

# LAWFUL NEUTRAL: THE JUSTICE SYSTEM AND DUNGEONS AND DRAGONS

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## I. INTRODUCTION

Since its introduction in 1974, Dungeons and Dragons (“D&D”) has been a cultural milestone.<sup>1</sup> With its blend of interactive role-playing, high fantasy, and storytelling, D&D has attracted players across all

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<sup>1</sup> Jon Peterson, *Forty Years of Adventure*, DUNGEONS & DRAGONS, <http://dnd.wizards.com/dungeons-and-dragons/what-dd/history/history-forty-years-adventure> (site accessed Sept. 25, 2018).

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ages, races, and cultural backgrounds; with the advent of its online application D&D has been gearing up to reach even more people.<sup>2</sup> Yet even the tabletop version has not lost its popularity. In a survey conducted in 2016, close to half of the participants played a version of the tabletop game weekly with a group of their peers.<sup>3</sup>

Its influence on popular media has not been lost. There are multiple successful podcasts that revolve around the playing of a “campaign.”<sup>4</sup> There are television shows that lovingly feature the playing of a campaign so as to set up the show’s supernatural elements, television shows that highlight D&D’s ability to unite people in their average day-to-day life, as well as movies that show that sometimes the fantastical elements found within the game aren’t the most fantastical things out there.<sup>5</sup> Many celebrities grew up playing and enjoying D&D: Stephen Colbert, Robin Williams, Matt Groening, Mike Myers, and Vin Diesel are only a few who have cited their enjoyment of D&D and other fantasy RPGs as a catalyst for discovering their love of acting and role playing.<sup>6</sup>

However, D&D has not always been something that popular culture and media has actively enjoyed, whether directly or peripherally. For the first few years of D&D’s release, it enjoyed a niche following for avid fans.<sup>7</sup> Unfortunately, the first major foray into popular culture’s purview for D&D was thanks to the craze known as “Satanic Panic” that began in the 1980s.<sup>8</sup> During this time in American history, religious groups, law enforcement officers, and even psychologists spread a moral panic about the game and its inclusion of the occult; they claimed that D&D indoctrinated the youth of the day to the occult through its incorporation of fantasy elements.<sup>9</sup> Media was created during this time that ended with the climax being the protagonist had blurred fantasy and

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<sup>2</sup> See Neima Jahromi, *The Uncanny Resurrection of Dungeons & Dragons*, NEW YORKER (Oct. 24, 2017), <https://www.newyorker.com/culture/cultural-comment/the-uncanny-resurrection-of-dungeons-and-dragons>; Ryan Dancey, *Adventure Game Industry Market Research Summary (RPGs)*, RPG.NET, (Feb. 7, 2000), <https://www.rpg.net/news+reviews/wotcdemo.html>; Charlie Hall, *More People Are Playing D&D Online Than Ever Before*, POLYGON (July 20, 2017), <https://www.polygon.com/2017/7/20/16005982/dungeons-and-dragons-online-roll20-data>.

<sup>3</sup> Mike Shea, *2016 Dungeons & Dragons Dungeon Master Survey Results*, SLY FLOURISH (Dec. 19, 2016), [http://slyflourish.com/2016\\_dm\\_survey\\_results.html](http://slyflourish.com/2016_dm_survey_results.html).

<sup>4</sup> *Critical Role: Vox Machina Ep. 1-Arrival at Kraghammer*, GEEK & SUNDRY (Jun. 8, 2017) (downloaded using Overcast); *The Adventure Zone: Ep. 1: Here There Be Gerblins-Chapter One*, THE MCELROYS (Dec. 3, 2014) (downloaded using Overcast).

<sup>5</sup> Alex Chalk, *A Chronology of Dungeons & Dragons in Popular Media*, ANALOG GAME STUDIES (Jun. 3, 2018), <http://analoggamestudies.org/2018/06/telling-stories-of-dungeons-dragons-a-chronology-of-representations-of-dd-play/>.

<sup>6</sup> TEDx Talks, *Why D&D is Good for You (In Real Life)*, YOUTUBE (May 21, 2016), <https://www.youtube.com/watch?v=6PaHJqpQnyw>.

<sup>7</sup> Chalk, *supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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reality with deadly consequences.<sup>10</sup> Whether these pieces of media explicitly or implicitly blamed D&D did not matter—to popular culture in the 1980s and early 1990s, D&D was a dangerous waste of creative minds.<sup>11</sup>

The mid to late 1990s and early 2000s did not help bring D&D into a better light; then, instead of being afraid of people who played D&D, popular culture thought it best to just laugh at them instead.<sup>12</sup> The stereotype of D&D players being mostly male, awkward nerds who have never seen let alone spoken to a woman begins to take the place of the dangerous practitioner of Satanism that was found in the previous decade.<sup>13</sup> With the advent of the Internet, D&D players began to create their own content and stories which led to the healthy escapism of D&D being portrayed the same way the players saw it, as something that fostered creativity and communication amongst friends and strangers.<sup>14</sup>

In spite of its history with the popular culture, D&D has retained a fanbase who love and respect the game. For many people, D&D is a game that is played within the walls of a basement or while seated around a kitchen table; however, some of the game's most ardent fans are locked behind prison walls.<sup>15</sup> With its reliance on high fantasy tropes and campaigns to save a mystical, far off land, it might come as a surprise that D&D has grown a following amongst the incarcerated.<sup>16</sup> Many of the players behind bars cite the game's ability to mentally transport them from the prison to far-off lands and for them to be able to be the hero of their own story as the main reason for the enjoyment of the game.<sup>17</sup>

Prisoners have said they deal with a plethora of terrible things but that playing D&D has helped them work through it and mentally escape.<sup>18</sup> Prisoners who have been released still meet together to play campaigns because in the words of one former inmate, “[I]t’s not how you play the game, it’s why you play the game.”<sup>19</sup>

The judicial system, though, seems to still be stuck in the “Satanic Panic” of the 1980s and as such does not view D&D with the same

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Elisabeth de Kleer, *How Inmates Play Tabletop RPGs in Prison Where Dice Are Contraband*, VICE (Jul. 25, 2017, 11:00 AM), [https://waypoint.vice.com/en\\_us/article/padk7z/how-inmates-play-tabletop-rpgs-in-prisons-where-dice-are-contraband](https://waypoint.vice.com/en_us/article/padk7z/how-inmates-play-tabletop-rpgs-in-prisons-where-dice-are-contraband).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

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sympathetic and valued light as the players.<sup>20</sup> Through the eyes of a judge, D&D is something that has a potential for violence, encouraging aggressive behavior, and fostering escapist behaviors.<sup>21</sup> Judges are also leery about D&D's inclusion in the prison system due to the possibility of D&D paraphernalia having secret codes and messages that would need to be decoded by prison personnel.<sup>22</sup>

In this Note I will discuss both the drawbacks and benefits of allowing D&D within the prison system; I will be addressing many of the concerns that judges and prison officials cite as the reasons for banning D&D within prisons including potential for gang violence and D&D's impact on the prison community as a whole. I will highlight D&D's potential as a socialization tool to ease inmates into social interactions post-incarceration and showcase that the ban of D&D is one rooted in misunderstanding of the game. While showing the advantages for playing D&D, my goal is to advocate for the judicial system to grant slightly less deference to prison officials and to allow for prisoners to play D&D while incarcerated.

## II. BACKGROUND

D&D and other role-playing games have been outright banned within a few states' prison systems.<sup>23</sup> In Idaho, their 2014 offender handbook specifically lists D&D as a banned activity, including it with other activities like tattooing, sexual activity, and damaging property.<sup>24</sup>

The current view of the United States' judicial system is to give great deference, that is more credence and weight, to the prison wardens and guards.<sup>25</sup> So much deference that inmates, who have created their

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<sup>20</sup> Elie Mystal, *Seventh Circuit Rules Dungeons & Dragons a Threat to Prison Security*, ABOVE THE LAW (Jan. 26, 2010, 1:00 PM), <https://abovethelaw.com/2010/01/seventh-circuit-rules-dungeons-dragons-a-threat-to-prison-security/>.

<sup>21</sup> *Singer v. Raemisch*, 593 F.3d 529 (7th Cir. 2010) (upholding a ban on all tabletop Role Playing Games, citing their potential for gang violence, encouraging aggressive behavior, and nurturing escapist behaviors).

<sup>22</sup> See *Glassman v. Yates*, No. 1:08-cv-01485-OWW-SKO PC, 2011 WL 347132 (E.D. Cal. Feb. 2, 2011) (upholding a ban on D&D materials for fear of "coded" messages; even though there was conflicting testimony as to whether or not the materials had hidden messages, the Court's decision that the prison officials are "entitled to summary judgment because the regulations are rationally related to a legitimate penological interest").

<sup>23</sup> See de Kleer, *supra* note 15 (the author interviewed currently incarcerated D&D players in Texas and formerly incarcerated D&D players in Massachusetts; the game was not banned there; however, certain D&D gaming paraphernalia, such as dice, was banned within the prison).

<sup>24</sup> IDAHO DEPT OF CORR. OFFENDER HANDBOOK 3, (2014), <https://www.law.umich.edu/special/policyclearinghouse/Documents/Idaho%20Offender%20Handbook%202014.pdf>. The handbook has "Role playing games (e.g. Dungeons and Dragons)" listed under the "Prohibited Activities."

<sup>25</sup> *Singer*, 593 F.3d at 534.

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own gaming and entertainment materials, find themselves on the losing end of a battle for their rights.<sup>26</sup> The judges state that they are not prison wardens and thus should rule in a way that gives extreme deference to those in charge of the prison system, believing that they know how to best run a prison so as to avoid potential outbreaks and riots.<sup>27</sup>

The current law surrounding the prohibition of prisoner's activities and its interpretation are supported by the case *Turner v Safley*, which sets forward a test with four criteria that prisoners must show are not satisfied.<sup>28</sup>

In *Turner v. Safley*, inmates brought a class action suit for injunctive relief from the Missouri Division of Corrections.<sup>29</sup> There were two regulations at issue in this case; the first pertained to regulations surrounding correspondence between different penitentiaries.<sup>30</sup> This regulation allowed for inter-penitentiary correspondence only in regard to legal matters or if the "classification/treatment team of each inmate deems it in the best interest of the parties involved."<sup>31</sup> The District Court found that this rule, as practiced by the penitentiary staff, also prevented inmates from writing to non-family inmates.<sup>32</sup>

The second regulation challenged is one that permitted an inmate to marry only with the permission of the superintendent of the prison, with that approval given "only when there are compelling reasons to do so."<sup>33</sup> The regulation did not define the term "compelling," however, the officials stated that marriage due to pregnancy would be a "compelling" reason.<sup>34</sup>

The test the Supreme Court established is one that determines whether or not the regulation at question violates a constitutional right.<sup>35</sup> If the regulation does not satisfy at least one aspect of the test, then the regulation is unconstitutional and would be struck.<sup>36</sup> First there must be a "valid, rational connection" between the regulation and the legitimate governmental interest put forward to justify it.<sup>37</sup> In regard to allowing D&D in prison, the courts refer back to their previous concerns of penological interests.<sup>38</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Turner v. Safley*, 107 S.Ct. 2254, 2256 (1987).

<sup>29</sup> *Id.* at 2258.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 2265

<sup>35</sup> *Id.* at 2262

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *See Bahrapour v. Lampert*, 356 F.3d 969 (9th Cir. 2004) (holding that the confiscation of

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Secondly if there are alternative means of exercising the right that the prisoners are asserting was taken away, then the request will be denied.<sup>39</sup> The court has stated that games such as Risk, Stratego, and chess are viable alternatives.<sup>40</sup> However, while there are benefits that traditional games such as Risk, Stratego, and chess can offer, they are not the same as the benefits that D&D and other role-playing games (“RPG”) have the potential to give to the inmates.<sup>41</sup>

Third, the court will look at “ripple effects” that the accommodation of the asserted constitutional right will have on the other inmates and guards as well as the possible financial implication on the prison’s resources.<sup>42</sup> In this context it means that the court will look at the possible financial burdens playing D&D could have on the prison system. D&D is a game that can cost as much or as little as a player wishes it to cost which means that it will not be an overly egregious

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role-playing materials due to the prison’s prohibition of said materials to “prevent inmates from placing themselves in fantasy roles that reduce accountability and substitute raw power for legitimate authority” served a penological interest. The ban was also upheld due to the prison’s concerns about RPG dice being used in gambling contexts); *Jacquay v. May*, 47 F.3d 1178 (10th Cir. 1995) (holding that a prison’s ban on RPG materials served penological interests of RPG’s potential to encourage aggressive behavior as well as game character being used as tattoo patterns); *Kay v. Friel*, No. 2:06-CV-23 TS, 2007 WL 295556 (D. Utah Jan. 26, 2007) (holding that Plaintiff did not adequately connect D&D to his practice of Wicca nor show that the prison was intentionally denying his practice of Wicca so as to outweigh the penological interests of the prison.); *Klug v. English*, No. 5:15cv237/MP/CJK, 2016 WL 6396018 (N.D. Fla. Aug. 5, 2016) (holding that the blanket ban on possession of RPG books and materials did not violate Plaintiff’s First Amendment right and dismissed the suit on the grounds of standing, stating that Plaintiff did not suffer an injury in fact); *see Farmer v. Dormire*, No. 03-4180-CV-C-NKL, 2005 WL 2372146 (W.D. Mo. Sept. 27, 2005) (holding that a prison’s ban on RPG and D&D materials could inspire violence and therefore served a penological interest); *Glassman v. Yates*, No. 1:08-cv-01485-OWW-SKO PC, 2011 WL 347132 (E.D. Cal. Feb. 2, 2011) (upholding a ban on D&D stating that the books could have secret meanings in them and that officers shouldn’t have to search through the books to make sure those meanings don’t exist); *Singer*, 593 F.3d at 534.

<sup>39</sup> *Turner*, 107 S.Ct. at 2256.

<sup>40</sup> *Singer*, 593 F.3d at 539.

<sup>41</sup> *Compare 8 Surprising Health Benefits of Board Games*, LOGICROOTS, (Nov. 22, 2018), <https://logicroots.com/MathBlog/8-surprising-health-benefits-of-playing-board-games/> (speaking on regular board games’ ability to lower blood pressure and stress as well as increase mental capacity and boost learning for children.); *and Top 10 Health Benefits of Board Games*, HEALTH FITNESS REVOLUTION, (May 15, 2015), <http://www.healthfitnessrevolution.com/top-10-health-benefits-board-games/> (speaking on regular board games’ ability to increase cognitive functioning, reduce stress, and work as a therapy treatment); *with Patrick Allan, The Surprising Benefits of Role-Playing Games (and How to Get Started)*, LIFEHACKER, <https://lifehacker.com/the-surprising-benefits-of-role-playing-games-and-how-1684582789> (highlighting D&D and other tabletop RPGs’ ability to encourage teamwork and cooperation, foster creativity, and teach problem solving skills); Erik Missio, *How Dungeons and Dragons Can Help with Child Development*, CBC, <https://www.cbc.ca/parents/play/view/how-dungeons-and-dragons-can-help-with-child-development> (highlighting D&D as a viable therapy for children with autism because of D&D’s focus on co-operation, math, and literacy); *and TEDx Talks, supra* note 6 (explaining how D&D helped the speaker with his problem solving skills, and explaining D&D’s lessons in ethics and how we can utilize them to work through problems).

<sup>42</sup> *Turner*, 107 S.Ct. at 2256.

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fiscal burden on the prison system.<sup>43</sup>

Finally, the absence of ready alternatives is evidence of the reasonableness of a prison regulation.<sup>44</sup> Because here there exist “obvious, easy” alternatives which are in many ways similar to D&D, there is evidence that the regulation is in fact not reasonable but rather an “exaggerated response” to prison concerns.

In the case of *Singer*, the court said that the prisoner was not entitled to his own handmade D&D materials for those very reasons.<sup>45</sup> At his trial, Singer brought in fifteen affidavits; three were from social psychologists and expert witnesses who spoke about the benefits of D&D and other role-playing games as applied to participants in a variety of studies that spans racial groups, ages, and socio-economic backgrounds.<sup>46</sup> The other twelve affidavits were from inmates and Singer’s brother, and these also attested to the lack of correlation of D&D and gang violence.<sup>47</sup>

The court, however, gave more deference to the prison’s one affidavit from Captain Bruce Muraski, who has “extensive training in illicit groups ranging from nationwide street and prison gangs to small occult groups and has been certified as a gang specialist by the National Gang Crime Research Center.”<sup>48</sup> Muraski claimed that gang violence “could” occur if D&D was allowed within prison.<sup>49</sup>

The prison’s expert’s testimony is contrary to almost everything that has been discovered through people who use D&D and other RPGs as therapeutic techniques, which leads to the question of why Risk, Stratego, and chess aren’t the same as D&D, and thus why D&D and other immersive RPGs should be played within the prison system.

### III. DUNGEONS, DRAGONS, AND THE TURNER TEST

D&D is not banned in all prisons;<sup>50</sup> the courts have left bans on any kind of activity up to the discretion of those who run the prison, typically wardens or governors.<sup>51</sup> To effectively address the ban on D&D within certain prisons, we must look to the utilization of the

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<sup>43</sup> Cindy Butor, *How to Play D&D on a Shoestring Budget*, BOOKRIOT (Oct. 13, 2017), <https://bookriot.com/2017/10/13/how-to-play-dd-on-a-budget/>.

<sup>44</sup> *Turner*, 107 S.Ct. at 2256.

<sup>45</sup> *Singer v. Raemisch*, 593 F.3d 529, 539 (7th Cir. 2010).

<sup>46</sup> *Id.* at 533.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Glassman v. Yates*, No. 1:08-cv-01485-OWW-SKO PC, 2011 WL 347132 (E.D. Cal. Feb. 2, 2011).

<sup>51</sup> *Turner v. Safley*, 107 S.Ct. 2254, 2259 (1987).

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Turner test regarding the ban on D&D.

*A. Valid, Rational Connection*

To speak on the first aspect of the *Turner* test, we should look to see if there is a “valid, rational connection” between the discretionary banning of D&D and the governmental interest in the ban. Prison officials and testimony cites the worry for an increase in violence and gang activity.<sup>52</sup> However, over the years, it has been shown that D&D is an effective rehabilitative tool that fosters the creation of relationships as well as boosts communication.<sup>53</sup>

1. Is D&D Rehabilitative?

Prison is commonly thought of as having three main purposes: segregation, deterrence, and rehabilitation.<sup>54</sup> Segregation tends to go hand in hand with the idea of “retributive justice” as prison is a punishment for a criminal’s crimes and separating criminals from society is a form of punishment.<sup>55</sup> Deterrence is the idea that life inside prison walls will help prevent future crimes through a cultivated fear of punishment.<sup>56</sup> Finally, and most importantly, rehabilitation refers to activities that are designed to specifically assist prisoners in changing their behavior.<sup>57</sup>

Rehabilitation in prison can take many forms.<sup>58</sup> There are the traditional rehabilitation programs such as education programs and

<sup>52</sup> *Singer*, 593 F.3d at 535.

<sup>53</sup> See Wayne D. Blackmon, *Dungeons and Dragons: The Use of a Fantasy Game in the Psychotherapeutic Treatment of a Young Adult*, 48 Am. J. of Psychotherapy 624 (1994), [http://www.rpgstudies.net/blackmon/dungeons\\_and\\_dragons/](http://www.rpgstudies.net/blackmon/dungeons_and_dragons/) (touching on D&D’s ability to help people open up from a clinical perspective); W.A. Hawkes-Robinson, *Role-playing Games Used as Educational and Therapeutic Tool for Youth and Adults*, (Dec. 6, 2011), [https://www.academia.edu/3668971/Role-playing\\_Games\\_Used\\_as\\_Educational\\_and\\_Therapeutic\\_Tool\\_for\\_Youth\\_and\\_Adults](https://www.academia.edu/3668971/Role-playing_Games_Used_as_Educational_and_Therapeutic_Tool_for_Youth_and_Adults); Allan, *supra* note 41; Missio, *supra* note 41 (going into detail about how the social aspect helps people relate to one another and helps them open up and feel more comfortable in a social contexts); TEDx Talks, *supra* note 6 (speaking at length about how D&D helped the speaker socialize more and become closer to people while playing as well, as speak about how D&D creates valuable ethical “thought experiments” that people can learn from).

<sup>54</sup> Austin MacCormick, *The Prison’s Role in Crime Prevention*, 41 J. Crim. L. & Criminology 36 (1950-1951), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=3752&context=jclc>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> 5 *Rewarding Types of Rehabilitation for Inmates*, CONNECTNETWORK, <https://web.connectnetwork.com/rehabilitation-for-inmates/>.



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vocational programs.<sup>59</sup> Then there are some prisons that look to rehabilitation through a more creative lens; one example is prisons partnering with animal shelters.<sup>60</sup>

The addition of animals to the prisoners' lives allows for bonding and social interactions. Staff at the Oakwood Forensic Centre in Lima, Ohio allowed for one ward to have pets and one ward to not; they found that the ward with pets was less violent and had no suicide attempts whereas the ward without pets had eight suicide attempts.<sup>61</sup> This approach to rehabilitation, using more creative, empathetic, and communication-based rehabilitation methods can reap obvious rewards.

There are multiple types of rehabilitation available for inmates, but the ones that tend to spring to mind are those that focus on education, employment, counseling, and community within the prison.<sup>62</sup>

Prisoners state that rehabilitation within prisons is done in a way that offers few options.<sup>63</sup> D&D has the ability to combine the counseling and community aspects while potentially assisting with the inmate's education. Aaron Klug, a former inmate from Colorado, stated that "[r]ehabilitation in the [Department of Corrections] is structured in a way that gives no alternatives. Not everybody is built the same. Dungeons & Dragons is my rehabilitation that I can deal with to escape into my own reality to solve my own problems."<sup>64</sup>

D&D has been a fascinating tool that modern day psychiatrists have utilized to assist their patients with communicating more effectively. Through his article "Dungeons and Dragons: The Use of a Fantasy Game in the Psychotherapeutic Treatment of a Young Adult," Dr. Wayne Blackmon stated that his patient's playing of D&D outside of the sessions allowed him a forum to more easily verbalize feelings. These social interactions helped the patient optimize communication during his sessions with Blackmon.<sup>65</sup> The patient had attempted suicide and struggled expressing his emotions to Blackmon, but during their time working together Blackmon found that his patient became more in touch with his emotions through his experiences playing the game.<sup>66</sup>

During the beginning of their time working together Blackmon

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<sup>59</sup> *Id.*

<sup>60</sup> Rebecca Liebson, *Prison Dog Training Programs Rehabilitate Canines and Cons*, NBC (Aug. 8, 2017), <https://www.cleartheshelters.com/Prison-Pup-Programs-Give-Inmates-and-Shelter-Dogs-a-Second-Chance-437660633.html>.

<sup>61</sup> J D Carpentieri, *Jail House Flock*, THE GUARDIAN (Aug. 24, 2001), <https://www.theguardian.com/theguardian/2001/aug/25/weekend7.weekend3>.

<sup>62</sup> *5 Rewarding Types of Rehabilitation for Inmates*, CONNECTNETWORK, <https://web.connectnetwork.com/rehabilitation-for-inmates/>.

<sup>63</sup> de Kleer, *supra* note 15.

<sup>64</sup> *Id.*

<sup>65</sup> Blackmon, *supra* note 53.

<sup>66</sup> *Id.*

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stated that he was leery on allowing his patient to bring the happenings of the game into their sessions.<sup>67</sup> Blackmon stated that his patient's playing of the game seemed like resistance to therapy; however, Blackmon later noticed the game's effects on his patient—he began expressing a wide array of emotions.<sup>68</sup> The patient later said that Blackmon's acceptance of his D&D fantasies "led him to state that it gave him a sense of being 'OK,'" and that Blackmon's acceptance boosted his sense of self-worth.<sup>69</sup>

While there can be a goal at the end of the game, RPGs have a unique ability to be an open world experience for the players.<sup>70</sup> This open world format gives participants the ability to fully communicate and talk, to allow their personal world to bleed into the fantasy world that they have created, and to address real issues of their day to day under the guise of playing in a fantasy world.<sup>71</sup>

To look at D&D as a rehabilitative tool, the court would have to give more credence to the abundance of social science that shows that D&D and other RPGs are a viable method of rehabilitation as it assists with opening communication,<sup>72</sup> helps promote team building,<sup>73</sup> and allows participants the ability to channel their emotions in non-violent ways.<sup>74</sup>

This point of view would go contrary to the view established in *Singer*, but it would still allow the prison personnel some deference in moderating the game. For example, the prison could allow the game to be played but could regulate certain aspects of the game. These different regulations will be discussed later in this note.

## 2. Do D&D's More Violent Aspects Spur Violent Tendencies?

The courts oftentimes cite D&D's more violent campaigns as something that would deter prisons from allowing D&D to be played amongst prisoners.<sup>75</sup>

Modern studies take into account both RPGs and video games; both mediums have the option of following a quest or exploring their

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Hawkes-Robinson, *supra* note 53.

<sup>71</sup> *Glassman v. Yates*, No. 1:08-cv-01485-OWW-SKO PC, 2011 WL 347132 (E.D. Cal. Feb. 2, 2011).

<sup>72</sup> Blackmon, *supra* note 53.

<sup>73</sup> Allan, *supra* note 41.

<sup>74</sup> Martin Blanco, *How Playing Dungeons & Dragons Can Help You IRL* (Aug. 1, 2017), <https://www.rewire.org/work/dungeons-dragons-can-help-work/>.

<sup>75</sup> *Singer v. Raemisch*, 593 F.3d 529, 532 (7th Cir. 2010)

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surroundings. Studies have shown that violent solo player video games exaggerate the violence found within people; however, when placed in a team-oriented situation, people are more willing to communicate and work together to solve a common goal.<sup>76</sup>

While it cannot be said that altercations never turn physical at a prison's D&D table, many prisoners state that their problems must be worked out using their words and their personal struggles must be put towards the game.<sup>77</sup> The benefits given by D&D to society are plenty inasmuch that it helps better the community at large with its facilitation of empathy and its ability to force prisoners to think in a different way.

If the prison system is worried about the violence that can be encouraged by D&D, the warden or governor can implement a regulation stating that no violent campaigns can be played or that no character can align as "evil."<sup>78</sup> In fact, playing a non-violent campaign through D&D is easier than most would think. D&D encourages innovative problem solving,<sup>79</sup> for example, one of these solutions to problems could be befriending the monster that guards the treasure or negotiating with the villain instead of killing it. Ethan Gilsdorf stated at his TEDx Talk about D&D, "D&D says there's no shame in a well bargained escape. Don't fight, negotiate."<sup>80</sup> Through prisoners learning about negotiating within a controlled fantasy environment, they could potentially take what they learned around the table out to the yard and begin to solve problems in more practical ways.

The courts and prison system focus on campaigns involving violent raids and skirmishes; however, D&D is not just a game that allows the players to kill dragons and foes. The campaigns and their content can range from finding a missing artifact to helping a village find a missing settler.<sup>81</sup> Through the myriad of stories, choices, and characters, D&D has the ability to allow a prisoner to feel like the hero in their own story.

### B. *Ready Alternatives for Prisoners*

The second part of the *Turner* test looks to whether or not there are alternative methods for the prisoners to exercise the infringed upon

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<sup>76</sup> David R. Ewoldsen et al., *Effect of Playing Violent Video Games Cooperatively on Subsequent Cooperative Behavior* 15 *CYBERPSYCHOLOGY, BEHAVIOR, AND SOCIAL NETWORKING* PAGE# (2012).

<sup>77</sup> de Kleer, *supra* note 15.

<sup>78</sup> *Alignment*, DND5E, <https://dnd5e.info/beyond-1st-level/alignment/> (last visited Nov. 11, 2019)

<sup>79</sup> TEDx Talks, *supra* note 6.

<sup>80</sup> *Id.*

<sup>81</sup> *The 36 Basic Plots*, <http://home.earthlink.net/~duanevp/dnd/36plots.htm>.

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right.<sup>82</sup> For *Singer*, the court stated that Risk, Stratego, and chess were viable alternatives.<sup>83</sup>

However, the sociological impacts found with D&D are not replicated through other games. Even the Sixth Circuit Court of Appeals has recognized that D&D is a valuable creative outlet for educators.<sup>84</sup>

Throughout the prisons that do allow for D&D to be played, the prisoners cite that the game comes first and foremost.<sup>85</sup> Prisoners have been cited to say, “above all, without fail, any gang ties, religious obligation or racial affiliations are superseded by the game.”<sup>86</sup>

So many prisoners and practitioners take this point of view, that there is a non-profit organization called the Prison University Project that uses D&D within their post release rehabilitation program.<sup>87</sup> In his article advocating for D&D’s use as a communication tool, “Dungeons & Dragons—A Life Changing Experience,” Bryan Richie states that D&D is “regarded by many inmates as one of the few acceptable multicultural social activities in prison.”<sup>88</sup>

A key component to a “successful campaign” in D&D is to create a diverse team amongst the players and to communicate and work together towards completing a goal. One of D&D’s core lessons revolves around diversity and collaboration; through its class system and different races, each category bringing something new to the land, D&D has created a world that shows players that homogeny is not something that is viable when fighting a troll or saving a prince.<sup>89</sup> Through the cooperative gameplay of D&D the idea that every player can rely on one another is one that is planted and nourished during the campaign.<sup>90</sup>

Through a player’s choice of character, they can express their emotions and speak more freely as their fantasy persona than as their everyday person.<sup>91</sup>

D&D gives a real opportunity for the players to put aside their differences and play a game and connect with others that they might not have connected with while incarcerated. Richie highlights a moment

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<sup>82</sup> *Turner v. Safley*, 107 S.Ct. 2254, 2256 (1987).

<sup>83</sup> *Singer v. Raemisch*, 593 F.3d 529, 539 (7th Cir. 2010).

<sup>84</sup> *Watters v. TSR, Inc.*, 904 F.2d 378, 380 (stating, in a wrongful death suit brought against D&D, that “many schools and libraries use Dungeons & Dragons as a learning tool and as a means of promoting creativity”).

<sup>85</sup> de Kleer, *supra* note 15.

<sup>86</sup> *Id.*

<sup>87</sup> PRISON UNIVERSITY PROJECT, <https://prisonuniversityproject.org/>.

<sup>88</sup> Bryan Richie, *Dungeons & Dragons: A Life Changing Experience*, PRISON UNIVERSITY PROJECT (Aug. 21, 2017), <https://prisonuniversityproject.org/news/dungeons-dragons-a-life-changing-experience-by-brian-richie/>.

<sup>89</sup> TEDx Talks, *supra* note 6.

<sup>90</sup> *Id.*

<sup>91</sup> Richie, *supra* note 88.

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when a fellow inmate approached his D&D group and asked to join.<sup>92</sup> This new inmate was a white inmate with visible tattoos that indicated previous violent acts towards black inmates.<sup>93</sup> Richie agreed that he could play with them, and through the hierarchy of the D&D class system showed the white inmate how it felt to be discriminated against and hated just for being born as that certain class.<sup>94</sup>

Richie and the other inmates in the group noticed a difference within the white inmate's attitude towards others and cited the game's ability to allow this other inmate to experience prejudice expressed against him within a controlled environment as the reason for the change.<sup>95</sup> D&D's fostering of comradery within prison is a common thread that many released prisoners cite as why they actually continue to play D&D.<sup>96</sup> Aaron Klug, who played D&D while incarcerated in Colorado and who became a Dungeon Master for his group of players post release, stated that "D&D is about culture, it's about comradery. It's about banding together to get the goal accomplished."<sup>97</sup>

While chess, Stratego, and Risk all have benefits to their playing, these benefits are more basic when compared to what an immersive RPG such as D&D can give.<sup>98</sup>

A game of chess, Stratego, or Risk does not provide the same forms of benefits as a D&D game does because—while those three games are a form of entertainment—the benefits of the entertainment vary drastically.<sup>99</sup> While those games might provide similar boredom relief as D&D, the communicative and empathy benefits are more rudimentary with classic board games.<sup>100</sup>

Board games like the ones the Court has cited to being adequate replacements to D&D do offer some basic cognitive benefits.<sup>101</sup> These games can help participants practice essential cognitive skills such as problem solving and can help develop the player's memory.<sup>102</sup> However, these games do not allow the players to work together in a collaborative way like D&D does.<sup>103</sup> In fact, having a campaign that is considered successful requires the players to work together in certain

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> de Kleer, *supra* note 15.

<sup>97</sup> *Id.*

<sup>98</sup> 8 *Surprising Health Benefits of Board Games*, LOGICROOTS, (Nov. 22, 2018) <https://logicroots.com/MathBlog/8-surprising-health-benefits-of-playing-board-games/>.

<sup>99</sup> *Top 10 Health Benefits of Board Games*, HEALTH FITNESS REVOLUTION, (May 15, 2015), <http://www.healthfitnessrevolution.com/top-10-health-benefits-board-games/>.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> TEDx Talks, *supra* note 6.

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situations.<sup>104</sup>

D&D's problem-solving aspect is one that can set it apart from traditional board games. Dungeon Masters can incorporate basic puzzles with different solutions into their games.<sup>105</sup> These puzzles can be anything from traps in a dungeon to riddles that must be solved before gaining the treasure, but at the end of the campaign the players can walk away with a different perspective of problem solving.<sup>106</sup>

An overlooked aspect of D&D is its leaning on math. Through the time playing D&D, one must make a character, and these characters, depending on class, race, and moral leaning, have certain abilities.<sup>107</sup> Those abilities are tabulated using scores running zero to twenty.<sup>108</sup> These abilities can be increased throughout the duration of the campaign, which leads to the player performing quick arithmetic during the campaign.<sup>109</sup> D&D can also lead to an expansion of the player's vocabulary. A D&D player whose second language is English stated that by the time he was 15, he knew the words "obfuscate", "ambidexterity", "demeanor", and more as well as what they meant.<sup>110</sup> He said that playing D&D required knowing not only the words but also what they meant.<sup>111</sup>

The length of time it takes to play the games that the court deems as an adequate replacement to D&D is extremely different as well. The time taken to play a game of Risk varies depending on what version of Risk you are playing. However, when playing a classic game of Risk, the game ends once the objective of claiming all 42 territories of the game is achieved.<sup>112</sup> The classic game of Risk pits players against one another to achieve this goal.<sup>113</sup>

Contrastingly, a D&D campaign can allow the prisoners to work together. The flexible timeline allows the players at the table to get to know each other and work through potential problems at their own speed and rate. According to some prisoners, they received only three hours of personal time per day; this time is shared with other personal

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *What is D&D?*, DUNGEONS & DRAGONS, <http://dnd.wizards.com/dungeons-and-dragons/what-is-dd> (last visited Mar. 2, 2019).

<sup>108</sup> *Id.*

<sup>109</sup> Johann Thorrson, *4 Reasons to Get Your Kids to Play Dungeons and Dragons*, BOOK RIOT (Sept. 20, 2016), <https://bookriot.com/2016/09/20/4-reasons-to-get-your-kids-to-play-dungeons-and-dragons/>.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Risk Game Guide*, HASBRO, **Error! Hyperlink reference not valid.** <https://www.hasbro.com/common/documents/DAD2886D1C4311DDBD0B0800200C9A66/F56A63AE8FA145D9B82A5FA3919CA3A5.pdf> (last visited Nov. 11, 2019)

<sup>113</sup> *Id.*

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activities like making phone calls and showering.<sup>114</sup> They said this personal time must be divvied up between recreation and personal needs.<sup>115</sup> This means that a game of D&D could last multiple days and could provide a week's worth of entertainment from just one singular campaign.<sup>116</sup>

According to a survey conducted with 6,600 D&D players, 43% of those surveyed said the average length of a game is four hours.<sup>117</sup> Many of the players surveyed, though, were veteran players who met frequently, understood the rules, and focused on completing the campaign.<sup>118</sup>

The survey focuses on just time spent playing the campaign. Dungeon Masters and players, though, must also prepare for the game; that preparation takes about an hour and a half.<sup>119</sup> D&D offers more than just the experience of playing the game. D&D encourages the player not to focus just on the destination but also on the journey and the story told along the way.<sup>120</sup>

### C. *Impact on Other Inmates, Guards, and Taxpayers*

The third *Turner* factor is commonly referred to as the “ripple effects” factor. It focuses on the social and mental impact that the proposed activity will have on the inmates and the committal impact it will have on the prison's guards. In other words, if prisons allow D&D, what additional duties would be prescribed to the guards and what potential economic impact would be felt by the taxpayers?<sup>121</sup>

#### 1. The Impact of Lifting the Ban on Prisoners

The impact that is felt by prisoners by the introduction of D&D could be varied but overwhelmingly positive. As discussed earlier, D&D has a plethora of positive impacts that can be found within the mental health community and those effects can be brought over into the world of incarcerated members of society.<sup>122</sup>

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<sup>114</sup> de Kleer, *supra* note 15.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Shea, *supra* note 3.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *What is D&D?*, DUNGEONS & DRAGONS, <http://dnd.wizards.com/dungeons-and-dragons/what-is-dd> (last visited Mar. 2, 2019).

<sup>121</sup> *Turner v. Safley*, 107 S.Ct. 2254, 2255 (1987).

<sup>122</sup> *Glassman v. Yates*, No. 1:08-cv-01485-OWW-SKO PC, 2011 WL 347132 (E.D. Cal. Feb. 2, 2011).

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D&D has the ability to improve empathy and communicative skills.<sup>123</sup> However, most plainly, D&D has the ability to alleviate boredom as well as any other kind of board game; however, unlike Risk, Stratego, or chess, D&D requires the inmates to speak about and work through problems together.

The true potential impact of lifting the ban is that the prisoners could forge relationships with one another in a meaningful way. Through the playing of D&D, they're united by an interest that isn't shared by just anyone.<sup>124</sup> As Richie explained in his essay advocating for the use of D&D in prisons, the white prisoner might have never spent time around him or his group of friends and could have still harbored hatred for them had he not played D&D, but he was welcomed into the group.<sup>125</sup>

Within the groups who play D&D while incarcerated there can be rules set in place.<sup>126</sup> Certain prison D&D games incorporate rules that ban evil characters and require players to work together.<sup>127</sup> The purpose of these requirements is so that the Dungeon Master and the other players come into the game with a certain level of trust between the players.<sup>128</sup>

While courts and prison systems might worry about the prospect of prisoners escaping using plans they supposedly found in D&D, the game is played primarily within the mind focusing on storytelling.<sup>129</sup> Through D&D, prisoners have the ability to talk about life and constructively work through issues that can arise between inmates in prison.<sup>130</sup>

## 2. The Impact of Lifting the Ban on Prison Guards

Now I turn from the impact felt by prisoners to the impact felt by prison guards and staff. The courts have previously stated that D&D manuals could contain graphic imagery and that it should not be within the prison officer's duties to screen every manual for such imagery.<sup>131</sup> The D&D manual is a book that explains the intricacies and nuances of

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<sup>123</sup> *Id.*

<sup>124</sup> Thorrson, *supra* note 109.

<sup>125</sup> Richie, *supra* note 88.

<sup>126</sup> de Kleer, *supra* note 15.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *What is D&D?*, DUNGEONS & DRAGONS, <http://dnd.wizards.com/dungeons-and-dragons/what-is-dd> (last visited Mar. 2, 2019).

<sup>130</sup> de Kleer, *supra* note 15.

<sup>131</sup> *Glassman v. Yates*, No. 1:08-cv-01485-OWW-SKO PC, 2011 WL 347132 (E.D. Cal. Feb. 2, 2011).



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the game in-depth, as well as explains a campaign.<sup>132</sup>

The manual gives players an idea of what kind of abilities different races and classes have and explains many key aspects of the game, including but not limited to the equipment, spells, skills, and combat.<sup>133</sup> While it is not required, D&D suggests that if it is a player's first time playing the game they should read the manual so that they can fully understand the world of D&D.<sup>134</sup>

The courts cite not wanting to waste prison resources towards D&D in regard to reading the manuals for the secret meanings and ideas.<sup>135</sup> As stated above, a manual is not a required part of D&D, just a suggested addition to the gameplay experience.<sup>136</sup> Additionally successful campaigns have been run without utilizing and relying on the manual.<sup>137</sup> However, there are different non-profit organizations across the country that specialize in playing games with inmates, and many of those games revolve around building empathy and communication skills amongst the prisoners.<sup>138</sup>

D&D is a natural addition to the games played with these nonprofits as it builds communication and problem-solving skills while focusing on improving the player's empathy and understanding.<sup>139</sup> Non-profit organizations exist that play D&D with autistic people to help them open up and improve social skills;<sup>140</sup> a logical leap could be one that works with prisoners to meet that same goal.

Partnering with a non-profit organization is one way that a prison could eliminate the court's worry about diverting necessary funds from prison staff. By partnering with a non-profit, the volunteers could either bring pre-approved manuals to the prison or forego the manuals all together because manuals are encouraged but not necessary.

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<sup>132</sup> *Product Overview*, DUNGEONS & DRAGONS, [http://dnd.wizards.com/products/tabletop-games/rpg-products/rpg\\_playershandbook](http://dnd.wizards.com/products/tabletop-games/rpg-products/rpg_playershandbook) (last visited Mar. 2, 2019).

<sup>133</sup> *Id.*

<sup>134</sup> *What is D&D?*, DUNGEONS & DRAGONS, <http://dnd.wizards.com/dungeons-and-dragons/what-is-dd> (last visited Mar. 2, 2019).

<sup>135</sup> *Glassman*, 2011 WL 347132.

<sup>136</sup> *What is D&D?*, DUNGEONS & DRAGONS, <http://dnd.wizards.com/dungeons-and-dragons/what-is-dd> (last visited Mar. 2, 2019).

<sup>137</sup> *The Adventure Zone: Ep. 1: Here There Be Gerblins-Chapter One*, THE MCELROYS (Dec. 3, 2014) (downloaded using Overcast) (this podcast highlights a successful D&D campaign played without a manual).

<sup>138</sup> *About Us*, COMPASSION GAMES, <http://compassiongames.org/about-us/> (last visited Mar. 3, 2019).

<sup>139</sup> Allan, *supra* note 41.

<sup>140</sup> David Burke, *How Slaying Dragons and Rolling Dice Can Help People With Autism*, CBC (Dec. 27, 2017). <https://www.cbc.ca/news/canada/nova-scotia/dungeons-dragons-autism-communication-social-skills-community-1.4433503>.

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## 3. The Impact of Lifting the Ban on Taxpayers

While this might seem frivolous, one of the prison system's purported goals is to rehabilitate criminals so that their transition back into society can be smoother.<sup>141</sup> The impact that D&D can have on prisoners could allow them to foster a group outside of prison. This group of people on the outside has the ability to hold former inmates accountable for their decisions and encourage them to not return to prison.

This could require allocating of funds from other programs within the prison system, or the community could come together to include playing D&D with their prison outreach programs. There are organizations that visit prisoners both for shorter and conjugal visits.<sup>142</sup> These organizations have the ability to adopt a D&D "branch" to set prisoners up with people who visit once a month to play D&D with them.

In regard to costs of the game, they have the potential to be very minimal. The actual game of D&D requires very few materials, with most of the action happening within the minds of the players and within the story the Dungeon Master has created. There is one tangible object that is viewed to be essential to playing and completing a campaign, though.

One of the most iconic features of D&D is the twenty-sided dice. Because of reasons surrounding gambling concerns, many prisons have a ban on dice.<sup>143</sup> These bans on dice become an issue to players in prisons that allow D&D to be played.<sup>144</sup>

To work around those bans, many prisoners who play D&D create their own dice and other number generators using materials found around the prison.<sup>145</sup> Examples of this include writing numbers on torn pieces of paper, placing them in a cup, and drawing randomly; creating a sand-filled origami die made using saltine crackers and prison toothpaste; and using paper die patterns utilizing adhesive from stickers on shampoo bottles.<sup>146</sup>

While prisons might not outright ban the creation of character sheets and miniature character figures ("minis"), the system oftentimes

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<sup>141</sup> *Purpose*, STOP THE CRIME, <http://www.stoptheaca.org/purpose.html> (last visited Mar. 3, 2019). [as mentioned above, please find something else to support this proposition]

<sup>142</sup> *About Us*, PRISON FELLOWSHIP, <https://www.prisonfellowship.org/about/> (last visited Mar. 3, 2019); *Our Visitors*, PRISONER VISITATION & SUPPORT, <https://www.prisonervisitation.org/our-visitors> (last visited Mar. 3, 2019).

<sup>143</sup> de Kleer, *supra* note 15.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

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does not give prisoners the resources to purchase or effectively create them.<sup>147</sup> “Minis” and character sheets can also be a costly aspect of the game, but prisoners have created alternatives to the typical plastic figurines by utilizing figures from other board games or everyday things easily found within the prison, such as peanut butter jar lids or holes pressed out of flip flops.<sup>148</sup>

Another potentially costly aspect of D&D are maps of the various landscapes found within the worlds. Prisons have been very leery of allowing maps to be used due to concerns of prisoners escaping; this ban again leads to a creative and ingenious solution on the part of the prisoners playing.<sup>149</sup> One prisoner in Massachusetts stated that they would create maps on cardboard boxes taken from other inmate workers.<sup>150</sup>

The portion of the game that could cost money and has been a point of contention for both the prison and court system, are the extensive manuals that are created by D&D. Courts have oftentimes ruled that a prison’s ban on D&D stems from the manuals; courts have stated that D&D’s imagery is graphic and could be used as a model for tattoos, and that is the reason for the banning of D&D manuals.<sup>151</sup>

These manuals cost \$50 per book.<sup>152</sup> It is understandable that the courts and prison systems would not want to give that kind of expense to the taxpayers. However, there are ways to cut the costs of D&D: most basic rules and character sheets are found online.<sup>153</sup>

These online resources coupled with the low-cost dice and dice alternatives result in low potential costs for taxpayers if a program like this is implemented within their state or federal penitentiary.

*D. The Ban on D&D is an Exaggerated Response*

The final aspect of the Turner test is to question whether or not the ban on D&D is an exaggerated response.<sup>154</sup> Because it has fulfilled the other three criteria, courts have determined that the ban is not an exaggerated response.<sup>155</sup>

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> de Kleer, *supra* note 15.

<sup>150</sup> *Id.*

<sup>151</sup> *See Jacquay v. May* 47 F.3d 1178 (Holding that a prison’s ban on RPG materials served penological interests of RPG’s potential to encourage aggressive behavior as well as game character being used as tattoo patterns).

<sup>152</sup> Cindy Butor, *supra* note 43.

<sup>153</sup> *Id.*

<sup>154</sup> *Turner v. Safley*, 107 S.Ct. 2254, 2256 (1987).

<sup>155</sup> *Id.*

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In *Turner v. Safley* the Court ruled that the marriage restriction did constitute an exaggerated response to the prison's stated security concerns and the inmates' rehabilitation.<sup>156</sup> The Court then struck down that provision as being unconstitutional because to ban the prisoners marrying is an exaggerated response to safety concerns, holding that the right to marry is one that is intrinsically found within the Constitution.<sup>157</sup> While it cannot be said that the ability to play D&D is found within the Constitution, the courts have recognized that prisoners do have a right to activities like Risk, Stratego, and chess; D&D is not dissimilar to those already recognized outlets, it is just a more social and therapeutic version.

Here the response that the Court has passed down of banning D&D can be viewed as an exaggerated response. In *Singer v. Raemisch*, the prison's singular expert witness claimed that playing D&D within prison could lead to gang activity; however, the plaintiff had multiple different social scientists and prisoners claiming the opposite.<sup>158</sup>

The Court's subsequent ban of D&D and other RPGs seems to be an exaggerated response to what the prison's expert testimony claimed might happen if D&D was allowed in prison.

#### IV. PROPOSAL

While I understand that there are some jails that prioritize utilizing their budget over other more varied activities for the inmates, D&D is an activity that can be low cost, yet still have a high emotional impact. The prison systems that have banned D&D have done so to the emotional and mental detriment of their prisoners.<sup>159</sup>

In the case of *Singer*, the inmate had himself made an extensive document detailing a campaign, hand writing it in compliance with what he thought to be the prison's set out rules.<sup>160</sup> However due to the prison's ban on D&D, Singer's manual was confiscated and destroyed.<sup>161</sup>

It must also be stated that there are prisons that allow for D&D to be played within the prison walls. There have also been no reported incidents of mass increase of violence within prison walls that stems directly from D&D or other such RPGs.<sup>162</sup>

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<sup>156</sup> *Id.* at 2263.

<sup>157</sup> *Id.*

<sup>158</sup> *Singer v. Raemisch*, 593 F.3d 529, 537 (7th Cir. 2010).

<sup>159</sup> *Id.* at 533.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> James McGuire, *Understanding Prison Violence: A Rapid Evidence Assessment*, HM PRISON & PROBATION SERV. (2018),

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I propose that prisons allow for D&D and other, immersive RPGs be allowed to be played. It is understandable that each different prison will have different criteria and protocol that should be followed. However, these protocols should not outright ban D&D. Giving prisoners the ability to play D&D, as outlined above, has the potential to improve prisoner's dispositions and allow them to channel frustration and anger in a more creative and constructive way.

To accomplish this, I am suggesting that the courts give less deference to the prison officials by weighing the benefits of allowing D&D in against the potential dangers. Not every prison bans D&D outright, and the prisoners who participate in D&D reinforce the theory that playing D&D, or any other type of immersive RPG, allows for a communicative experience that can help prisoners build and develop empathy.<sup>163</sup>

By using D&D in a controlled and understanding environment, the prison system has a chance to help prisoners build empathy and communication skills amongst themselves. Prisons could require that the Dungeon Master has to be a licensed psychologist or a prison guard with experience with D&D. To help abate their fears of a potential jailbreak, the prisons could ban playing campaigns involving escaping a jail or prison. One prisoner has stated that while he played in prison, he never played a campaign that focused on escaping jail because it felt "too on the nose. Come to think of it, we tended to avoid the trope of being in a dungeon filled with monsters as we were already in a dungeon filled with monsters."<sup>164</sup>

While to the prison system it might seem daunting to organize and a waste of precious resources, to prisoners D&D is a low cost, therapeutic activity that has the potential to help them not only while incarcerated but also helps them foster a community within the prisons walls to assist them post release.

## V. CONCLUSION

D&D is something that has the ability to bring people together. D&D has pervaded the modern cultural landscape and its influence has even been felt within penitentiaries.<sup>165</sup> These bans' effects have the potential to harm the inmates and guards they're in place to help.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/737956/understanding-prison-violence.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737956/understanding-prison-violence.pdf).

<sup>163</sup> *Glassman v. Yates*, No. 1:08-cv-01485-OWW-SKO PC, 2011 WL 347132 (E.D. Cal. Feb. 2, 2011).

<sup>164</sup> *de Kleer*, *supra* note 15.

<sup>165</sup> *Id.*

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The social science available backs the idea that allowing D&D within a prison has potential to help the inmates that participate in long term ways both inside of prison as well as post release. With the proper systems in order, prison officials have the ability to help prisoners build empathy, communication, and creative problem-solving skills as well as create a support network for post release.