



April 3, 2014

Mr. Alan D. Weber
Allen County Counselor
1 N. Washington
Iola, KS 66749

Re: Allen County Jail Policy Banning Newspapers & Magazine Subscriptions
Our File No.:13-0006084

Dear Mr. Weber:

On March 30, 2014, Charles Bruce filed an Inmate Request asking whether he could subscribe to newspapers and magazines. That request was denied by D. Dawn, #119, who wrote: "The jail does not allow newspapers or magazines no exceptions!!!!!!" I have enclosed a copy of the Inmate Request form. As I will set forth more fully below, the jail's policy of banning inmates from subscribing to and receiving newspapers and magazines is unconstitutional. Thus, I request that the jail immediately rescind the ban and allow Mr. Bruce and all other Allen County inmates to subscribe to newspapers and magazines.

Nearly forty years ago, the Supreme Court noted that "[t]here is no iron curtain drawn between the Constitution and the prisons of this country," *Wolff v. McDonnell*, 418 U. S. 539, 555-556 (1974), and 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," *Pell v. Procunier*, 417 U.S. 817, 822 (1974). Specifically, the Court held that inmates retain the First Amendment right to receive information. *Procunier v. Martinez*, 416 U.S. 396, 408 (1974). *See also Jacklovich v. Simmons*, 392 F.3d 420, 426 (10th Cir. 2004) (same). Moreover, "pretrial detainees . . . retain at least those constitutional rights that . . . are enjoyed by convicted prisoners." *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

Although the right is not unlimited, inmates retain a First Amendment right to receive books and magazines. *See Bell v. Wolfish*, 441 U.S. at 549 (acknowledging pretrial detainees' First Amendment right to receive books and magazines but upholding "publisher only" restriction on federal pretrial detainees' right to receive books from outside the institution). The Tenth Circuit has also upheld such a publisher-only rule, *Jones v. Salt Lake County*, 503 F.3d 1147, 1158-9 (10th Cir. 2007), but I am unaware of any case upholding an absolute ban on inmates ordering and receiving books and other periodicals. Here, the jail's absolute ban on inmate book orders violates the First Amendment right of inmates to receive information without serving any important penological purpose. Thus, the ban on books is unconstitutional.

The federal courts have also unanimously held that jails cannot – consistent with the Constitution – ban inmates from receiving periodicals such as newspapers and magazines. *See, e.g., Thomas v. Leslie*, 176 F.3d 489, 1999 WL 281416 (10th Cir. 1999) (jail's absolute ban on newspapers unconstitutional); *Wilkinson v. Skinner*, 462 F.2d 670, 673 n. 5 (2d Cir. 1972) ("refusal to deliver a newspaper would ordinarily be interference with appellant's first

Mr. Alan D. Weber
Allen County Counselor
April 3, 2014
Page 2

amendment rights"); *Kincaid v. Rusk*, 670 F.2d 737, 744 (7th Cir.1982) (total ban on newspapers unjustifiable when hazards of newspaper possession could as well be caused by reading material detainees were permitted to have); *Mann v. Smith*, 796 F.2d 79, 82-83 (5th Cir. 1986) (county jail's policy of banning newspapers and magazines violated a pretrial detainee's First Amendment rights where the state failed to show the ban served a legitimate government objective); *Green v. Ferrell*, 801 F.2d 765, 772 (5th Cir.1986) (jail's prohibition on newspapers violated First Amendment); *Sizemore v. Williford*, 829 F.2d 608, 610 (7th Cir. 1987) (absent restrictions based on legitimate goals of confinement, prison inmates retain First Amendment right to receive and read newspapers); *Payne v. Whitmore*, 325 F. Supp. 1191, 1993 (N.D. Cal.1971) (First Amendment guarantees inmates the right to receive newspapers and magazines); *United States ex rel. Manicone v. Corso*, 365 F. Supp. 576, 577 (E.D. N.Y. 1973) (First Amendment prohibits complete ban on news); *Mitchell v. Untreiner*, 421 F. Supp. 886, 895 (N.D. Fla.1976) (failure to permit inmates to read daily newspaper denied First Amendment freedom of speech, association, and right to be informed citizens in democratic society); *Hutchings v. Corum*, 501 F. Supp. 1276, 1299 (W.D. Mo. 1980) ("absolute denial of access to newspapers violate[d] the inmates' First Amendment guarantees"); *Spellman v. Hopper*, 95 F. Supp. 2d 1267 (M.D. Ala. 1999) (absolute prohibition on subscription magazines and newspapers applied to administrative segregation inmates in Alabama not reasonably related to legitimate penological goals); *Avery v. Ferguson*, 2010 U.S. Dist. LEXIS 101864, 43-44 (W.D. Ark. Sept. 3, 2010) (jail newspaper ban unconstitutional).

As you may know, in 2011, this ACLU sued the Shawnee County, Kansas, Department of Corrections over a similar blanket ban on newspaper and magazine subscriptions. That case resulted in a favorable consent decree for our client, Prison Legal News (PLN). In resolving that case, moreover, Shawnee County agreed to drop its ban on newspapers and books and paid a total of \$75,000.00 in damages and attorneys' fees to PLN, the ACLU, and the other lawyers who helped me represent PLN. That case shows that this type of litigation can be costly for governments that operate jails.

For these reasons, I urge the Allen County Sheriff's Department to rescind its current ban on newspapers and magazines so as to allow inmates to receive newspapers, magazines and other periodicals. I will be out-of-town attending a conference beginning this morning and will not return to the office until next Wednesday, April 9, 2014. So, please let me hear from you about this issue by next Friday, April 11, 2014.

Sincerely,



Doug Bonney
Chief Counsel & Legal Director
Direct Dial: (816) 994-3311

Enclosure



Bryan J. Murphy Sheriff

Jerry E. Daniels, Undersheriff

Allen County Law Enforcement Center

ALLEN COUNTY SHERIFF DEPARTMENT DETENTION DIVISION

INMATE REQUEST/ GRIEVANCE/ APPEAL FORM

ORDER OF APPEAL & PROCEDURE

1. DUTY OFFICER
2. JONI & SHERIFF

TO BE COMPLETED BY INMATE:

Inmate

Name: Charlie Bruce Date: June 3-30-14 Time: 1:30 pm

Describe completely but briefly the problem below: Can we have subscriptions to newspapers or magazines here? My sister is gonna order me some magazines today from Muscle + Fitness so will you please give me a reply today? Thank You

Signature of Inmate: Charlie Bruce

TO BE COMPLETED BY DETENTION OFFICER:

Received By: _____ Date: _____ Time: _____

Forwarded To: _____ Date: _____ Time: _____

COMMENTS:

The jail does not allow newspapers or magazines and no exceptions!

RECEIVED BY: _____
COMMENTS &/OR DISPOSITION

Date: _____ Time: _____

SIGNED: D. Daur #119