2022, Thompson filed suit against New York State officials, challenging the blanket censorship of *Blood in the Water* in the New York prison system. This struggle was foreshadowed by the original Attica uprisers: Abolishing censorship at the prison was one of their core demands. Settlement proceedings between Thompson and the institutional defendants began in October 2022.

The Attica uprisers’ critique extended beyond their facility. They argued that their circumstances were not unique but archetypal: “Attica Prison is one of the most classic institutions of authoritative inhumanity upon men.” Prison conditions were a focus, but the men of Attica also were intentional in describing the prison system as “the authoritative fangs of a coward in power.” The mention of fangs implies the existence of a body. Critical to the uprisers’ argument was the idea that prisons are one component of a larger structure, a framing similar to that of scholars who choose to discuss the “carceral state” rather than the “penal state.” The
“carceral state” encompasses the physical institutions imprisoning people in America as well as the ideologies that fuel investment in those institutions.16 It is a larger government apparatus that functions as a means of social ordering against targeted groups and profit maximization for others.17 In recounting the uprisers’ critique, Blood in the Water offered a narrative that would have allowed the people incarcerated in Attica today to understand their history and, through that history, the meaning of their experience. This Note stems from a desire to understand the censorship of Thompson’s book from the vantage point of the people deprived of the right to read it.18

The carceral state and the carceral system are also a racist state and a racist system. The abolition of slavery brought with it a surge in Black criminalization and incarceration.19 In Alabama, for instance, the prison population shifted from ninety-nine percent white to ninety percent Black after the Civil War.20 By the 1870s, Black people made up ninety-five percent of the prison population in the South.21 In the absence of slavery, incarceration became the container for Black freedom and the vehicle for Black labor exploitation.22 In state prisons today, Black people are


17. See id. (“Consider the days of colonization. Black people were brought to be slaves, and this sparked the roots of connecting Blackness to captivity, a carceral condition. These are the roots of the racialized prison industrial complex that looms over Americans in present day.”); see also Aisha Khan, The Carceral State: An American Story, 51 Ann. Rev. Anthropology 49, 50 (2022) (defining the “carceral state” as “governmentality that relies on institutionalized punishment and surveillance (including mass incarceration), particularly of targeted populations”).


21. Delaney et al., supra note 19.

22. See id. (“State penal authorities deployed these imprisoned people to help rebuild the South—they rented out convicted people to private companies through a system of convict leasing and put incarcerated individuals to work on, for example, prison farms to produce agricultural products.”); see also Ashley Nellis, The Color of Justice: Racial and Ethnic Disparity in State Prisons, Sent’g Project 11 (2021), https://www.sentencingproject.
incarcerated at almost five times the rate of white people.\textsuperscript{23} While Black people make up thirteen percent of the population in America, they represent thirty-eight percent of the incarcerated population.\textsuperscript{24} One in three Black men will be sentenced to time in prison, in contrast with one in seventeen white men.\textsuperscript{25} These disparities make clear that incarceration is simply the latest iteration of racial persecution in America.\textsuperscript{26}

Books are central to an analysis of the American prison because of the nexus between race, literacy, and incarceration. Black people are disproportionately imprisoned in America, and rates of illiteracy are disproportionately high among incarcerated people.\textsuperscript{27} Participation in education programs while incarcerated has been shown to reduce recidivism; fewer educated people are reincarcerated upon release.\textsuperscript{28} The interests of proponents and opponents of incarceration would seem to converge on reduced recidivism rates, which would mean that fewer people commit crimes and are reincarcerated after release.\textsuperscript{29} Nevertheless,
battles over the censorship of reading and educational materials rage on in America’s prisons.30

So how does censorship serve, or disserve, the goal of reducing recidivism? Prison officials rely on safety and security concerns to justify banning certain books.31 More specifically, books discussing race or the experience of incarceration might be banned for inciting division or unrest among incarcerated people.32 On the other hand, people focused on reducing prison populations point to the positive benefits that reading offers to incarcerated people, one of which is lowering the rate of recidivism and reincarceration.33 From this perspective—and factoring in the lack of empirical data showing that books cause disruptions in prisons—maintaining order through censorship makes little sense.34 But at present, the evidence of reading’s benefits, and the absence of evidence of harm, receive little (if any) weight in censorship decisions.35 The fact that decisionmakers don’t consider the real effects of censorship on incarcerated people raises the question whether reduced recidivism can be honestly touted as a goal of incarceration or if book bans are merely one cog in a purely punitive machine. The history of withholding education to oppress freed Black people in America lends credence to the latter understanding of prison censorship.36

This Note uses Thompson’s case to unpack the racialized censorship of reading materials in prisons. Its specific focus is texts about the subjugation of Black people in America, which necessarily discuss the history of prisons and imprisonment. Part I offers a critical assessment of the statutes, administrative regulations, and case law that have shaped the law and policy around prison censorship. Part II revisits the Attica uprising, Thompson’s challenge to the present-day censorship of her book by the Attica Correctional Facility, and the politics of racially motivated book bans in prisons. It also connects Thompson’s prison censorship story to the broader attacks on Critical Race Theory (CRT) and the teaching of Black history outside of the prison system. Part III offers a proposal that rebalances the constitutional interests implicated by the current prison censorship regime. It places racial literacy and the knowledge access rights

31. See infra notes 57–58 and accompanying text.
32. See infra notes 88–89 and accompanying text.
33. See Yoon, supra note 28.
34. See infra note 231 and accompanying text.
35. See infra section I.B.
of incarcerated people at the center of the legal analysis and argues that this issue can only be approached through the eyes of the victims of censorship, not those of its perpetrators.37

I. ENABLING CENSORSHIP

The free exercise of First Amendment rights “serves not only the needs of the polity but also those of the human spirit.”38 This is equally if not more true for people in prison.39 Book bans in prisons threaten the First Amendment rights of incarcerated people, and the current legal landscape makes it nearly impossible for those rights to be vindicated in the courts. Section IA discusses the means and ends of censorship in prisons. Section IB summarizes the case law governing the constitutional rights of incarcerated people to access reading material.

A. Access to Books “Inside”

1. Why Reading in Prison Matters. — Reading in prison is important. Malcolm X said he “never had been so truly free” until he took up reading during his incarceration.40 Reading is a simple and important means for people in prison to engage with the outside world.41 Reading in prison is mental healthcare.42 For some incarcerated people, reading encourages them to pursue higher education upon release.43 Most importantly, the

39. See id. at 428 (“If anything, the needs for identity and self-respect are more compelling in the dehumanizing prison environment.”).
right to read encompasses basic ideas about human dignity. These positive factors weigh in favor of encouraging incarcerated people to read.

Those championing the right to read in prison often highlight its correlation with lower recidivism rates. Over forty percent of people released from state prison are re-arrested within one year of release. One study found that participation in educational programs in prison reduces the likelihood of recidivism by twenty-eight percent. Reducing recidivism is desirable for a few reasons: Less recidivism means less crime, less crime means fewer people in prisons, and fewer people in prisons means less money spent on incarceration. In spite of the evidence that education...

44. See PEN America, supra note 41, at 16 (quoting Jonathan Rapping, founder of Gideon’s Promise, as emphasizing that intellectual engagement “is essential to human dignity” and demanding “a criminal justice system that does not refuse to allow people the ability to develop their mind”); see also Mzezewa, supra note 43 (quoting Elizabeth Alexander, a Columbia University professor, as equating the right of incarcerated people to read with “the right to be able to understand the condition of their life”).

45. See, e.g., PEN America, supra note 41, at 18 (“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.” (citing Robert Bozick, Jennifer Steele, Lois Davis & Susan Turner, Does Providing Inmates With Education Improve Postrelease Outcomes? A Meta-Analysis of Correctional Education Programs in the United States, 14 J. Experimental Criminology 389 (2018))); Thurgood Marshall C.R. Ctr., Banning the Caged Bird: Prison Censorship Across America 8 (2021), https://thurgoodmarshallcctr.howard.edu/sites/tmrc.howard.edu/files/2021-10/HH8108 %20%20Prison%20Censorship%20Report%20Update%20v1-revised.pdf [https://perma.cc/UV5C-TK7H] (“Reading books in prison helps reduce recidivism, in part, because it increases education among incarcerated persons and teaches them basic vocational and educational skills needed to succeed in our society.”); Kelly Jensen, Why and How Censorship Thrives in American Prisons, Book Riot (Oct. 21, 2019), https://bookriot.com/censorship-in-american-prisons/ [https://perma.cc/RRR2-LEV9] (“It’s been proven that access to books reduces recidivism.”); Mzezewa, supra note 43 (“One 2013 study found that people who participate in correctional education programs while incarcerated had . . . 43 percent lower odds [of] recidivating than those who did not.” (citing Lois M. Davis, Robert Bozick, Jennifer L. Steele, Jessica Saunders & Jeremy N.V. Miles, Evaluating the Effectiveness of Correctional Education (2013))); Skopic, supra note 42 (“[I]n one study, the University of Massachusetts found that incarcerated people who took part in reading programs were much better equipped to deal with the outside world on their release, showing only an 18.75% rate of recidivism compared to a control group’s 45%.” (citing G. Roger Jarjoura & Susan T. Krumholz, Combining Bibliotherapy and Positive Role Modeling as an Alternative to Incarceration, 28 J. Offender Rehab., no. 1–2, 1998, at 127, 132–33)).


48. See Yoon, supra note 28 (noting that reducing recidivism can save “states a combined $365.8 million in decreased prison costs per year”). For a critique of reform strategies focused on recidivism, see Avlana K. Eisenberg, The Prisoner and the Polity, 95 N.Y.U. L. Rev. 1, 29–30 (2020).
and reading are effective tools to combat mass incarceration, very few incarcerated people participate in educational programs.49

Literacy can also be a predictor of a person’s likelihood of being incarcerated in the first place. Young men who drop out of high school are forty-seven times more likely to be incarcerated than their college graduate counterparts.50 Barbara Fedders, Director of the Youth Justice Clinic at the University of North Carolina School of Law, observes this pipeline firsthand. She notes how children who struggle with reading are more likely to get left behind by the educational system and picked up by the juvenile justice system.51 Across the board, illiteracy rates are higher for people in prison than for those outside.52 One study found that Black and Hispanic people who aren’t incarcerated tend to have lower literacy rates than white people outside or inside prisons.53 These data are perhaps unsurprising given the history of education deprivation as a tool of Black oppression.54 Maintaining these disparities in literacy rates perpetuates


52. See Michon, supra note 27 (“People in prison are 13 to 24 percent more represented in the lowest levels of literacy than people in the free world.”).

53. Id.

54. See, e.g., Coleman, supra note 36 (“In 1833, an Alabama law asserted that ‘any person or persons who shall attempt to teach any free person of color, or slave, to spell, read,
disparities in incarceration rates, serving the larger carceral goal of racial ordering. One way to correct these disparities would be to increase literacy rates for people in prisons. Access to books seems like a commonsense approach to combating mass incarceration because reading serves crime prevention on the front end and recidivism prevention on the back end.

2. Why and How Prisons Censor Books. — Prisons have broad power to restrict the reading materials of the people they imprison, and they tend to use it liberally. The Federal Bureau of Prisons uses a catchall provision to censor any material deemed “detrimental to the security, good order, or discipline of the institution or [that] might facilitate criminal activity.” Specific reasons for restricting a book (if given) include: The book poses a serious security concern, the book is too “dangerous,” the book contains “racially motivated” content, or the book contains nudity or sexually explicit material. Any of these features could be deemed disruptive to the rehabilitative function of prisons, justifying censorship in

55. See Nellis, supra note 22, at 15 (arguing that factors such as “unstable family systems, exposure to family and/or community violence, elevated rates of unemployment, and higher school dropout rates . . . are more likely to exist in communities of color” and that these factors are the result of a history of intentional racial oppression).


57. See PEN America, supra note 41, at 3 (“[P]rison 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. . . . The results have been wide-ranging . . . .”).

58. Censorship and Banned Book Lists in Correctional Facilities, Nat’l Inst. of Corr. (Feb. 9, 2022), https://nicic.gov/censorship-and-banned-book-lists-correctional-facilities [https://perma.cc/DD8F-QMMQ] (noting also that this guideline is “generally understood” to cover “content such as explanations on how to make explosives, martial arts training manuals and books containing maps of the prison and its surrounding area”).


60. Banning Books in Prisons, supra note 59 (noting an Alabama prison’s ban of an award-winning book about racial oppression because it was “too dangerous for prisoners”).

61. Gaines, supra note 59.

62. See id. (noting that Pennsylvania officials ban materials that are sexually explicit or intended for “sexual gratification”). Connecticut prison officials recently pointed to sexually explicit materials as creating an overly “sexually charged” environment that was unsafe for female staff at the facilities. Reynolds v. Quiros, 25 F.4th 72, 79 (2d Cir. 2022). The prison in that case considered a ban on such materials only for people convicted of sexual offenses but found such a limitation impracticable given that those people were not housed separately from the rest of the incarcerated population. Id. at 80.
the interest of public policy. Using this calculus, prison officials weigh preserving the function of the prison against incarcerated people’s right to read. As this Note will discuss, a closer analysis of censored material calls into question the safety and security motivations upholding book bans. The issue is whether book bans, examined critically, really can be justified by appeals to “corrections goals,” or if they serve more sinister ends. In any context, limiting access to information based on a cost–benefit analysis warrants closer attention.

Opacity and bureaucracy help First Amendment violations in prisons persist without effective opposition. Lists of banned books are rarely made available to the public. On its censorship page, the National Institute of Corrections simply provides that “[s]ome states do supposedly maintain lists of banned items,” but that there “certainly” isn’t one comprehensive database for the country. Advocacy organizations can use

63. See PEN America, supra note 41, at 1 (“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.”).
64. See id.
65. See Thurgood Marshall C.R. Ctr., supra note 45, at 13 (“Few would take issue with prison officials seeking to maintain order in their institutions, but the content of the banned publications make clear that safety and order are not advanced by their prohibition.”); see also Mzezewa, supra note 43 (questioning the reasoning behind prison book bans in light of research showing that reading and education lead to lower recidivism rates).
66. Cf. Turner v. Safley, 482 U.S. 78, 93 (1987) (upholding a restriction on correspondence between people incarcerated at different prisons because it was “reasonably related to valid corrections goals”).
67. See Andy Chan & Michelle Dillon, Opinion, Prison Systems Insist on Banning Books by Black Authors. It’s Time to End the Censorship., Wash. Post (Jan. 12, 2022), https://www.washingtonpost.com/opinions/2022/01/12/end-prisons-ban-books-black-authors-censorship-malcolm-x-toni-morrison/ (on file with the Columbia Law Review) (“Limitations to access to information by the government should be deeply concerning, especially when considered within the known biases of the prison system.”).
68. See PEN America, supra note 41, at 1 (“There is very little public visibility into how these policies are considered, adopted, implemented and reviewed.”).
69. See id. at 4 (“Only a minority of states have made their prison banned book lists available.”); Thurgood Marshall C.R. Ctr., supra note 45, at 12 (“While 26 states maintain lists of banned books, few states publicize their banned book lists on their websites, leaving the public with little understanding of what policies are in place in prisons.”); Jensen, supra note 45 (“The Human Rights Defense Center has tracked state-by-state policies. According to their records as of writing, only two states have their banned books lists available online: Pennsylvania and Washington state.”); Michael Van Aken, Prisons and Legal Perspectives on Book Challenges and Bans, Riverside Cnty. L. Libr.: Blog (Apr. 15, 2022), https://www.rclawlibrary.org/blog/2022/04/prisons-and-legal-perspectives-on-book-challenges-and-bans/ ("However, many book challenges and bans in prisons remain somewhat of a ‘hidden issue,’ meaning the issue rarely sees the light of day unless some form of reporting exposes it.").
70. Censorship and Banned Book Lists in Correctional Facilities, supra note 58 (emphasis added). For an example of advocacy organizations’ efforts to aggregate this information, see Keri Blakinger, The Books Banned in Your State’s Prisons, Marshall Project (Feb. 23, 2023), https://www.themarshallproject.org/2022/02/21/prison-banned-books-list-find-your-state[https://perma.cc/STY4-AM4K].
Freedom of Information Act requests to compel officials to disclose their banned book lists. But such requests do not require officials to continuously update the public with revisions to banned book lists, meaning that these disclosures are merely “snapshots in a timeline of censorship.” Sometimes the only way to find out if a book has been censored is to mail it to a prison and see what happens. Using trial and error to obtain banned book lists from various facilities is time consuming and expensive, and some states charge for this information. Red tape makes banned book lists difficult to access, which makes them difficult to fight.

Restrictions also vary by jurisdiction and by facility. An incarcerated person could lose access to a book simply because they were transferred to another facility with a more restrictive policy. An incarcerated person could lose access to a book within a single facility because officials changed the internal censorship policy from one day to the next. Censorship decisions are generally decentralized and unorganized. A book could be kept from its intended incarcerated recipient based on the decision of the prison mailroom staff, a prison-wide policy, or statutory law. This lack of stability and consistency within and across institutions means the current state of censorship in America’s carceral state is unknowable with any certainty.

71. See PEN America, supra note 41, at 4–5 (“And even those states [who make their banned book lists available] 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.”).

72. Id. at 5.

73. Mzezewa, supra note 43 (“What’s clear is that in most states such policies are unclear, with people finding out if a book is not allowed only after it has been mailed, leading to frustration, wasted time and money.”).

74. See, e.g., Thurgood Marshall C.R. Ctr., supra note 45, at 12 (“Some states were only responsive to inquiries about banned books after the [Howard Human and Civil Rights Clinic] submitted public information requests. Even then, a number of states were still unresponsive.”); Jensen, supra note 45 (noting that the Human Rights Defense Fund was charged $2,000 for Alaska’s banned book records and that some states charge for the mere request of a banned book list even if such a list doesn’t exist).

75. See Chan & Dillon, supra note 67 (“With little transparency, these seemingly arbitrary bans are difficult and expensive to fight.”).

76. See Thurgood Marshall C.R. Ctr., supra note 45, at 5 (“[A]n incarcerated individual might have access to a specific book in one facility, but that same book might be off limits to that individual in the event that he or she is transferred to a different facility in that same state.”); Chan & Dillon, supra note 67 (“A book accepted in one prison may be censored in another.”).

77. See Chan & Dillon, supra note 67 (noting that within a prison “[a] book accepted one day may be banned the next”).

78. See PEN America, supra note 41, at 4 (“Prison systems function as a hierarchy, meaning officials at multiple levels can act as censors and block incarcerated people’s access to books.”).

79. See id. (“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.”); Nazish
Book bans can be divided into two categories: content-neutral and content-based.\footnote{See Thurgood Marshall C.R. Ctr., supra note 45, at 10 (“State prisons in the United States generally ban books in one of two ways: content-based and content-neutral banning. (Some prisons use a combination of these two methods to ban books.”)).} Content-neutral bans restrict books based on how they enter the correctional facility.\footnote{See PEN America, supra note 41, at 8 (noting that prison officials may censor “books-as-packages” regardless of their subject matter).} In theory, contraband might be smuggled into the facility inside books.\footnote{See id. at 10 (“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.”).} To combat this potential threat, institutions limit the kind of mail incarcerated people can receive and may designate certain “approved vendors” to be the sole providers of books to the facility.\footnote{See Thurgood Marshall C.R. Ctr., supra note 45, at 10 (“Recently, in [2021], [t]he Biden Administration has begun to end physical mail [altogether] for federal incarcerated individuals . . . . The shift to electronic mail has often been accompanied by efforts to limit access to physical books for supposed security concerns . . . .”); Skopic, supra note 42 (“Under [Iowa’s] new guidelines, incarcerated people can get books only from a handful of ‘approved vendors.’” (quoting Iowa Dep’t of Corr., OP-MTV-02, Incoming Publications 3 (Apr. 2021))).} Partnering with approved vendors also gives prison officials control over what kinds of books are offered to incarcerated people, meaning content-neutral policies can function similarly to their content-based counterparts.\footnote{See PEN America, supra note 41, at 9 (stating that a nonprofit found that New York’s proposed program offered seventy-seven books total, forty-five of which were coloring books or puzzle books (citing Letter from N.Y.C. Books Through Bars to Andrew M. Cuomo, Gov., N.Y., and Anthony J. Annucci, Acting Comm’r, N.Y. State Dep’t of Corr. & Cmty. Supervision (Jan. 3, 2018), https://booksthroughbarsnyc.org/wp/wp-content/uploads/2018/01/Statement-against-4911A.pdf [https://perma.cc/UJ6A-EQPC])); see also id. at 9–10 (“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.” (citing Press Release, ACLU of Md., ACLU Calls on Prison System to Reverse Rule Severely Limiting Access to Books in Violation of First Amendment (May 31, 2018), https://www.aclu-md.org/en/press-releases/aclu-calls-prison-system-reverse-rule-severely-limiting-access-books-violation-first [https://perma.cc/568A-BSP3])).}

Content-based bans serve a more overt censorship purpose: They target books based on what they are about.\footnote{See id. at 10 (“Generally, content-based bans prohibit books that the prison deems a potential threat to the safety and security of the prison facility, but each state sets forth its own specific categories of prohibited materials.”).} If a book contains subject matter considered disruptive to the functionality of the correctional facility, then it may be banned.\footnote{Dholakia, The Cruel Practice of Banning Books Behind Bars, Vera Inst. Just. (Apr. 4, 2022), https://www.vera.org/news/the-cruel-practice-of-banning-books-behind-bars [https://perma.cc/4MPT-8FZV] (“This lack of transparency means that U.S. prisons’ book-banning practices could be far more extensive than we know.”).} This Note focuses on content-based bans.
that target books about race and carceral history. 87 Books about race might be banned for their alleged potential to incite racial animus and conflict among groups within prisons. 88 Books about the carceral state and its history might be banned for their alleged potential to incite disobedience against corrections staff. 89 These subjects are, of course, highly relevant to people who are incarcerated, and the effort to exclude books about them from prisons is an effort to keep this knowledge away from the people who stand to benefit from it the most. 90

3. Procedural Barriers for Would-Be Plaintiffs. — Challenging a book ban as an incarcerated person is an onerous task. Notice is an initial obstacle. When a book is sent to someone in prison and authorities decide to censor it, the sender’s and recipient’s awareness of that decision depends on the facility’s notice policy (and whether staff comply with that policy). 91 Just as lack of transparency makes it difficult to challenge

87. See id. ("This report also found a nationwide trend of prisons banning books relating to racial equality."); Skopic, supra note 42 ("Like so many things in the carceral system, the pattern of restrictions is flagrantly racist. For instance, many prisons have blanket bans on ‘urban’ novels, a genre revolving around crime and intrigue in African-American communities. These are treated as contraband, and can’t be obtained through approved sources.").


89. See, e.g., Wash. State Dep’t of Corr., supra note 88 (initially flagging Mariame Kaba’s We Do This ’Til They Free Us because it “[a]dvocates violence against others and/or the overthrow of authority”).

90. See Thurgood Marshall C.R. Ctr., supra note 45, at 4 ("[E]qually valuable [as reduced recidivism] is the ability of the incarcerated to learn about and challenge the systems to which they are subjected. . . . When prisons ban books of this kind, they are purposefully cutting off the tools the incarcerated need to realize their civil and human rights."); Andrew Hart, Librarians Despise Censorship. How Can Prison Librarians Handle That? It’s Complicated., Wash. Post (Jan. 16, 2018), https://www.washingtonpost.com/news/posteverything/wp/2018/01/16/librarians-despise-censorship-how-can-prison-librarians-handle-that-its-complicated/ (on file with the Columbia Law Review) ("Restricting [incarcerated people] from reading about injustices in the U.S. prison system struck many as a shocking and ironic overreach.").

91. See Dholakia, supra note 79 (noting that the nonprofit Books to Prisoners “receives a handful of [censorship notices] every week,” making it “impossible to say how many books never make it to their intended recipients because such notices aren’t standard”); see also Censorship and Banned Book Lists in Correctional Facilities, supra note 58 (citing a claim against a prison that banned the Jailhouse Lawyer’s Handbook without notifying the publisher as required).
overarching censorship policies, lack of notice makes it difficult to challenge individual instances of censorship as they occur.92

If an incarcerated person becomes aware of a censorship decision and wants to challenge it, they must also contend with the requirements of the Prison Litigation Reform Act (PLRA).93 The statute’s exhaustion requirement is particularly problematic since an incarcerated person’s failure to first exhaust administrative remedies offered by the prison is grounds for dismissal of any lawsuit they might file.94 If a prison offers the option to appeal a ban, an incarcerated person must take it, even if that option just means that a censorship decision will be reviewed only by other corrections officers and more likely than not upheld.95 Advocacy groups might choose to litigate on behalf of an author or publisher to vindicate the rights of an incarcerated person and avoid the cumbersome requirements of the PLRA.96 But this strategy relies on the author or publisher being sufficiently invested in the rights of incarcerated people to join the fight.97 In the unlikely case that an incarcerated person clears these procedural hurdles or that a third party decides to litigate an anti-censorship claim, they must overcome the damning precedent of three Supreme Court opinions.


94. 42 U.S.C. § 1997e(a) (2018); ACLU, supra note 93, at 1 (“If you file a lawsuit in federal court before taking your complaints through every step of your prison’s grievance procedure, it will almost certainly be dismissed.”). For a broader discussion of the ways prisons erect administrative barriers, see generally PEN America, supra note 41, at 14 (“Prisons may . . . implement unreasonably short filing deadlines, extend timelines as a stalling tactic, create multiple layers of review, or craft procedural dead ends. These systems are difficult to navigate, and courts will seize on any error . . . as a reason to dismiss the claim, regardless of the underlying merits.”).

95. PEN America, supra note 41, at 6 (noting that since review committees usually comprise other corrections officers, “these committees are far more likely to uphold the censor’s decision than to reverse it”); Boston, supra note 93, at 363 (“You may believe that the complaint system in your prison is unfair or a complete waste of time, but you still must use and go through all of the steps and give the prison a chance to fix the problem first.”); see also infra text accompanying notes 220–222.

96. See PEN America, supra note 41, at 15 (noting that, since there is no exhaustion requirement for nonincarcerated people, “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”). For example, Dr. Thompson, not one of the incarcerated people to whom she tried to send her book, is the plaintiff in her suit against New York State prison officials. See Complaint, S.D.N.Y., supra note 10, at 1.

97. See PEN America, supra note 41, at 15 (“But this litigation is rare. Publishers have very little financial incentive to wage a protracted and expensive legal battle for the book access rights of an incarcerated person who ordered their book. Furthermore, publishers and authors often are seldom aware that their book has been censored.”).
B. The Prevailing Power of Turner

The prevailing standard of review for constitutional challenges to prison regulations was set by the Supreme Court in *Turner v. Safley*. This 1987 decision came on the heels of a period of increased incarcerated activism and litigation targeting apparently unconstitutional internal prison policies. Before this period, it was accepted that incarceration placed people “outside the bounds of constitutional protection,” and courts were very deferential to the “expertise” of prison officials when determining which rights could be compromised. Prison uprisings spiked in the 1950s, putting pressure on courts to actually consider the merits of incarcerated plaintiffs’ claims (something they had declined to do up to this point). Once these activism efforts revealed the completely arbitrary justifications behind many prison policies, the stage was set for the Supreme Court to rule on the issue definitively: The question at bar was how to protect incarcerated people’s constitutional rights while giving prisons enough deference to conduct their business safely.

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99. See Schnell, supra note 98, at 128–29 (describing waves of prison uprisings and litigation from the 1950s through the 1970s “challenging conditions of confinement and . . . treatment [of incarcerated people].”).

100. See id. at 127–28 (noting that for the first two centuries after the United States was founded, “[t]he only protections granted to [incarcerated people] could be found in state law, should a state choose to afford them”).

101. See Nicole B. Godfrey, Suffragist Prisoners and the Importance of Protecting Prisoner Protests, 53 Akron L. Rev. 279, 296 (2019) (describing how the Civil Rights Movement prompted federal courts to “recogniz[e] federal remedies for constitutional violations” by the state and “also began allowing [incarcerated people] to sue prison officials for unconstitutional prison conditions”); Schnell, supra note 98, at 128 (“The need for reform gradually drove the Warren Court to shift away from their ‘hands-off’ approach and rule on the merits of [incarcerated people’s] rights claims, directly addressing the unconstitutionality of prison conditions and treatment of [incarcerated people].”).

102. See Schnell, supra note 98, at 129 (“Early lawsuits during this second wave of litigation revealed that prison officials frequently could not justify or even explain their procedures, leading courts to call for reforms.”).

103. Id. (“Courts thus faced the difficult question of how to ‘discharge their duty to protect constitutional rights,’ while still affording appropriate deference to the judgment of newly ‘professionalized’ prison administrators as to what regulations were truly necessary to maintain safe prison environments.” (quoting Procunier v. Martinez, 416 U.S. 396, 404–06 (1974), overruled by Thornburgh v. Abbott, 490 U.S. 401, 415 (1989))).
The standard of review for such claims was first considered in *Procunier v. Martinez*, which addressed mail censorship specifically. This 1974 case was a class-action suit brought by people incarcerated in California who challenged a content-based ban on mail communications. The Court struck down the ban as unconstitutional, objecting to the “extraordinary latitude” that the policy granted prison officials. The Court applied a heightened standard of scrutiny, requiring that restrictions on correspondence be “generally necessary” to protect the government interest of “internal order and discipline.” But the Court focused its holding on the First Amendment rights of the outside communicator. It expressly declined to refer to case law on “prisoners’ rights” and instead relied on precedent dealing more generally with restrictions on First Amendment liberties. In the aftermath, courts appeared confused about the standard the Court had set, applying varying levels of scrutiny to prison policies in claims brought by incarcerated people.
Over a decade later, the Supreme Court established a universal standard of review for prison regulations in *Turner*111. The plaintiffs were people incarcerated in Missouri.112 They challenged two prison regulations: The first prohibited correspondence between people incarcerated at different facilities, and the second prohibited marriage between incarcerated people.113 The plaintiffs brought claims under the First and Fourteenth Amendments, challenging both the interfacility communication ban and the marriage ban.114 The district court applied the heightened scrutiny from *Martinez* and found the communication ban to be “unnecessarily sweeping”; in other words, it was broader than necessary to promote order and security.115 The district court struck down the policies as unconstitutional and the Eighth Circuit upheld that decision.116

*Turner* is most remembered for establishing a new test for evaluating rights infringements in prisons.117 The test the Court applied was “whether a prison regulation that burdens fundamental rights is 'reasonably related' to legitimate penological objectives, or whether it represents an 'exaggerated response' to those concerns.”118 The Court established a four-factor test to measure reasonable relatedness.119 Those factors were:

1) Whether there is a “valid, rational connection” between the prison regulation and the government interest said to justify the regulation;

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111. Schnell, supra note 98, at 140–41 (“The *Turner* Court reviewed its past jurisprudence to synthesize what it believed to be a coherent standard for evaluating these and future claims.”).
113. Id.
114. Schnell, supra note 98, at 140–41.
116. Godfrey, supra note 101, at 298 (“The Eighth Circuit affirmed, concluding that correspondence between [incarcerated people] 'is not presumptively dangerous nor inherently inconsistent with legitimate penological objectives' and that the marriage rule as applied by Superintendent [William] Turner was unconstitutional on its face because it provided no alternative means of exercising the right to marry.” (quoting *Turner*, 777 F.2d at 1313)); Keenan, supra note 104, at 512 (“The circuit court approved the use of the strict scrutiny standard and found that neither regulation was the least restrictive means of achieving the asserted security interest.”).
117. See *Turner*, 482 U.S. at 81 (“The Court of Appeals for the Eighth Circuit, applying a strict scrutiny analysis, concluded that the regulations violate respondents' constitutional rights. We hold that a lesser standard of scrutiny is appropriate in determining the constitutionality of the prison rules.”); see also Godfrey, supra note 101, at 298 (“The Supreme Court affirmed in part and reversed in part and, in so doing, announced a new test through which federal courts should examine First Amendment claims brought by [incarcerated people].”).
119. See Schnell, supra note 98, at 140–42 (crediting the *Turner* decision for setting "a universal standard of review for constitutional challenges to prison regulations").
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2) Whether there are “alternative means” of exercising the right that is limited by the regulation;
3) What impact accommodation of the asserted constitutional right would have on prison administrators, [incarcerated people], and prison resources; and
4) Whether there are “ready alternatives” to the chosen regulation.120

Turner was immediately cemented as a near-insurmountable barrier to the subsequent litigation of similar claims.121 The first factor, testing rational connection, is widely regarded as the core of the test, and most plaintiffs fail to clear that hurdle.122 Institutional defendants usually only need to offer some “plausible security concern” to defeat a constitutional challenge,123 an outcome feared by the dissenters.124 The Court cited deference to prison officials to justify judicial restraint, noting that “[r]unning a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources.”125 The Court deemed the communication ban “logically connected” to prison security

120. Id. at 142 (footnotes omitted) (citing Turner, 482 U.S. at 89–92). But see Justin L. Sowa, Note, Gods Behind Bars: Prison Gangs, Due Process, and the First Amendment, 77 Brook. L. Rev. 1593, 1598 (2012) (“The first prong . . . seems to have considerably more weight than the other three.”).

121. See Sowa, supra note 120, at 1600–01 (“The application of Turner, therefore, is not nearly as protective of prisoners’ rights as its plain language would suggest. Because of the Supreme Court’s continued emphasis on deference to the decisions of prison authorities, much of the force of the decision has been neutered.”).

122. See id. at 1596 (“In practice, as long as the first prong—the rational relation test—is met, courts tend to find that the others are met as well.”); see also Godfrey, supra note 101, at 298 (“Oftentimes, this factor alone is dispositive in Turner cases—if the prison system can come forward with any legitimate government interest to justify the regulation, even if that interest is not the actual reason the prison system enacted the policy, the [incarcerated person] loses.”).

123. See, e.g., Schnell, supra note 98, at 143–44 (“The Court has, for example, upheld regulations that allowed wardens to selectively reject incoming publications purportedly for ‘order and security,’ with no evidence in the record that publications would cause disruptions, nor any evidence that an incoming publication had caused a disciplinary or security problem.”).

124. See Keenan, supra note 104, at 515–16 (“[T]he dissent warned that if the Court’s standard can be satisfied merely by a ‘logical connection’ between the regulation and the asserted penological concern, then the standard would effectively be meaningless because it would permit abuses of . . . constitutional rights whenever an imaginative warden could produce a plausible security concern.”). In his dissent, Justice John Paul Stevens criticized the decision, including the Court’s “erratic use of the record” in distinguishing marriage from correspondence. Turner, 482 U.S. at 116 (Stevens, J., dissenting).

125. Turner, 482 U.S. at 84–85 (majority opinion); see also Keenan, supra note 104, at 512–13 (“The Court refused to subject day-to-day decisions of prison officials to ‘an inflexible strict scrutiny analysis’ for fear of distorting the decision-making process, hampering the efforts of prison officials to anticipate problems, and unnecessarily involving courts in the details of prison administration.” (quoting Turner, 482 U.S. at 89)).
concerns and upheld it as constitutional. The only prison regulation to have failed Turner's reasonableness test before the Supreme Court is the marriage ban in Turner itself.

The Court affirmed this low bar just a few years later with Thornburgh v. Abbott. The Thornburgh plaintiffs challenged the constitutionality of restrictions on "outside" publications within the prison based on institutional security concerns. They argued for application of the stricter Martinez standard, which would have required heightened scrutiny for such restrictions. But the Supreme Court definitively held that Turner controlled and overruled Martinez. The Court focused on the rights of nonincarcerated correspondents, analogizing this focus to the Martinez approach and distinguishing it from Turner, which considered the rights of incarcerated people specifically. But the Court clarified that the more relevant distinction was the direction that communications flowed in the cases: out of the prison (Martinez) versus into the prison (Turner and the case at bar, Thornburgh).

126. Turner, 482 U.S. at 91–93; see also Keenan, supra note 104, at 514 (noting that prison officials testified that communications between incarcerated people posed a threat to security because there was the potential to "coordinate escapes, assaults, and gang activity," and that the Court upheld the restriction in part because incarcerated people were still allowed to communicate with nonincarcerated people).

127. Schnell, supra note 98, at 144; see also Keenan, supra note 104, at 511, 515 (describing how the Court in Turner found the Missouri Division of Corrections's prohibition on marriage between incarcerated people to be an "exaggerated response" to the cited security concerns (internal quotation marks omitted) (quoting Turner, 482 U.S. at 97–98)). See generally Sowa, supra note 120, at 1509 ("Under the Turner test, the Supreme Court has upheld prison regulations that . . . prevented [incarcerated] Muslim[s] from attending a religiously commanded Friday evening prayer service, severely restricted visitation rights, imposed up to sixteen-day delays in access to legal materials, and [forcibly] subjected an [incarcerated person] to treatment with antipsychotic drugs . . . ." (footnotes omitted)).


129. Id. at 403.

130. Id.; see also Procunier v. Martinez, 416 U.S. 396, 413 (1974) ("[T]he limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved."), overruled by Thornburgh, 490 U.S. at 413–14.

131. Thornburgh, 490 U.S. at 414 ("[W]e recognize that it might have been possible to apply a reasonableness standard to all incoming materials without overruling Martinez . . . . We choose not to go that route, however, for we prefer the express flexibility of the Turner reasonableness standard.").

132. See id. at 408 ("In this case, there is no question that publishers who wish to communicate with those who, through subscription, willingly seek their point of view have a legitimate First Amendment interest in access to [incarcerated people].").

133. See id. at 408–09 (noting that the question is what standard of review to apply to prison regulations limiting outsiders' communications to incarcerated people and comparing that focus to other cases, including Turner, which "involve[d] 'prisoners' rights" (quoting Turner v. Safley, 482 U.S. 78, 89 (1987)))

134. See id. at 413 ("[T]he logic of our analyses in Martinez and Turner requires that Martinez be limited to regulations concerning outgoing correspondence. . . . Any attempt to
a prison could more logically be expected to interfere with penological interests than those flowing out of a prison.\textsuperscript{135} The Court determined that this distinction, rather than the identities of the rightsholders, was most relevant to the issues of prison order and security.\textsuperscript{136}

Thornburgh united the constitutional rights of incarcerated and nonincarcerated people with respect to reading materials “inside” under the Turner umbrella. For communications going into a prison, the inquiry (derived from Turner) was (1) whether the government objective at issue was legitimate and neutral and (2) whether the regulation was rationally related to that objective.\textsuperscript{137} This eliminated federal courts’ ability to apply a more exacting standard reminiscent of Martinez.

If Turner and Thornburgh left any room to question the rights of incarcerated people to access “outside” reading materials, the Court answered in Beard v. Banks.\textsuperscript{138} This 2006 case challenged the “deprivation theory of rehabilitation” in a Pennsylvania prison, where reading materials were restricted based on security levels.\textsuperscript{139} Incarcerated people in the more restrictive level had heightened restrictions on reading materials,\textsuperscript{140} and good behavior could allow them to move to the less restrictive level and earn access to those materials.\textsuperscript{141} In Turner terms, the legitimate penological interest at stake was rehabilitation.\textsuperscript{142}

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\textsuperscript{135} Id. at 412 (“We deal here with incoming publications, material requested by an individual [incarcerated person] but targeted to a general audience. Once in the prison, material of this kind reasonably may be expected to circulate . . . with the concomitant potential for coordinated disruptive conduct.”).
\textsuperscript{136} See id. at 411 (stating that the regulation in Martinez was rejected because “the regulated activity centrally at issue in that case . . . did not, by its very nature, pose a serious threat to prison order and security”).
\textsuperscript{137} Id. at 414.
\textsuperscript{138} 548 U.S. 521, 525 (2006) (plurality opinion); see also Schnell, supra note 98, at 145 (“Most extraordinarily, in the last case in which the Turner test was applied to a free speech challenge by the Supreme Court, the Court held that ‘deprivation’ of [incarcerated people]’ access to reading materials and photographs is reasonably related to prisoner rehabilitation and security.”).
\textsuperscript{139} See Schnell, supra note 98, at 145 (quoting Beard, 548 U.S. at 546 (Stevens, J., dissenting)).
\textsuperscript{140} Michael Keegan, The Supreme Court’s “Prisoner Dilemma:” How Johnson, RLUIPA, and Cutter Re-Defined Inmate Constitutional Claims, 86 Neb. L. Rev. 279, 310 (2007) (“[Incarcerated people] in the more restrictive level 2 have no access to the commissary, may only have one visitor per month, and are not allowed phone calls except in emergencies.”).
\textsuperscript{141} See id. at 310–11 (“An [incarcerated person] at level 1 still may not have photographs, but may receive one newspaper and five magazines.”).
\textsuperscript{142} See Schnell, supra note 98, at 145 (“As Justice Stevens noted in his dissent in Beard, there is no ‘limiting principle’ to this ‘deprivation theory of rehabilitation.’ Any number of constitutional rights could therefore be limited in the name of rehabilitation.” (quoting Beard, 548 U.S. at 546 (Stevens, J., dissenting))).
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The Beard Court reaffirmed the Turner standard, which the prison policy easily satisfied. The Court found it necessary to review only one of three justifications offered for the prison policy and hinged its decision almost exclusively on the first factor of the Turner test. The Court held that the other Turner factors did not add much to the analysis so long as the regulation was reasonably related to at least one penological interest. The only evidence the Beard Court offered to show that it wasn’t “impossible” to defeat a prison regulation in court was that the marriage regulation from Turner failed the test laid out in that case. Would-be plaintiffs were left with a near-impossible standard, such that only one regulation was struck down in the span of two decades.

II. REVISITING ATTICA

The Attica prison uprising challenged the human and civil rights violations committed by New York State prison officials against incarcerated people. The original uprisers specifically called for an end to the harsh censorship policies limiting their right to read. The ban on Blood in the Water at the very prison whose history it recounts is a grim reminder that censorship is a weapon still wielded by the carceral state.

Section II.A recounts the circumstances surrounding the Attica prison uprising. Section II.B gives an overview of the current legal struggle against the present-day censorship of Attica’s history at that same facility. Section II.C situates censorship in prisons alongside censorship of history in other contexts.

143. See Beard, 548 U.S. at 530–33 (plurality opinion) (applying Turner’s four-factor test to the regulation at issue).

144. See Keegan, supra note 140, at 311–12 (“The plurality began with the first Turner factor, accepting the valid rational connection offered by the Secretary . . . . Though the plurality opinion briefly looked at the second, third, and fourth factors, it noted that those factors ‘here add little, one way or another, to the first factor’s basic logical rationale.’” (quoting Beard, 548 U.S. at 532)).

145. See id.

146. See id. at 535–36 (referring to Turner itself to counter the argument that “the deference owed prison authorities makes it impossible for [incarcerated people] or others attacking a prison policy like the present one ever to succeed or to survive summary judgment”).

147. See supra note 127 and accompanying text; see also Schnell, supra note 98, at 145 (“As the most recent case of Beard demonstrates, [incarcerated people’s] free speech challenges essentially stand or fall with the first prong of Turner, i.e., whether there is a valid, rational connection between a prison regulation and the purported government interest.”).


149. Id. at 30.
A. The Attica Prison Uprising

The 1971 uprising was preceded by consistent efforts by the men incarcerated at Attica to negotiate with their imprisoners for better treatment. In the year prior to the uprising, the men forced to work in Attica’s metal shop went on strike in protest of their wages, which capped out at twenty-nine cents per day and were withheld by prison officials until the men’s release. The metal shops were dirty and hot, showers were limited, and men continued work throughout the hot summer months in up to eighty-nine degree weather. The strike forced negotiations, which resulted in a raise for metal shop workers. But responsibility for the peaceful strike was attributed to the “[B]lack militant[s]” of Attica, who unsettled the superintendent and corrections officers. Many of these organizers were subjected to increased surveillance following the strike.

Attica’s corrections staff were not alone in their fear of Black political organizing. Outside of prisons, anyone affiliated with the Black Power Movement had become a “national security threat,” and the government fought back against these domestic enemies by incarcerating them. Across the country, prison officials feared the larger numbers of Black “radicals” they suddenly found behind their walls. And their revolutionary energy was contagious. A manifesto that originated from the 1970 uprising at Folsom Penitentiary circulated throughout prisons nationwide. At the Auburn Correctional Facility in New York, a demonstration led by incarcerated Black political activists ended with violent retaliation from corrections officers. News of this violence spread

150. The full story of the Attica prison uprising is better told by Thompson in Blood in the Water. The events of September 9 to 13 of 1971, including the uprising, negotiations, and retaking, are recounted in parts II, III, and IV of the book. See generally Thompson, supra note 1.

151. Id. at 15, 17; see also Attica: The Official Report of the New York State Special Commission on Attica 38–39 (1972) [hereinafter Attica: The Official Report] (noting that metal shop positions were hated among the men incarcerated at Attica).


153. Thompson, supra note 1, at 17.

154. Id.

155. Id.


157. Badillo & Haynes, supra note 2, at 161 (“In all prisons . . . a dangerous racial tinderbox terrified wardens and prison administrators. Alarmed about radicals, revolutionaries, and ‘ultra-liberal groups out to cause revolution’ . . . most officials [were] neither inclined nor equipped to handle this extremely sensitive problem.” (quoting John Zelker, Warden, Green Haven Correctional Facility)).


159. Thompson, supra note 1, at 23–24.
quickly, and some of the organizers were transferred to Attica.\footnote{160} Riots in New York City jails ended with violence from prison officials, and some of the men deemed particularly culpable were also transferred to Attica.\footnote{161} Ironically, many of these transferees became the leaders of Attica’s own uprising.\footnote{162} Finally, George Jackson’s writings critiquing U.S. prisons as capitalist and oppressive were popular readings for organizers across the country.\footnote{163} He was murdered by prison guards in August 1971, to the outrage of those whom he inspired.\footnote{164}

Over the summer of 1971, the incarcerated men at Attica spent increased time forming critiques of their conditions of imprisonment.\footnote{165} Led by the Attica Liberation Faction, they collaborated on a document titled “The Attica Liberation Faction Manifesto of Demands,” in which they spoke out on behalf of all of the men of Attica and other incarcerated people against the human and civil rights violations perpetrated in the “fascist concentration camps of modern America.”\footnote{166} Their preamble targeted, among other grievances, the blanket censorship of reading materials at Attica.\footnote{167} The men framed their right to read as the “human right[] to the wisdom of awareness” and accused prison officials of condemning them to “isolation status” by restricting this right.\footnote{168} The Faction sent the manifesto to the Commissioner of the New York State Department of Corrections and Community Supervision (DOCCS) for review in the summer of 1971.\footnote{169} Negotiations ensued over the course of the summer but ended on September 2 with an anticlimactic tape-

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\item \footnote{Id. at 23–24, 27–28.}
\item \footnote{Id. at 29.}
\item \footnote{Id. at 27–28, 32 (noting that the New York Department of Corrections and Community Supervision (DOCCS) Commissioner found it “disturbing” that one of the Attica Manifesto’s signers had been an organizer in the New York City jail rebellion the previous year).}
\item \footnote{Camp, supra note 156, at 75–76 (“[George Jackson’s] prison letters were widely circulated and debated among the radical social movements from California to New York and beyond, and provided a vision of class struggle as a strategy for the emergent multiracial [incarcerated people’s] movement.”).}
\item \footnote{Id. at 70, 76 (noting that George Jackson’s murder was “the spark” for the Attica uprising).}
\item \footnote{Id. at 69 (describing how the leaders of the Attica uprising “forged alliances in a social science class, where they learned concepts critical for analyzing the social formation” and “developed an understanding of the centrality of prisons as mechanisms of racist social control under U.S. capitalism”).}
\item \footnote{The Attica Manifesto, supra note 13, at 28.}
\item \footnote{See id. at 30, 32 (describing the systematic censorship of news media and other print resources as tantamount to a form of isolation).}
\item \footnote{Id. at 30.}
\item \footnote{See Thompson, supra note 1, at 31.}
\end{enumerate}
\end{footnotesize}
recorded message from the commissioner; prison officials took no reformatory measures in response to the Faction’s demands.\textsuperscript{170}

The uprising itself emerged out of a chaotic frenzy the morning of September 9, 1971. A group of incarcerated men was leaving breakfast when one of the superintendents ordered them to return to their cells as a disciplinary measure.\textsuperscript{171} The men normally would have passed through a tunnel to the yard for recreation time, but the superintendent ordered that the tunnel gate be locked to redirect the group to their cells; at that point, the men realized they were trapped in the tunnel with a guard known to be violent.\textsuperscript{172} Panic broke out, and 1,281 incarcerated men successfully gained control of the facility.\textsuperscript{173}

Once the frenzy dissipated, the men got organized.\textsuperscript{174} They gathered in one of the prison’s yards along with thirty-eight civilian employee and corrections officer hostages.\textsuperscript{175} Two-thirds of the men assembled in the yard were Black, one-quarter white, and one-tenth Puerto Rican.\textsuperscript{176} Over the next four days, nonviolent but tense negotiations ensued between the incarcerated men of Attica and the state, conducted through a team of civilian observers called in as middlemen.\textsuperscript{177} Though the demonstration garnered international attention, Governor Rockefeller did not visit Attica during the uprising and did not otherwise meaningfully acknowledge the demands of the uprisers.\textsuperscript{178}

The state regained control of the facility and the narrative surrounding the uprising on September 13, 1971, when armed national guardsmen ambushed the prison and opened fire.\textsuperscript{179} They fatally shot twenty-nine incarcerated men and nine civilian hostages, but prison officials immediately reported to the media that the civilians had their throats slit by the rioters.\textsuperscript{180} The same day, newspapers across the country reported on the alleged throat slashings as fact.\textsuperscript{181} Though autopsy reports would soon prove this to be a complete fabrication, the damage to the collective interpretation and memory of Attica had already been done.\textsuperscript{182}

\textsuperscript{170} See id. at 39–40 (“[I]t seemed clear [to the uprisers] that their foray into the democratic process and their patience as well as pledge of nonviolence had produced not a single improvement in their living conditions.”).

\textsuperscript{171} See id. at 51.

\textsuperscript{172} See id. at 51–52.

\textsuperscript{173} See id. at 52–59, 64.

\textsuperscript{174} See id. at 64.

\textsuperscript{175} See Badillo & Haynes, supra note 2, at 40.

\textsuperscript{176} See Badillo & Haynes, supra note 2, at 40.

\textsuperscript{177} See Badillo & Haynes, supra note 2, at 53–89 (summarizing the negotiations between the uprisers and state officials).

\textsuperscript{178} See supra notes 3–4 and accompanying text.

\textsuperscript{179} See supra note 1, at 180, 187, 193–95.

\textsuperscript{180} See supra note 1, at 180, 187, 193–95.

\textsuperscript{181} See id. at 195–96.

\textsuperscript{182} See id. at 227–30, 236.
The story fed to the outside audience was one of state heroism finally restoring order not only to the immediate facility but to “our free society” as well. It took nearly fifty years for a competitive counternarrative to emerge.

The Attica prison uprising coincided with the birth of the prisoners’ rights movement. The uprising was only one of thirty-seven that took place in 1971, which was a mere foreshadowing of the forty-eight that followed in 1972. There was a cycle of incarcerated people educating themselves on the politics of their imprisonment through the work of Black organizers outside and those outside organizers eventually being incarcerated themselves. By arresting political activists, the state created direct links between incarcerated individuals and groups such as the Black Panther Party, Black Muslims, the American Civil Liberties Union, and the American Communist Party, and their political education was a direct threat to the system imprisoning them. The Attica prison uprising personified this threat; the lies spread about “knife-wielding prisoners” created moral panic and an enduring narrative about law and order, with the “insurgent prisoner” at the center. Governor Rockefeller leveraged this narrative to usher in two cornerstones of mass incarceration: “the super-maximum-security prison” and mandatory-minimum drug laws to funnel even more people behind those prison walls. These laws were duplicated across the country, and in this way Attica ushered in the tough-on-crime era responsible for mass incarceration today. The Attica Manifesto properly identified a shift in American incarceration away from any harm-reduction end and toward an “era of punitive excess” that

183. See id. at 194.
184. See infra notes 194–197 and accompanying text.
187. See Bosworth, supra note 158, at 107–08 (“[M]ass media became a means of politicization, educating [incarcerated people] about their rights and shared experiences . . . . [F]rom the 1960s onwards, an increasing number of [incarcerated people] arrived already politicized by their experiences with the Civil Rights Movement and by the increasingly radical Black Power Movement.”).
188. Id. at 88, 111 (describing state efforts to quash Black Muslim and freedom movements within prisons).
189. See Camp, supra note 156, at 71.
190. Id. at 73.
191. See Thompson, supra note 1, at 563.
192. See id. at 562–63 (“That Attica had . . . helped fuel an anti-civil-rights and anti-rehabilitative ethos in the United States was soon clear . . . . Any politician who wanted money for his or her district had learned that the way to get it was by expanding the local criminal justice apparatus and making it far more punitive.”).
created and maintained an even worse status quo for American imprisonment.¹⁹³

B. Thompson v. Annucci

1. Blood in the Water and Its Impact. — In 2016, Dr. Heather Ann Thompson published Blood in the Water, an almost 600-page account of the events at Attica.¹⁹⁴ It is regarded as the first comprehensive, “definitive” history of the uprising.¹⁹⁵ Blood in the Water is not the only book about the Attica uprising, but it is unique for also covering both the sociopolitical context that birthed the uprising and the resulting fallout.¹⁹⁶ Central to her narrative was Thompson’s condemnation of the state-sponsored cover-up that followed the uprising, and she is credited for bringing the extent of this cover-up to light.¹⁹⁷ The book concludes by pointing to Attica as a key catalyst of mass incarceration as we know it today.¹⁹⁸

Blood in the Water was met with critical acclaim. Reviewers agreed that the book was particularly timely given how many more people are incarcerated in America today than in 1971.¹⁹⁹ Thompson accepted the

¹⁹³. See Jeremy Travis & Bruce Western, The Era of Punitive Excess, Brennan Ctr. for Just. (Apr. 13, 2021), https://www.brennancenter.org/our-work/analysis-opinion/era-punitive-excess [https://perma.cc/584E-MAVP]; see also The Attica Manifesto, supra note 13, at 30 (arguing that the system claiming to rehabilitate them was in fact victimizing them).

¹⁹⁴. See Thompson, supra note 1.


¹⁹⁶. See Eisen, supra note 195; see also Michael Avery, Book Review: Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy, 74 Nat’l Laws. Guild Rev. 57, 57 (2017) (“I was simply not prepared for the shock of Thompson’s painstaking recreation of the brutal retaking of the prison by the state police, or for her detailed account of the decades long callous indifference of New York State officials to the consequences of their actions.”); Oppenheimer, supra note 9 (“Had it only painstakingly reconstructed the events of that week in 1971, Ms. Thompson’s book would have been a definitive addition to a growing shelf of Attica literature . . . . But the uprising and its suppression barely get us halfway through the story.”).

¹⁹⁷. See Avery, supra note 196, at 60 (“When it comes to the culpable officials, she names names, and provides detailed evidence, from Governor Rockefeller to Attica Superintendent Vincent Mancusi . . . as well as the bey of lawyers, bureaucrats, and elected officials who attempted to cover up the truth.”); Hartle, supra note 195 (noting that Attica would, but for the cover-up, be grouped with other trust-shattering incidents like the Vietnam War and Watergate).

¹⁹⁸. See Thompson, supra note 1, at 563 (describing how Governor Rockefeller introduced mandatory minimums for drug possession in New York in 1972, ushering in the War on Drugs and mass incarceration).

2017 Pulitzer Prize for her work, among other awards. Critics praised her depth of research and compared her to bestselling author of *The New Jim Crow*, Michelle Alexander, for her ability to make difficult history accessible to a general audience. While her reliance on official records translated to credibility for certain readers, others critiqued this methodology as telling the story “through the eyes of the state.” In any case, the fact that Thompson was able to use these records at all was a feat. The introduction of *Blood in the Water* describes how difficult it was for Thompson to access any of the official records surrounding the uprising. Thompson is clear that this cover-up by the state was deliberate. Prison and law enforcement officials had fought hard to prevent the disclosure of certain documents, and others were only released subject to heavy redaction. It was by happenstance that Thompson found out about “a bunch of Attica papers” that had been moved to the back room of a courthouse in upstate New York. A similar stroke of luck led her to piles of evidence recovered from Attica immediately after the uprising. Once she had compiled what she found, one of Thompson’s express goals was to get this information to people in prisons.

2. Challenging Censorship in New York. — Censorship in state prisons in New York is governed by regulation. Section 712.2 of the New York Administrative Code governs literature for incarcerated people. The regulation specifically prohibits materials containing child porn or that provide instructions on how to manufacture weapons. It more broadly...
prohibits materials that “incite violence based on race,” “present[] a clear and immediate risk of lawlessness, violence, anarchy, or rebellion against governmental authority,” or encourage disobedience against correctional staff. The New York State DOCCS publishes more specific media review guidelines in Directive 4572. The directive tracks the New York Administrative Code but goes into greater procedural detail. A book sent to an incarcerated person may be flagged in the mailroom for potentially violating one of the above provisions. Flagged books are sent to the Facility Media Review Committee, comprising members of the facility’s prison staff, for an initial decision. If the committee is considering withholding delivery of a book, it must notify the incarcerated recipient. If the committee finds that the book violates the directive, the intended recipient may appeal to the statewide Central Office Media Review Committee. The directive mandates this review procedure but outlines no specific review criteria other than the list of prohibited content from section 712.2. Notice of the final decision to ban a book must be sent to the intended recipient of the book and its sender.

The shortcomings of New York’s media review procedures are typical of other carceral institutions. Initial censorship decisions are based on the “good faith belief[s]” of corrections staff, and review of those decisions is conducted by other corrections staff. The only outside, and potentially less biased, review of these decisions is conducted by federal courts who have pledged deference to corrections staff on the subject. The right to read in prison is thus almost completely subject to the whims of the imprisoners, which arbiters of justice are unlikely to check.

3. The Case Against the State.—Official efforts to prevent incarcerated people both in and outside New York from reading Blood in the Water

211. Id. § 712.2(c)–(e).
213. See id. at 1–5 (stipulating both the standards for evaluating literature sent to incarcerated people and procedures for identifying and withholding literature that violates these standards).
214. Id. at 5.
218. For a list of content prohibited in New York State prisons, see Directive No. 4572, supra note 212, at 1–2.
219. See id. at 5.
220. For information on the censorship procedures in each state’s prison system, see Thurgood Marshall C.R. Ctr., supra note 45, at 26–68.
222. See, e.g., Reynolds v. Quiros, 25 F.4th 72, 83 (2d Cir. 2022) (“In weighing these competing interests, both the Supreme Court and this Court have emphasized that deference should be accorded to decision-making in the corrections system . . . .”).
exemplify the book’s impact. Under Directive 4572, New York State prisons have banned *Blood in the Water* since its publication. The directive prohibits materials that “advocate, expressly or by clear implication, acts of disobedience” toward “law enforcement officers or prison personnel.” Thompson received notice that her book had been censored not from the review committees, as the directive mandates, but instead from the incarcerated person she tried to send it to. She filed her claim in the Southern District of New York under the First and Fourteenth Amendments, seeking declaratory and injunctive relief. The named defendants were officials with authority over censorship decisions in New York State prisons, including DOCCS Commissioner Anthony Annucci. Thompson was represented by attorneys from the Cardozo Civil Rights Clinic at the Benjamin N. Cardozo School of Law and by the New York Civil Liberties Union. Thompson argued against the censorship of her book and for the right to read in prisons more generally. Thompson’s position was that there was no evidence, in New York prisons or elsewhere, that her book caused disruption or disobedience among incarcerated people. Thompson also noted the allowance of similar books, like *Soledad Brother: The Prison Letters of George Jackson* and *The New Jim Crow*, to point out the incoherence of the DOCCS policy as applied to her book in particular. She cited three instances in which prison officials prevented incarcerated people from receiving copies of her book. Thompson argued that preventing people from reading her book excluded them from a larger conversation and public moment, an argument that harks back to the demands of the original uprisers. Amid the litigation, the DOCCS lifted the ban on *Blood in the Water* subject to one condition: The pages showing a map of the facility would be removed.

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224. Complaint, S.D.N.Y., supra note 10, at 8 (noting that bans of *Blood in the Water* have been upheld by the Central Office Media Review Committee “on around a dozen occasions”).


226. See supra note 219 and accompanying text.


228. Id. at 15–16.


230. See supra note 219 and accompanying text.

231. Complaint, S.D.N.Y., supra note 10, at 12–13 (“There is no evidence that *Blood in the Water*’s presence in correctional facilities—either in New York or in facilities across the country—has ever caused disruptions or safety concerns between officers and incarcerated persons.”).

232. Id. at 13–14.

233. Id. at 9–11.

234. Id. at 10; supra notes 167–168 and accompanying text.
from each copy. The parties reached a settlement agreement in June 2023, under which Thompson would supply each DOCCS library with two copies of her book and the defendants would pay $75,000 in attorney’s fees.

While litigation was ongoing in New York, an identical claim by Thompson was quashed in Illinois—almost. Thompson filed that complaint in 2018, advancing an almost identical claim to her New York suit. In October 2022, a judge in the Central District of Illinois decided on cross-motions for summary judgment in favor of the institutional defendants. Thompson’s First Amendment claim did not defeat the qualified immunity standard, which allows “reasonable but mistaken judgments” on the part of the prison officials. The court also deemed the dispute “academic, if not entirely moot,” given that Thompson did not assert an intention to send any incarcerated person a copy of Blood in the Water in the future. Thompson filed her appeal from that decision in the Seventh Circuit in November 2022. In September 2023, the parties reached a settlement agreement under which the defendants would approve Blood in the Water to be distributed in Illinois prisons and pay Thompson $8,500. The barriers Thompson faced—despite having more resources and facing fewer hurdles than an incarcerated plaintiff—demonstrate the inherent difficulties of fighting prison book bans in the courts.

C. Censorship as a Racial Project

1. Inside. — Central to the critique launched by the Attica Liberation Faction was the racism of the system imprisoning them. Censorship was a focus, but the Faction made clear that not all incarcerated people were censored equally; prison officials used censorship to politically and racially persecute certain groups at the prison. Those labeled “Black militants”
were more closely monitored, and censorship was fundamental to that monitoring. Today, prisons liberally apply bans to books by Black authors recounting and critiquing the treatment of Black people in America, especially those highlighting the racism of the carceral state. "Racial" books are monitored for fear that they will cause disruption and foster an unsafe environment in prisons. But given that books authored by KKK members and even Hitler are sometimes permitted, these broad content-based bans obscure a different goal: preventing incarcerated people from reading Black history and carceral history.

Censorship cuts off rare sources of hope for incarcerated people. Political writings are an easy target, as evidenced by the repression that led to the Attica uprising. So are books about life after prison; Florida prison officials deemed Keri Blakinger’s book about getting out of prison and making changes in her life “dangerously inflammatory.” Even abstract representations of optimism might not be safe. A mural by artist Faith Ringgold is being moved from Rikers to the Brooklyn Museum. The mural was completed in 1972; meant to provide inspiration to women detained at the facility, it depicts women in various careers “living happily
The mural had to be restored at one point due to prison officials painting over it after deeming the art inappropriate for the men incarcerated at Rikers. After years of neglect, the painting is being moved in anticipation of the facility’s planned closure in 2027, though the people at Rikers remain. In these ways, censorship deprives people in prison of narratives that could inspire them to think beyond the conditions of their confinement. Censorship, when used like this, conflicts with the “principle of return,” the idea that imprisonment is finite and incarcerated people are entitled to return to free society. Formal educational opportunities are integral to a successful return, but so are reading materials and media that show possibilities to incarcerated people other than reoffending upon release. Censorship can effect perpetual punishment and recidivism when used to obscure these possibilities.

Prison book bans also continue the historical war on Black literacy in America. The application of book bans to books about race and prisons is disturbing given the disproportionate imprisonment of Black people in America. Alexander’s The New Jim Crow has been a common target of prison book bans.


252. Dafoe, supra note 250.

253. See Budds, supra note 251 (noting that Ringgold supports the removal and preservation of her mural, “especially given the way it was treated in the past [at Rikers],” but that moving it to a museum “will further diminish its message since it will no longer be viewed in the context of a jail”); Dafoe, supra note 250 (“It is a shame that the Public Design Commission did not interrogate the serious concerns around lending public artwork to a private museum, especially an artwork specifically intended to serve people in jail.” (internal quotation marks omitted) (quoting public art preservationist Todd Fine)); Zachary Small, Faith Ringgold Mural at Rikers Island to Move to Brooklyn Museum, N.Y. Times (Jan. 18, 2022), https://www.nytimes.com/2022/01/18/arts/design/faith-ringgold-mural-rikers-brooklyn-museum.html (on file with the Columbia Law Review) (“And I just keep wondering whether they are doing a disservice to the people who are still in Rikers.” (internal quotation marks omitted) (quoting art historian Michele H. Bogart)).

254. See Eisenberg, supra note 48, at 48 (“After completing his or her punishment, a person is entitled to return as a free citizen.”).

255. See supra notes 41–43.

256. See Mzezewa, supra note 43 (“[T]he strategy of keeping information and limiting access to knowledge from [B]lack Americans . . . has a sordid history.”).

257. See Thurgood Marshall C.R. Ctr., supra note 45, at 4 (“In a prison system that disproportionately incarcerates African Americans relative to their population in the country, it is especially vital that those behind bars have access to books that affirm their racial identity and provide tools for coping with and challenging racist systems of oppression.”).

relevant than in the institutions it critiques, as it could offer Black incarcerated people the tools needed to understand and challenge their imprisonment. Indeed, Alexander has mused that prison officials are worried that “the truth might actually set the captives free.” 259 After all, in the American system, where stakeholders can profit from filling prison beds, perverse incentives exist to keep people inside. 260 Pre–Civil War literacy bans that upheld slavery parallel modern-day book bans that uphold mass incarceration. 261 Further parallels can—and should—be drawn to a similar struggle outside.

2. Outside. — The fight for inclusive education in schools provides a possible model for recognizing and elevating the issue of censorship in prisons. The NAACP Legal Defense Fund has dubbed the current trend of school censorship “anti-CRT mania.” 262 The heroes are young people who are willing to speak out in defense of their right to inclusive education. 263 The villains are anti-truth laws and their proponents, who use anti-CRT rhetoric to vilify and ban Black history from schools. 264 The battleground is the classroom, “traditionally ... the site of some of this nation’s most egregious acts of state sponsored racism.” 265 This framing is accessible and powerful. And the characters and motivations are not so different from their carceral counterparts.

In both contexts, those suppressing certain parts of history seek to stifle the voices of the people and communities that history portrays, effectively eliminating their voices from our democracy. 266 Anti-CRT incarcerated people in Florida, Michigan, New Jersey, and North Carolina from accessing The New Jim Crow).


260. See id. (“After all, the multi-billion dollar prison industrial complex is a very profitable industry.”).

261. See id.; see also Mzezewa, supra note 45 (“Slaves weren’t allowed to read because reading would directly lead to rebellion . . . .” (internal quotation marks omitted) (quoting Heather Ann Thompson)).


263. See id. (describing student-led demonstrations opposing bans on ostensibly “divisive” books).

264. See id. (“[T]he fearmongering around what politically-motivated forces are claiming is CRT has starkly illustrated the ever-shifting weapons being levelled at our multiracial democracy.”).

265. Id.

activists target Black history in particular as being too political or inflammatory.\textsuperscript{267} They characterize discussions about race as “divisive” and therefore disruptive to the goals of the classroom.\textsuperscript{268} In the prison context, officials label books about race as divisive while labeling books about prisons as disruptive.\textsuperscript{269} The fear is the same: Accurate historical information about this country and its protected tradition of racism translates to powerful critiques of the status quo.\textsuperscript{270} As one teacher notes, “[W]e have to understand how [systems of oppression] formed and whose interests they serve today” in order to challenge them.\textsuperscript{271}

These issues should be addressed in tandem.\textsuperscript{272} Comparing anti-CRT mania with prison book bans makes it clear that prison censorship does not occur in the vacuum of “legitimate penological interests.”\textsuperscript{273} Both censorship regimes reflect the fragility of white supremacy and its alliance with the carceral state, since “[l]egitimate power does not fear discussion and study.”\textsuperscript{274} Eliminating truthful accounts of American history in schools can be seen as an attempt at “mind control,” in the words of the Beard dissenters.\textsuperscript{275} And if the attack on racial history in schools is part of “a multi-pronged attack on the lived experiences, voices, and political participation of the many diverse communities that make up this country,”\textsuperscript{276} then the attack on racial and carceral history in prisons is one

\textsuperscript{267}. See Robinson, Anti-CRT, supra note 26 ("The disturbing proliferation of book bans in the past few months makes clear that the ultimate goal of these ‘anti-CRT’ efforts is to censor, silence, and suppress Americans’ ability to be fully informed about their own country and the lived experiences of their fellow citizens.").

\textsuperscript{268}. See supra note 263.

\textsuperscript{269}. See supra notes 88–89.

\textsuperscript{270}. See Robinson, Why Truthful, supra note 266 (internal quotation marks omitted)” (quoting Kate Schuster, Director of the Hard History Project).


\textsuperscript{273}. See Skopic, supra note 42.

\textsuperscript{274}. See Beard v. Banks, 548 U.S. 521, 552 (2006) (Stevens, J., dissenting) (asserting that the prison’s censorship policies “came perilously close to a state-sponsored effort at mind control”).

\textsuperscript{275}. See Robinson, Why Truthful, supra note 266.
of the prongs. Finally, comparing these struggles makes the act of reading in prison more familiar. Incarcerated people, like schoolchildren, “have a right to know the truth, to know who they are, to know who they live with, and what their community is like.”277

Juxtaposing these issues also allows us to better understand how carceral logic can reach those outside, too. Similarities between the two systems can be attributed to the strategy of running schools like prisons, a phenomenon that contributes to the school-to-prison pipeline.278 When schools incorporate the technologies and methods of prisons, sometimes through surveillance and monitoring by actual police officers, they simulate the experience of incarceration.279 Sociologist Carla Shedd argues that we can view today’s public high schools as “the extension of our larger ‘disciplinary society.’”280 Schools took inspiration from drug law enforcement to implement zero-tolerance disciplinary policies, and students are now increasingly likely to be disciplined by the criminal system rather than the school system.281 The disproportionate representation of Black people in prisons is replicated and produced by the disproportionate representation of Black students in public school arrests.282 In this context, banning Black history in schools is one of many mechanisms of socialization that primes students, particularly Black boys, to be ready to interact with the more formal criminal punishment system.283 The omnipresent surveillance and the deprivation of truthful narratives about Black life deprives students of opportunities to think beyond punishment, a punitive measure quite similar to prison censorship regimes.

277. Id. (internal quotation marks omitted) (quoting Kate Schuster).
278. See School-to-Prison Pipeline, ACLU, https://www.aclu.org/issues/juvenile-justice/juvenile-justice-school-prison-pipeline [https://perma.cc/ENA8-SS9D] (last visited May 11, 2023) (“Zero-tolerance’ policies criminalize minor infractions of school rules, while cops in schools lead to students being criminalized for behavior that should be handled inside the school. Students of color are especially vulnerable to push-out trends and the discriminatory application of discipline.”).
279. See Carla Shedd, Unequal City: Race, Schools, and Perceptions of Injustice 80–81 (2015) (“Metal detectors, surveillance cameras, and other mechanisms designed to monitor and control inhabitants are now standard equipment in American urban schools. Youth who must navigate these spaces are inevitably at high risk of police contact, which may lead to frustration, disengagement, and delinquency.”).
280. Id. at 81 (quoting John Devine, Maximum Security: The Culture of Violence in Inner-City Schools 97 (1996)).
281. Id. at 84–85.
282. See id. at 85 (“Over 8,000 [Chicago Public Schools] students, ages five to eighteen, were arrested in 2003. African American students, who make up just under half of the students enrolled in Chicago public schools, accounted for more than three-quarters of those arrests.” (footnote omitted)).
283. See id. at 114 (“The current structure and culture of urban public education is socializing young people to interact with agents of the law inside their schools, thereby conditioning them to be ready to interact with police outside the schoolhouse doors, not as students but as suspects.”).
Both censorship practices can be viewed as a form of “memory law,” or a government policy designed to guide public interpretation of the past and influence social behavior. Memory laws “work by asserting a mandatory view of historical events, by forbidding the discussion of historical facts or interpretations or by providing vague guidelines that lead to self-censorship.”\(^{284}\) The goal is to “cultivate a national feeling” that cannot exist when the negative parts of a society’s history are taught and known.\(^{285}\) Historian Timothy Snyder uses Russian intervention in Ukraine during the Soviet era as an example.\(^{286}\) Accurate historical accounts of World War II and critiques of Stalin were labeled as “revisionism,” and Russia established a presidential commission to legally attack any such “revisionist” history.\(^{287}\) The goal was to guide public memory, hence the label “memory laws,” and ensure that pro-Russia accounts dominated over more truthful and critical ones.\(^{288}\)

For Snyder, CRT scholars are America’s “revisionists,” targeted by those in power to maintain the racialized status quo.\(^{289}\) Anti-CRT legislation claims to fight against feelings of discomfort in classrooms and, like memory law, promotes a positive “national feeling.”\(^{290}\) The suppression of the legacy of the Attica uprising is another example of how memory laws function in America. It started with the lies spread by the government and cosponsored by media outlets in the wake of the retaking.\(^{291}\) The next iteration of these memory laws was the specific suppression of the archival documentation of the uprising, lasting decades until Thompson unearthed this history while writing *Blood in the Water*. Thompson argues that the cover-up is still active, since multiple bodies of evidence that she used for her book seem to have since vanished.\(^{292}\) Efforts


\(^{285}\) See id.

\(^{286}\) Id.

\(^{287}\) See id. (“To note that the Soviet Union had actually begun the war as a Nazi ally, by this logic, was to commit a crime; a Russian citizen who mentioned in a social media post that Nazi Germany and the Soviet Union both invaded Poland was prosecuted.”).

\(^{288}\) See id.

\(^{289}\) See id. (“By the same token, anyone looking at the United States from the outside immediately sees that our new memory laws protect the legacy of racism. We are only fooling ourselves.”); see also Tayyab Mahmud, Foreword: LatCrit@25: Mapping Critical Geographies and Alternative Possibilities, 20 Seattle J. for Soc. Just. 915, 921 (2022) (noting that CRT consists of “counter-stories” that “embody cultural difference that emerges as resistance to hegemonic modes of representation”).

\(^{290}\) Snyder, supra note 284; see also Danielle M. Conway, The Assault on Critical Race Theory as Pretext for Populist Backlash on Higher Education, 66 St. Louis U. L.J. 707, 716 (2022) (“State-sanctioned, punitive memory laws, such as those enacted or proposed to ban CRT, amount to self-serving attempts to apply self-exculpatory laws to protect states from criticism about systemic racial inequality.”).

\(^{291}\) See supra notes 180–183 and accompanying text.

\(^{292}\) See Thompson, supra note 1, at xiii–xvi.
to ban *Blood in the Water* in prisons are a last-ditch effort to repress the memory of a group the state can comfortably control: incarcerated people.

### III. RECOGNIZING RIGHTS

Reports and surveys conducted by advocacy groups help to aggregate the otherwise poorly organized data on prison book bans.\(^{293}\) They might include a list of proposals to combat censorship, such as statewide policies, publicly available book lists, oversight committees, and more literacy training for prison officials.\(^{294}\) Such reforms assume the continued existence of book bans and seek to mitigate the harms they cause “until the right to read is fully recognized” and book bans in prisons are abolished.\(^{295}\)

This Note also advocates for full recognition of the right to read for incarcerated people and the abolition of book bans in prisons. To reduce harm in the meantime, it suggests using the *Turner* factors to more critically examine the motivations behind book bans; involving more impartial decisionmakers in censorship decisions; and assigning more weight to the interests of incarcerated people. Section III.A discusses how the *Turner* factors could be better used to protect the rights of incarcerated people. Section III.B summarizes the lessons to be taken from the conflict surrounding inclusive education in America.

#### A. A Return to Heightened Scrutiny

1. *Resurrecting the Lost Turner Factors.* — Returning to the core of the *Turner* test and reframing the interests at stake could provide more protections for the rights of incarcerated people. Although the *Turner* Court claimed to step back from the heightened scrutiny of *Martinez*, Michael Keegan argues that the *Turner* test is itself a form of heightened scrutiny.\(^{296}\) True rational basis review should only require a “legitimate” government (in this case penological) interest to be put forth.\(^{297}\) *Turner*’s first factor, testing the “valid rational connection” between the challenged regulation and the penological interest justifying it, essentially “mirrors” rational basis review.\(^{298}\) But the *Turner* test has other factors. When the Court emphasizes the importance of the first factor and downplays the significance of the other factors, it applies something analogous to rational basis review.\(^{299}\)

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293. See, e.g., Thurgood Marshall C.R. Ctr., supra note 45, at 26-68 (aggregating information about prison censorship policies in each state as well as in federal prisons).
294. See, e.g., id. at 22–23 (listing the recommendations to combat prison censorship).
295. Id. at 22.
296. Keegan, supra note 140, at 332.
297. Id.
298. Id. at 334 (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)).
299. See supra notes 121–124 and accompanying text.
Courts should look more closely at whether book bans are reasonably related to maintaining safe and orderly prison conditions. The suppression of carceral history in prisons is meant to suppress feelings of dissatisfaction with prison conditions. Proponents of prison censorship would draw a direct line between dissatisfaction and violent unrest. This viewpoint easily satisfies the Court’s weakened *Turner* test: If racial and carceral history lead to dissatisfaction and dissatisfaction leads to violence, then censoring that content supports the “legitimate penological objective” of maintaining safe correctional facilities. In other words, safety and censorship could be seen as reasonably related. Sometimes, as with Thompson’s New York case, evidence exists to sever this connection. Thompson essentially demanded more scrutiny when she pointed to the lack of evidence linking her book to disorder in any prison. Courts must take the absence of corroborating evidence seriously. Otherwise, the safety and security narrative offered by prison officials will persist.

But the Court also raised the bar for prison regulations with *Turner’s* fourth factor. Keegan argues that *Turner’s* fourth factor, which focuses attention on alternatives to the proposed regulation, heightens scrutiny above rational basis review. The *Turner* Court included the fourth factor to prohibit “exaggerated response[s]” to the penological interests at stake, whereas practically any response would be permissible under regular rational basis review. This standard falls somewhere between strict scrutiny, which requires narrow tailoring, and rational basis, which requires no tailoring as long as the government interest is not “arbitrary or irrational.”

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300. See Mzezewa, supra note 43 (“The more checked into internal prison world and isolated, the harder it is to challenge the conditions . . . .” (internal quotation marks omitted) (quoting Elizabeth Hinton, Professor, Harvard Univ.)); see also PEN America, supra note 41, at 5–6 (describing various justifications for banning books about racism and mass incarceration as security threats).

301. See supra note 300; see also Thompson v. Baldwin, No. 18-cv-03230-SEM-KLM, 2022 WL 6734896, at *3 (C.D. Ill. Oct. 11, 2022) (quoting a prison official arguing that there is always the potential for a prison riot and that *Blood in the Water* could easily be used “as a potential guideline and process” to that end).


303. See Keegan, supra note 140, at 334 (“The language fleshing out the fourth *Turner* prong raises the standard beyond that of the traditional rational-basis test.”).

304. Id.

305. See id. (internal quotation marks omitted) (quoting Turner v. Safley, 482 U.S. 78, 87 (1987)) (“Under the traditional rational-basis examination, where the government needs to show only a ‘reasonably conceivable set of facts,’ an ‘exaggerated response’ would be permissible. All that must be shown is that the means of achieving the government objective was not arbitrary or irrational.”).

classified as “toothless review,” even if the Court’s subsequent application of the test has rendered it so.307

Courts should consider how prison administrations themselves contribute to disorder to weaken the causal relationship between books and unrest. For example, writings from and news of other prison protests certainly inspired the men at Attica to organize themselves, but they did so peacefully.308 The uprising was caused more immediately by the violent atmosphere created by corrections officers and the refusal of prison officials to acknowledge the demands of the organizers.309 The Attica Liberation Faction Manifesto specifically stated that no strike would accompany the demands and that they were “trying to do this in a democratic fashion.”310 A “ready alternative” to the banning of so-called inflammatory materials would have been meaningful negotiation and the removal of violent corrections staff. Discussion of these additional catalysts and alternative responses weakens the connection between access to certain reading materials and disorder. A weaker connection weighs against reasonable relatedness and supports the idea that complete bans on books critiquing prisons might be the kind of exaggerated response that Turner prohibits.

Though far from ideal, the Turner test has the potential to protect the interests of incarcerated people. And the Supreme Court seems unwilling to revisit its chosen standard for prison regulations.311 It has denied petitions for writs of certiorari for such claims since Beard in 2006.312 Thus, the Beard standard, with its emphasis on the first factor, stands.313 Thompson’s cases show that there are rightsholders other than incarcerated people dedicated to fighting this battle in the courts. The settlements reached secured the right to read as it pertains to Blood in the Water in state prisons in New York and Illinois; victories in spite of the

307. Id. at 334–35. To observe the Court’s defanging of the Turner test, see, e.g., Beard v. Banks, 548 U.S. 521, 532 (2006) (plurality opinion) (“In fact, the second, third, and fourth factors, being in a sense logically related to the Policy itself, here add little, one way or another, to the first factor’s basic logical rationale.”).
308. See supra notes 165–169 and accompanying text.
309. See supra note 170 and accompanying text.
311. See Schnell, supra note 98, at 145 (“The Supreme Court does not appear willing to revisit the standard of review question, having consistently reaffirmed Turner and denied certiorari to cases involving Turner since Beard in 2006.”). But see Clay Calvert & Cara Carney Murrhee, Big Censorship in the Big House—A Quarter-Century After Turner v. Safley: Muting Movies, Music & Books Behind Bars, 7 NW. J.L. & Soc. POL’Y 257, 295–94 (2012) (arguing that while heightened scrutiny could help incarcerated plaintiffs litigate these claims, the test is unlikely to be applied in the prison context given the fact that incarcerated people are not a suspect class).
312. Schnell, supra note 98, at 145–46.
unfavorable forum for this kind of claim. Advocacy efforts by well-resourced parties like Thompson are necessary if courts are ever to incorporate the suggestions made by this Note and other commentators. Yet Thompson’s struggles with mootness and qualified immunity show how difficult this road will be. With success in the courts remaining improbable, opponents of censorship should consider additional battlegrounds to continue this fight.

2. Attacking Book Bans Before They Reach the Courts. — If the courts are an inhospitable environment for First Amendment claims brought by incarcerated plaintiffs, incarcerated people and advocates should seek to defeat book bans before they must be litigated. Critics agree that censorship review procedures in prisons are deeply flawed. This Note emphasizes the need for standardized and detailed review procedures across institutions. If the prison system must infringe upon an incarcerated person’s First Amendment rights, the degree of that infringement should not change based simply on where that person happens to be imprisoned. Criteria binding reviewers should balance the interests of incarcerated people against those of the institution; reviewers should be required to consider the value offered by a book rather than just the threat it poses. The Turner factors are a decent starting point for formulating these criteria. As Keegan suggests, the fourth Turner factor can and should operate as a check on the first factor. As discussed above, the first factor should be applied to scrutinize prison censorship decisions more heavily. And with a shift in perspective, the second and third factors can consider penological goals and the interest incarcerated people have in reading.

The perspective of incarcerated people is noticeably absent from the current balancing test. The test considers censorship from the perspective of prison administrators. Each act of censorship is analyzed based on how it serves a particular penological goal. This focus invites responses that

314. See Stipulation and Order of Settlement and Dismissal, supra note 236; Settlement Agreement and General Release, supra note 242.
316. See, e.g., PEN America, supra note 41, at 6–7 (describing the typical rubber-stamp review procedures for prison book bans); Thurgood Marshall C.R. Ctr., supra note 45, at 22–23 (recommending improvements to review procedures).
317. See supra notes 76–79 and accompanying text.
318. See PEN America, supra note 41, at 18 (“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.”).
319. See supra notes 303–307 and accompanying text.
320. See supra notes 300–310 and accompanying text.
reflect what Alan Freeman describes as the “perpetrator perspective,” which views racial discrimination “not as conditions, but as actions . . . inflicted on the victim by the perpetrator.”

Approaching a case of wrongful censorship from the perpetrator perspective would focus on “neutraliz[ing] the inappropriate conduct of the perpetrator.”

The proceedings surrounding Thompson’s cases are a good example of the perpetrator perspective in action: The settlements give incarcerated people access to Blood in the Water, stopping this discrete harmful act by prison officials.

In contrast, the victim perspective describes racial discrimination in terms of the conditions it produces for its victims. A proper solution to a dispute over a book ban would look to the effects of censorship on the conditions of incarcerated people at Attica and would situate a particular book ban within larger patterns of censorship at the prison. Such a solution would be consistent with the victim’s perspective, which is everything that the perpetrator’s perspective is not: It is collectivist; it is part of the social fabric and has historical continuity; it sees racial discrimination via the restriction of knowledge access as a social phenomenon.

Without the victim perspective, solutions to censorship will be piecemeal and fail to address the oppressive conditions that book bans create.

Review boards and committees need more impartial decisionmakers to properly apply the victim perspective and weigh the criteria outlined above. The issue is not just how books bans are reviewed—it is who does the reviewing. On one side of the prison censorship debate are the victims: people in prison who have a First Amendment right to access their history and the history of the institutions that imprison them. On the other side are the perpetrators: prison and government officials interested in maintaining order, for both incarcerated people and corrections staff. Also involved are those who exist outside of the system, such as family and community members, politicians, nonprofits, and grassroots organizations. Any of these parties may be heavily invested in censorship decisions and biased toward one side or the other, making them

321. Freeman, supra note 37, at 1053.
322. Id.
323. See Stipulation and Order of Settlement and Dismissal, supra note 236, at 1–2 (stating that Thompson “brought this action pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief requiring that Defendants allow individuals in DOCCS’s custody to keep and read Blood in the Water”).
324. See Freeman, supra note 37, at 1052–53; see also supra text accompanying note 168 (describing the “isolation status” that the men incarcerated at Attica experienced as a direct consequence of the censorship policies).
325. Cf. Freeman, supra note 37, at 1054 (“The perpetrator perspective presupposes a world composed of atomistic individuals whose actions are outside of and apart from the social fabric and without historical continuity. From this perspective, the law views racial discrimination not as a social phenomenon, but merely as the misguided conduct of particular actors.”).
potentially polarizing additions to review boards. This Note suggests looking to another set of stakeholders for guidance: prison librarians.

Prison librarians are in a unique position to balance the interests at stake when considering a potential book ban. Due to the nature of their workplace, prison librarians have a duty to prioritize security.326 If they subscribe to the tenets of the American Library Association (ALA), they are also bound by a commitment to intellectual freedom.327 This positions them well to balance the harmful conditions created by censorship regimes against the interests of the correctional institution. The ALA has already done this specifically for incarcerated people in its interpretation of the “Library Bill of Rights.”328 The ALA advocates for selection in prisons rather than censorship. Censorship is restrictive, while selection is inclusive.329 It advocates for prison libraries to reflect the needs of the people incarcerated at that facility.330 Thompson argues that Blood in the Water is “essential reading” for incarcerated people.331 This Note backs Thompson and other advocates who argue that there is a need for people in prison, especially Black people, to access their own history and the history of the institution imprisoning them.332 Prison librarians can help meet this need.

The ALA’s interpretation of the Library Bill of Rights also addresses the lax application of rational basis review to First Amendment challenges in prisons. It states: “Only those items that present an actual compelling and imminent risk to safety and security should be restricted. Although these limits restrict the range of material available, the extent of limitation


329. See Right to Read, supra note 272 (“Censorship is a process of exclusion by which authority rejects specific viewpoints. Unlike censorship, selection is a process of inclusion that involves the search for materials, regardless of format, that represent diversity and a broad spectrum of ideas.”); see also Hart, supra note 90 (“There is nothing more contentious for librarians than censorship. . . . [T]he American Library Association has enshrined the core principles of [the] right [to read] in the Library Bill of Rights and in its Professional Code of Ethics.”).

330. See Right to Read, supra note 272 (citing informational needs, recreational needs, and cultural needs).


332. See supra note 44; see also supra text accompanying note 277.
should be minimized . . . .” While the ALA understands the potential need to restrict some reading materials, it also recognizes the need for real limits to these restrictions. In concert with critics of memory laws and censorship in other contexts, the ALA considers the “suppression of ideas” to be “fatal to a democratic society.” In sum, the Library Bill of Rights urges prison librarians to critically examine the reasons a book might be banned. Critical examination might reveal that the offered reasons are pretextual. This heightened scrutiny will be especially useful when applied to the first and fourth \textit{Turner} factors: whether a ban is in the interest of security, and, if so, whether it is an exaggerated response to serve malign ends.

If reviewers use the \textit{Turner} test, they should incorporate the victim perspective into their analysis of the second and third factors. Prison librarians are good candidates for this job because they understand the value of books generally and how important reading is to incarcerated people specifically. The second \textit{Turner} factor looks to whether there are “alternative means of exercising the right” at issue. The Supreme Court requires the right at issue to “be viewed sensibly and expansively,” making alternative means easy to find. In the book ban context, the Court has deemed the availability of any other book a sufficient alternative means of exercising First Amendment rights. The ALA’s interpretation of the Library Bill of Rights identifies reading as an “essential right[].” Prison librarians can help define this right more precisely as the right to access specific books or information rather than books in general. For a book like \textit{Blood in the Water}, a prison librarian could determine whether other permitted reading materials provide a similar-enough learning experience to satisfy the second factor. The third factor looks at the “impact” of allowing the right to be exercised. Prison librarians can help balance out prison officials’ proffered negative impacts with the benefits of reading for incarcerated people, ensuring that the \textit{Turner} factors do not favor censorship by default.

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\item \textsuperscript{333} Right to Read, supra note 272.
\item \textsuperscript{334} See id.
\item \textsuperscript{335} Id; see also text accompanying note 266.
\item \textsuperscript{336} See, e.g., Andrew, supra note 326 ("The services prison librarians provide may seem insignificant, but have far reaching and lasting effects."); Hart, supra note 90 ("[Incarcerated people] considered it a privilege to visit the library, and none of them wanted to mess up their chance at coming on their housing unit’s library days.").
\item \textsuperscript{337} \textit{Turner v. Saferly}, 482 U.S. 78, 90 (1987).
\item \textsuperscript{338} See, e.g., \textit{Thornburgh v. Abbott}, 490 U.S. 401, 417 (1989).
\item \textsuperscript{339} See id. at 418–19 (holding that even though the specific publications at issue were banned, the fact that other publications were available for incarcerated people to read satisfied the second factor).
\item \textsuperscript{340} Right to Read, supra note 272.
\item \textsuperscript{341} \textit{Turner}, 482 U.S. at 90.
\item \textsuperscript{342} Cf. \textit{Beard v. Banks}, 548 U.S. 521, 533 (2006) (plurality opinion) (considering the negative impact of allowing the incarcerated people to access certain materials with little...}
The concept of including librarians on censorship review boards is not a new one. In New York, DOCDS Directive 4572 suggests that the Facility Media Review Committee for each facility include representatives from security staff and program services staff. Program services include mental health, education, recreation, and library services. In theory, this is a good starting point. If prisons don’t have a fleet of librarians available to handle censorship, other staff focused on the education and wellbeing of incarcerated people can similarly provide a different perspective from security staff. But under current regulations for New York prisons, including prison librarians, this is only a suggestion, not a requirement. Even if program services staff are included, they can likely only provide symbolic representation unless they have a voting majority. The mere inclusion of prison librarians and other program services staff cannot be the necessary “substantial check on prison censorship.”

This Note proposes a requirement that censorship review boards, like Facility Media Review Committees in New York, consist equally of security staff and program services staff (or their equivalents at a given facility). If a prison has library staff, they should be required to serve on review boards. The mandatory inclusion of nonsecurity staff, particularly librarians, in equal measure to security staff will help balance the interests at stake in censorship decisions.

To improve accountability, review boards should be required to publish written majority (and dissenting) opinions applying the Turner factors. Even if prison librarians and other program services staff succeed in striking down an unjust book ban, there is no guarantee that their decision will stand. Some states have a multilevel review system, meaning that the initial decision disfavoring censorship could be overturned on appeal. New York is one such state. It is also, of course, possible that
treatment of the “important constitutional dimension” encompassing the right to read in prison). The Court spoke vaguely about this “important constitutional dimension” in terms of First Amendment rights but did not specify the benefits of reading for incarcerated people. See id.

343. See, e.g., PEN America, supra note 41, at 19–20 (advocating for review committees to include trained librarians); Jeanie Austin, Melissa Charenko, Michelle Dillon & Jodi Lincoln, Systemic Oppression and the Contested Ground of Information Access for Incarcerated People, 4 Open Info. Sci. 169, 170 (2020) (“[C]ombating censorship within prisons . . . should, ostensibly, fall within the professional purview of [library and information science].”).

345. Id.
346. See id. (using the language “[i]t is suggested that” regarding the inclusion of program services staff on review boards).
347. See, e.g., PEN America, supra note 41, at 7 (describing the system in Washington State, where the review board consists of two prison officials and only one librarian).
348. Id.
349. See, e.g., supra text accompanying notes 216–217 (describing New York’s two-level review system).
350. See supra text accompanying notes 216–217.
the rest of the review board outvotes opponents of censorship. In these circumstances, a book ban may still be litigated. While the Supreme Court insisted in *Beard* that it was not “inconceivable” that an incarcerated person might overcome the *Turner* bar with the right evidence, meeting this burden remains difficult. Incarcerated plaintiffs could use a written opinion by opponents of censorship as evidence to counter prison officials’ safety and security narratives in court.

One concern with this solution is resources. Not all prisons have libraries, so there is not always a librarian to review censorship decisions. Existing prison libraries are underfunded and often first on the chopping block when budgets are cut. Prison librarians already do many jobs at once and might be overburdened by having to review censorship decisions on top of their other work. Additional funding dedicated to prison libraries could solve some of these issues. Another solution would be for one centralized board of decisionmakers—half security staff and half program services staff like prison librarians—to review all of the decisions in the state. This would make it irrelevant (for the discrete issue of book bans) whether each prison had its own librarian to review censorship decisions. It would also help make censorship policies consistent within each state.

The inclusion of librarians and other nonsecurity staff as decisionmakers cannot guarantee that books are never banned for the wrong reasons. Notwithstanding the ALA’s rights-affirming stance, many librarians may lack the requisite knowledge and training to put these values into action. On a systemic level, public library services in the United States have historically upheld and catered to the pro-white status quo. On an individual level, prison librarians are not immune to implicit (or explicit) biases that may prompt them to ban books about race or the history of prisons without valid cause. And even the ideal librarian representative can only ever be that: a representative. This solution relies

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351. *Beard v. Banks*, 548 U.S. 521, 527, 535–36 (2006) (plurality opinion) (noting that the plaintiff’s evidence, consisting of one deposition of a prison official and various prison manuals and policies, was insufficient to support his claim).

352. See, e.g., PEN America, supra note 41, at 11 (“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.”).

353. Id.

354. See, e.g., Andrew, supra note 326 (“As you can see, this is a very busy schedule, and is typical for most prison librarians. One person performs the jobs of several. This can create a lot of stress and frustration.”).

355. See Austin et al., supra note 343, at 178 (noting that librarians “generally lack the skills and background knowledge needed to provide meaningful information access to . . . the groups of people most likely to be surveilled, policed, and incarcerated”).

356. See id. at 179, 182 (“[Library and information services] has been rooted in whiteness, heterosexuality, and gender normativity to the disadvantage of its patrons and professional codes.”).
on some level of collaboration between incarcerated people and prison librarians. As difficult as this work may be under carceral conditions, it is necessary to ensure that prison librarians successfully advocate for the victims of censorship.

This is an imperfect solution largely because it exists within the deeply flawed and racist prison system. Full recognition of the right to read for incarcerated people will require a multifaceted and sustained attack on censorship by stakeholders both within and outside of that system. The suggested amendments to review procedures are mitigation tactics for the meantime.

B. Lessons From the Battle for Inclusive Education

Anti-CRT efforts in schools offer some guidance for opponents of racially motivated censorship in prisons. First, public pressure is key in the ongoing fight for information access. A few quickly repealed bans prove that this tactic can be effective in the prison context. The challenge is getting more eyes on the issue when book bans persist in large part due to the secrecy around prison censorship policies. In the education context, advocates point to New Jersey’s Amistad Commission, an organization ensuring that New Jersey public schools teach Black history, as an example of what is necessary to achieve inclusive education goals. Likewise,
oversight from outside the prison system will be necessary to ensure compliance with any newly implemented procedures or measures to combat censorship.

Second, incarcerated people must be centered in the fight against racist book bans. Advocates for inclusive education urge supporters to uplift the voices and efforts of schoolchildren, whom restrictive policies affect most. This wisdom applies equally to incarcerated people fighting against censorship. Protecting incarcerated people’s connection to the outside world ensures that they can be active in this fight and other political movements. Access to books helps this connection survive. As the Attica uprising exemplifies, incarcerated people have been doing this work long before it gained mainstream recognition and are in the best position to fashion solutions that protect their interests.

CONCLUSION

The banning of Blood in the Water at the Attica Correctional Facility exemplifies the interests at stake in the fight against censorship and the inadequacies of the existing administrative and legal remedies. It also reifies the throughline of anti-Black censorship practices in American history and the present. In demanding the right to read freely, incarcerated people simply “seek the rights and privileges of all American people.”

Censorship policies inside and outside of prisons reflect vulnerability in the powers that be. Anti-CRT mania has risen at a time of historic critical resistance to systemic racism in America. Prison censorship attempts to stifle organized resistance among incarcerated people and uses “the façade of rehabilitation” to attack literature that highlights and inspires these movements. Conservative backlash in both instances can signal that proponents of knowledge access are on the right track. If the status quo were entirely secure, there would be no need to suppress history to

362. See, e.g., Robinson, Why Truthful, supra note 266 (“The first and I think most important is supporting young people in their school district. . . . They’re often the first people to say, ‘Hey, these books actually don’t make us feel guilt or anguish.’ ”).

363. See supra note 18; see also supra text accompanying notes 167–168.

364. See supra notes 256–261.


366. Robinson, Anti-CRT, supra note 262.

367. The Attica Manifesto, supra note 13, at 30; see also Skopic, supra note 42 (“Prisons in cities like St. Louis have seen mass uprisings—not ‘riots’ of random violence, as the press would have it, but concerted political actions with specific demands . . . .”)

368. See Skopic, supra note 42 (“[I]n the Biden era, we can lack for obvious means of pursuing change. Sending free books to people in prison is one such means, and if the recent backlash against donations is anything to judge by, it’s a potent one.”).
The exposure of these insidious goals calls for nationwide recognition of the right to read in prisons. Proper recognition of this right will center the voices of incarcerated people, who are best situated to articulate their experience of information access, or lack thereof. Once the right is recognized, infringements can be remedied.

But more important than honoring the spirit of our Constitution, protecting the right to read in prison affirms the humanity of our people—all of them.

369. See id. ("Historically, systems of censorship and control are at their strictest when the regime in power knows it has something to hide, and fears exposure—if its position were unassailable, there would be no need.").