

Unit 2
Prisoners' Rights Mock Trial:
Prison Legal News v. Redwood County

Unit Questions

To what degree do our jails and prisons reflect the values and principles of American constitutional democracy? How are incarcerated people's rights protected and limited? How should they be?

Overview

For much of U.S. history, prisoners were considered to have lost the protection of the Constitution and other laws; they were sometimes described as “slaves of the state.” American prisoners suffered through deplorable living conditions, non-existent or poor medical care, brutal labor requirements, and arbitrary punishment. The tide began to turn in the 1960s and ‘70s, when, in the midst of the civil rights movements, prison conditions came under greater public scrutiny and activists began to advocate for the rights of incarcerated people. The 1964 case of *Cooper v. Pate*—in which an Illinois state prisoner had been held in solitary confinement because of his religion, and was denied access to the Koran—was the first time the Supreme Court held that a prisoner could file a civil rights lawsuit. Then, in a 1974 case regarding unfair disciplinary charges in the prison system, *Wolff v. McDonnell*, the Supreme Court famously declared that “there is no iron curtain between the Constitution and the prisons of this country.”

Despite such strides in court-enforceable protections for prisoners, concerns over practices within the system remain today. Over the past four decades, civil rights litigation concerning [prison conditions](#) has given the judiciary a critical role in determining whether the iron curtain between the Constitution and U.S. prisons has indeed lifted, and in providing injunctive relief for prisoners where it has not.

This unit asks you to consider civil rights inside prison, as you conduct a mock trial in the case of *Prison Legal News v. Redwood County*. This case is closely modeled after [Prison Legal News v. Columbia County](#), a case that concerned prisoners' free speech/association rights. By participating in a mock trial, you will not only learn about the litigation process, but will also learn about how democratic values and principles can be applied to specific situations, why people disagree on when and how they should be applied, and how the courts are important in providing a forum for contestation and resolution of such disputes and in ensuring that our commonly held values and principles are protected.

Unit 2: Student Overview

Prisoners' Rights

Here are the mock-trial's facts: On January 13, 2012, the [Prison Legal News](#) (PLN) filed a class-action lawsuit in the U.S. District Court for Oregon against Redwood County. The plaintiff, PLN, is a project of the non-profit Human Rights Defense Center and publishes a monthly magazine on criminal justice issues and prison and jail-related civil litigation, with an emphasis on prisoners' rights. In its court filings, PLN claimed that the defendant County was violating the First Amendment to the U.S. Constitution by censoring and excluding PLN books and magazines sent to individual subscribers in custody at the Redwood County Jail. PLN asked the federal trial court for declaration that the county had violated its First Amendment rights, an order requiring the County to change its policy, and money damages. PLN specifically alleged that the defendants' "postcard only" and "no magazine" policies for inmate mail violated its free speech rights, as well as the free speech rights of inmates and their correspondents.

For this exercise, you will consider the case on their own. In this mock trial, you will be able to play roles on both the plaintiff and defendant sides of this case, exploring both the trial process and questions of prisoners' rights in American constitutional government. You will engage in the authentic tasks of examining and weighing evidence, and using facts and evidence to formulate and present claims.

Unit Objectives and Standards

By the end of this unit, you will be able to:

- Explain some issues related to prisoners' rights in the United States, including disagreements regarding prisoners' rights.
- Analyze and weigh evidence in the case of *PLN v. Redwood County*.
- Use evidence to formulate and deliver an argument in the case of *PLN v. Redwood County*.
- Evaluate the trial process as well as the decision in *PLN v. Redwood County* to determine the degree to which justice was served in the case.

Unit Assessment

You will participate in a mock trial.

Handout 1

Nonfiction Source Evaluation

(adapted from Stanford Historical Education Group, Historical Thinking Chart,
<https://sheg.stanford.edu/historical-thinking-chart>)

Nonfiction Reading Skills	Questions	Students should be able to . . .	Prompts
Sourcing	<ul style="list-style-type: none"> Who wrote this? When and where was it written? What is the author's perspective or stake in the argument? Who is the intended audience? Why was it written? Is it reliable? Why? Why not? 	<ul style="list-style-type: none"> Identify the author's position on the event Identify and evaluate the author's purpose in producing the document Hypothesize what the author will say before reading the document Evaluate the source's trustworthiness by considering genre, audience, and purpose 	<ul style="list-style-type: none"> The author probably believes . . . I think the audience is . . . Based on the source information, I think the author might . . . I do/ don't trust this document because . . .
Close Reading	<ul style="list-style-type: none"> What claims does the author make? What evidence does the author use? What is the strongest argument? Why? What is the weakest argument? What language (words, phrases, images, symbols) does the author use to persuade the document's audience? How does the document's language indicate the author's perspective? 	<ul style="list-style-type: none"> Identify the author's claims about an event Evaluate the evidence and reasoning the author uses to support claims Evaluate author's word choice; understand that language is used deliberately 	<ul style="list-style-type: none"> I think the author chose these words in order to . . . The author is trying to convince me . . . The author claims . . . The evidence used to support the author's claims is . . .
Corroboration	<ul style="list-style-type: none"> What do other documents say? Do the documents agree? If not, why? What are other possible documents? What documents are most reliable? 	<ul style="list-style-type: none"> Establish what is probable by comparing documents to each other Recognize disparities between accounts 	<ul style="list-style-type: none"> The author agrees/disagrees with . . . These documents all agree/ disagree about . . . Another document to consider might be . . .

Handout 2

Prison Legal News Article

Louisiana Sheriff Cages Suicidal Prisoners in Space Smaller than Required for Dogs (June 2011)

“These people need to be locked up,” said Louisiana’s St. Tammany Parish Sheriff Jack Strain, Jr., referring to prisoners at his jail. “They performed like animals in our society and they need to be caged like animals.” And when it comes to suicidal prisoners, Strain is doing exactly that.

When St. Tammany Parish jail officials determine prisoners are suicidal, they place them in “squirrel cages” after stripping them half-naked. The metal cages, which are 3’ x 3’, are so small that prisoners are forced to curl up on the floor to sleep. They are not provided with a bed, blanket, shoes or a toilet. Prisoners are also placed in the cages during the booking process into the jail.

Requests to use the restroom are frequently ignored by guards, forcing some prisoners to urinate in discarded containers. Most humiliating is the fact that the cages are in the main part of the jail, allowing other prisoners to gawk at those who are so confined. Prisoners have reported being left in the cages for “days, weeks, and even over a month.

“We appreciate that mentally ill prisoners pose a challenge for the jail, but Sheriff Strain has a legal and moral obligation to care for sick people in a humane way,” said Katie Schwartzmann, legal director for the ACLU of Louisiana. “Caging them for prolonged periods of time is an unacceptable solution, both from a legal rights perspective and a human rights perspective.”

In fact, Sheriff Strain exposes suicidal prisoners to conditions that even dogs are not expected to endure. According to St. Tammany Parish Code 4-121.10, dogs must be kept in cages at least 6’ wide x 6’ deep, with “sufficient space ... to lie down.”

“This should really go without saying, but in America we should not treat any person worse than animals,” observed ACLU of Louisiana Prison Litigation Fellow Berry Gerharz.

In addition to being placed in the squirrel cages, suicidal prisoners are forced to wear orange short shorts (“Daisy Duke” style); some of the shorts have “Hot Stuff” written on the rear end. This treatment increases the likelihood that prisoners will commit suicide, as they are less likely to inform guards they are suicidal due to fear they will be placed in the humiliating, degrading cages. Those who have been confined in the squirrel cages report “acute physical and psychological after-effects, including clinical depression, nightmares and crying fits after they were released from jail,” the ACLU noted.

“This is what can happen when you have law enforcement treating the mentally ill. If the Constitution’s Eighth Amendment protection against cruel and unusual punishment means anything, it means people shouldn’t be treated like this,” said Majorie Esman, executive director of the ACLU of Louisiana. “Jails across this country typically have housing for suicidal prisoners

Unit 2: Lesson 1
Prisoners' Rights

and don't resort to barbarity. The squirrel cages belong in the history books."

On July 8, 2010, the ACLU of Louisiana sent a letter to Sheriff Strain and Parish President Kevin Davis condemning the practice of using small cages to house suicidal prisoners, stating, "All we ask is that people be housed more humanely than dogs."

The parish agreed to change its policies and house suicidal prisoners in a holding cell with access to bathrooms, beds and water, where they will be monitored by jail staff. "The cages will be used only as a last resort in emergency situations, only on order of a doctor when no alternative is available, and for no more than 10 hours at a time," said Esman, who called the policy change for suicidal prisoners a "more humane treatment." The jail will also create a new position for a "jail inspector" to monitor conditions at the facility.

"No one should be held in the conditions that existed in St. Tammany Parish Jail. It's unfortunate that it took public exposure of these serious problems in order to have them corrected, but we're relieved that conditions should improve for the most vulnerable people in the sheriff's custody," Esman stated.

However, Sheriff Strain said that "[s]hould the need arise, the medical staff at the jail will continue to have available to them the use of booking cages for severely suicidal inmates." Not that the cages are particularly effective at preventing suicide attempts. On September 1, 2010, a 26-year-old jail prisoner, who was not identified, attempted to kill himself while being held in one of the cages during the booking process. The prisoner was taken to a hospital, then returned to the jail and placed on suicide watch.

Handout 3

Prison Legal News (PLN) v. Redwood County

Introduction

On January 13, 2012, Prison Legal News (PLN) filed a federal lawsuit against Redwood County, the Redwood County Sheriff's Office, and its Sheriff, Jeff Dickerson. PLN, a project of the Human Rights Defense Center, publishes and distributes a monthly journal of prison and jail news and analysis, as well as books about the criminal justice system and issues affecting prisoners. PLN claimed that the defendants censored their PLN publications and other correspondence sent to Redwood County prisoners, in violation of the First Amendment. The plaintiff asked the court for an official court declaration (called a "declaratory judgment") that the jail's policy was unconstitutional and an injunction ordering the jail to change its policy. Defendants countered that their mail policies, specifically their "postcard only" policy, was legitimate because it prevented the introduction of contraband into their jails and saved time during mail inspection at the jail.

Note: This is a real case, though we've changed its name and the name of the county; the description of the case and the excerpts from its documents are real. Much more information—including summaries and documents—is available at <http://www.clearinghouse.net/detail.php?id=12105>. For this exercise, we've added some (fictitious) information about the witnesses, and therefore changed their names.

Facts

PLN, plaintiff in the case, publishes and distributes a soft-cover monthly journal and paperback books about the criminal justice system and legal issues affecting prisoners. PLN has approximately 7,000 subscribers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and other members of the public. PLN distributes its publication to prisoners and law libraries in approximately 2,200 correctional facilities across the United States, including the Federal Bureau of Prisons and the Oregon Department of Corrections. Prison Legal News engages in speech on matters of public concern, such as operations of facilities, prison conditions, prisoner health and safety, and prisoners' rights.

Redwood County Jail, the facility at issue in the case, is a fairly small jail, with fewer than 200 inmates. Each day, the Jail receives about fifty incoming pieces of mail addressed to inmates and about forty pieces of mail from inmates to be sent out. Out of the fifty pieces of incoming inmate mail, about thirty-five to forty pieces are personal mail; the rest is legal mail. A typical shift has four corrections deputies. The booking deputy is responsible for inspecting incoming and outgoing non-legal mail, in addition to other responsibilities such as communicating with intake officers, booking arrestees into the Jail, and monitoring inmates in the cells and booking area. The control room deputy manages all movements in the Jail, which are remotely controlled. The remaining two corrections deputies are roving deputies who must check on inmates every forty-five minutes, distribute food and mail, and monitor them during common and recreation periods.

Unit 2: Lesson 1
Prisoners' Rights

Between December 2010, and July 2011, PLN mailed its monthly journal to certain prisoners, including inmate Thomas Davis, at the Redwood County Jail, by U.S. Mail. PLN's monthly journal is a 56-page publication titled *Prison Legal News: Dedicated to Protecting Human Rights*. The publication contains various articles on corrections news and analysis, about prisoner rights, court rulings, management of prison facilities, and prison conditions. The defendants rejected each publication and did not deliver the publication to prisoner addressees. For the journals that the defendants returned to Prison Legal News, the defendants (a) placed a sticker on the mailing stating: "As of April 1, 2010, the Redwood County Jail ONLY ACCEPTS POSTCARDS. This applies to ALL incoming and outgoing mail"; (b) stamped the mail "INSPECTED BY REDWOOD COUNTY JAIL" and handwrote checkmarks next to "RETURN TO SENDER" and "REFUSES/VIOLATES SECURITY"; or (c) stamped the mail "RETURN TO SENDER."

In addition, an individual, Betty Pale, sent legal articles to certain prisoners at the Redwood County Jail; she printed the articles off of PLN's website and mailed them via U.S. Mail in standard #10 envelopes. The articles included a critique of prison privatization and research findings about the goals and results of privatization. The articles also included introductory descriptions of PLN's 20 "Breaking News" headlines about various topics, including but not limited to sex abuse in prison, poor forensics used to secure criminal convictions, private prison companies behind Arizona's immigration law, and the death penalty in Texas. Defendants rejected at least twelve envelopes containing PLN articles sent by Ms. Pale; they did not deliver them to the prisoners to whom they were addressed by name.

Law

- **The First Amendment of the U.S. Constitution:** “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or **abridging the freedom of speech, or of the press**; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The First Amendment rights to freedom of speech and association are central issues in this case. Freedom of speech is considered one of the most important rights guaranteed in the Constitution because it serves to guarantee other rights by permitting open political debate and challenges to government authority. Freedom of speech restricts the government from limiting speech based on its content. Outside of prison and jail, the government may limit the time, place, and manner of speech—but only when it has a compelling need to do so, adopts the least restrictive means of limiting speech, and does so by a regulation that is neither too vague nor too broad.

- **The special case of jails and prisons: Turner v. Safley** (U.S. Supreme Court, 1987).

In 1987, in a case called Turner v. Safley, the Supreme Court addressed the issue whether constitutional rights were the same inside and outside of prisons or jails. This was a civil rights case in which the prisoner plaintiff challenged the constitutionality of two prison regulations. The first regulation banned nearly all letter writing from one inmate to another. The second regulation banned nearly all inmates from getting married (permission was granted only in the case of pregnancy).

In its opinion, the Court confirmed that inmates do have constitutional rights, like people outside prison. However, the Court held, First Amendment and many other constitutional rights are more limited inside prison than out, because of the legitimate needs of the prison officials. The Supreme Court laid out a test—which remains the most important precedent in cases like this one—for evaluating prisoners' First Amendment claims.

To be constitutional, a correctional institution's regulation that restricts inmates' free speech rights must be “reasonably related to legitimate penological interests,” rather than an “exaggerated response to prison concerns.”

The Court articulated four factors for application of this test:

1. The regulation must be rationally related to a legitimate and neutral governmental objective, unrelated to the content of the expression.
2. If alternative avenues remain open to the inmates to exercise the right, that weighs in favor of the legitimacy of the regulation.
3. If accommodating the asserted right will have a significant impact on other prisoners' or guards' liberty or safety, or on the allocation of prison resources, that weighs in favor of the legitimacy of the regulation.
4. The existence of easy and obvious alternatives may indicate that the regulation is an exaggerated response by prison officials.

Unit 2: Lesson 1
Prisoners' Rights

Applying these factors, the Supreme Court upheld the constitutional validity of the correspondence ban, finding that “restrictions on inmate-to-inmate correspondence were done for legitimate, physical security reasons.” But the Court held that the marriage ban was unconstitutional: rather than being “reasonable,” it was an “exaggerated response” to security concerns about love triangles and abusive relationships.

Applying the Law

Read through the following excerpt, focusing on the court's analysis of whether an action is "reasonably related to legitimate penological interests" or an "exaggerated response to prison concerns." In your small group, answer the following questions about your excerpt. Be prepared to present the issue and the court's analysis to the class.

1. What is the issue of the case? How are the prisoner's First Amendment rights being limited?
2. What was the prison's asserted penological interest? Did the court consider this limitation/prohibition to be reasonably related or an exaggerated response?
3. What considerations influenced the court's analysis of each of the *Turner* factors?

Excerpt 1

Bell v. Wolfish

(this opinion is by the U.S. Supreme Court)

Inmates at the Metropolitan Correctional Center (MCC) brought a class action suit against the government alleging that MCC violated the inmates' First Amendment rights when it prohibited the receipt of all books or magazines mailed from outside the facility, except for those sent directly from a publisher or book club.

We conclude that a prohibition against receipt of hardback books unless mailed directly from publishers, book clubs, or bookstores does not violate the First Amendment rights of Metropolitan Correction Center inmates. That limited restriction is a rational response by prison officials to an obvious security problem. It hardly needs to be emphasized that hardback books are especially serviceable for smuggling contraband into an institution; money, drugs, and weapons easily may be secreted in the bindings. They also are difficult to search effectively. There is simply no evidence in the record to indicate that MCC officials have exaggerated their response to this security problem and to the administrative difficulties posed by the necessity of carefully inspecting each book mailed from unidentified sources. Therefore, the considered judgment of these experts must control in the absence of prohibitions far more sweeping than those involved here.

Our conclusion that this limited restriction on receipt of hardback books does not infringe the First Amendment rights of MCC inmates is influenced by several other factors. The rule operates in a neutral fashion, without regard to the content of the expression. And there are alternative means of obtaining reading material that have not been shown to be burdensome or insufficient. "[We] regard the available 'alternative means of [communication as] a relevant factor' in a case such as this where 'we [are] called upon to balance First Amendment rights against [legitimate] governmental . . . interests.'" The restriction, as it is now before us, allows soft-bound books and magazines to be received from any source and hardback books to be received from publishers, bookstores, and book clubs. In addition, the MCC has a "relatively large" library for use by inmates. To the limited extent the rule might possibly increase the cost of obtaining published materials, this Court has held that where "other avenues" remain available for the receipt of materials by inmates, the loss of "cost advantages does not fundamentally implicate *free speech* values. We are also influenced in our decision by the fact that the rule's impact on pretrial detainees is limited to a maximum period of approximately 60 days. In sum, considering all the circumstances, we view the rule, as we now find it, to be a "reasonable 'time, place and manner' [regulation that is] necessary to further significant governmental interests"

Excerpt 2

Thomas v. Leslie (This opinion is by the federal 10th Circuit Court of Appeals)

Plaintiff Thomas, an inmate at the Reno County Detention Center, sued Defendant Leslie, the Reno County Sheriff, alleging that the detention center's total ban on newspapers violated Thomas' First Amendment rights.

Sheriff Leslie argued that the ban on newspapers was rationally related to concerns that newspapers could be used to start fires or as weapons and that the accumulation of papers constituted a health hazard. The sheriff admitted that inmates were permitted a soft-back Bible and that they "have access to puzzle books and paperback books via the commissary." As to the first Turner factor, the [district] court determined that because other materials presenting the same security and safety concerns were not restricted, the newspaper ban was not rationally related to the sheriff's stated objective.

Sheriff Leslie also claimed that access to television, which included local and cable news channels, constituted an alternate means of exercising the right to remain informed about community and national news. He cites no authority for this proposition, nor did he dispute Mr. Thomas's claim that because a majority vote of the inmates in each cell governs what programs are in fact watched, Mr. Thomas was not able to view the news programs he wanted to.

The [district] court found that the alternative means test would allow Sheriff Leslie to prohibit all reading material under the theory that television provides an adequate substitute for all written communications and that this second Turner factor also weighed against upholding the rule.

The [district] court found that as to the third Turner factor, the impact of accommodating the right, any such impact of allowing newspapers would be minimal in view of the permitted access to paperback and puzzle books and soft back Bibles.

Finally the [district] court determined that an obvious and easy alternative existed to the sheriff's expressed concerns underlying the rule and was thus evidence that the rule was not reasonable but rather an "exaggerated response" to prison concerns." The alternative identified by the district court was a policy approved for use at another county jail which required inmates to turn in one publication before receiving another, thus reducing the amount of combustible material in the jail. Concluding that the blanket prohibition on newspapers violated Mr. Thomas's First Amendment rights, the court granted him summary judgment on this claim and awarded nominal damages of \$ 1.00.

We agree with the district court that the absolute ban on newspapers does not constitute a "'valid, rational connection' between the prison regulation and the legitimate governmental interest put forth to justify it, particularly where the hazards concerning Sheriff Leslie could as well be caused by the permitted reading materials.

Nor are we persuaded by Sheriff Leslie's argument that access to television provides an adequate alternative to newspapers. Television cannot supply the depth and diversity of coverage that newspapers can provide. Mr. Barnett's affidavit states he was unable to watch news programs because of the majority vote rule controlling what programs were watched.... Moreover, it is not up to the [county sheriff] or this court to decide that television can adequately service the first amendment right to receive protected materials. Rather, we must apply the principle 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.

Handout 4

The Litigation Process

In both state and federal court, a body of rules, known as court procedure, outlines the process of civil litigation from beginning to end.

Part I: Pretrial

This part describes the major steps in the litigation process that occur before the trial starts. As you walk through each step, consider what court procedures ensure that the process is fair.

The Complaint

The plaintiff begins a lawsuit by filing a complaint in a trial court. The complaint is a formal document accusing the defendant of violating the law. It provides the defendant with notice, and outlines the plaintiff's case against the defendant. Specifically, the complaint:

- identifies the plaintiff and defendant
- describes the facts that show the defendant harmed the plaintiff
- explains what law those facts violate
- requests a remedy—usually court order to the defendant to pay money damages or to start or stop doing something

The Answer

After the plaintiff formally files the complaint against the defendant, the defendant must respond to each allegation. Responses can deal with facts, law, or both. With respect to the facts, the defendant will typically respond by admitting some of the plaintiff's allegations, denying some of them, and stating that he or she lacks knowledge about some of them. The defendant might also argue that there are additional facts that change the situation. This is done in a document called an *answer*.

Discovery

If the case is not dismissed, then the parties begin a process called *discovery*. This is how attorneys on each side gather evidence from the other side. There are several types of discovery. Parties can obtain information through *depositions*, which are interviews of witnesses, conducted under oath. Parties also find out information through *interrogatories*, which are written questions submitted to the opposing party. The opposing party's written answers to these questions are also under oath. Attorneys for both parties can also demand that the opposing side share documents and other physical evidence relevant to the case.

Since the pre-trial process can be so long, attorneys often try to get witness statements as soon as possible, when events are clearer in people's minds. They can then use those statements to corroborate or dispute what may be said during the trial. Contrary to what is often shown in movies and television, there should be no surprises in a trial, and everyone should have ample time to evaluate information and evidence.

Developing a Theory of the Case

Attorneys take all the statements and evidence they have gathered from discovery and develop a *theory of the case*. A theory of the case is a clear outline of what they hope to prove in court, the facts that will make up their argument, the evidence to support the facts, and the strategy that will lead others to the conclusion they want. Good lawyers develop themes around which the case will be centered, such as equality, human dignity, greed, or vengeance. Lawyers also organize the theory of the case so that it tells a coherent story throughout the trial.

Alternative to Reaching Trial: Settlements

Movies and television usually focus on the trial part of the litigation process but, in fact, most cases never go to trial. The biggest reason is that judges and lawyers try to resolve disputes out of court through negotiation. During negotiation, the opposing parties try to reach a *settlement*—an agreement that is acceptable to all that ends the dispute. Most cases settle, at some point. If they can reach a settlement and avoid trial, both parties save a lot of time, money, and other resources.

Alternative to Reaching Trial: Motions

Even apart from settlement, there is a long process prior to trial, during which many cases are resolved. Remember that litigation can concern *factual disputes*, *legal disputes*, or both. Trials are where facts are developed and decided. But legal disputes are sometimes resolved without a trial. Judges very often decide cases based on the law through *motions*—requests to the court.

Both parties have several chances to file *motions for judgment* in their favor. These are written arguments that claim, based on the law and whatever uncontested evidence exists, that their side should win. A motion of this type can occur before discovery, after discovery, before trial, during trial, and even after trial. In fact, more disputes are resolved by this kind of motion than by a trial.

A *Motion to Dismiss*, for example, seeks to have the case thrown out. A defendant might file a Motion to Dismiss claiming that even if the plaintiff's allegations are true, those allegations do not add up to a legal violation. Many other grounds for filing a Motion to Dismiss exist. For example, if the plaintiff filed the complaint in the wrong court, or failed to properly serve the complaint on the defendant, the judge may dismiss the case. If the judge grants a Motion to Dismiss, the lawsuit is over; the plaintiff has lost.

Part II: Trial

This Part describes the major steps in the litigation process that occur during trial. Although quite infrequent, trials remain the dramatic central moment of civil litigation. Cases are developed and settled based on the parties' expectations about what will happen at trial. So understanding how trials work is critical to understanding all the other possibilities. As you walk through each step, consider what rules ensure that the process is fair.

What Happens at a Trial?

Trials are mostly about disputed facts. During trial, the decision-maker (a judge or jury) finally decides whose facts are true. In order to establish their version of the facts, the parties introduce evidence in court. Evidence can include witness or expert testimony, physical evidence, and

documentary evidence. Nearly always, plaintiffs have the *burden of proof*. This means they have to convince the judge or jury of their version of the facts. Unlike in criminal cases, where the prosecutor must establish its version of events *beyond a reasonable doubt*, the plaintiff in a civil case has a lower burden, called the *preponderance of the evidence* standard. To meet the preponderance of evidence standard, civil plaintiffs must show that their version of events is *more likely than not*. The defendant tries to provide enough evidence, or a convincing enough explanation of the evidence, to prevent the plaintiff from meeting that burden of proof.

What Evidence can be Used During a Trial?

Not all of this evidence can be used at trial. The Rules of Evidence regulate what kinds of evidence can be used during the trial.

- First, all evidence and witness questions and answers must be *relevant*—that is, only evidence that is helpful in establishing a legal proposition involved in the case may be considered.
- *Hearsay*, or second-hand testimony, is often inadmissible (not allowed) in court. Witnesses usually must have directly seen, heard or experienced whatever it is they are testifying about. This is to improve the reliability of the testimony.
- *Character evidence*, defined broadly as any evidence showing a person's general tendency to act in a certain way, is nearly always inadmissible. This is because character evidence is often unfairly prejudicial, wastes time, and confuses the jury.
- *Privileged information*, such as conversations between a husband and wife, between a client and a lawyer, or a patient and a doctor, is also excluded from trial. This is because we want to respect these types of private relationships, and not encourage distrust or betrayal.
- Other rules of evidence inform the ways lawyers can ask questions and the ways witnesses can answer them.
 - For example, lawyers in a trial cannot ask their own sides' witnesses *leading questions*—questions phrased in a way that suggests the desired answer to the witness. This is to protect against unreliable, untruthful answers.
 - Further, the witness must answer reasonably specific questions, not provide *narration*. In other words, they must limit their answer to the information that the question calls for. This is to limit testimony so that it is both relevant and time efficient.
 - Except for technical experts, who can give opinions about matters relating to their field, witnesses cannot give opinions in their testimony. Testimony is limited to *facts, not opinions* for witnesses that are not testifying as experts. This is because the opinions of witnesses are typically irrelevant and can confuse the jury.

The Basic Trial Process

Only a very small proportion of civil cases go to trial. Although there is really no “typical” trial, the basic steps in the trial process are outlined below.

1. Jury Election. In criminal cases, and in civil cases, if the plaintiff is seeking damages, either the plaintiff or the defendant usually can choose to have the case presented or tried to a jury. This means the jury will decide factual disputes. Civil cases seeking other kinds

of relief—for example, court orders requiring the defendants to do something or stop doing something—are presented to a judge without a jury.

2. Jury Selection. Typically on the first day of trial, a pool of potential jurors—citizens from the same county (for state court) or state (for federal court)—is gathered in the courtroom. During jury selection, the judge and attorneys ask those potential jurors questions about the particular case, including questions about ideological views and life experiences that may indicate some involvement in the dispute or other bias. The questioning is called *voir dire*. If a potential juror's experience makes it difficult for him or her to be fair, the lawyers from either side can seek to exclude that person from the actual jury through a *challenge for cause*. For example, a juror can be excluded from the actual jury if he or she knows one of the parties or witnesses, already has an opinion about the facts of the case, or has himself or herself had an experience similar to the case's subject. In addition, the parties can exclude a set number of the potential jurors without explaining the reason for exclusion. This is called a *peremptory* challenge. However, peremptory challenges may not be based on the race, ethnicity, or gender of the juror.

Once the jury is chosen, the trial can begin.

3. Opening Statements. At the beginning of trial, the attorneys representing each party introduce the case to the judge and jury as clearly and persuasively as possible. In theory the opening statement is not an argument. Instead, it summarizes the facts that each party sets out to prove. But the opening statement *is* an argument of sorts, since each lawyer tries to persuade the jury to begin to see the case in a certain way. The plaintiff's lawyer delivers the first statement, followed by the defendant's lawyer. Both speak in the future tense, using statements like "the evidence will show," to provide the jury with a helpful overview of what's to come.
4. The Plaintiff's Case. The plaintiff has the first chance to present evidence through witness testimony. If there is non-witness evidence—documents or physical evidence—a witness typically presents and explains that evidence. The plaintiff's lawyer has met with the witnesses in advance, and knows what they are going to say. The defendant's lawyer has usually deposed the witnesses (interviewed the witnesses under oath) during discovery, and therefore also knows what they are going to say.
 - a. Direct Examination. To begin with, the plaintiff's lawyer asks the plaintiff's witnesses questions. Attorneys want to question witnesses and present evidence in such a way that tells a compelling story and convinces the judge and jury that the defendant violated the law.
 - b. Cross-Examination. For each witness, the defendant's attorney has the opportunity to ask questions to show weaknesses in the witness's testimony. This happens after the plaintiff's attorney has completed the direct examination. All questions asked during cross-examination must relate to the questions asked in the direct examination.

- c. Redirect Examination. At the close of the cross-examination, the plaintiff gets an opportunity to conduct a redirect examination. Redirect examination is limited to subjects from the cross-examination.

After the plaintiff's attorney has finished presenting the plaintiff's case, the defendant has an opportunity to try to get the case dismissed. The defendant can file a *Motion for Judgment as a Matter of Law*, arguing that the plaintiff has not presented sufficient evidence to meet his or her burden of proof. The judge hears this motion out of the presence of the jury (if there is a jury). If the judge believes that, given the evidence presented, no reasonable jury could find for the plaintiff, the judge may grant the motion. This means that the defendant will win the case without completing the trial.

5. The Defendant's Case. Once the plaintiff has presented all of his or her witnesses and evidence, it's the defendant's turn. The process is the same:
 - a. Direct Examination
 - b. Cross-Examination
 - c. Redirect Examination
6. Plaintiff's Rebuttal. If (but only if) the defendant raises any issues that were not addressed in the plaintiff's initial presentation of evidence, the plaintiff's attorney gets an opportunity to address these issues with additional witnesses and other evidence, if there are any. This is called a rebuttal.

Plaintiff's rebuttal closes the evidence phase of the trial. At that point, either party may file another *Motion for Judgment as a Matter of Law*, arguing that no reasonable jury could find for his or her opponent. If the judge grants the motion, the trial ends.

7. Closing Arguments. After all the evidence has been presented, the attorneys for each party summarize their main arguments, highlight the most important evidence in their favor, and explain why the jury should not believe or not care about evidence against them. This is called closing arguments. Unlike opening statements, closing arguments are just that—arguments, although they may not go beyond the evidence presented. They are attempts to persuade the judge and jury. Closing arguments give both parties one last chance to address doubts, reinforce sympathies, and explain why the judge or jury should agree with their theory of the case.
8. Deliberation and Verdict. Finally, the judge or jury considers the evidence and delivers a verdict. For a jury trial, the judge first provides instructions to the jury giving them information about the legal standards they should apply to reach their decision. In federal civil litigation, and in both federal and state criminal litigation, jury verdicts must be unanimous; if any member of the jury disagrees with the other members of the jury, the jury cannot render a verdict, and the case has to be retried. States often allow civil cases to be resolved by jury with one or two dissenting votes. Either way, the verdict ordinarily

does not include any explanation. It simply states who wins, and what damages (if any) are awarded.

(Once a jury verdict is reached, the parties can, one last time, file a *Motion for Judgment as a Matter of Law*. Even if the judge disagrees with the jury verdict, usually the verdict stands. This is because judges are supposed to overturn a jury verdict only if “no reasonable jury” could have reached that verdict.)

Part III: Post-Trial

This Part describes the major steps in the litigation process that occur after the trial. As you walk through each step, consider what rules ensure that the process is fair.

What Happens After the Judgment?

In a civil case, after the trial court enters its judgment, the losing party generally has a right to *appeal* the decision—to apply to a higher court for reversal of the lower court’s decision. In the federal Courts of Appeals, a three-judge appellate panel is chosen at random from among that particular court’s judges. The party that lost in the trial court must choose particular aspects of the process to appeal, making specific claims of trial-court error.

If the appeal deals with the trial court’s decisions regarding questions of law, appellate review is undeferential—no weight at all is given to the trial court’s opinion. The legal term for this type of review is *de novo* review. (De novo is Latin for “from the beginning” or “anew.”)

If, however, the appeal deals with factual decisions, appellate review is highly deferential to the trial court’s decisions. Appellate courts will not reverse jury findings unless the findings had “no reasonable basis” in the testimony or other trial evidence. If the case was tried to a judge rather than a jury, appellate courts will not reverse trial judge findings-of-fact unless those findings are “clearly erroneous.” In that situation, appellate reversal of the trial judge findings is appropriate only if the appellate judges have a “definite and firm conviction that a mistake has been committed.” These high standards make it difficult for the party who lost in the trial court to win any appeal on decisions of fact.

Whichever party loses the appeal may have additional options for further review. For example, the losing party can petition the Supreme Court of the United States to hear the case. The Supreme Court can choose whether or not to hear the case. Nearly always, the Supreme Court chooses against hearing the case. At that point, the decision of the Court of Appeals becomes final.

In state’s court systems, cases can be appealed from the intermediate appellate court to the state’s supreme court. Depending on the state, this may be rare or routine. If the issues on appeal do not involve the federal Constitution or a federal statute, that is the end. When the issues on appeal *do* involve the federal Constitution or a federal statute, the losing party in the state supreme court may, seek even further review before the U.S. Supreme Court. However, U.S. Supreme Court review is extremely rare. The Court receives thousands of applications for review each year, and decides to hear well under a hundred of them.

Handout 5
Analyzing the Declarations

Witness	Important Evidence	Analysis of Evidence
Thomas Davis		
Betty Pale		
Elizabeth Hewitt		
Katherine Cahill		

Unit 2: Lesson 2
Prisoner's Rights

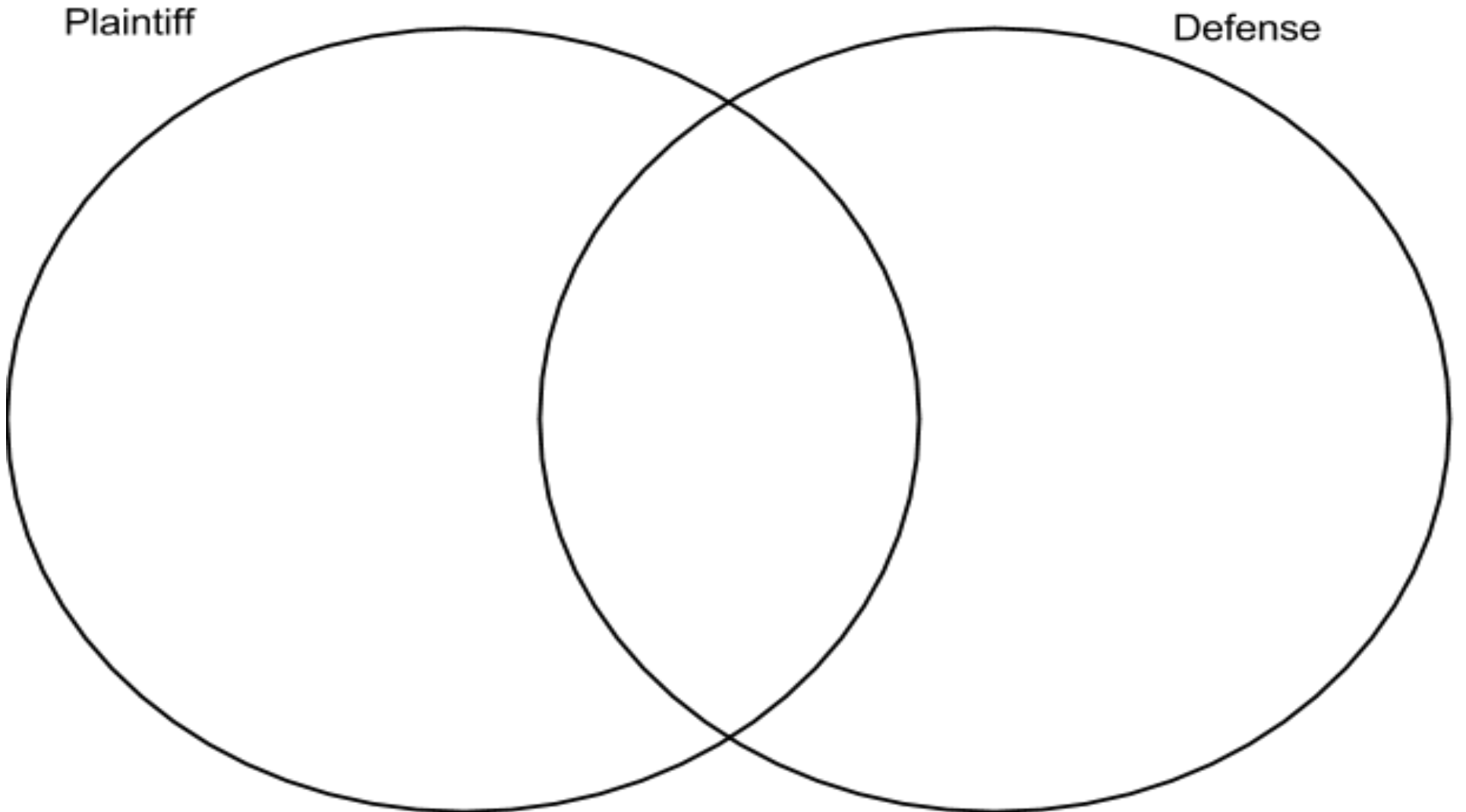
Austin Cahill		
Kevin Parson		
Jeremy Meyer		
Bryan Cutright		

Handout 6
Sorting the Evidence and Venn Diagram

As you read through the evidence packet, use the following questions to help you build a picture of the argument. Remember, the evidence should address (1) content of prisoner's policies, (2) and need (or lack of a need for the policies).

Turner Factor	Building Support
<p>The regulation must be rationally related to a legitimate and neutral governmental objective, unrelated to the content of the expression.</p>	<p><i>What is the prison policy?</i></p> <p><i>What is the governmental objective? Is it a legitimate objective? Why or why not?</i></p> <p><i>Does the policy apply discriminate against certain types of speech? Is the restriction based on the content of the speech?</i></p>
<p>If alternative avenues remain open to the inmates to exercise the right, that weighs in favor of the legitimacy of the regulation.</p>	<p><i>Even with this policy in place, are prisoners still able to exercise their right? How?</i></p> <p><i>Does the policy create a substantial change in the prisoners' ability to exercise that right?</i></p>
<p>If accommodating the asserted right will have a significant impact on other prisoners' or guards' liberty or safety, or on the allocation of prison resources, that weighs in favor of the legitimacy of the regulation.</p>	<p><i>What is the prisoners' asserted right? How does the policy limit that right?</i></p> <p><i>How could the prison accommodate this right?</i></p> <p><i>What impact would accommodating this right have for prisoners, guards or the allocation of prison resources?</i></p>
<p>The existence of easy and obvious alternatives may indicate that the regulation is an exaggerated response by prison officials.</p>	<p><i>What are the alternatives to the prison's policy? Would it be as effective?</i></p> <p><i>Is this alternative feasible? Why or why not?</i></p>

Venn Diagram



Handout 7

Developing a Theory of the Case

Directions: A theory of a case is a clear outline of what a party hopes to prove in court, complete with the themes around which the case will revolve, the facts that will make up their argument, the evidence to support the facts, and the strategy that will lead others to the conclusion they want. The theory of the case is an argument about rhetoric, not the law; if you are going to persuade a decision maker you need to create a story and the theory is the overarching theme that makes your case more persuasive.

In developing the theory of a case, it is important to thoroughly understand the facts of the case and the underlying law before choosing a particular strategy. As Michael Tigar, a famous trial attorney, notes, "Advocacy skills are indispensable to success, but are worthless without thorough and thoughtful preparation of facts and law." When lawyers develop their understanding of the facts, they cannot merely rely on their clients' statements; instead, they must also do independent research to get a full picture of the facts presented. At the same time, the client's emotions and interests are key. Why does he/she feel that he/she was wronged? The human side of the case is essential in telling a winning story.

Because the vast majority of cases settle before trial, the bulk of a lawyer's work occurs in this preparation stage. Armed with a full understanding of the facts and the law, the next step is to brainstorm strategies, including the strategies and narratives your opponent will likely use (in order to develop counter narratives), and to select the best among them. Throughout the development of this strategy, keep in mind that the point of litigation is to tell a coherent narrative about justice. Every stage of the trial must be organized around the central theme of the case, and calculated to convince the decisionmaker that your client's version of the facts is more plausible than the opponent's version.

In developing your narrative, it is also important to remember that losing the judge or jury's trust can have disastrous results. Going into litigation, you should always know your case's strengths and emphasize them. But to deny your case's weaknesses (for example, by arguing that your client was not at a certain location at a certain time when there is clear video evidence to the contrary) will likely lead the decisionmaker, whether that's the judge or the jury, to distrust you and be skeptical about the remainder of the arguments presented.

In addition to knowing all the facts pertaining to a case, a theory of a case includes the following elements. Keep in mind that this is not necessarily the order in which you'll present your case, just the parts you should include.

Note that in this case, the trial will be about the plaintiffs' requested declaration that the County's policy is unconstitutional, and request for a court-ordered change to the policy, rather than about damages. For that reason, the decisionmaker is a judge, not a jury.

Theory of the Case Worksheet Responses

A. Key Facts. *What facts do you want to emphasize in making your argument? What facts are beyond dispute?*

B. Evidence. *What are the key pieces of evidence you will use? What part of your argument will the evidence support? How will you use this evidence to convince the judge that your client's version of the facts is the more plausible version?*

C. Motive. *Why did the plaintiff/defendant act in the way they did? What explains their actions?*

D. Law. *What laws are at issue? What do you think should be the proper legal outcome of the case?*

E. Emotions. *To what kinds of emotions can your case appeal? Has an injustice been committed? Has the plaintiff/defendant been mistreated? What kind of fear, sadness, or anger is this case likely to rouse?*

F. Weaknesses. *What are the weaknesses in your case? Where will you have the most trouble convincing the judge/jury that your interpretation of the facts is correct? How, if at all, do you plan to address these weaknesses? In certain circumstances, it may undermine your case to not admit the weaknesses to the judge or jury.*

G. Opponent's Case. *What is your opponent going to argue? What key facts will their argument hinge upon and how will they use the evidence? How will you counter their argument?*

H. Short Summary. *Who did what to whom and why did they do it? What was the result? What are the legal and moral reasons this requires a verdict in your favor? What is your single most important item of evidence, and your best response to the other side's case?*

Handout 8

Evidence Overview

Not all of this evidence can be used at trial. The Rules of Evidence regulate what kinds of evidence can be used during the trial. The following explains some of the rules of evidence. We will use the case about the Bible-only prison policy to provide an example of the rules, including potential objections that can be raised, responses, and likely outcomes.

- *Relevance.* All evidence and witness questions and answers must be *relevant*—that is, only evidence that is related to the case's subject and helps to establish a legal proposition at issue in the case may be considered.
 - **Question:** Mr. Anthony, are you a Christian?
 - **Objection:** Objection, Your Honor, this question is irrelevant to this case.
 - **Response:** Your Honor, this series of questions will show that Mr. Anthony is using the Bible-only policy to push a Christian agenda.
 - **Likely result:** The question is probably proper.
- *Hearsay*, or second-hand testimony, is often inadmissible (not allowed) in court. Witnesses usually must have directly seen, heard or experienced whatever it is they are testifying about. This is to improve the reliability of the testimony. For purposes of this mock trial hearsay evidence is only allowed if the witness is repeating a statement that was made directly to him by another witness in the case.
 - **Testimony:** My cellmate Joe told me that the rule in this prison was, I couldn't keep the Koran in my cell.
 - **Objection:** Objection, Your Honor, hearsay.
 - **Likely result:** This hearsay testimony isn't reliable (there are much better ways to find out what the rule was), so the objection would be sustained.
- *Character evidence*, defined broadly as any evidence showing a person's general tendency to act in a certain way, is nearly always inadmissible. This is because character evidence is often unfairly prejudicial, wastes time, and confuses the jury.
 - **Question:** Mr. Williams, how many times have you been incarcerated?
 - **Objection:** Objection, Your Honor, counsel is trying to introduce character evidence.
 - **Response:** Your Honor, this series of questions will show that the bible-only policy is commonly used in prisons.
 - **Likely result:** The response is very unpersuasive. It seems much more likely that the real goal of the question is to taint Mr. Williams' credibility by portraying him as a repeat offender. The objection would likely be sustained.
- *Privileged information*, such as conversations between a husband and wife, a client and a lawyer, or a patient and a doctor, is excluded from trial. This is because we want to respect these types of private relationships, and not encourage distrust or betrayal.

Other rules of evidence govern the form of questions and answers.

- Lawyers cannot ask their own side's witnesses *leading questions*—questions phrased in a way that suggests the desired answer. This is to protect against untruthful answers.
 - **Question.** Mr. Williams, you tried to keep the Koran in your cell, didn't you?
 - **Objection.** Objection, Your Honor, counsel is leading the witness.
 - **Resp.** Your Honor, I'll rephrase the question: Mr. Williams, did you try to keep a book in your cell?
- The witness must answer reasonably specific questions, not provide *narration*. In other words, they must limit their answer to the information that the question calls for. This is to limit testimony so that it is relevant and time efficient.
 - **Question:** Did you try to keep any books in your cell?
 - **Witness:** I tried to keep the Koran in my cell. I have read the Koran every day since I could read and keeping the book in my cell, is the only way for me to keep up with my daily prayers. The Koran is a really important book for Muslims like me. It represents . . .
 - **Objection** Objection, Your Honor, the witness is narrating.
 - **Response:** Your Honor, the witness is giving us a complete statement of the reason he wanted to keep the Koran in his cell.
 - **Likely outcome:** The judge is likely to say something like: Mr. Williams, please just answer the question; don't go on to talk about related things.
- Except for technical experts, who can give opinions about matters relating to their field, witnesses cannot give opinions in their testimony. Testimony is limited to *facts, not opinions* for witnesses that are not testifying as experts. This is because the opinions of witnesses are typically irrelevant.
 - **Testimony.** Inmate Witness: If every inmate was allowed to keep just one book in their cell, it wouldn't cause a safety hazard.
 - **Objection.** Objection, Your Honor, the witness is giving an opinion.
 - **Likely outcome.** Objection sustained. That kind of opinion is appropriate for an expert, but not for this witness.

Introducing Documents into Evidence

Many times attorneys will want to question a witness about a document—for example, a letter, policy, or report. Before asking the witness about the item, the attorney must first introduce the evidence. To introduce documents (or physical evidence), the parties must follow this procedure.

Attorney: Your honor, I wish to have this document marked for identification as [Plaintiff's Exhibit A, Defendant's Exhibit 1].

(Attorney takes the document to the clerk who marks the Exhibit letter/number. The attorney shows the item to opposing counsel. The attorney then shows the item to the witness)

Attorney: Do you recognize the item marked as [Plaintiff's Exhibit A]?

Witness: Yes.

Attorney: Can you please identify this item?

Witness: [States what the document is e.g. a letter I sent to Brad Smith].

The attorney can begin to ask the witness questions about the document.

Handout 9
Trial Structure

(As the judge enters)

CLERK (hits gavel three times): All rise. (Everyone stands) The U.S. District Court for the District of Oregon, Portland Division is now in session. The Honorable Judge [JUDGE LAST NAME HERE] presiding.

JUDGE: Please be seated. Calling the case of Prison Legal News v. Redwood County Jail. Are both parties ready?

PLAINTIFF and DEFENSE ATTORNEYS: Yes your honor.

JUDGE: We will begin with the Plaintiffs' opening statement.

PLAINTIFF ATTORNEY: May it please the court, I am [name], here representing the plaintiff. [Opening Statement]

JUDGE: We will now hear the Defendant's Opening Statement.

PLAINTIFF ATTORNEY: May it please the court, I am [name], here representing the defendant. [Opening Statement]

JUDGE: We will now hear the plaintiff's case. The plaintiff may call its first witness.

[The following procedure should be used for each witness for the plaintiff]

PLAINTIFF'S ATTORNEY: The plaintiff calls [name]. (Witness walks to stand).

CLERK: Please stand and raise your right hand. Do you promise the testimony you shall give in the case before this court shall be the truth, the whole truth, and nothing but the truth?

WITNESS: I do.

CLERK: You may be seated.

(Plaintiff's attorney questions the witness)

PLAINTIFF'S ATTORNEY: I have no more questions for this witness, your honor.

JUDGE: Does the defendant have any questions?

DEFENDANT'S ATTORNEY: Yes, we do your honor.

(Defendant's attorney questions the witness)

DEFENDANT'S ATTORNEY: I have no more questions for this witness, your honor.

JUDGE: Does the plaintiff have any further questions for this witness?

PLAINTIFF'S ATTORNEY: [Yes/No], your honor.

(If the plaintiff's attorneys have more questions for the witness, their redirect is limited to questions arising from the plaintiff's questioning of the witness. The plaintiff's counsel will inform the court when it is finished questioning the witness.)

JUDGE: The witness is excused. Does the plaintiff have any additional witnesses?

PLAINTIFF'S ATTORNEY: Yes, your honor (follow script above)

[or]

No your honor. The plaintiff rests.

JUDGE: The defendant may call its first witness.

[The following procedure should be used for each witness for the defendant]

PLAINTIFF ATTORNEY: The defendant calls [name]. (Witness walks to stand).

CLERK: Please stand and raise your right hand. Do you promise the testimony you shall give in the case before this court shall be the truth, the whole truth, and nothing but the truth?

WITNESS: I do.

CLERK: You may be seated.

(Defendant's attorney questions the witness)

DEFENDANT'S ATTORNEY: I have no more questions for this witness, your honor.

JUDGE: Does the plaintiff have any questions?

Unit 2: Lesson 4
Prisoners' Rights

PLAINTIFF'S ATTORNEY: Yes, we do your honor.

(Plaintiff's attorney questions the witness)

PLAINTIFF'S ATTORNEY: I have no more questions for this witness, your honor.

JUDGE: Does the defendant have any further questions for this witness?

DEFENDANT'S ATTORNEY: [Yes/No], your honor.

(If the defendant has more questions for the witness, their redirect is limited to questions arising from the plaintiff's questioning of the witness. The defendant's counsel will inform the court when it is finished questioning the witness.)

JUDGE: The witness is excused. Does the defendant have any additional witnesses?

DEFENDANT'S ATTORNEY: Yes your honor (follow script above)

[or]

No your honor. The defense rests.

JUDGE: We will now hear closing argument.

PLAINTIFF'S ATTORNEY: [Closing Argument]

DEFENDANT'S ATTORNEY: [Closing Argument]

JUDGE: Thank you. I will take these arguments into consideration. Court is adjourned.

Handout 10
Courtroom Roles

Role 1: Judge

During the trial, the judge must be attentive, engaged, and in control of the courtroom. Judges need to be familiar with trial procedure to make sure the trial proceeds in an orderly manner, and must resolve disputes about application of the rules. At the close of each subpart of the trial, the judge tells the parties what happens next. Unlike juries, which decide cases simply by voting, and do not need to explain their vote, judges must provide a written explanation of their decisions.

To prepare for the trial you should:

1. Read through all the case and evidence material so that you are very knowledgeable about the facts.
2. Familiarize yourself with the law pertaining to this case. You are going to decide the case by deciding what the legal standard requires based on which facts you believe.
3. Familiarize yourself with trial procedure. This is particularly important for the judge, who needs to make sure everything runs smoothly in the courtroom. Use the space below to write a “cheat sheet” for trial procedure.

Role 2: Witnesses

During a trial, it is important that witnesses only respond to the questions asked of them, and that they stick to their original story. You want the judge to believe that you are a credible witness. The opposing side will try to show that you cannot be believed or that there are inconsistencies in your story.

To prepare for the trial, you should:

1. Read through your statement. As much as possible, try to see this case from your character's perspective.
2. Review the rules of evidence so you know the types of testimony you are permitted to give.
3. Pair up with the other witness from your team to practice questioning each other. This will help you to learn more about your witness. Drill each other until you can answer every conceivable question without looking at your statement. Use the space below to create a "cheat sheet" that you can review before going to the witness stand.

Role 3: Direct Examination Attorneys

Direct examination questions should be designed to get the witness to tell a logical story about what s/he saw, heard, or experienced. The questions should ask only for facts, not for opinions. (For example, "What did you see?" Not "Did that seem dangerous?") You should ask open-ended questions that begin with why, where, when or how. During direct examination, you may only ask questions; you may not make any statements about the facts. You may have the opportunity to conduct a redirect examination if, during cross-examination, your witness says something that requires explanation or correction.

To prepare for the trial, you should:

1. Read through all the statements from your witnesses.
2. Pair up with the other direct examiner from your team and outline a series of open-ended questions for each witness. Review the Rules of Evidence to make sure you know the types of questions you can ask. Think about how the witness's testimony connects to the theory of the case. Write your questions in the space below.
3. Think about how you might rephrase questions in case the witness does not understand, gives an incorrect response, or there is an objection.

Role 4: Cross-Examination Attorneys

During the trial, it is important that you pay close attention to questions and responses given during direct examination. You want to undercut the opposing side's testimony, and you are only allowed to ask questions about subjects that came up during direct examination. Make sure that questions are not long or argumentative. It is best if they require only a simple yes or no answer, not long explanations. You don't want to give the witness a chance to explain their response. Leading questions that begin with something like, "Isn't it true that..." *are* allowed, and it is a good idea to use them.

To prepare for the trial, you should:

6. Read the opposing witness statements and think about how they could support the opposing case. Think about how to weaken or cast doubt on their statements. You want to highlight any inconsistencies, to show that the witness's story is implausible.
7. Discuss the questions and responses that might come out of the direct examination. Plot out a series of cross-examination questions you can then use to address the material that comes out of direct examination. Use the space below to record your potential questions.

Role 5: Opening Statement

The opening statement is the introduction to the case and the very first time attorneys get to tell their side of the story. The opening statement should include a summary of the facts, a summary of the evidence, and a statement regarding what your party hopes to get out of the trial.

To prepare for the trial, you should:

1. Work with the other attorneys to understand the core arguments that will be presented.
2. Write the opening statement for the case. The opening statement should paint a picture of the case, summarizing the evidence and testimony.

Role 6: Closing Argument

The purpose of the closing argument is to convince the judge or jury that the evidence presented is enough to win the case. The closing argument should summarize the facts, and evidence, and present a legal argument about how the law requires the judge or jury to interpret the evidence and decide the case.

To prepare for the trial, you should:

1. Work with the other attorneys to understand the core arguments that will be presented.
2. Prepare an outline for the closing argument. You can then write this in full during the trial.

Role 7: Media Reporters

The media reporters will provide a written or oral account of the trial at the close of each day of the mock trial. During the trial, the media reporters must be attentive, engaged, and taking note of everything that happens in the courtroom. The media reporters need to be familiar about the facts of the case and the pertinent law to make sure they fully understand the legal arguments that are being made. Although the media reporters should present both sides, the written account should revolve around a specific theme or lens that shapes the account.

To prepare for the trial you should:

1. Read through all the case and evidence material so that you are very knowledgeable about the facts.
2. Familiarize yourself with the law pertaining to this case.
3. Discuss with the other media reporters potential themes and lenses that you could use in writing the account of the trial.

Role 7: Clerk

The clerk will be responsible for calling the court in session and swearing in the witnesses. During the trial, the clerk will follow the script below.

(As the judge enters)

CLERK *(hits gavel three times)*: All rise. The U.S. District Court for the District of Oregon, Portland Division is now in session. The Honorable [Judge name] presiding.

For each witness:

CLERK: Please stand and raise your right hand. Do you promise the testimony you shall give in the case before this court shall be the truth, the whole truth, and nothing but the truth?

WITNESS: I do.

CLERK: You may be seated.



Prison Legal News

v.

Redwood County

Based on a real case: Prison Legal News v. Columbia County. The description of the case and excerpts from its documents are real.

More information—including summaries and documents—available at <http://www.clearinghouse.net/detail.php?id=12105>.

Case Materials

Table of Contents

Statement of Facts	3
Notes for Case	4
Applicable Law	4
Background Information	5
COMPLAINT	6
ANSWER	11
UNITED STATES CONSTITUTION	14
DECLARATION OF THOMAS DAVIS	15
DECLARATION OF BETTY PALE	17
DECLARATION OF ELIZABETH HEWITT	18
DECLARATION OF KATHERINE CAHILL	20
DECLARATION OF AUSTIN CAHILL	22
DECLARATION OF KEVIN PARSON	23
DECLARATION OF JEREMY MEYER	26
DECLARATION OF BRYAN CUTRIGHT	28
Exhibit A	30
Exhibit B	32
Exhibit C	34
Exhibit D	35
Exhibit E	36
Exhibit F	37

Statement of Facts

Brief Case Summary:

On January 13, 2012, Prison Legal News (PLN) filed a federal lawsuit against Redwood County, the Redwood County Sheriff's Office, and its Sheriff, Kevin Parson. PLN, a project of the Human Rights Defense Center, publishes and distributes a monthly journal of prison and jail news and analysis, as well as books about the criminal justice system and issues affecting prisoners. PLN claimed that the defendants censored PLN publications and other correspondence sent to Redwood County prisoners, in violation of the United States Constitution's First Amendment. The plaintiff asked the court for an official court declaration (called a declaratory judgment) that the jail's policy was unconstitutional and an injunction ordering the jail to change its policy. Defendants countered that their mail policies, specifically their "postcard only" policy, was legitimate because it prevented the introduction of contraband into their jail and saved time during mail inspection at the jail.

This Statement of Facts is not to be used as evidence in the trial.

Notes for Case

1. All exhibits included within are authentic and accurate. No objections to the authenticity of the exhibits will be honored.
2. All signatures on witness affidavits and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the content of the documents(s) and the date(s) indicated therein. The witness affidavits are deemed to be given under oath or affirmation. Neither side is permitted to argue that a signature appearing on a deposition does not comport with the witness' actual signature

Applicable Law

The plaintiff has the burden to show that the correctional institution's regulation that restricts inmates' free speech rights deprived the plaintiff of rights under the United States Constitution. In order for the regulation to be constitutional, it must be *reasonably related to legitimate penological interests* rather than an *exaggerated response to prison concerns*. The regulation must make sense; it must be reasonable and logical. For example, if the prison is concerned with safety during meal times—a legitimate penological interest, it would be reasonable and logical to use only plastic knives and ban metal knives. But, it would be an exaggerated response to ban all utensils, even plastic spoons, and force the inmates to eat all meals with their hands.

In determining whether the challenged regulation is reasonably related to legitimate penological interests, the court will consider each of the following four factors:

1. Whether ordering the jail to change its policy will impact other prisoners' or guards' safety or liberty or if it will impact the allocation of prison resources. *If yes, this weighs in favor allowing the jail to keep its policy.*
2. Whether prison officials have easy and obvious alternatives to the regulation. *If yes, this weighs in favor of making the jail change its policy.*
3. Whether the inmates can exercise their affected rights in another way. *If yes, this weighs in favor of allowing the jail to keep its policy.*
4. Whether the regulation relates to a government goal (e.g. safety) that is unrelated to the content of the expression. *If yes, this weighs in favor of allowing the jail to keep its policy.*

This Notes Section and Law Section shall not be used as evidence in the trial.

Background Information

1. When reading the Answer, each numbered paragraph corresponds to the similarly numbered paragraph in the Complaint. For example, paragraph 2.1 in the Answer relates to paragraph 2.1 in the Complaint. Where the Defendant admits or denies an allegation in the answer, the admission or denial only relates to the similarly numbered paragraph in the complaint.
2. Background information for Thomas Davis and Austin Cahill. Davis was an inmate at Redwood County Jail between October 15, 2010 and September 4, 2011. Cahill, who is still an inmate at the time of trial, has been at the Redwood County Jail since January 20, 2011. Davis and Cahill have been residents of Redwood County since they were born. They were both imprisoned for non-violent crimes. There is nothing in either of their backgrounds or past conduct at the jail to indicate they present a heightened security risk. At all times during their imprisonment, Davis and Cahill were members of the general inmate population.
3. Background information for Betty Pale: She is a resident of Spokane, Washington, which is approximately 400 miles by car from the Redwood County Jail. Pale has been a resident of Spokane since she was born. Pale is a retired schoolteacher. She is active in her community and participates in political rallies whenever she has time.
4. This is the only background information you need. We recognize a typical mock trial packet often has additional background information about the witnesses. For the purposes of this exercise, you do not need any additional information. You should focus on the substantive issues contained herein.

This Background Information Section should not be used as evidence in the trial.

COMPLAINT

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

PRISON LEGAL NEWS, a project of the
HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

REDWOOD COUNTY; REDWOOD
COUNTY SHERIFF’S OFFICE; KEVIN
PARSON, individually and in his capacity
As Redwood County Sheriff,

Defendants.

No. CV 12-0071-SI

COMPLAINT

DEMAND FOR JURY TRIAL

I. NATURE OF THE CASE

1.1 Plaintiff Prison Legal News, a project of the Human Rights Defense Center, brings this action to enjoin Defendants' censorship of Prison Legal News' monthly publication, and correspondence mailed to prisoners who are held in custody at the Redwood County Jail, in violation of the First Amendment and the Fourteenth Amendment's Due Process Clause. Defendants have adopted and implemented written mail policies and practices that unconstitutionally restrict correspondence to and from prisoners to postcards only, and that prohibit delivery of, among other things, letters, books and magazines to prisoners. Further, Defendants' policies and practices do not afford due process notice and an opportunity to challenge the censorship as required by the Constitution.

II. PARTIES

2.1 Plaintiff Prison Legal News (PLN) is a project of the Human Rights Defense Center (HRDC), a Washington Non-Profit Corporation. The core of HRDC's mission is public

education, prisoner education, advocacy, and outreach in support of the rights of prisoners and in furtherance of basic human rights. PLN publishes and distributes a monthly journal of corrections news and analysis and certain books about the criminal justice system and legal issues affecting prisoners, to prisoners, lawyers, courts, libraries, and the public throughout the Country. PLN also maintains a website (www.prisonlegalnews.org) and operates an email list. Prisoners of all types, family and friends of prisoners, and prisoner advocates, are among the intended beneficiaries of PLN's activities.

2.2 Defendant Redwood County is a municipal corporation formed under the laws of the State of Oregon.

2.3 Defendant Redwood County Sheriffs Office is a department of Redwood County and operates the Redwood County Jail located in St. Helens, Oregon. The Redwood County Jail facility houses convicted prisoners and pretrial detainees.

2.4 Defendant Kevin Parson is the Sheriff of Redwood County. Sheriff Parson is employed by and is an agent of Redwood County and the Sheriff's Office. He is responsible for the operations of the Redwood County Jail, and the training and supervision of the Jail staff who interpret and implement the Jail's mail policy for prisoners. He is the policymaker for the Jail policy governing mail for prisoners.

2.5 Each of the acts and omissions of persons alleged herein were taken under color of state law and within the scope of their official duties as employees and officers of Redwood County and the Redwood County Sheriffs Office.

III. FACTUAL ALLEGATIONS

3.1 Prison Legal News publishes and distributes a soft-cover monthly journal, and publishes and distributes paperback books about the criminal justice system and legal issues affecting prisoners.

3.2 Prison Legal News has approximately 7,000 subscribers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and other members of the public. PLN distributes its publication to prisoners and law librarians in approximately

2,200 correctional facilities across the United States, including the Federal Bureau of Prisons and the Oregon Department of Corrections.

3.3 Prison Legal News sent its monthly journal to certain prisoners at the Redwood County Jail by U.S. Mail.

3.4 PLN's monthly journal is a 56-page publication titled *Prison Legal News: Dedicated to Protecting Human Rights* and contains various articles on corrections news and analysis, prisoner rights, court rulings, and prison conditions.

3.5 On February 10, 2011, PLN mailed its February 2011 *Prison Legal News* publication addressed to Thomas Davis. On March 10, 2011, PLN mailed its March 2011 *Prison Legal News* publication addressed to Thomas Davis. On April 10, 2011, PLN mailed its April 2011 *Prison Legal News* publication addressed to Thomas Davis. Thomas Davis was a prisoner at the Redwood County Jail at the time that the Jail received the February 2011, March 2011, and April 2011 *Prison Legal News* publications from PLN.

3.6 Prison Legal News also sent informational brochures and subscription forms, book catalogs, and book offers (collectively "PLN Brochure Pack") to certain prisoners at the Redwood County Jail by U.S. Mail.

3.7 On May 1, 2011, PLN sent Thomas Davis the PLN Brochure Pack. At the time the Jail received the PLN Brochure Pack, Thomas Davis was a prisoner at the Redwood County Jail.

3.8 Defendants rejected PLN's February 2011 and April 2011 *Prison Legal News* publications and February 2011 PLN Brochure Pack, and did not deliver the publications to the prisoner-addressee. For the items that Defendants returned to Prison Legal News, Defendants: (a) placed a sticker on the mail stating: "As of April 1, 2010 The Redwood County Jail ONLY ACCEPTS POSTCARDS, This applies to ALL incoming and outgoing mail"; (b) stamped the mail "INSPECTED BY REDWOOD COUNTY JAIL" and handwrote checkmarks next to "RETURN TO SENDER" and "REFUSES/VIOLATES SECURITY"; or (c) stamped the mail "RETURN TO SENDER."

3.9 An individual, Betty Pale, sent legal articles that she printed off of PLN's website to certain prisoners at the Redwood County Jail in standard #10 envelopes via U.S. Mail.

3.10 The legal articles mailed by Ms. Pale to prisoners at the Redwood County Jail included a critique of prison privatization, and research finding about the goals and results of the move toward privatization.

3.11 In December 2011, Ms. Pale mailed PLN online articles to 15 prisoners at the Redwood County Jail. The Defendants rejected the articles and did not deliver them to the prisoners to which they were addressed by name.

3.12 For the PLN articles that Defendants returned to Ms. Pale, Defendants: (a) placed a sticker on the mail stating: "As of April 1, 2010 The Redwood County Jail ONLY ACCEPTS POSTCARDS, This applies to ALL incoming and outgoing mail"; (b) stamped the mail "INSPECTED BY REDWOOD COUNTY JAIL" and handwrote checkmarks next to "RETURN TO SENDER" and "REFUSES/VIOLATES SECURITY"; or (c) stamped the mail "RETURN TO SENDER."

3.13 Effective April 1, 2010, Defendants implemented a policy titled "Redwood County Jail Mail Policy J603-R02," which requires all incoming and outgoing mail to prisoners to be in postcard form (hereinafter "Postcard-Only Mail Policy"). *See Exhibit A.*

3.14 The Jail's Postcard-Only Mail Policy states, in pertinent part, "Incoming Mail will be only accepted in the form of commercially produced postcards or a photograph used as a postcard." *See Exhibit A.*

3.15 In addition, Defendants sometimes place a sticker on returned mail, which states: "As of April 1, 2010 The Redwood County Jail ONLY ACCEPTS POSTCARDS. This applies to ALL incoming and outgoing mail"

3.16 Defendants have used their Postcard-Only Mail Policy to refuse Plaintiff's *Prison Legal News* journal, online articles, and other correspondence.

3.17 Defendants have used their Postcard-Only Mail Policy to refuse correspondence from other publishers, companies, organizations, prisoners and individuals. For example,

Defendants rejected numerous PLN articles that Betty Pale printed from the PLN website and mailed to certain prisoners at the Redwood County Jail. The Jail's stated justification for rejection was that "the Redwood County Jail ONLY ACCEPTS POSTCARDS" or "no envelope mail" as the reason for rejection.

3.18 Defendants' Postcard-Only Mail Policy and their practice of enforcing this policy unconstitutionally burdens Plaintiff's First Amendment rights, the First Amendment rights of other correspondents who send mail to prisoners confined at the Redwood County Jail, the First Amendment rights of the intended recipients of outgoing mail from prisoners confined at the Redwood County Jail, and the First Amendment rights of prisoners at the Redwood County Jail.

IV. CLAIM ALLEGATIONS

4.1 Plaintiff realleges and incorporates by reference the preceding paragraphs.

4.2 The acts described above constitute violations of Plaintiff's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at the Redwood County Jail, and the rights of prisoners confined at the Redwood County Jail, under the First Amendment to the United States Constitution.

4.3 The acts described above have caused damages to Plaintiff, and will continue to cause damage.

V. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff requests relief as follows:

5.1 A preliminary injunction and a permanent injunction preventing Defendants from continuing to violate the Constitution by limiting prisoner correspondence to postcards.

5.2 A declaration that Defendants' policies, practices and customs violate the Constitution.

ANSWER

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

PRISON LEGAL NEWS, a project of the
HUMAN RIGHTS DEFENSE CENTER,
Plaintiff,

v.

REDWOOD COUNTY; REDWOOD
COUNTY SHERIFF’S OFFICE; KEVIN
PARSON, individually and in his capacity
As Redwood county Sheriff,
Defendants.

No. CV 12-0071-SI

ANSWER

DEMAND FOR JURY TRIAL

Defendants deny each and every allegation of Plaintiff’s Complaint except admitted in this Answer.

I. NATURE OF THE CASE

1.1 Deny.

II. PARTIES

2.1 Admit that Human Rights Defense Center is a Washington non-profit corporation. Admit that Prison Legal News (“PLN”) publishes and distributes a monthly publication of corrections news and analysis and certain books about the criminal justice system and legal issues affecting prisoners. Admit that PLN maintains a website. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder in ¶ 2.1

2.2 Admit.

2.3 Admit.

2.4 Admit.

2.5 Admit.

III. FACTUAL ALLEGATIONS

3.1 Admit.

3.2 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in 3.2, therefore they are denied.

3.3 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in 3.3, therefore they are denied.

3.4 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in 3.4, therefore they are denied.

3.5 Admit.

3.6 Admit.

3.7 Admit.

3.8 Admit.

3.9 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in 3.9, therefore they are denied.

3.10 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in 3.10, therefore they are denied.

3.11 Admit.

3.12 Admit.

3.13 Admit.

3.14 Admit.

3.15 Admit.

3.16 Admit.

3.17 Admit.

3.18 Deny.

IV. CLAIM ALLEGATIONS

- 4.1 Defendants re-allege and incorporate herein each answer included in 1.1-3.18.
- 4.2 Deny.
- 4.3 Deny.

UNITED STATES CONSTITUTION

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

DECLARATION OF THOMAS DAVIS

I, Thomas Davis, hereby declare as follows:

1. I am over the age of 18, am competent to testify, and make this Declaration based on my personal knowledge.

2. By letter dated August 18, 2011, from the law firm MacDonald, Rudy, and Bales, I received and reviewed the documents described below.

3. My check marks (✓) below indicate whether I received or did not receive mailings from Prison Legal News (PLN) when I was a prisoner at the Redwood County Jail, and whether I received or did not receive written notice from the Jail that mail addressed to me was rejected.

4. **EXHIBIT B** (sample front and back of *Prison Legal News* journal)

___ I **RECEIVED** PLN's 56-page journals as indicated by my check marks (✓)

below next to the date of the issues(s) I received:

___ January 2011

___ February 2011

___ March 2011

___ April 2011

___ May 2011

or

✓ I did **NOT** receive **ANY** copies of PLN's 56-page monthly journals.

If you did NOT receive one or more of the PLN journals listed above, please indicate whether you received written notification that the journal(s) was rejected by the Jail:

✓ I did **NOT** receive written notification that the Redwood County Jail rejected *Prison Legal News* journals addressed to me; or

___ I **RECEIVED** written notification **EVERY TIME** the Redwood County Jail rejected *Prison Legal News* journals addressed to me; or

___ I **RECEIVED** written notification **SOMETIMES**, but not every time, when the Redwood County Jail rejected *Prison Legal News* journals addressed to me.

5. **EXHIBIT C** (PLN Brochure Pack - 3 single-page double-sided brochures)

(i) PLN Brochure and Subscription Order Form

(ii) 2010 PLN Book List

(iii) PLN Brochure about two books for sale

___ I **RECEIVED** Exhibit C from PLN; or

I did **NOT** receive Exhibit C from PLN; and

I did **NOT** receive written notification that the Redwood County Jail rejected Exhibit C; or

___ I **RECEIVED** written notification that the Redwood County Jail rejected Exhibit C.

6. I was a prisoner in the Redwood County jail between October 15, 2010 and September 4, 2011.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Respectfully submitted this 24th day of August, 2011.

DECLARATION OF BETTY PALE

I, Betty Pale, hereby declare as follows:

1. I am over the age of 18 and I am competent to testify. The statements of fact contained herein are based on my own personal knowledge and belief.
2. I am a resident of the state of Washington.
3. On December 15, 2011, I visited the Prison Legal News website (www.prisonlegalnews.org) and printed multiple copies of the same article titled "The Failed Promise of Prison Privatization" to send to prisoners at the Redwood County Jail. I enclosed the printed articles in separate envelopes and sent them to specific prisoners at the Redwood County Jail in standard sized #10 envelopes with appropriate postage affixed to each one.
4. The Redwood County Jail rejected the articles I mailed and returned the rejected mailings to me, as described below:

Exhibit D is an envelope I sent to prisoner Steven Adams at the Redwood County Jail on December 15, 2011. Exhibit E is the first page of a 7-page article contained in the envelope. I printed the article from the Prison Legal News website. The jail returned the envelope and article to me. The returned envelopes is stamped and marked "INSPECTED BY REDWOOD COUNTY JAIL," "RETURN TO SENDER," and "CONTRABAND."

5. I sent eleven other envelopes and articles like the one I sent to Steven Adams to other prisoners at the Redwood County Jail. They were all returned to me, as described in number 4 above.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Respectfully submitted this 25th day of January, 2012.

DECLARATION OF ELIZABETH HEWITT

I, Elizabeth Hewitt, declare as follows:

1. I am over the age of 18 and I am competent to testify. The statements of fact contained herein are based on my personal knowledge.
2. Since 1990 I have been the editor and co-founder of Prison Legal News ("PLN"), which publishes a monthly magazine of the same name, maintains a website, operates an email list, distributes books of interest to prisoners and publishes self-help, non-fiction reference books.
3. Prisoners of all types (from pre-trial detainees to convicts), family and friends of prisoners, and prisoner advocates, are among the intended beneficiaries of PLN' s activities.
4. I am frequently contacted by individuals who are concerned about the health and well-being of one or more prisoners, and who are seeking information or materials from PLN on issues related to prisoners' rights.
5. PLN's website, www.prisonlegalnews.org. gets approximately 100,000 unique visitors per month. The website contains over 23,000 articles, 9,000 court opinions, and 5,000 legal documents in its brief bank and in excess of 4,000 documents in its publications library. The PLN website is the largest online repository of data related to detention facility news and litigation in the world. It is updated on a daily basis.
6. Since prisoners do not generally have access to the internet, they rely on friends, family members and other supporters who are not incarcerated to download and print articles from PLN's website and mail those documents to the prisoners in jails or prisons.
7. PLN has purposely designed its website so that non-prisoners can research topics of interest and importance to prisoners, and then download, print and mail the information to

prisoners because PLN lacks the resources to communicate this information individually to each and every prisoner who desires it.

8. In fact, PLN's website invites anyone who corresponds with prisoners to utilize the material on the website to educate prisoners. The website states: "Prisoners generally do not have internet access. We encourage the distribution of information on our website to incarcerated persons by printing it out and mailing it to them. If you are volunteering your time to research a topic for someone in prison, jailor other detention facility please feel free to print out articles and send them to the prisoner."

9. The Redwood County Jail's adoption of its Postcard-Only Policy means that no family member, no friend, nor any other concerned individual can ever utilize PLN's website to print and mail information from PLN's website or listserv to prisoners in custody in the Jail. The policy prevents prisoners from receiving free material on the PLN website about prisoners' criminal or civil legal rights, about health and safety issues in Jail, about reasonable accommodation or treatment of medical or mental health issues, about their right to effective assistance of counsel and how to represent themselves in court, or about a host of other important issues to prisoners.

10. Without question, Defendants' Postcard-Only Policy prohibiting family, friends, and other individuals from mailing to prisoners materials printed off PLN' s website frustrates PLN's core mission of educating prisoners.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.**

Respectfully submitted this 12th day of March, 2012.

DECLARATION OF KATHERINE CAHILL

I, Katherine Cahill, declare and affirm as follows:

1. I am over the age of 18 and I am competent to testify. The statements of fact contained herein are based on my own personal knowledge.
2. I am Austin Cahill's mother. Austin has been incarcerated at the Redwood County Jail since February 2011.
3. I wrote many letters to Austin while he was incarcerated in other correctional facilities. I value being able to stay in touch with Austin. It is important to me that Austin is able to share his concerns with me without being concerned about privacy.
4. The Postcard-Only Policy at the Redwood County Jail has been very frustrating for me. I have a lot to share with Austin. It seems like as soon as I start writing a message to Austin on a postcard I have to end my message because of the size limitations, unless I send multiple postcards which means I have to buy additional stamps.
5. I am concerned about the lack of privacy. I don't want to share confidential information with Austin on a postcard that people I don't know can read. He told me he has the same privacy concerns, and does not feel he can communicate with me about matters that he feels are confidential.
6. Conforming my communications with Austin to the Jail's restrictive Postcard-Only Policy is a hassle. I don't ordinarily have postcards on hand and have to make a special trip to the post office or the souvenir section in a store to buy postcards. They can be more expensive than stationary which can get spendy. I tried making my own, using card stock from the craft store, but the Post Office returned the postcards to me as unacceptable, which only added to my frustration.

7. I do not drive, so it is difficult for me to visit Austin in person. The letters we wrote to each other when he was incarcerated at other facilities in the past were our primary means of communication. The Jail's Postcard-Only Policy has severely limited our ability to communicate with each other.

8. I am very fortunate in that Austin is not only my son but my good friend. I miss him very much. Every week I wish I could write him a letter, but I know I can't.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.**

Respectfully submitted this 3rd day of March, 2012.

DECLARATION OF AUSTIN CAHILL

I, Austin Cahill, declare and affirm as follows:

1. I have been incarcerated in the Redwood County Jail since February 2011.
2. The Redwood County Jail has had a Postcard-Only Mail Policy for as long as I've been incarcerated here.
3. The Jail's Postcard-Only Mail Policy deters me from communicating with my friends and family by mail because anyone who handles the postcards can read my messages.
4. There is no privacy. When talking with me Columbia County Jail Staff have referred to statements written in my mail so I know they have read my mail.
5. I have also refrained from communicating with my pastor because of the Postcard-Only Policy. I do not want the jail staff or others to read my private communications with my pastor.
6. The Postcard-Only Mail Policy has also made it difficult for me to communicate with my friends and family because a postcard is so small. There is not enough room to communicate the information I would like to send to my family and friends.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.**

Respectfully submitted this 14th day of February, 2012.

DECLARATION OF KEVIN PARSON

I, Kevin Parson, declare as follows:

1. I have been Redwood County Sheriff since January 1, 2009, and I make this declaration from my personal knowledge.

2. Prior to taking office as Sheriff, I was a state police officer with the Department of Oregon State Police for twenty years. During that time, I served approximately fifteen years in patrol and five years as a detective assigned to a federal task force under the Bureau of Alcohol, Tobacco and Firearms.

3. My duties as Sheriff include establishing jail procedures at the Redwood County Jail.

4. The corrections staff at the Jail currently consists of sixteen correction deputies and five supervising corrections deputies. Due to budget constraints in the past few years, the five supervising deputies fill deputy shifts and not supervisor shifts.

5. A typical corrections shift currently has four deputies. The booking deputy on the swing shift processes and inspects all incoming and outgoing mail on a daily basis for compliance with the Jail's mail policy. The booking deputy's other essential duties are communicating with intake officers, booking arrestees into the Jail (fingerprinting, searching, etc.), and monitoring inmates on suicide watch as well as inmates who are at the Jail for a short period of time or who cannot yet be placed in the general population.

6. The control room deputy manages all movements in the Jail. Many inmate movements within the Jail, such as movements for medical appointments, attorney conferences, family visits, and court transports are not accompanied by an escort. Instead, the control room deputy monitors these movements by video and locks and unlocks doors remotely. This deputy also

monitors dozens of cameras inside and outside the Jail and controls ingress and egress to the Sheriff's Office.

7. Two corrections deputies serve as roving deputies. Their duties are to check on inmates every forty-five minutes, distribute food, handle inmate requests, distribute and pick up inmate mail, and monitor inmates during common and recreation periods.

8. The Jail has the capacity for up to 255 inmates. Due to budget constraints that came about in 2010, the current funded capacity of the Jail is 150 inmates. I had to reduce staff in 2010 and 2011, and, unfortunately, I may have to implement additional reductions in 2012 depending upon future budget cuts.

9. I first learned about the postcard only policy during an Oregon State Sheriff's Association meeting, where the sheriff from Washington County discussed his reasoning for implementing the policy. He stated that Washington County purchased all the postcards so it was less of an expense to the inmates. He also talked about the postcard only policy helps protect the safety and security of the building. He also talked about cost savings and mentioned that the post card only policy can help with time saving as well.

10. Due to budget constraints, we have had to reduce the number of staff who work on each shift and increase the number of responsibilities each staff member has during their shift. To help staff manage their responsibility, I decided it was in the best interest to instate the postcard only policy because it reduced the time it takes to inspect incoming and outgoing mail by 1½ to 2 hours per day. Additionally, I believe this policy helps keep our inmates and facility safe.

11. Exhibit A is a true and accurate copy of the Redwood County Sheriff's Office Inmate Mail Policy J603-R02, effective January 1, 2010.

12. Without the postcard mail policy, the time spent inspecting incoming and outgoing personal inmate mail would greatly increase, reducing the time available to staff for other tasks that are just as essential, and sometimes more essential, than inspecting the mail each day.

13. The Jail has limited resources available to assist inmates in conducting personal business. The Jail encourages third parties to deposit money into an inmate's jail account through the TouchPay system or call a toll-free phone number. Inmates can also visit the Sheriff's Office and deposit money into a kiosk in the front office. Cash, VISA, and MasterCard are accepted. If third parties cannot transact personal business on behalf of an inmate, the inmate may conduct this business with the approval of the jail sergeant.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Respectfully submitted this 13th day of February, 2012.

DECLARATION OF JEREMY MEYER

I, Jeremy Meyer, declare as follows:

1. I have worked for the Redwood County Sheriff's Office as a Sergeant at the Redwood County Jail (the Jail) for the past twelve years.
2. During my shifts at the Redwood County Jail I sometimes work as the booking deputy. As the booking deputy, one of my responsibilities is reviewing all incoming and outgoing mail.
3. On January 2, 2010, Sheriff Parson held a staff meeting regarding the new mail procedures. All sheriff deputies attended, including any staff members who handle mail. We were instructed to inform any volunteers who handle mail of the new policy.
4. Part of the new policy requires that if mail is returned, confiscated, or destroyed, the inmate and sender must be notified of the reasons for the violation and of the informal appeal process. We use the Prohibited Mail Notice slip to make this notification. Exhibit F is a copy of a blank Prohibited Mail Notice slip.
5. Contraband, which can include bodily fluids, lipstick, perfume, glue, paint, and unidentifiable substances because they are bio-hazards and can contain bio-hazards, is prohibited in the Jail, and may not enter via the mail. These substances are prohibited because they can contain hazardous or illegal materials. If contaminants enter the inmate holding areas, they can spread quickly. Contraband inside the Jail undermines security and safety of the inmates and staff.
6. We also inspect mail to determine if it contains threats of physical harm, blackmail, extortion, other criminal activity, sexually explicit material, gang-related material, and plans for escape or other violations of jail rules. Inmates are not allowed to view mail that contained this information because it would undermine the security and safety of the inmates, staff, and public.

7. Mail in sealed envelopes can hide contraband that cannot be hidden when the mail is in the form of a postcard.

8. Envelopes containing multiple pieces of paper can hide contraband such as needles, blades, similar weapons, and handcuff keys.

9. A variety of drugs, such as heroin, PCP, LSD, marijuana, cocaine, and powdered prescription drug pills, can be hidden under a postage stamp.

10. Postcards are easier and quicker to inspect for contraband and prohibited content than multiple sheets of paper in an envelope because contraband is easier to detect on a postcard and there is less area to inspect. The risk of prohibited substances entering the Jail is reduced by the use of postcards for personal mail.

11. In my experience, personal mail sent from an inmate's family or friends is more likely to contain the prohibited content mentioned in paragraph 6 of this declaration.

12. There is no prohibition on the number or frequency of postcards that an inmate may send or receive. Persons seeking to communicate with inmates may use alternative means of communication as well. They can come to the Jail during visiting hours or speak to inmates on the telephone during designated times.

13. Inmates can use the prison's library to read magazines, newspapers, and books. Inmates can submit requests to the library to order certain books or publications. The library currently carries two copies of the Prison Legal News publication.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Respectfully submitted this 6th day of January, 2012.

DECLARATION OF BRYAN CUTRIGHT

I, Bryan Cutright, declare and affirm as follows:

1. I am over the age of 18 and I am competent to testify. The statements of fact contained herein are based on my own personal knowledge
2. I am a Sergeant at the Redwood County Jail (the Jail). I have worked for the Redwood County Sheriff's Office for about seventeen years, all of which was at the Jail. The statements in this declaration are based on my personal knowledge.
3. I am familiar with how the corrections staff at the Jail inspects mail. I estimate that we receive about fifty pieces of mail per day addressed to inmates. Approximately ten to fifteen pieces of mail are legal mail. The rest of the mail is primarily personal mail from an inmate's family or friends. Both legal or personal mail must be inspected thoroughly for contraband and personal mail must be inspected for prohibited content. This means we read the inmates' personal mail. Each piece of mail is scanned via the use of a bar code scanner as incoming or outgoing mail. I estimate that inmates send about forty pieces of mail per day to whomever they wish.
4. Before the postcard policy was implemented in 2010, the Jail received personal mail in envelopes of a variety of sizes. The envelope was opened and the envelope and papers inside were inspected for contraband, such as sticky substances or prohibited items. Both sides of the paper were inspected to see if prohibited content was discussed. The inmates used pencil and notepad paper to draft letters. Their outgoing mail was inspected for contraband and for prohibited content. Although there is less risk that outgoing mail contains contraband, it still must be inspected. On average, the booking deputy spent 1.5 to 3 hours of his or her shift on inspecting the incoming and outgoing mail, depending on the volume of mail. However, because

people could send envelopes in a variety of sizes, some letters inmates received would be very long. Once, I had to sort through an envelope that contained 205 pages of Internet articles.

5. In January 2010, when the Jail began to require most incoming and outgoing mail be on a postcard, the time it took the booking deputy to inspect incoming and outgoing mail was reduced by one-third (approximately 30 to 60 minutes depending on the volume of mail). Some of the factors making inspecting postcard-sized mail quicker are: (a) postcards are easy to hold in one's hand (b) postcards are easy to turn over to inspect both sides (c) postcards are on thick paper, which makes them durable and (d) it is easier and quicker to scan postcards than other types of papers such as notepad paper. There is also less risk of contraband being present because a postcard is a standard-sized single piece of paper; contraband—such as bodily fluids and small metal objects—can be hidden between sheets of paper.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.**

Respectfully submitted this 20th day of February, 2012.

Exhibit A

Redwood County Jail Mail Policy J603-R02

REDWOOD COUNTY SHERIFF'S OFFICE
Jail Operations
Kevin Parson, Sheriff

Effective January 1, 2010

Policy

It is the policy of the Redwood County Sheriff's Office to provide for and encourage the maintenance of important ties of inmates with families, friends, attorneys, and the community by the use of U.S. Mail. All incoming and outgoing mail is subject to search and/or scanning for the purpose of safety and security of the jail.

Regulations

1. Personal mail is limited to postcards delivered by the U.S. Postal Service up to a maximum size of 5-1/2" tall x 8-1/2" wide. The jail does not permit any other form of personal mail for inmates. Inmates are not limited to a specific number of postcards that they may receive or send.
2. "Personal mail" is defined as postcards mailed to and from family, friends, organizations, businesses, or other unofficial entities.
3. This mail policy does not apply to communications with the court or with the inmate's attorneys.

Violations

1. The jail must determine whether incoming mail violates the jail mail policy. This determination must be made on a case-by-case basis.
2. If incoming mail violates this Jail Mail Policy, staff can return, confiscate, or destroy the prohibited items. Staff may return prohibited mail to a sender if it is in the best interest of the jail not to store it (e.g. perishables). Staff may also confiscate prohibited items. Staff can destroy any item that presents a health or safety risk if it were to be stored in the jail or returned to sender.
3. Staff must notify both inmate and sender of the violation, action taken (return, confiscate, destroy), and provide information on an informal appeal process. Staff should use a

“Prohibited Mail Slip” for the notification. (*See Exhibit F*) The only exception to the notice requirement is if the prohibited item is evidence in a jail disciplinary action or a crime.

4. To return postcards, a mail handler will use a sticker or stamp marked ‘return to sender,’ note the reason for refusal on the stamp, obliterate any mail-sorting bar code, and return it to the post office.
5. To return unopened mail (other than postcards), a mail handler will use the ‘return to sender’ stamp. To return mail that has been opened, a mail handler will repackage the mail and return it to the sender at the expense of the jail. The mail handler will include a copy of the Returned Mail form letter.

Appeals

If sender of mail believes the correspondence was improperly denied, the sender may appeal the decision by sending in a written letter stating the reasons sender believes the decision was wrong within 15 days from the date of receipt of the Prohibited Mail Slip. The jail will send a decision on appeal within 15 days of receiving it. Please direct your written appeal to: [address for the jail commander].

Exhibit B

Sample Front and Back Pages of Prison Legal News Publication

PRISON Legal News

VOL. 22 No. 4

ISSN-1075-7678

Dedicated to Protecting Human Rights

April 2011

Nationwide *PLN* Survey Examines Prison Phone Contracts, Kickbacks

by John E. Dannenberg

An exhaustive analysis of prison phone contracts nationwide has revealed that with only limited exceptions, telephone service providers offer lucrative kickbacks (politely termed “commissions”) to state contracting agencies – amounting on average to 42% of gross revenues from prisoners’ phone calls – in order to obtain exclusive, monopolistic contracts for prison phone services.

These contracts are priced not only to unjustly enrich the telephone companies by charging much higher rates than those paid by the general public, but are further inflated to cover the commission payments, which suck over \$152 million per year out of the pockets of prisoners’

families – who are the overwhelming recipients of prison phone calls. Averaging a 42% kickback nationwide, this indicates that the phone market in state prison systems is worth more than an estimated \$362 million annually in gross revenue.

In a research task never before accomplished, *Prison Legal News*, using public records laws, secured prison phone contract information from all 50 states (compiled in 2008-2009 and representing data from 2007-2008). The initial survey was conducted by *PLN* contributing writer Mike Rigby, with follow-up research by *PLN* associate editor Alex Friedmann.

The phone contracts were reviewed to determine the service provider; the kickback percentage; the annual dollar amount of the kickbacks; and the rates charged for local calls, intrastate calls (within a state based on calls from one Local Access and Transport Area to another, known as interLATA), and interstate calls (long distance between states). To simplify this survey, only collect call and daytime rates were analyzed.

Around 30 states allow discounted debit and/or prepaid collect calls, which provide lower prison phone rates (much lower in some cases). However, since other states don’t offer such options and not all prisoners or their families have access to debit or prepaid accounts, only collect calls – which are available in all prison systems except Iowa’s – were compared. Also, while telephone companies sometimes provide reduced rates for evening and nighttime calls, many prisoners don’t have the luxury of scheduling phone calls during those time periods.

Lastly, it should be noted that more

recent phone rates may now be in effect due to new contract awards or renewals, and while data was obtained from all 50 states, it was not complete for each category. See the chart accompanying this article for a breakdown of the data obtained.

PLN has previously reported on the egregious nature of exorbitant prison phone rates, notably in our January 2007 cover story, “Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry,” by University of Michigan professor Steven Jackson.

How Are Phone Rates Regulated?

Domestic phone calls are generally divided into three categories: local, intrastate and interstate. The rates charged for these calls depend on several factors and are regulated by different authorities. Local calls are usually flat-rate within a small area around the call’s originating location; e.g., within the same city.

Local and intrastate calls are often regulated by state public utility or service commissions, which set rate caps. These caps are negotiated to allow phone companies to recover capital costs in a reasonable time frame while also satisfying requirements levied by the state. The latter include subsidizing low-income phone users, providing emergency communications for state agencies, and providing required phone coverage (such as emergency-reporting phone booths along major highways). Obviously, some of these state-mandated requirements are not in and of themselves profitable, so negotiation of rate structures includes recouping these otherwise nonrecoverable costs.

At the interstate level, phone com-

Inside

Phone Rate Chart	16
Editorial	18
Prisoners’ Human Rights	22
Crime Reporting	26
Guantanamo Drugging	28
Washington Public Records Suit	32
Texas Parole Audit	34
Maine Private Prison Lobbying	37
Los Angeles Jail Heat Ray	38
Prison Facebook Problems	43
Texas Legislator Sentenced	46
New Jersey Bankrolls CEC	48
News in Brief	50



Prison Legal News

P.O. Box 2420
West Brattleboro, VT 05303

Change Service Requested

Non-Profit Org.
U.S. Postage
PAID
Portland OR
Permit No. 3142

Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2006, then the subscription expires after the February 2006 issues is mailed. Please renew at least 2 months before the expiration date. **IF THE LABEL SAYS EXPIRES: 04/2010 THIS IS YOUR LAST ISSUE.** Please renew immediately to avoid missing any issues.

Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!

We Pay **CASH FOR YOUR STAMPS**

Get the **HIGHEST REIMBURSEMENT RATES** for ALL of your stamps from the **ONLY stamp service continuously serving inmates for 9 years.**

WE BUY COMPLETE AND PARTIAL BOOKS, SHEETS, STRIPS AND ROLLS OF ALL DENOMINATIONS AND QUANTITIES OF POSTAGE STAMPS IN GOOD CONDITION

Within 24 Hours we will send a Money Order, Cashier's Check, or Electronic Payment to wherever you designate, or we will pay an approved vendor for a package or gift.

REIMBURSEMENT RATES:

- 75%***
of Face Value (33¢ per stamp) for **Forever Stamps** in complete books or sheets
- 65%**
of Face Value for **44¢ Stamps** in complete books, sheets, strips or rolls
- 55%**
of Face Value for 44¢ Stamps in **partial books, sheets or strips** (minimum 4 each)
- 50%**
of Face Value for all **other denominations** or stamped envelopes

* **SPECIAL RATES FOR PLN SUBSCRIBERS - CLIP & SEND THIS AD TO:**
CLN, P.O. Box 687-PN, Walnut, CA 91789 Or visit **OUR Website: www.cash4urStamps.com**

SEND FOR FREE BROCHURE
(This offer void where prohibited by state regulations)

Minimum money order. Designate where your funds are to be sent. Please provide any necessary forms & instructions. Used, worn, damaged or taped stamps are not accepted or returned.

Exhibit C

Sample First Page of Brochure

Order Form

All purchases must be pre-paid. Prisoners can pay with new stamps (stamps or books) or pre-stamped envelopes.

Books (3 & 4-yr Subscription Specials: **CIRCLE** one book or bonus issues, and **DO NOT** add S/H) \$ Amt. _____

Protecting Your Health and Safety _____ \$ Amt. _____

or 4 Bonus Issues (3-yr subscription offer) _____ \$ Amt. _____

Prison Profiteers or With Liberty for Some _____ \$ Amt. _____

or 6 Bonus Issues (4-yr subscription offer) _____ \$ Amt. _____

Book Total (inc. all books bought separately) _____

Add 6% sales tax for Vermont residents only _____

ADD \$6.00 S/H to book orders UNDER \$50

PLN Subscriptions

6-month Subscription (Prisoners only) _____

1 yr Subscription (12 issues) _____

2 yr Subscription (24 plus 2 Bonus issues) _____

3 yr Sub (Circle bonus book above or 4 Bonus issues) _____

4 yr Sub (Circle bonus book above or 6 Bonus issues) _____

Sample Issue - \$3.50 each _____

TOTAL Amount Enclosed _____

Send to: _____

Name: _____


DOC #: _____

Agency/Inst: _____

Address: _____

City/State/Zip: _____

MAIL PAYMENT AND THIS FORM TO:



Prison Legal News
P.O. Box 2420
Brattleboro, VT 05303

Purchase by phone with a Visa or MasterCard
802-257-1342
Or buy books and subscriptions online at
www.prisonlegalnews.org

PLN Subscription Rates

Subscription Rates	1 yr	2 yrs	3 yrs	4 yrs
Prisoners *	\$24	\$ 48	\$ 72	\$ 96
Individuals	\$80	\$ 60	\$ 90	\$120
Professionals	\$80	\$160	\$240	\$320

(Lawyers, govt. & professional agencies, libraries, etc.)

Sample issue for anyone - \$3.50 each *

Six-month prisoner subscription for \$12*

* Prisoners can pay with new first-class stamps (stamps or books only) or pre-stamped envelopes, if allowed by prison policies.

Subscription Bonuses!

2 years - 2 bonus issues, for 24 monthly issues total.

3 years - 4 bonus issues (40 total) *OR* *Protecting Your Health and Safety* (see book description on the other side of this brochure).

4 years - 6 bonus issues (64 total) *OR* your choice of *With Liberty for Some* or *Prison Profiteers* (see descriptions on the other side).

New 3 or 4-Year Subscription Book Offers!

Subscribe or renew for three years at the regular price (\$72 for prisoners & \$90 for individuals), and receive as a FREE bonus, *Protecting Your Health and Safety* or four bonus issues of PLN! (40 monthly issues total). Indicate your choice on the Order Form.

Subscribe or renew for four years at the regular price (\$96 for prisoners & \$120 for individuals), and receive as a FREE bonus, *Prison Profiteers* or *With Liberty for Some*, or 6 bonus issues of PLN! (54 monthly issues total). Indicate your choice on the Order Form.

NO shipping charge for subscription bonus books!

NOTE: If you want the bonus issues of PLN instead of the free book offer, please indicate that on the Order Form.

Contact Us for PLN's Book List!

You can buy dozens of legal, social commentary, self-help books, and legal and regular dictionaries directly from PLN's book store! Ask us for a book list, or view our selection online at:

www.prisonlegalnews.org/store.aspx

All subscription rates & bonus offers are effective as of 5-1-10 and valid through 12-31-10.


* No returns after orders have been placed.

PLN

PRISON LEGAL NEWS

Dedicated to Protecting Human Rights

PLN is a project of the
Human Rights Defense Center




Eastern State Penitentiary 1829-1971

Charles Dickens visited Philadelphia's Eastern State Penitentiary in 1842 and he later wrote: "The System is rigid, strict and hopeless ... and I believe it to be cruel and wrong....I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body." The prison remained open for 129 years after Dickens condemned it as being barbaric, and some of its inhumane practices continue to be used in prisons nationwide.

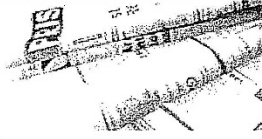
P.O. Box 2420, Brattleboro, VT 05308
802-257-1342 • www.prisonlegalnews.org

Exhibit D







PRISON LEGAL NEWS
Dedicated to Protecting Human Rights



Logged in as: Lucy Lennox
Firm:
Status: Member
[Edit Profile](#) [Log Out of PLN](#)

HOME
BOOK STORE
SEARCH PLN
ADVERTISE
SUBSCRIBE
DONATIONS
CONTACT US
VIEW CART

[Book Review](#) | [FAQ's](#) | [Interviews](#) | [PLN links](#) | [PLN in the News](#) | [Annual Reports](#) | [Referral Directory](#)

12 FREE ISSUES!

InmateMagazineService.com

[Please visit our advertiser above]

The Failed Promise of Prison Privatization

by Richard Culp, Ph.D.

We have been experimenting with prison privatization in the U.S. now for over twenty-five years. The privatization idea originated out of a notion that the private sector, with its competition-driven efficiency and innovation, could operate prisons of higher quality and lower cost than the public sector. Create a market for incarceration services, the argument ran, and the market will work its magic, improving prison conditions and rehabilitative outcomes while saving the taxpayers millions of dollars. That market has effectively been created over the past quarter century and we have now arrived at a place where prison privatization has been studied extensively and evaluated rigorously.

Although hyperbole continues to propel prison privatization policy along, research findings are incontrovertible: even in the best private prisons, quality of prisoner care is no better than in public prisons and the cost advantage of privatization, which initially accounted for minimal savings, is steadily eroding as the private prison industry matures. The big promises of prison privatization – less cost, higher quality – have simply not materialized. Despite these disappointing results, prison privatization advocacy maintains traction in diverse jurisdictions as policymakers from Ohio to Florida and from Maine to California seek expedient solutions to budget shortfalls triggered by a lingering great recession.

In retrospect, it should come as no surprise that prison privatization would fail to live up to its promises. There are several reasons for this. First, free market solutions to social problems like crime assume, after all, that there are “free” markets for appropriate services. However, there is no such thing as a natural market for the services provided by private prison companies. On the contrary, the marketplace for incarceration services is created by the government, for the government. It is an artificial market. Many of the services that have been privatized by government (e.g., custodial services, food preparation, medical care) are provided by the private sector independently of the government’s decision to privatize or not. There is a free market analogue for many kinds of services that governments routinely provide. Other fields such as education and health care, for example, have an active market of existing nonprofit and for-profit providers willing to sell educational and healthcare services to a huge market of potential buyers that includes both individuals and governments.

The prison business is fundamentally different in that no one can freely purchase incarceration services as a private individual. There is no natural market for incarceration services. The power to incarcerate someone – to hold a person against his or her will – is a defining characteristic of the state. The government holds a monopoly over the legitimate use of physical force and the power to incarcerate. Only the government has the legitimate power to restrict a citizen’s liberty; individuals are prohibited by law from incarcerating another person under “false imprisonment” statutes. The government can delegate this power on a limited basis – for example, “shopkeeper’s privilege” allows merchants to temporarily detain suspected shoplifters. But long-term incarceration is a different matter. The only potential buyers who can legally purchase incarceration services are the government jurisdictions that have custody over indicted, convicted or detained persons. In order to privatize its incarceration function, the government has had to create a market since one does not and cannot exist without its direct intervention.

Secondly, the development of the private prison industry has resulted in a highly concentrated producer market where only four companies control over 90% of the incarceration services business. Economic theory tells us that when production is highly concentrated in very few companies, the market becomes an oligopoly, a market situation that is inherently less competitive and innovative than a market with more broad-based representation. An oligopoly is characterized by interdependence, avoidance of

BREAKING NEWS

- ▶ Judicial Conference Committee Disciplines Federal Judge for Membership in Discriminatory Country Club by Alex Friedmann In May 2011, PLN reported that the Sixth ...
- ▶ Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks by John E. Dannenberg An exhaustive analysis of prison phone contracts nationwide has revealed that ...
- ▶ Prison Legal News Interviews Former Prisoner and Famous Actor Danny Trejo Danny Trejo is one of the best-known American actors living today. ...
- ▶ Remembering Attica Forty Years Later by Dennis Cunningham, Michael Deutsch & Elizabeth Fink This year, September 9 will mark the 40th anniversary ...
- ▶ The History of Prison Legal News by Paul Wight In May 1990, the first issue of Prisoners’ Legal News (PLN) was published. It ...
- ▶ Twenty Years of PLN in Court Since PLN was founded in 1990 we have been censored in prisons and jails around ...
- ▶ Appalling Prison and Jail Food Leaves Prisoners Hungry for Justice by David M. Reutter, Gary Hunter & Brandon Sample Prison food. The very ...
- ▶ Sexual Abuse by Prison and Jail Staff Proves Persistent, Pandemic by Gary Hunter Sexual assault, rape, indecency, deviance. These terms represent reprehensible behavior ...
- ▶ Judge Not: Judges Benched for Personal Misconduct by Gary Hunter & Alex Friedmann They decide hot-button topics ranging from abortion and racial discrimination ...
- ▶ The Graying of America’s Prisons by James Ridgeway Frank Soffen, now 70 years old, has lived more than half his life in prison, ...

https://www.prisonlegalnews.org/23838_displayArticle.aspx

12/15/2011

36

Exhibit F



Redwood County Sheriff's Office

Kevin Parson, Sheriff

PROHIBITED MAIL NOTICE

_____ Date: _____

Because of rules contained in the Columbia County Jail Inmate Mail Policy,
we are **returning** or **confiscating** the **letter** or **publication**
you sent to inmate _____, Booking # _____

The mail was denied for the following reason(s):

- It is deemed personal mail and not on a post card.
- It contains sexually explicit material
- It contains prohibited material or a foreign substance: _____
- It contains plans for escape, criminal activity, or activity that violates jail rules.
- It contains inflammatory materials, such as advocating violence against a group based upon their religion, race, gender or ethnicity.
- Other _____

The reverse side of this letter is an Inmate Mail Guide which contains guidance on mail rules and complaint information. You may also go to the jail's web page at www.co.columbia.or.us/sheriff to find the information. The inmate was also notified of this denial and can appeal this decision as well.

APPEALS: If you believe that your correspondence/publication was improperly denied, you may appeal the decision by sending in a written letter stating the reasons you believe that the decision was wrong within 15 days from the date of this letter. Your appeal should identify specifically why you believe that our decision to deny the mail was wrong and include your name and return address. You are not required to provide a phone number, but it may be useful if we need further clarification. We will send you a decision on your appeal within fifteen days of receiving it. Please direct your written appeal to:

Jail Commander
ATTN: Denied Mail Appeal
Columbia County Sheriff's Office
901 Port Ave.
St. Helens, OR 97051

Mail Handler and DPSST #

White - Sender ♦ Yellow - Inmates Jail File ♦ Pink - Inmate