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Patrick Huber
Washington University in St. Louis

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A Note for Kalief: Unlocking Media Access to America's Prisons

Patrick Huber*

The First Amendment serves not only the needs of the polity but also those of the human spirit—a spirit that demands self-expression. Such expression is an integral part of the development of ideas and a sense of identity. To suppress expression is to reject the basic human desire for recognition and affront the individual's worth and dignity.[1]

It isn't Club Med . . . [p]risons are not country clubs. They're not there to be visited, and looked at, and toured by this, that and the other.[2]

* Patrick Huber J.D. (2017), Washington University in St. Louis; B.A. (2010), University of Illinois at Urbana-Champaign.

[1] Procunier v. Martinez, 416 U.S. 396, 427 (1974) (Marshall, J., concurring) (citing Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 YALE L.J. 877, 879–80 (1963)), *overruled by* Thornburgh v. Abbott, 490 U.S. 401 (1989).

[2] Jessica Pupovac, *The Battle to Open Prisons to Journalists*, CRIME REP. (Jan. 2, 2013), http://www.thecrimereport.org/news/inside-criminal-justice/2013-01-the-battle-to-open-prisons-to-journalists (quoting former Illinois Governor Pat Quinn).

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INTRODUCTION

Mass incarceration is an epidemic in America.[3] The United States has five percent of the world's population, and twenty-five percent of the world's prisoners.[4] The U.S. prison population has grown rapidly in the past thirty years, from about three hundred thousand in 1980 to approximately two million people today.[5] Incarceration on this scale is enormously costly.[6] In total, states spend more than fifty billion dollars per year running prisons.[7]

Public spending on prisons has largely gone unchecked because press is kept out of prisons.[8] Jessica Pupovac, a freelance reporter, recently compiled state prison media access policies.[9] She found "a system that too often impedes journalists from reporting accurately, effectively or with any regularity on what goes on inside America's

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[3] *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010); Adam Gopnik, *The Caging of America*, NEW YORKER (Jan. 30, 2012), http://www.newyorker.com/magazine/2012/01/30/the-caging-of-america; Richard Gunderman, *The Incarceration Epidemic*, ATLANTIC (June 20, 2013), https://www.theatlantic.com/health/archive/2013/06/the-incarceration-epidemic/277056/.

[4] Eric Holder, U.S. Attorney Gen., Address at the Annual Meeting of the American Bar Association's House of Delegates (Aug. 12, 2013), https://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-annual-meeting-american-bar-associations.

[5] ALEXANDER, *supra* note 3, at 6.

[6] *See, e.g.*, PEW CTR. ON THE STATES, TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 1 (2012), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/PrisonTimeServedpdf.pdf.

[7] *Id.*

[8] *See, e.g.*, Jessica Pupovac, *Behind the Wall: Tips for Prison Reporting*, QUILL (Aug. 7, 2012), http://www.spj.org/prisonaccess.asp.

[9] *See id.*; *see also* Jessica Pupovac, *Prison Access Policies*, SOC'Y PROF. JOURNALISTS, http://www.spj.org/prisonaccess.asp (last visited Feb. 7, 2016).

prisons."[10]

Prison policies restrict journalists' access in various ways.[11] For example, Missouri, Nevada, and New York specifically forbid interviews between journalists and non-specific inmates.[12] Kansas, Idaho, and Iowa go even further—these states do not allow journalists to engage in face-to-face interviews with inmates.[13] In Maine and Wyoming, a Department of Corrections official must be present during an interview.[14] Colorado uniquely provides that reporters are personally limited to one visit to a penological facility per year, not to exceed three hours in length.[15] And although Alabama has a discretionary policy that allows journalists' access, "[c]urrent administration rarely, if ever, allows media professionals inside facilities upon request."[16]

Media access policies are important not only because they have an effect on who is allowed *inside* prisons, but also because of what goes on *outside* prisons. The conditions within prisons shape incarcerated persons even after they are released. Every year approximately six hundred thousand people are released from prisons; they are expected to find jobs and integrate back into society.[17] Journalists give incarcerated persons a voice to speak out against potential abuses within the system, and the First Amendment to the Constitution guarantees a free press to ensure accountability and transparency within public institutions.[18]

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[10] Pupovac, *supra* note 8.
[11] *Id.*; *See supra* sources cited in note 9.
[12] Pupovac, *supra* note 9.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *See, e.g.*, M. Keith Chen & Jesse M. Shapiro, *Does Prison Harden Inmates? A Discontinuity-Based Approach* 2 (Cowles Found. for Res. in Econ., Working Paper No. 1450, 2004), http://ssrn.com/abstract=470301.
[18] U.S. CONST. amend. I.

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In a now-famous[19] concurring opinion, Justice Hugo Black, in *New York Times Co. v. United States*, enunciates the rationale behind the First Amendment.[20] Justice Black says, "[t]he Press was to serve the governed, not the governors. The power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people."[21] The First Amendment is important because it ensures a free press, to compile and convey information so that citizens can evaluate performance of their public institutions.[22]

Media restrictions enacted by prison authorities serve distinct interests and often censor the content of speech—or prevent expression entirely.[23] One California reporter, for instance, was prevented from publishing an op-ed with the *Los Angeles Times*

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[19] *See, e.g.*, Floyd Abrams, "The Pentagon Papers a Decade Later" N.Y. TIMES (June 7, 1981), http://www.nytimes.com/1981/06/07/magazine/the-pentagon-papers-a-decade-later.html?pagewanted=all (detailing the wide discussion of the case—for example, in the memoirs of Richard Nixon, Henry Kissinger, John Ehrlichman, and Charles Colson).

[20] 403 U.S. 713 (1971). In *New York Times Co.*, the United States sought to enjoin the New York Times and the Washington Post from publishing content that derived from a classified study on policy surrounding the Vietnam War. *Id.* at 714. The Supreme Court dismissed the claims against the New York Times. *Id.*

[21] *Id.* at 717 (Black, J., concurring).

[22] *See, e.g.*, Associated Press v. United States, 326 U.S. 1, 20 (1945) ("[The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society).

[23] *See, e.g.*, Peter Y. Sussman, *Media on Prisons: Censorship and Stereotypes*, *in* INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 258–62 (Marc Mauer & Meda Chesney-Lind eds., 2002).

because, in the eyes of the parole board, it was "not in the best interests of the State."[24] Similarly, a Connecticut media request to visit prisoners reportedly has required that an applicant provide "a statement of any perceived benefit to law enforcement agencies."[25] The government censors these reporters in precisely the way that Justice Black condemned. Instead of being allowed to investigate and expose government practices, these journalists are silenced and censored in contravention of their First Amendment rights.[26]

Jennifer Gonnerman, a reporter with *The New Yorker*, exemplified the power of the press and the spirit of the First Amendment when she reported on the secret story of Kalief Browder, a young boy who was confined at Rikers Island Correctional Facility for three years without a trial.[27] Kalief was arrested ten days before his seventeenth birthday for allegedly stealing a backpack while returning home from a party.[28] Kalief was charged with robbery, grand larceny, and assault.[29] The judge set the bail at three thousand dollars but Kalief's family could not afford to post bail, so he waited in jail awaiting a trial that would never occur.[30]

Kalief reported that he endured two years of solitary confinement and was subjected to brutal violence by the guards.[31] Kalief was finally released when the District Attorney's office realized that they could not meet their burden of proof at trial. Kalief completed a semester at Bronx Community College but could not shake his

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[24] *Id.* at 261.

[25] *Id.* at 265.

[26] *See* U.S. CONST. amend. I.

[27] Jennifer Gonnerman, *Before the Law*, NEW YORKER (Oct. 6, 2014), http://www.newyorker.com/magazine/2014/10/06/before-the-law; *see also* Editorial, *Total Failure on Speedy Trials in New York*, N.Y. TIMES (Apr. 15, 2015), http://www.nytimes.com/2015/04/16/opinion/total-failure-on-speedy-trials-in-new-york.html?_r=0.

[28] Gonnerman, *supra* note 27.

[29] *Id.*

[30] *Id.*

[31] *Id.*

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haunting treatment at Rikers Island. Tragically, Kalief committed suicide in June of 2015.[32] He was only twenty-two years old.[33]

Kalief's mistreatment and subsequent untimely death spurred outrage from the highest ranks of government.[34] In April after the initial story was released, New York City Mayor Bill de Blasio announced a policy change at Rikers to "root out unnecessary case delay" in New York City's courts.[35] One month after Kalief's death, Mayor de Blasio and (then) New York State Chief Judge Jonathan Lippman announced that they would enact an eighteen million dollar program to supervise persons accused of low-level offenses who could not afford bail.[36] Kalief even garnered the notoriously aloof

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[32] *See* Jennifer Gonnerman, *Kalief Browder, 1993–2015*, NEW YORKER (June 7, 2015), http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015.

[33] *Id.*

[34] *See, e.g.*, *supra* note 38; Mark Berman, *Kalief Browder and What We Do and Don't Know About Solitary Confinement in the U.S.*, WASH. POST (June 9, 2015), https://www.washingtonpost.com/news/post-nation/wp/2015/06/09/kalief-browder-and-what-we-do-and-dont-know-about-solitary-confinement-in-the-u-s/; Jillian Jorgensen, *City Needs 'Some Type of Bail Reform,' de Blasio Says After Kalief Browder Suicide*, OBSERVER (June 8, 2015), http://observer.com/2015/06/city-needs-some-type-of-bail-reform-de-blasio-says-after-kalief-browder-suicide/; Hallie Grossman, *Kalief Browder's Life and Death Galvanize Action to End Solitary Confinement*, SOLITARY WATCH (June 29, 2015), http://solitarywatch.com/2015/06/29/kalief-browders-life-and-death-galvanize-action-to-end-solitary-confinement/.

[35] Jennifer Gonnerman, *Kalief Browder and a Change at Rikers*, NEW YORKER (Apr. 14, 2015), http://www.newyorker.com/news/news-desk/kalief-browder-and-a-change-at-rikers. Mayor de Blasio and then-Chief Judge of the New York Court of Appeals, Jonathan Lippman, put forth a plan to identify inmates held for more than a year on cases that have yet to reach a disposition and fast-track those cases so that they are resolved within six months. *Id.*

[36] Rick Rojas, *New York City to Relax Bail Requirements for Low-Level Offenders*, N.Y. TIMES (July 8, 2015),

Supreme Court's attention. Justice Anthony Kennedy cited Gonnerman's story in his fiery concurring opinion in *Davis v. Ayala*, where he castigated the horrors of solitary confinement.[37] Finally, President Barack Obama discussed Kalief Browder's story for the damaging effects of solitary confinement in his *Washington Post* op-ed where he explained his Executive Order that banned the restrictive practice for juveniles in federal prisons.[38]

Kalief Browder's tragic story serves as a dispiriting and bittersweet example of good journalism at work. Kalief's story exposed the lethargic system of justice in New York's courts; it laid bare the damaging use of solitary confinement among juveniles; it revealed the often-arbitrary practice of imposing secured money bail on the nation's poorest residents. But Kalief's story is an unlikely one.[39] Kalief repeatedly refused to plead guilty for a crime he did not commit—despite a promise of leniency accompanied by a ticket out of jail.[40] Jennifer Gonnerman was able to report on Kalief only after he was released from jail. Kalief's unlikely story leads one to wonder about the similarly situated persons who never made headlines. What

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http://www.nytimes.com/2015/07/09/nyregion/new-york-city-introduces-bail-reform-plan-for-low-level-offenders.html.

[37] Davis v. Ayala, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring) ("There are indications of a new and growing awareness in the broader public of the subject of corrections and of solitary confinement in particular . . . . [a]nd consideration of these issues is needed.").

[38] Barack Obama, *Barack Obama: Why We Must Rethink Solitary Confinement*, WASH. POST (Jan. 25, 2016), https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html?tid=a_inl&utm_term=.f6534e84dd7b.

[39] The story is unlikely because, on average, ninety to ninety-five percent of criminal cases are resolved by guilty plea. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PLEA AND CHARGE BARGAINING: RESEARCH SUMMARY 1 (2011), https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf.

[40] Gonnerman, *supra* note 27.

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about the Kaliefs who pled? What about the Kaliefs who are still in the system? What about the Kaliefs who never made it out?

This note discusses the law governing media access policies in prisons. Part I is split in three subparts. The first sub-part begins with a brief overview of Supreme Court precedent on media access policies, and concludes with a modern case on prison regulations generally. The second sub-part is a case study of a group's attempts to seek access to an Illinois state prison—illustrating the difficulties and dangers inherent in our current system, where access is not guaranteed to members of the press. The third sub-part is a study of California's failed efforts at legislating a media access to prison policy.

Part II discusses the rationale used to uphold media restrictions in prisons. Finally, the proposal would give prisoners a voice and allow journalists to fulfill their professional obligations, yet still respect the pressing needs of prison administrators.

I. HISTORY

This section begins with the Court's last and most significant case on media access to prisons, *Pell v. Procunier*.[41] The Court has since decided the standard of review for prison regulations, in *Turner v. Safley*.[42] This section concludes with two sections on modern case studies concerning media access policies in prisons.[43]

a. What the Court Has Said

In 1974, the Supreme Court, in *Pell v. Procunier*, held constitutional a California Department of Corrections (DOC) policy limiting journalists' access to persons in prisons.[44] The Court found

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[41] 417 U.S. 817 (1974).
[42] 482 U.S. 78 (1987).
[43] *See infra* sections b and c.
[44] 417 U.S. 817, 835 (1974). *See also* Cruz v. Beto, 405 U.S. 319, 322

legitimate penological[45] interests in deterring crime in prisons, rehabilitating prisoners, and maintaining internal security within prison facilities.[46] The litigation was a joint action between persons incarcerated at San Quentin State prison and journalists that sought access to interview incarcerated persons.[47] The California DOC policy challenged was enacted in response to a riot at San Quentin.[48]

On the same day as *Pell*, the Supreme Court also decided *Saxbe v. Washington Post*, a suit challenging a Federal Bureau of Prisons policy that restricted media access to prisons.[49] The policy prohibited interviews between journalists and persons confined at all federal prisons, except minimum-security institutions.[50] The Court held that the policy did not abridge Freedom of the Press rights because it did

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(1972) (holding that prisoners have First Amendment rights when a prisoner was retaliated against for allegedly spreading religious materials).

[45] Here, the Court is using a term found in prison literature to describe the types of interests that the government asserts in the context of managing jails or prisons. *See, e.g.*, *Pell*, 417 U.S. at 822 ("In the First Amendment context a corollary of this principle is that a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system."); Malcolm M. Feeley and Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications,* 30 CRIM. 449 (1992), http://scholarship.law.berkeley.edu/facpubs/718 (discussing the development of penal policy over time).

[46] *Pell*, 417 U.S. at 822–24.

[47] *Id.* at 817; CAL. DOC MANUAL NO. 415.071.

[48] For a brief overview of the riot see James Queally & Paige St. John, *The San Quentin Six: How a Wig and a Handgun Sent a Prison into Chaos 44 Years Ago*, L.A. TIMES (Aug. 14, 2015), http://www.latimes.com/local/crime/la-me-san-quentin-six-retro-20150813-htmlstory.html; *see also* WILBUR R. MITCHELL, THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA 1602 (discussing how a thirty-three minute riot left six people dead after an attorney slipped a gun to his client, George Jackson, under the disguise of a wig).

[49] 417 U.S. 843, 844 (1974).

[50] *Id.*

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not discriminate against the press, and it did not deny journalists information generally available to the public.[51]

Two months before *Pell*, the Court decided *Procunier v. Martinez*, the "high water-mark for prisoner rights."[52] *Martinez* held unconstitutional a prison regulation that broadly censored outgoing prisoner mail.[53] Censorship of prisoner mail is legal only if it serves "an important or substantial government interest"[54] and "the limitation of First Amendment freedoms [is] no greater than is necessary or essential to the proper discharge of an administrator's duty."[55] California DOC failed to meet the Court's strict scrutiny test.[56] The heightened level of review was applied because the Court recognized that the First Amendment liberty interests of private citizens were intertwined with restrictions on prisoner mail.[57]

Thirteen years later the Court, in *Turner v. Safley*, finally stated

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[51] *Id.* at 850. The Court reasoned that the policy was permissible because "[t]he Constitution [does not] impose[] . . . [an] affirmative duty to make available to journalists sources of information not available to members of the public generally." *Id.* at 850 (quoting *Pell*, 417 U.S. at 834–35); *see also* U.S. CONST. amend. I.

[52] *See* David L. Hudson, Jr., *Remembering the High Point of Prisoner Rights*, FIRST AMEND. CTR. (Apr. 29, 2011), http://www.firstamendmentcenter.org/remembering-the-high-point-of-prisoner-rights.

[53] Procunier v. Martinez, 416 U.S. 396 (1974), *overruled by* Thornburgh v. Abbott, 490 U.S. 401 (1989). The regulation authorized censorship of statements "that unduly complain or magnify grievances, expression of inflammatory political, racial, or religious, or other views, and matter deemed defamatory or otherwise inappropriate." *Id.* at 398 (quoting DOC policies) (internal quotations omitted). Prison staff in charge of censoring mail could simply choose not to send the letter, they could issue a disciplinary report against the prisoner, or they could put a copy of the letter in the prisoner's file. *Id.* at 400.

[54] *Id.* at 413.

[55] *Id.* at 414.

[56] *Id.* at 415.

[57] *Id.* at 409.

the definitive standard of review for prison regulations.[58] The litigation concerned two Missouri prison regulations.[59] One prohibited correspondence between prisoners at different state prisons, and the other was an almost complete ban on inmate marriages.[60] The Court held that prison regulations challenged on constitutional grounds are not subject to strict scrutiny (implicitly overruling *Martinez*)—instead, these regulations are valid if "reasonably related to legitimate penological interests."[61] The regulation limiting mail correspondence was upheld because it had a reasonable relationship to the valid correctional goals of institutional security and safety.[62] But the regulation on inmate marriages was

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[58] 482 U.S. 78 (1987). *See also Pell*, 417 U.S. at 834; Jones v. N.C. Prisoners' Labor Union, Inc., 433 U.S. 119, 136 (1977) (holding a regulation restricting labor unions in prisons constitutional on the basis that "wide-ranging deference" should be given to prison authorities); Bell v. Wolfish, 441 U.S. 520, 561 (1979) (holding that it was not a violation of the Fourth Amendment to submit pre-trial detainees to intrusive body searches under the following test: "if particular . . . restriction . . . is reasonably related to legitimate nonpunitive governmental objective, it does not, without more, amount to punishment, but, conversely, if condition or restriction is arbitrary or purposeless, court may permissibly infer that purpose of governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees"); *Procunier*, 416 U.S. at 413 (holding a California DOC regulation unconstitutional when it permitted censorship of inmates' mail, under the following two-part test: (1) "[the regulation] furthers one or more of the substantial governmental interests of security, order, and rehabilitation . . . (2) the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved").

[59] Mo. Div. of Corr. Regs. 20–118.010(1)(e) & 20–117.050. Safley v. Turner, 777 F.2d 1307, 1308–09 (8th Cir. 1985), *aff'd* in part, *rev'd* in part, 482 U.S. 78 (1987).

[60] *See supra* note 59 and accompanying text; *Turner*, 482 U.S. at 81–82.

[61] *Id.* at 89.

[62] *Id.* at 93.

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struck down because it was not reasonably related to a legitimate penological interest.[63]

Two years later the Court re-affirmed the *Turner* standard of review and further elaborated that it is "not toothless."[64] In *Thornburg v. Abbott*, the Court explicitly overturned *Martinez* when it held that regulations were facially constitutional when they permitted prison officials to reject incoming publications in certain circumstances.[65] Therefore, prison officials now have wide latitude to censor mail as long as a reasonable relationship to a legitimate institutional objective can be proffered.[66]

Applying *Turner*, the Court recently held that there was a "valid, rational connection" between a Pennsylvania prison regulation and the "legitimate penological interest" in motivating better behavior on the part of particularly difficult prisoners.[67] The regulation at issue restricted access to newspapers, magazines, and photographs for persons confined on the Long Term Segregation Unit (LTSU).[68] Ronald Banks, a person housed on the LTSU, brought a suit alleging that the regulation deprived him of his First Amendment rights.[69] Although the Court upheld the policy it promised, "[a] prisoner may be able to marshal substantial evidence that, given the importance of the interest, the Policy is not a reasonable one."[70] Justice Ginsburg, in dissent, argued that the State had not alleged sufficient evidence to show that the regulation was reasonable—she said the evidence was

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[63] *Id.* at 97–98. In response to the marriage restriction, the Court said that it "represents an exaggerated response to such security objectives. There are obvious, easy alternatives to the Missouri regulation that accommodate the right to marry while imposing a *de minimis* burden on the pursuit of security objectives." *Id.*

[64] Thornburg v. Abbott, 490 U.S. 401, 414 (1989).

[65] *Id.* at 414–15.

[66] *Id.* at 413; *see also* Beard v. Banks, 548 U.S. 521 (2006).

[67] *Beard*, 548 U.S. at 531 (quoting *Turner*, 482 U.S. at 89, 95).

[68] *Id.* at 524–25.

[69] *Id.* at 524–27.

[70] *Id.* at 535–36.

of "the kind that could be made to justify virtually any prison regulation that does not involve physical abuse."[71] Recent case studies suggest that Justice Ginsburg's argument—that some evidence should be offered to justify prison regulations—should be given weight due to the strong countervailing constitutional right to freedom of expression.

b. Illinois as a Case Study of Unreasonableness

"[I] wouldn't even house a dog in the kind of conditions men are enduring in basements at the minimum security institution." These are the words of a former inmate at Vienna Correctional Center, a state prison located in southern Illinois.[72] In August of 2012, Rob Wildeboer, criminal-and-legal-affairs reporter at public radio station WBEZ in Chicago began reporting on the deplorable conditions at Vienna.[73] Even though it was designed to hold only 685 inmates, in 2014 Vienna housed more than 1,600 people.[74] After years of neglect, "mostly low-level offenders [were] crammed into dilapidated buildings infested with mice and cockroaches."[75]

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[71] *Id.* at 554.

[72] Rob Wildeboer, *Former Inmates Not Surprised Quinn Keeping Reporters Out of Prisons*, WBEZ (Aug. 9, 2012), http://www.wbez.org/news/former-inmates-not-surprised-quinn-keeping-reporters-out-prisons-101605.

[73] *See* Rob Wildeboer, *Gov. Quinn Keeps Public in the Dark on Prison Conditions*, WBEZ (Aug. 7, 2012), http://www.wbez.org/news/gov-quinn-keeps-public-dark-prison-conditions-101548#transcript; *see also* JOHN MAKI & MAYA SZILAK, MONITORING VISIT TO VIENNA CORRECTIONAL CENTER (John Howard Ass'n of Ill. ed. 2011), illinoistimes.com/file-123-.pdf.

[74] *See* TROYER, *supra* note 73, at 1–2.

[75] MAKI & SZILAK, *supra* note 73, at 2. A man formerly incarcerated at Vienna for three years attested to the terrible conditions at the prison. He said:

> I thought to myself this is supposed to be a minimum security institution, but this was more like a maximum security institution in

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Wildeboer eagerly sought, and was repeatedly denied, access to Illinois Department of Corrections (IDOC) prisons, including Vienna.[76] Wildeboer first requested access after reading a report from John Howard Association.[77] Then-Governor Quinn cited safety and security reasons as the basis for denying the media's requests.[78]

WBEZ sponsored a full frontal attack on IDOC—they urged regular listeners and staff reporters to call, tweet and blog about the crisis in Illinois' prisons.[79] WBEZ even enlisted the help of two attorneys from the law firm Jenner & Block LLP, who offered pro bono assistance.[80] Illinois will now have "media days," where prison

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> that I couldn't believe that they would actually expect people to live under those type of conditions. The place is infested with rats and the rats were so aggressive that we used to call them kangaroo rats 'cause while I was there quite a few guys had rats actually jump up in bed with them.

Wildeboer, *supra* note 73.

[76] *See* Rob Wildeboer, *Gov. Quinn, We Have Questions,* WBEZ (Mar. 28, 2013) [hereinafter *Gov. Quinn, We Have Questions*], http://www.wbez.org/news/gov-quinn-we-have-questions-106327. *See also* Rob Wildeboer, *Inmates Housed in Flooded Basements, and Gov. Quinn Keeping Reporters Out,* WBEZ (Aug. 9, 2012), http://www.wbez.org/news/inmates-housed-flooded-basements-and-gov-quinn-keeping-reporters-out-101555; Wildeboer, *supra* note 72.

[77] *Gov. Quinn, We Have Questions*, *supra* note 76. *See also* TROYER, *supra* note 73.

[78] *Gov. Quinn, We Have Questions*, *supra* note 76.

[79] *Id.*

[80] *See* Rob Wildeboer, *Quinn's Half-Measures on Prison Openness*, WBEZ (Oct. 31, 2012), http://www.wbez.org/news/quinns-half-measures-prison-openness-103540. In an e-mail statement reacting to the decision, Jeffrey Colman, an attorney from the firm Jenner and Block who had been working pro bono with WBEZ, spoke positively about the change, but said "IDOC practices—including its new directive—violate constitutional guarantees and deprive the public of the ability to see how its hundreds of millions of dollars of tax money are spent." Rob Wildeboer, *Quinn Allows Limited Media Tours of Prisons but Stops Short of Transparency*, WBEZ

officials will lead journalists around the facility.[81] This is not a clear victory, however, because the Director of the Department of Corrections has the sole discretion to set the terms of the "media day" policy, which means it could be abolished at any time.[82] Furthermore, reporters are not allowed access to interview individual inmates, nor are they allowed to take microphones or cameras on the tours—which means "if there's mold or flooding, the public won't be able to see how severe it is or isn't."[83] Wildeboer insists that the new policy is a "long way from maximizing transparency . . . [because] it seems aimed solely at minimizing the threat of a lawsuit."[84]

Despite denying journalists' access to jails, Illinois permitted prison access to a multitude of different organizations: "school groups, church groups, [and] The John Howard [Association]."[85] Jeffrey Colman, one of the attorneys working with WBEZ, argued that IDOC gave in because "they knew that to give access to John Howard and not the media raised a significant equal protection claim under the Fourteenth Amendment."[86]

(Oct. 26, 2012), http://www.wbez.org/quinn-allows-limited-media-tours-prisons-stops-short-transparency-103466.

[81] *Id.*

[82] Wildeboer, *Quinn's Half-Measures on Prison Openness*, *supra* note 80.

[83] *Id.* Carol Marin, a reporter based in Chicago, said:

You can't report on prisons if you can't see them, if you can't talk to inmates, and if you can't bring in a camera, and what the administration, I think, is counting on is that in a day of reduced news budgets, fewer reporters, and the distance that prisons are from Chicago that we won't care or we won't cover it and as a consequence taxpayers won't see it.

Id.

[84] *Id.*

[85] Beth Schwartzapfel, *Inside Stories: Nearly 1 in 100 Americans is Incarcerated. But How Well Can Journalists Cover Prisons if They Can't Get Past the Gates?*, COLUM. J. REV. (Mar./Apr. 2013), http://www.cjr.org/cover_story/inside_stories.php?page=all.

[86] *Id.*

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Still, early signs of Illinois media days show signs of success. Inmates report that facilities were improved days before the media were scheduled to enter facilities, a fact that was confirmed by Vienna Warden Randy Davis.[87] Davis explained the renovations in a common-sense way when he rhetorically asked: "Do you get ready for visitors at your house? We do the same thing . . . ."[88] In Illinois, at least, it seems that public pressure and the prospect of scrutiny has led to small-scale reforms.

c. California's Failed Efforts at Reform

In California, inmates organized on a large scale to protest prison conditions. In 2013, thirty thousand incarcerated persons in California went on a hunger strike to protest inhumane conditions in state prisons.[89] Prison media access policies allowed prisons to deny media requests during such a critical period for investigative reporting. The hunger strike ended after sixty days without official acknowledgement of any of the strikers' demands. Tragically, during this time one of the strikers committed suicide.[90] Journalists were

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[87] *Gov. Quinn, We Have Questions*, *supra* note 76.

[88] *Id.*

[89] Robin Abcarin, *California's Prison Hunger Strike and Shadow of Guantanamo*, L.A. TIMES (July 10, 2013), http://articles.latimes.com/2013/jul/10/local/la-me-ln-california-prison-hunger-strike-20130709. Hunger strikers had demands such as: ending indeterminate sentences to solitary confinement units, guaranteeing procedural mechanisms in place to govern disciplinary proceedings that lead to SHU, and putting in place a "step-down" program whereby persons in SHU can eventually transition back to the general population. *See* Samantha Schaefer, *Hunger Strike: Pelican Bay Inmate Demands*, L.A TIMES (July 9, 2013), http://documents.latimes.com/pelican-bay-inmate-demands/.

[90] Sal Rodriquez, *California Prison Hunger Strike Ends After 60 Days*, SOLITARY WATCH (Sept. 5, 2013), http://solitarywatch.com/2013/09/05/california-prison-hunger-strike-ends-60-days/ (documenting the tragic death of Billy Sell, a person who was

repeatedly denied access to these facilities on the grounds that it was a period of emergency.[91]

In California, state politicians have repeatedly tried to pass legislation aimed at securing journalists' access to prisons.[92] Despite popular support in the legislature, California Governors vetoed such bills on nine separate occasions.[93] In his veto of AB 304, then-Governor Schwarzenegger said: "[f]or the past two years I have vetoed similar measures because these bills would allow the media to glamorize murderers and thereby once again traumatize crime victims and their families."[94] Instead, the Governor emphasized new regulations to the California DOC.[95]

In California, the drive to pass legislative proposals earnestly began in 1997—one year after Governor Wilson passed an emergency measure that restricted specific inmate face-to-face

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incarcerated at Corcoran Prison).

[91] Julie Small, *California Prison Officials Deny Media Access to Hunger Strikers*, REPRESENT! (July 22, 2013), http://www.scpr.org/blogs/politics/2013/07/22/14314/california-prison-officials-deny-media-access-to-h/.

[92] The following bills have been successfully passed by the California legislature: S.B. 304 2007–2008 Reg Leg. Sess. (Cal. 2007–2008), S.B. 1521 2006–2007 Reg. Leg. Sess. (Cal. 2006–2007) S.B. 239 Reg. Leg. Sess. 2005–2006, (Cal. 2005-2006), S.B. 1164 2003–2004 Reg. Leg. Sess. (Cal. 2003–2004), A.B. 2101 1999–2000 Reg. Leg. Sess. (Cal. 1999–2000), S.B. 434 Reg. Leg Sess. 1997–1998, (Cal. 1997–1998). *See* S. COMM. ON PUB. SAFETY, R. on AB 1270, 2011–2012 Sess. (Cal. 2012), http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1251-1300/ab_1270_cfa_20120705_141037_sen_comm.html.

[93] *Id.* In opposition to the bill, The Crimes Victims Action Alliance similarly said: "[o]pening up media access to allow for pre-arranged face-to-face interviews with inmates elevates criminals to a celebrity status—allowing them to be interviewed and 'tell their side of the story.'" *Id.*

[94] *Id.*

[95] *Id.*

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interviews.[96] The restrictive regulation was enacted because, according to J.P. Temblay, Assistant Secretary of California's Youth and Adult Correctional Agency, "[we] didn't want to have inmates becoming celebrities and heroes."[97] Assistant Secretary Temblay also voiced concerns about setting up interviews with the "tabloid press," but denied that the policy was aimed at restricting access to mainstream media.[98] The media access policy enacted in 1996 is largely still in place, which means that prison officials exercise discretion over the time, place, individual inmate to be interviewed, and whether an inmate may be interviewed at all.[99]

II. ANALYSIS

The Supreme Court, in *Pell*, held DOC restrictions on media access to prisoners constitutional "in light of the alternative channels of communication that are open to prison inmates."[100] The restriction on media access is permissible, according to the Court, as long as it operates in a "neutral fashion"[101] and does not censor the content of the expression. According to the Court, restricting media access to

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[96] *See supra* note 92; Brenda Sandburg, *California Prisons Bar Face-to-Face Interviews*, WORKERS WORLD (Jan. 25, 1996), http://www.workers.org/ww/1996/fileout43.html. In response to the government order, Luis Talamantez, a prisoner involved in the 1971 San Quentin Riot, said:

The government wants to slow down the scrutiny of the prisons . . . [o]therwise an avalanche of lawsuits will be brought and won against the prison system. They know they have cowboy guards in there killing prisoners and they don't want to be sued. They want the media out.

Id. (citations omitted).

[97] Jane Kirtley, *Limiting Media Access to Prisons*, AM. J. REV. (Mar. 1996), http://ajrarchive.org/Article.asp?id=1768.

[98] *Id.*

[99] *Id. See also* S. COMM. ON PUB. SAFETY, *supra* note 92.

[100] Pell v. Procunier, 417 U.S. 817, 827 (1974).

[101] *Id.* at 828.

prisoners is necessary in light of the "big wheel" problem.[102]

Despite the concerns expressed by the Court, it is well recognized that incarcerated persons still have First Amendment rights.[103] These rights, according to the Court in *Pell*, must be balanced against legitimate government interests.[104] A prisoner retains First Amendment rights "that are not inconsistent with his status as a prisoner."[105] The government interests that balance these rights include deterring crime, providing security in prisons, and rehabilitating prisoners.[106]

a. No Viable Alternative Channels of Communication

In *Pell*, the Court characterized a media access restriction as one that imposed on an inmate's visitation rights.[107] These inmates had open "channels of communication"[108] due to the presence of alternative types of visitors, like "family, friends of prior acquaintance, legal counsel, and clergy."[109] The Court characterized the regulation as content neutral because journalists were not identified based on the anticipated communication.[110] Furthermore, inmates were free to indirectly speak to journalists through any of the permissible visitors acting as mediums of communication.[111]

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[102] Saxbe v. Wash. Post Co., 417 U.S. 843, 866 (1974) ("The Bureau's principal justification for its interview ban has become known during the course of this litigation as the 'big wheel' phenomenon.").

[103] *Pell*, 417 U.S. at 822 ("[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.").

[104] *Id.*

[105] *Id.* at 822.

[106] *Id.* at 822–23.

[107] *Id.* at 827.

[108] *Id.*

[109] *Id.*

[110] *Id.* at 827–28.

[111] *Id.*

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The Court's reasoning is problematic for two reasons. First, it is unrealistic to expect laypeople to perform the job of professional journalists. Family and friends have distinct reasons to visit inmates in prisons and it is unrealistic to expect these people to be coopted by a journalist in order to gather information for a news organization. Second, the Court defers completely to the prison administrator's judgment when they hold that selecting journalists as ineligible for visitation furthers rehabilitation and other legitimate goals.[112] If other people are acting as a conduit for journalists, then why not just allow journalists to go into these facilities personally? The government does not elaborate on the potential risk of introducing journalists to prisons and the Court does not require additional justification for the arbitrary classification.

The Court argues that written communication gives inmates an "open and substantially unimpeded channel for communication."[113] This channel is anything but unimpeded for various reasons, including literacy rates, the nature of written communication, and the now-deferential standard of review applicable to censorship regulations. About fifty-six percent of incarcerated persons hold just basic or below basic levels of literacy.[114] For these persons, communicating back-and-forth with a journalist by writing letters is substantially impeded by their limited ability to comprehend written language.

For literate persons in prisons, acquiring necessary tools to write might be an obstacle. Unlike face-to-face communication, letter writing requires tools because a person needs a pen and paper to write

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[112] *Id.* at 826.

[113] *Id.* at 824.

[114] Basic or below basic levels of literacy are associated with being able to "read easily identifiable information in short, commonplace prose texts." *See* ELIZABETH GREENBERG, ERIC DUNLEAVY, & MARK KUTNER, U.S. DEP'T OF EDUC., LITERACY BEHIND BARS: RESULTS FROM THE 2003 NATIONAL ASSESSMENT OF ADULT LITERACY PRISON SURVEY 13 (Am. Insts. for Res. ed. 2007), https://nces.ed.gov/pubs2007/2007473.pdf.

a letter. In this regime, an easy way to censor an inmate is to simply withhold the supplies necessary to facilitate communication. While private citizens can easily remedy this problem by purchasing a pen or paper, an inmate can effectively be silenced much more easily. One can easily imagine a scenario where an outspoken prisoner, critical of the status quo, is withheld writing "privileges" and yet has little recourse because letter writing is his only way of communicating his plight to the outside world.

Despite the initial barriers, letter writing is just the first step. After writing a letter, it still must be mailed by prison administrators. This is yet another opportunity for censorship. It is reasonable to expect that the Court, in *Pell*, relied on their recent precedent in *Martinez*, discussed *infra*, which applied strict scrutiny to a prison regulation that censored outgoing mail. In *Pell*, the Court held that reasonable alternatives to communication exist on the grounds that censorship was difficult to justify. Today, strict scrutiny no longer applies.[115] Now, as discussed *infra*, the Court applies the more deferential *Turner* test, which allows the government to enact a regulation if "reasonably related" to a "legitimate" interest.[116] This reasonable relationship test thus opens the door for prison administrators to apply blanket restrictions to outgoing mail, especially when mail is not seen to be in the government's interests.

Even if an inmate has access to writing supplies and is sufficiently capable, written communication is an imperfect substitute for face-to-face interaction. In-person conversation is superior to written correspondence not only because it can lend information by way of body language and speech patterns, but also because it allows the interview to be tailored to the journalist's interests. A person subjected to the daily rigors of the prison environment is likely to become desensitized and lose sight of suitable living conditions. A face-to-face interview is ideal for gathering information that an

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[115] Hudson, *supra* note 52.

[116] Turner v. Safley, 482 U.S. 78, 95 (1987); *see also* Beard v. Banks, 548 U.S. 521 (2006).

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inmate might not otherwise think to discuss.

b. Prison Policies Are Not Neutral

Although overruled, the District Court for the District of Columbia, in *Washington Post Co. v. Kleindienst*, found that the interview ban was not neutral, and was unconstitutional because it "simply serves to prevent too sharp an inquiry into official conduct."[117] The Court came to this conclusion after a two-day evidentiary hearing with an array of experts from the journalist and the prison industry.[118] The district court found that "private personal interviews are essential to accurate and effective reporting."[119] On appeal to the Court, Justice Powell, dissenting in *Saxbe*, noted that neither the Court of Appeals, nor the government, attacked the District Court's finding on the essential nature of press interviews.[120]

Therefore, the Court erroneously accepted the Government's argument that journalists are not entitled to a "special" right of access "beyond that afforded [to] the general public."[121] The majority concluded that the access policy was constitutional to the extent that it was nondiscriminatory.[122] Journalists were not entitled a special right to interview specific persons face-to-face, reasoned the Court.[123] Comparing journalists to members of the public is inapt because the general public frequently has neither the time, nor the interest, to visit prisons in order to gather information. Members of the public, therefore, are not seeking a face-to-face interview in order to serve the underlying rationale behind the First Amendment. Policies behind

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[117] 357 F. Supp. 779, 782 (D.D.C. 1972), *modified*, 494 F.2d 994 (D.C. Cir. 1974), *rev'd sub nom.*, *Saxbe*, 417 U.S. 843 (1974).

[118] *Id.* at 781.

[119] *Id.* at 782.

[120] *Saxbe*, 417 U.S. at 856. (Powell, J., dissenting).

[121] *Id.* at 850.

[122] *Id.*

[123] *Id.* at 846.

visitation rights mirror the notion that personal interviews are by nature personal—family and friends can meet an inmate in-person because of their relationship to that person, not because of a professional relationship. Journalists, too, have a relationship to an inmate that is based on their professional relationship as information gatherers; this relationship should be considered distinct and specific from that of the general public, and should be deemed worthy of a face-to-face, specific inmate interview.

c. Big Wheels Keep on Turnin'

Prison officials that restrict media access often cite the "big wheel" problem as a primary justification for the restriction.[124] A "big wheel" is an inmate who is a leader within a jail or prison setting.[125] These leaders gain popularity through publicity, and they use their influence to build coalitions and networks within prisons.[126] "Big wheels" subvert officials' ability to run an institution to the extent that they "persuade other prisoners to engage in disruptive behavior."[127]

Though it is clear that "big wheels" exist, there is no evidence to suggest any causation between "big wheels" and media interviews.[128]

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[124] *See id.* at 866 (Powell, J., dissenting).

[125] *Id.* For a popular media depiction of the "big wheel" problem, see the Netflix original series "Orange is the New Black." Lorraine Toussaint's character "Vee" plays a charismatic and manipulative inmate who organizes deep divisions among the inmates at the fictional Litchfield Federal Penitentiary. Vee successfully starts an illicit business in the jail selling cigarettes, but her acerbic and cold demeanor leads to her ultimate demise. Of course, Vee is not emboldened by a journalist visiting her in jail, but rather she has a "big wheel" personality that was defined by her prior life as a drug dealer. *See* Jenji Kohan, Orange Is the New Black, NETFLIX (2013–2015), http://www.netflix.com/title/70242311.

[126] *Saxbe*, 417 U.S. at 866.

[127] *Id.*

[128] Wash. Post Co. v. Kleindienst, 357 F. Supp. 779, 781 (D.D.C.

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Indeed, the District Court, in *Washington Post v. Kleindienst*, found that the presence of a few "big wheels" was "impressionistic" and while "advanced in good faith" the justification did not merit a restriction that had such an "obvious purpose of stultifying dissent."[129]

Even *if* media access to inmates has an effect on "big wheels" (of which there is no evidence to support), a restriction can be tailored to accommodate legitimate government interests. Justice Powell, dissenting in *Saxbe*, articulated ways in which policies could be tailored to accommodate the "big wheel" concern.[130] Prison officials could, for instance, set a limit on the number of interviews in which a given inmate is allowed to participate for a certain period of time.[131] These restrictions would not be overly burdensome because such time, place, and manner restrictions already govern interviews that are conducted with family and friends, attorneys, and members of the clergy.[132]

d. The Struggle for Access

WBEZ's struggle with Illinois DOC serves as a prime example of why consistent and open media access policies are needed. Conditions were reportedly deplorable and not fit for human occupation. In order to demand change, the public must be informed. Journalists tasked with providing essential information to the Illinois taxpayers could not gain access to Vienna for nine months after discovering of the alleged violations. The Court in *Beard* promised that a challenger could marshal enough evidence to successfully challenge a prison regulation.[133] The Illinois case proves that

1972).

[129] *Id.*

[130] *See Saxbe*, 417 U.S. at 873 (Powell, J., dissenting).

[131] *Saxbe*, 417 U.S. at 873 (Powell, J., dissenting).

[132] *Id.*

[133] *Beard*, 548 U.S. at 535–36.

sufficient evidence exists because it is unreasonable for a journalist to be barred from a prison that is kept at almost three times its capacity, reportedly filled with vermin, and yet funded by state tax money, merely because of a hypothetical "big wheel."

e. Manson as Bogeyman

Charles Manson has become a big wheel bogeyman deterring officials from acting on media access policies. During discussion of California Senate Bill 304, Doris Tate Crime Victims Bureau said, "media interviews tend to glamorize crime and criminals by making inmates television 'stars' and thus undermine the severity of the penalties designed to deter crime."[134] Charles Manson was discussed extensively in the California Senate analysis of a media access to prisons bill, and he was used as an example of how an ordinary prisoner can gain massive popularity through the news media.[135]

DOC does not provide any evidence that supports the notion that "sales of recordings and Tee-shirts concerning inmate Charles Manson have no doubt been aided by frequent interviews with this inmate."[136] The irony in this argument is that prison tours take detours in order to show where famous prisoners are held.[137] So, on one hand, DOC purports to be concerned with advertising and publicizing inmates, yet their practices directly contradict these

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[134] *See, e.g.*, *Bill Analysis (SB 304) Before S. Rules Comm.*, 2007–2008 Sess. (Cal. 2007).

[135] *Id.*

[136] Sussman, *supra* note 23, at 264.

[137] *Id.*

Said the reporter, "They took us by this protective housing unit, which is where all the stars of the system are. There's Charlie Manson next to Sirhan Sirhan next to Juan Corona. And they take everybody through. And it's almost like—it reminded me of being at the San Diego Zoo, and they took you by Ling Ling, the panda bears . . . They're just showing off; the prison system is showing off its stars."
Id. at 264–65.

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professed goals.[138]

Charles Manson's popularity cannot reasonably be attributed to media interviews alone. For example, Manson is the subject of an all-time best-selling true crime book, with over seven million copies sold.[139] Manson also boasts over 70,000 "likes" on his Facebook page, and receives over thirty-five handwritten letters a week—more mail than any other inmate in California state prison history.[140] Charles Manson is clearly not a representative inmate from which to draw conclusions, and he should not be used to justify a blanket restriction on constitutional rights to free expression.

California governors have vetoed legislative bills ensuring media access to prisons on nine separate occasions.[141] The need for open media access policies to prisons is apparent, as evidenced by the repeated legislative efforts on this issue. The Supreme Court should act because normal democratic processes have been exhausted.

III. PROPOSAL

Civil rights attorney William Bennett Turner, addressing Justice Blackmun during oral argument in *Procunier v. Martinez*, said "[w]hat we are dealing with here is just expression. It's not obscenity, not libel, not fighting words. We're not talking about conduct[.]"[142] Turner explains that the contentious letters in the case were addressed

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[138] *Id.* at 264.

[139] David Stout, *Vincent T. Bugliosi, Manson Prosecutor and True-Crime Author, Dies* at *80*, N.Y. TIMES (June 9, 2015), http://www.nytimes.com/2015/06/10/us/vincent-t-bugliosi-manson-prosecutor-and-true-crime-author-dies-at-80.html.

[140] Ted Rowlands, *Why People Still Pay Attention to Charles Manson*, CNN (Jan. 3, 2015), http://www.cnn.com/2014/08/08/justice/charles-manson-fascination/.

[141] *See supra*, notes 92–93 and accompanying text; Schwartzapfel, *supra* note 85.

[142] WILLIAM BENNETT TURNER, FIGURES OF SPEECH: FIRST AMENDMENT HEROES AND VILLAINS 43 (2011).

to persons on the approved Department of Corrections list.[143] Furthermore, Turner says, "we are not seeking a First Amendment charter of liberty for prisoners, only a constitutional minimum—a right not to be punished for criticizing prison officials or saying things that officials might consider otherwise 'inappropriate.'"[144] This brilliant oration worked: the Court delivered a unanimous verdict in favor of Turner's incarcerated clients.[145]

Like Turner's plea during oral arguments, the Supreme Court should adopt a rule that guarantees a certain minimum level of media access to prisons. Legislative attempts have proven that ordinary democratic means are inadequate to solve the problem, yet legal pressure on prison administrators effectively stopped the quagmire in Illinois. Journalists do not seek access to prisons for malicious or violent reasons—these professionals merely seek to exchange in a dialogue with prisoners so that they can effectively report on the state of public institutions. Prisons should have visitation policies regarding journalists that are like current policies towards families and friends. Journalists should be required to undergo the same screening process as other visitors, and they should be allowed to conduct interviews with specific inmates upon request. These policies should have the similar time, place, and manner restrictions that are imposed on other types of visitation that occur within prisons.

Current media access policies are inadequate and unconstitutional because they do not leave open channels of communication through which inmates can speak.[146] Without opportunities for freedom of expression, we lack necessary information to evaluate the

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143 *Id.*

144 *Id.*

145 *See generally* Procunier v. Martinez, 416 U.S. 396 (1974).

146 *See Pell*, 417 U.S. at 826 ("So long as reasonable and effective means of communication remain open and no discrimination in terms of content is involved, we believe that, in drawing such lines, 'prison officials must be accorded latitude.'") (quoting Cruz v. Beto, 405 U.S. 319, 321 (1972)).

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performance of our public institutions.[147]

Because journalists play an essential role in delivering information to the public, the Supreme Court should overturn *Pell v. Procunier*. Prison conditions have changed drastically in the past forty-two years, and journalists should play a crucial role in the way that prison policies are shaped in the decades to come.

IV. CONCLUSION

Media access policies that restrict face-to-face inmate interviews are unconstitutional because (1) there are no viable alternative forms of communication, (2) media access policies are not neutral, and (3) there is no "big wheel" problem. Prison restrictions do not operate in a neutral fashion, and instead seek to censor the content of expression; media access restrictions do not fall within the "appropriate rules and regulations" to which "prisoners necessarily are subject"[148] and, instead, abridge inmates' First Amendment rights.[149]

Regulations on media access to prisons are important because the public deserves to know what goes on inside its institutions. Ensuring media access to prisons gives a voice to those who might not have had a fair trial, or to those who might not have had a trial at all.[150] The sheer weight of these policies rests on the memory of once-petite shoulders—these shoulders belong to a bright, sixteen-year-old boy who was denied due process when he was subjected to the full rigor

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[147] *See, e.g.*, First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978) ("[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw."); Kleindienst v. Mandel, 408 U.S. 753, 762 (1972) ("In a variety of contexts this Court has referred to a First Amendment right to 'receive information and ideas'").

[148] Cruz v. Beto, 405 U.S. 319, 321 (1972).

[149] U.S. CONST. amend. I.; *See* Pell v. Procunier, 417 U.S. 817, 828 (1974).

[150] *See supra* note 39 and accompanying text.

of New York's most notorious and brutal prison.[151]

Now is the time that we turn our attention to America's prisons. In order to face this challenge, we first need to understand the conditions that incarcerated persons endure. The struggle to reform our prisons will be fueled by the words that are shared between inmates and journalists—these words a product of the free exchange of ideas that goes to the very core of the protections guaranteed by the First Amendment.

[151] *See supra* discussion in Introduction.

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