



Unit 2

Prisoners' Rights

Mock Trial

(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>.

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?

Length of Unit

This unit can be completed in six lessons of about one hour each.

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 students to consider civil rights inside prison, as they 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, students 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.

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.

In real life, the judge in this trial ruled in favor of the PLN; the judge found that PLN's free speech rights prevailed because the evidence did not support the County's rationale that the "postcard only" policy prevented the introduction of contraband and saved time during mail inspection. But for this exercise, students are encouraged to consider the case on their own. This mock trial allows students 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. Students 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, students will be able to:

- Explain some issues related to prisoners' rights in the United States, including disagreements regarding prisoners' rights.
 - [NSCG II.D.3](#), [NSCG II.D.4](#), [NSCG II.D.5](#);
 - [MI-HSCE 2.2.3](#), [MI-HSCE 2.2.5](#)
- Analyze and weigh evidence in the case of *PLN v. Redwood County*.
 - [MI-HSCE 6.1.3](#)
- Use evidence to formulate and deliver an argument in the case of *PLN v. Redwood County*.
 - [MI-HSCE 6.1.5](#)
- 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.
 - [NSCG III.D.1](#), [NSCG III.D.2](#), [NSCG V.B.1](#), [NSCG V.B.5](#);
 - [MI-HSCE 2.2.2](#)

Anticipated Student Understanding/Challenges to Understanding

For students to participate a mock trial, they should have some background on court procedures. These are addressed most fully in Unit 1 on this website.

Unit 2: Overview Prisoners' Rights

This unit of instruction assumes that students have already studied fundamental values and principles of America's constitutional republic (including justice/desert, due process, equal protection, and the rule of law), and that they have some understanding of the various levels and responsibilities of courts in the federal and state judicial system.

Materials Needed

What we provide:

- Unit readings and handouts
- Teacher's guides and answer keys
- Access to documents from *PLN v. Columbia County*

What you provide:

- Physical copies of suggested documents from the case, plus any additional documents you'd like to include

Unit Assessment

Students will participate in a mock trial.

References

- Alexandra M. Ashbrook, *StreetLaw's Classroom Guide to Mock Trials and Moot Courts* (Glencoe/McGraw-Hill, 2004).
- Amy E. Lerman & Vesla M. Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (University of Chicago Press, 2014).
- Michael E. Tigar, *Huck Finn, The River and Trying Your Case* (Kentucky Bar Association, 2014), http://c.ymcdn.com/sites/kybar.site-ym.com/resource/resmgr/2014_Convention_Images/11_ac2014.pdf.
- Michael E. Tigar, *Nine Principles of Litigation and Life* (American Bar Association, 2014).

Lessons

Lesson 1: What is this case about?

Students will learn about the background of the mock trial case and understand the relevant legal standards.

Students will be able to:

- Provide a brief explanation of recent prisoner rights issues.
- Explain the nature, facts, and issues of *PLN v. Redwood County*.

Lesson 2: Understanding the Evidence

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Students will conduct a close reading of the evidence and analyze witness declarations.
Students will be able to:

- Analyze trial court documents, including a complaint and an answer.
- Analyze and make connections between pieces of evidence for a trial.

Lesson 3: Developing an Outline for the Case

Students will work in groups to organize the facts of the case and develop an outline of their arguments.

Students will be able to:

- Analyze the evidence for the case of *PLN v. Redwood County*.
- Develop a clear outline and theory of the case.

Lesson 4: Preparing for Trial

Students will be prepare for the mock trial.

Students will be able to:

- Understand the fundamental rules of evidence.
- Prepare questions and documents for a mock trial.

Lesson 5: The Trial

Students will participate in the mock trial.

Lesson 6: Debrief and Reflection

Students will reflect on the mock trial through written responses and class discussion.

Students will be able to:

- Evaluate their performance in the mock trial and reflect on the mock trial experience.

Lesson 1
What is this case about?

Lesson Objectives

Students will be able to:

- Provide a brief explanation of recent prisoner rights issues.
- Explain the nature, facts, issues, and relevant case law for *PLN v. Redwood County*.

Materials

- Handout 1: Nonfiction Source Evaluation Chart
- Handout 2: PLN article
- Handout 3: *Prison Legal News (PLN) v. Redwood County*

Lesson Assessments

- Evaluation of Prison Legal News Article
- Handout 3: *Prison Legal News (PLN) v. Redwood County*

Instructional Activities

Anticipatory Set

- Copy the following prompt on the board:
When people go to prison, their liberties are limited in many ways, both as part of their punishment and in order to run prisons safely and securely. Consider this list of rights:
 1. Freedom of speech
 2. The right to peaceable assembly
 3. The right against unreasonable searches and seizures of persons or effects (“effects” = property)
- Place students into small groups and assign each group of students one right from the list above. Students will discuss, and answer the following questions for the right assigned to their groups:
 - a) Your best guess about the current law: Can the government limit this right for prisoners?
 - b) Your opinion: To what extent, if any, *should* the government be allowed to limit this right for prisoners?
 - c) Your justification: Why should the government be able or unable to limit this right?

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- Students will then share out their responses to the class and engage in a general discussion of whether the government should be permitted to infringe on the constitutional rights of prisoners.
- Introduce students to the Mock Trial Unit by reading the following overview to the class:

This unit will investigate the degree to which the government should be permitted to infringe on prisoner's rights. 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 first time the Supreme Court held that a prisoner could file a civil rights lawsuit was in 1964 in the 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. A decade later, in [Wolff v. McDonnell](#) a case regarding unfair disciplinary charges in the prison system, the Supreme Court famously declared, "there is no iron curtain between the Constitution and the prisons of this country."

Despite these strides in court-enforceable protections for prisoners, concerns over democratic practices within the system remain today. Over the past forty years, civil rights litigation concerning [prison conditions](#) has made the courts a critical forum for debating what rights prisoners should have, and for enforcing those rights.

- To prepare for the mock trial, students will read and analyze a number of nonfiction sources. Distribute **Handout 1: Nonfiction Source Evaluation** and briefly discuss the chart with students, noting that the chart is broken up into three categories (sourcing, corroboration, and close reading) and each category contains a number of questions that will guide students' analysis of nonfiction sources. Instruct students to work with a partner to read through the chart and discuss why it is important to consider each category when analyzing a nonfiction source.
- Students will share their reactions to the Nonfiction Source Evaluation chart with the class. Use this time to ask students if there are any aspects of the chart they don't understand.

Guided Practice

- Distribute **Handout 2: Prison Legal News Article** (alternatively, students can read a current article from the [Prison Legal News](#) publication) and explain that Prison Legal News is a journal which provides articles on criminal justice issues, particularly issues concerning prisoners' rights. Instruct students to use the questions from the nonfiction source evaluation chart to guide their analysis of the article. Students will read through the article and work with a partner to respond to the sourcing and close reading questions. Ask students to share out their responses and their reactions to the article(s) and the

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publication. During the discussion students should be able to identify that prisoners are an intended audience for this publication. Ask students whether they think prisoners should have access to this article and other articles from the Prison Legal News publication and why prison officials might not want prisoners to have access to these articles. (Potential answers: these articles are critical of prisons; sheriffs may not like being criticized; sheriffs may think these articles will make prisoners become discontent with the prison policies and will cause disruptions.)

- Inform students that some jails have kept the PLN publication from prisoners, and as a result, PLN has filed –and mostly won—a number of lawsuits challenging the prison’s censorship. The focus of this unit will be investigating and conducting a mock trial for one such case, *PLN v. Redwood County*. Provide students with **Handout 3: *PLN v. Redwood County*** and instruct students to read through the Introduction and Facts, underlining important information. Point out that much of this text is from original court documents, but has been slightly altered to fit the needs of the mock trial (original documents can be viewed on the website.) Use the Handout 3 Teacher’s Guide (below) to check for student understanding of this background material.
- As a class, read through the Law section of Handout 3 to learn about the legal standards that will be used to adjudicate the case. Use the Handout 3 Teacher’s Guide (below) to guide student understanding of the law.
- Divide the class into small groups. Students will complete the Applying the Law section, reading through the excerpts and responding to the questions. Students should be prepared to discuss the key facts of the case and why the court reached the decision it did. The goal of this activity is to help students apply the law to the facts. Students can do either or both excerpts.

Independent Practice

- Ask students to write a brief newspaper article or deliver a brief news report (no more than 250 words) telling the public about the case and summarizing the rule of law that will apply to the case.

Closure

- After students have completed and shared their articles and/or news reports, explain that they’ll be exploring the case through a mock trial, beginning with pretrial preparation.

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

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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.

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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.

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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 3: Teacher's Guide

Prison Legal News (PLN) v. Redwood County

** The following is a 6-page teacher's manual to help students understand the facts of the case and the legal standards that will be used during the mock trial. As the class reads through each section of Handout 3, the annotations provide places for students to stop and think in order to emphasize key points and further student comprehension.*

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.

- Who is the plaintiff?
- Who is the defendant?
- What is the plaintiff's claim?
- What relief does the plaintiff seek?
- What is the defendant's response?

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.

- What is PLN?
- What does PLN do?
- What types of issues does PLN focus on?
- How many inmates are in the jail?
- How much mail does the jail inspect each day?
- How many people work in the jail? What are their responsibilities?

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.

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

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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.

- What types of articles were included in the PLN publication mailed to Redwood County Jail inmates?

- Why did the jail refuse to deliver Prison Legal News?

- What other mail did the jail reject?

- What type of information did that mail contain?

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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 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.

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.

* The next page provides a more thorough description of the four factors

- What does the First Amendment protect?

- Why is the freedom of speech one of the most important rights?

- When can the government restrict First Amendment rights?

Turner v. Safley (questions in red, answers in blue)

- What is the issue in the case? The scope of prisoners' constitutional rights, compared to other citizens.

- What does the plaintiff challenge? Two regulations: one banned letter-writing between inmates, the other banned nearly all inmates from getting married

- What did the Court hold? Although prisoners have constitutional rights, these rights, including the First Amendment, are more limited than outside prison because of the legitimate needs of prison officials.

- What test does Turner tell courts to use to evaluate whether a prison rule that restricts prisoners' free speech is constitutional?

1. If the rule imposed on prisoners is “reasonably related to legitimate penological interests” then it is legitimate and constitutional.
2. If the rule is an “exaggerated response to prison concerns” then it is an impermissible and unconstitutional regulation.

Note: this is the test that will be used to adjudicate the PLN case

- Do you think this is a loose standard? Why is it important to have a flexible standard for evaluating First Amendment claims?

This flexible standard prevents courts from interfering in the day-to-day judgments of prison administrators. Prison officials need latitude in adopting solutions to anticipated security problems so the standard does not require the regulation to be the least restrictive means of achieving the goal. **The Turner test provides a fuzzy standard and it is highly contestable, so the trial can really matter.**

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Prisons generally have three types of safety concerns: metal, drugs, and plans. Any prison can keep metal out by passing all mail through a metal detector. Drugs are a little more difficult; to effectively keep drugs out, prisons would need to have dogs that could sniff out any drugs. The most difficult safety concern is plans, because plans can be hidden in text and reading letters isn't cost effective.

Although the Turner test articulates one standard the Court considers four different factors to determine whether the regulation is constitutional.

Let's expand of the four factors the test considers. (Numbers correspond to each factor)

1. What are some of the key words or phrases from the first factor? What do they mean?

Rationally related- Regulation must fit the circumstance; you can explain the relationship sounding reasonable, not absurd.

Legitimate and neutral governmental objective- "Objective" means goal or purpose—that is, did the prison impose the regulation to fulfill some purpose? For example, safety and budget are both legitimate objectives. Neutral means that the regulation cannot favor one group or set of values over another.

Unrelated to content? the restriction on the speech cannot be based on the content the speech.

A regulation is not reasonable if it is arbitrary or irrational or if it does not respond to a legitimate government objective. A court will consider whether the regulation restricting the prisoner's right to free speech operated in a neutral fashion, without regard to the content of the speech.

What if a prison policy prohibited prisoners from keeping books in their cell, unless the book was a Christian Bible? What objective might this regulation achieve? Is this legitimate or neutral? Is it unrelated to the content?

The objective: maybe prison is concerned that too many books in cell will cause safety issues or a fire hazard. But the choice of the Bible as the only book also suggests an objective of teaching prisoners Christian values or moral values.

Legitimate & neutral? No. The Constitution requires citizens have right to the free exercise of religion; this policy favors Christian values and the government cannot force pro-Christian values on its citizens.

Unrelated to content? No. Policy not only prohibits all other religious texts but all types of texts as well. Maybe prison instituted the policy because they didn't want prisoners to have the news or be able to read other literature.

2. Rephrase this factor in your own words.

If the regulation doesn't completely restrict the prisoner's free speech rights and if prisoners can still exercise those rights in other circumstances it is more likely the regulation is legitimate/constitutional.

Going back to the Bible policy, let's say this prison has a library. Even though prisoners cannot keep books (other than the Bible) in their cell, prisoners have an alternative way to exercise their right to read books because they can read in the library.

3. Rephrase this factor in your own words.

Because correctional institutions have limited resources, it is important to consider how a policy change would affect other prisoners, prison staff, and the prison's limited resources for preserving institutional order. If accommodating the prisoner's free speech interests raises significant safety concerns, limits the liberty of the other prisoners or officials, or places a burden on the prisons' resources, it is more likely the court will defer to the informed discretion of corrections officials, and find the regulation legitimate/constitutional.

Allowing each prisoner to keep whatever one book they choose in their cell seems unlikely to create a significant problem, given that Bibles are already allowed. If prisoners were allowed to have an unlimited amount of books, this might present a problem, though.

4. Rephrase this factor in your own words.

If the government can achieve its asserted purpose through obvious alternatives that do not place significant restrictions on the prisoners' free speech, it is more likely the regulation is an unconstitutional exaggerated response. When the plaintiff cannot show there is a reasonable alternative to the prison policy at issue, this indicates the policy is reasonable. However, if a plaintiff can point to obvious, easy alternatives to the prison's policy that fully accommodate the prisoner's rights and also satisfy the prison's valid penological interests, this is evidence that the regulation is not reasonable.

Thinking about the Bible policy, again, an easy alternative is that the prison could allow each inmate to have one book of their choosing. The issue does not seem to be about safety or fire; it seems to be specifically about the bible.

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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 . . ."

Bell v. Wolfish

What is the issue?

Whether a prison can prohibit inmates from receiving hardback books, unless those books are mailed directly from the publisher or book club.

How are prisoners' First Amendment rights limited?

Prisoners cannot receive a used hardback book or a book sent from family or friends.

What was the prison's interest?

Prison security, contraband can be easily smuggled into the prison through hardback books, particularly in the spine. Was this limitation reasonably related or an exaggerated response? Reasonably related

What influences the court's analysis for each Turner factor?

1. Objective: Security – contraband is easily smuggled into prisons through hardback books and books are difficult to search. The restriction does not depend on the content of the book.
2. Alternatives: Prisoners can obtain other reading materials; they are allowed to receive magazines, soft bound books, and hardback books if sent directly from the publisher because books from the publisher can't be tampered with. But this requirement presents a real constraint because they are more expensive. There also is a library inmates can use. Although the rule can increase the cost of obtaining published materials, there are other ways for inmates to obtain these materials and does not fundamentally impact free speech.

The Court found the first two *Turner* factors were satisfied, but did not explicitly address the third and fourth factors.

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.

Thomas v. Leslie

What is the issue?

Whether a prison can prohibit inmates from receiving newspapers.

How are prisoners' First Amendment rights limited?

Prisoners cannot receive newspapers.

What was the prison's interest?

Safety-newspapers can be used to start fires or be used as weapons, and the accumulation of paper is a health hazard.

Was this limitation reasonably related or an exaggerated response?

Exaggerated Response- there was not a valid connection between the ban on newspaper and the safety hazard caused by the material.

What influences the court's analysis for each Turner factor?

1. Objective: Safety- Even though safety is a legitimate objective, the regulation was related to the content. Inmates were allowed to have bibles and other books in their cells, even though these materials presented the same safety concerns

2. Alternatives: Inmate's access to tv, which included the news, is not an alternative means of exercising the right to remain informed about the news and inmates do not always get to watch what they want. TV is not an adequate substitute for written communication.

3. Impact of allowing newspapers would be minimal since other reading material is permitted in the cell.

4. An easy alternative to the policy was that prisoners would be required to turn in one newspaper before receiving another, reducing the amount of paper in the cell.

Lesson 2 Understanding the Evidence

Lesson Objectives

Students will be able to:

- Analyze trial court documents, including a complaint and an answer.
- Analyze and make connections between pieces of evidence for a trial.

Material

- Handout 4: The Litigation Process
- Student Packet
- Handout 5: Analyzing the Declarations

Lesson Assessments

- Handout 5: Analyzing the Declarations

Instructional Activities

Anticipatory Set

- Distribute **Handout 4: The Litigation Process**. * Students will briefly review of the steps of the pretrial process. Make sure to highlight that discovery is the longest part of the pretrial process.

**The beginning of this lesson assumes that students have completed Unit 1 or have otherwise learned about the litigation process during class. If students have not learned this material, give students enough time to read through and annotate the handout with a partner and engage in a class discussion about the different aspects of the litigation process. Unit 1: Lesson 2 on the clearinghouse website provides a more thorough plan for teaching this material.*

- Ask students to think about what kind of evidence they would seek if they were lawyers in the PLN case. When gathering and evaluating the evidence, students need to keep in mind the legal standard that will apply to the case: the point of the evidence is to establish their side of the case, or undermine their opponents' side. Here, the law dictates that the evidence should address both the *content* of the prison's policies and the *need* (or lack of a need) for those policies.

Guided Practice

- Provide students with the *Case Packet*, which has adapted documents from the [Civil Rights Litigation Clearinghouse](#) website. If your students have had extensive experience with mock trial, you can instruct students to work with a partner to read and annotate the complaint and the answer. If your students need more guidance, instruct students to turn to page 6 of the case packet and use the Teacher's Guide (below) to guide your students through the complaint and the answer.
- Instruct students to turn to page 14 in the case packet and read through the First Amendment. If you've taught incorporation, you can ask students whether the First Amendment applied and emphasize the process by which the Bill of Rights was deemed applicable to state and local governments, not just federal.
- Have students turn to page 15, which contains declarations from witnesses. Inform students that a declaration is a person's statement, but one thing that makes a big difference is that a declaration is a statement made under oath, so that perjury (lying) is illegal. Ask students to look back at the Nonfiction Source Evaluation Chart and think about what questions will be most useful for analyzing witnesses' declarations. Have students share out their responses and write the questions on the board. Possible questions include:
 - Who is the author? What is their stake in the case? Is this source reliable?
 - What claims does the author make?
 - What evidence does the author use to support these claim?
 - Do other documents agree?

Independent Practice

- Distribute **Handout 5: Analyzing the Declarations**. As students read through the declarations, they should write important evidence and use the questions from the board to guide their analysis of the evidence. Students can either (i) read through all the declarations on their own or with a partner, or (ii) read through and analyze two declarations on their own and then jigsaw into a group of four, sharing their evidence and analysis with the group so that each group member has the important evidence and analysis from all of the declarations. If students need guided practice reading through a declaration, a Teacher's Guide for reading through the first two declarations is below.
- If desired, ask students to identify pieces of evidence they think are missing and seek them out on the case site OR ask students to do some independent research on relevant court cases that might serve as precedents for the case.

Closing

- Ask students to respond to the following questions:
 - Whose testimony do you think is the most reliable? Why?

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- Whose testimony is the least reliable? Why?
- How could you make their testimony seem more reliable?

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		

Teacher's Guide: Complaint and Answer

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

Let's look at the header. What does it tell us? Location of the court is in Oregon and the case is in a federal US court

Why is this case in federal court? The plaintiff claims that the prison's mail policy violated the US Constitution. All constitutional claims are heard in federal court.

-Let's look at the caption next. Who is bringing the suit and who are they bringing it against?

The plaintiff, Prison Legal News, is suing the defendants Redwood County, the Redwood County Sheriff's office, and Kevin Parson, the Redwood County Sheriff.

What do we know about PLN from other documents? PLN is a publication concerned with prisoners' rights and prison reform.

Complaint and demand for jury trial. This means the plaintiff requests a jury trial; they think they'll be best if the case is adjudicated by regular people. Although the plaintiff initially requested a jury trial, during out mock trial the case will be tried in front of a judge.

Why are the paragraphs numbered? Each paragraph is numbered so it is easier to reference specific parts of the complaint in later documents.

- Nature of the case- what function does this section serve? This provides background information about the parties and the issues that gave rise to the case.

- Parties- Provides the court with more information about the parties to the case. We have already reviewed this information in other documents.

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 Sheriff's 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 Sheriff's 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

How many defendants are being sued?

Three: Redwood County, the Redwood County Sheriff's office, and Kevin Parson, the Redwood County Sheriff.

What was each defendant's role in the issues that gave rise to the case (the prison's mail policy)?

Sheriff Parson- responsible for creating and implementing the mail policy at the Jail.

Sheriff's Office- responsible for operating the Jail, which instituted the mail policy

Redwood County- responsible for funding the sheriff's office and by extension the jail.

2.5 is an important paragraph- in implementing the prison mail policy, Sheriff Parson was acting within the scope of his official duties as an officer of the Sheriff's Office, and the County, and thus these two entities can be held liable for his actions.

Factual allegations- what is the difference between this and claim allegations?

Factual allegations- explain the who, what, where, when questions.

Claim allegations- explain why that information constitutes a claim in court.

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."

Who is Thomas Davis? Why is he important? Thomas Davis was an inmate at Redwood County Jail who was affected by the Prison's mail policy because he did not receive the PLN publications. He is important because in order to bring a case, PLN cannot merely show a hypothetical harm of how someone could be affected by the prison's mail policies, but must instead, must show a real, tangible harm of how these policies injured someone at the prison.

What action did PLN take? PLN sent Davis and other prisoners the PLN publication, subscription forms, informational brochures, catalogs, and book offers.

What action did the jail take? The Jail rejected many of PLN's mailings because they violated the Jail's postcard only policy.

Unit 2: Lesson 2
Prisoner's Rights

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,

In the background information we read that Betty Pale has lived in Spokane, WA since she was born (400 miles from the Jail), is a retired schoolteacher, and is an active member of her community. Why do you think Pale is sending these articles to the jail? Don't know. Maybe she read about the prison postcard only policy and wanted to show harm. Maybe she is interested in prisoners' rights.

What did Pale do? How did the jail respond?

Mailed 15 prisoners articles about the privatization of prisons. The Jail rejected all of these articles.

What do we know about PLN from other documents? PLN is a publication concerned with prisoner's rights and prison reform.

What is the jail's official policy? See 3.13-3.15.

What is the purpose of 3.16-3.18? Shows the harm.

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.

Claim allegations- why do the above acts constitute a claim in court? The plaintiff claims that by rejecting their mail, the prison violated their First Amendment rights.

What is the request for relief? What the plaintiff seeks from the lawsuit.

What relief does the plaintiff seek? What does this mean? The plaintiff seeks an injunction and a declaration. A declaration is a statement about rights; the plaintiffs are asking the court to "declare" that what the jail is doing is wrong. An injunction is an enforceable order about conduct; the plaintiffs are asking the court to order the jail to stop implementing its postcard only policy.

Let's look back at the nonfiction source evaluation document. Who wrote this? Is the complaint a reliable document? Can we know these things actually happened? The complaint seems reliable since an attorney wrote in. Federal Rules of Civil Procedure impose heavy penalties for attorneys who submit documents, knowing they are false. Since the lawyer's license is on the line we know the complaint is more reliable than, say, a letter. On the other hand, the complaint presents allegations, and the plaintiff is framing the facts in a way that is most favorable to their case. The complaint is an opportunity for the plaintiffs to tell their side of the story. The complaint doesn't seek to present the facts in the fairest way, but in the way that shows their side will win. A complaint is simultaneously addressed to the court and to the defendants; it tries to persuade the court that plaintiffs deserve a trial, and tries to persuade the defendants to settle before that trial.

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.

What is this document? The answer is the defendants' response to the allegations in the complaint.

How do we read this? We need to pair the answer with the complaint. Go back and read the complaint and the answer together paragraph by paragraph. The paragraphs line up and begin to explain why the complaint's paragraph numbers are so important.

The most interesting parts of the answer are the parts that the defendants admit. Defendants usually deny everything or admit only certain pieces. How do we figure out whether the plaintiff or the defendant is telling the truth? At this stage, what facts are true remains unclear; this is why it is a contest. The job of the jury (or the judge) is to sort out the facts and decide what is true.

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.

Teacher's Guide: Declarations

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

What is a declaration?

A sworn statement—lying in a declaration is illegal.

Why is paragraph 1 important?

Provides a sort of certification for the testimony, declaring that the person is of: (i) legal age and can give consent to testify, (ii) sound mind and competent to testify, and (iii) the testimony is based on their personal knowledge, not something they learned secondhand.

Who is Thomas Davis?

Inmate at the Redwood County Jail. From the background information we know that he is a nonviolent prisoner.

What does he talk about?

He talks about what he received; he's telling his version of the story.

What do Exhibits B and C tell us?

Exhibit B tells us Davis did not receive any of the publications PLN sent him and Exhibit C tells us that Davis did not receive the other materials PLN sent him.

Why is it important that he did not receive notification from the jail that his copy of the PLN publication was rejected?

One of the claims is that the inmates were denied due process by not being informed of the prison's rejection of their mail because the lack of notification meant they could not file an administrative appeal.

Why do you think his declarations are based off these two exhibits?

In preparing for litigation, PLN likely sent this survey to multiple prisoners in the County Jail and these exhibits are their responses.

After you have read through the Davis declaration, ask students to respond to the questions for analyzing the declaration from the board and share out responses.

Unit 2: Lesson 2
Prisoner's Rights

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.

Who is Betty Pale? What is her stake in the case?

Pale is a resident of WA who sent PLN articles to inmates at the Jail. Her stake in the case is unknown.

What actions did Betty Pale take?

She printed articles from the PLN website and sent them to specific prisoners at the Jail.

What did the prison do with Pale's mail?

The prison rejected Pale's mail and returned the mailings to her with a stamp that said inspected by Redwood County Jail, returned to sender, contraband. .

After you have read through the Davis declaration, ask students to respond to the questions for analyzing the declaration from the board and share out responses

Lesson 3 Developing an Outline for the Case

Lesson Objectives

Students will be able to:

- Analyze the evidence for the case of *PLN v. Redwood County*.
- Develop a clear outline and theory of the case.

Material

- Handout 6: Sorting the Evidence
- Handout 7: Developing a Theory of the Case

Lesson Assessments

- Handout 6: Sorting the Evidence and Venn Diagram
- Handout 7: Developing a Theory of the Case

Instructional Activities

Anticipatory Set

- Students will respond to the following question: Based on the declarations we read yesterday, who do you think the strongest witnesses are for each side? Why?

Guided Practice

- Inform students that today's class will focus on sorting the evidence and developing an outline for the case. Distribute **Handout 6: Sorting the Evidence and Venn Diagram** and read through the questions with students to check for understanding. Students will work in groups of three to complete Handout 6. To complete the Venn Diagram of Evidence, students will place the evidence that is beneficial to the plaintiff's case on the Plaintiff side of the diagram and evidence that is beneficial to the defendant's case on the Defendant side of the diagram. Evidence that is neutral, or beneficial to both parties should be placed in the middle of the chart.
- As a class, discuss the students' responses both to the Sorting the Evidence chart and to the Venn diagram. Create a class chart for the Venn diagram, and as students share their responses, ask them to explain why they think the evidence better supports one of the party's arguments. Once the Venn diagram is complete, you can challenge the students

Unit 2: Lesson 3
Prisoner's Rights

and ask them if they can reframe any of the evidence so that it supports the other party's argument.

- Provide students with **Handout 7: Developing a Theory of the Case**. Explain to students that they will use this to record their thinking as they begin to draft their theory of the case. As a class, read through and discuss Handout 7. Ask students to recall the policy discussed in Lesson 1, which says that prisoners cannot keep any books in their cell unless the book is a bible. Ask students to think about some themes that the plaintiff and defendant could base their arguments on in this case. (Potential Answers: The plaintiff could argue that the prison is trying to force Christian values on prisoners. The defendant may argue that the bible-only policy is necessary for safety and restricting books in the cell ultimately keeps inmates safe.)

Independent Practice

- Break students into plaintiff and defendant groups. (Students can work in two large groups or several smaller groups depending on your space and preference.) Explain to students that they will be working as a group to complete sections A-G of Handout 7. They should leave section H for individual work in class or at home.
- Students should discuss the case and fill out sections A-G of the handout together. Once they have had time to discuss, each group should report out to engage in a whole group discussion.

Closure

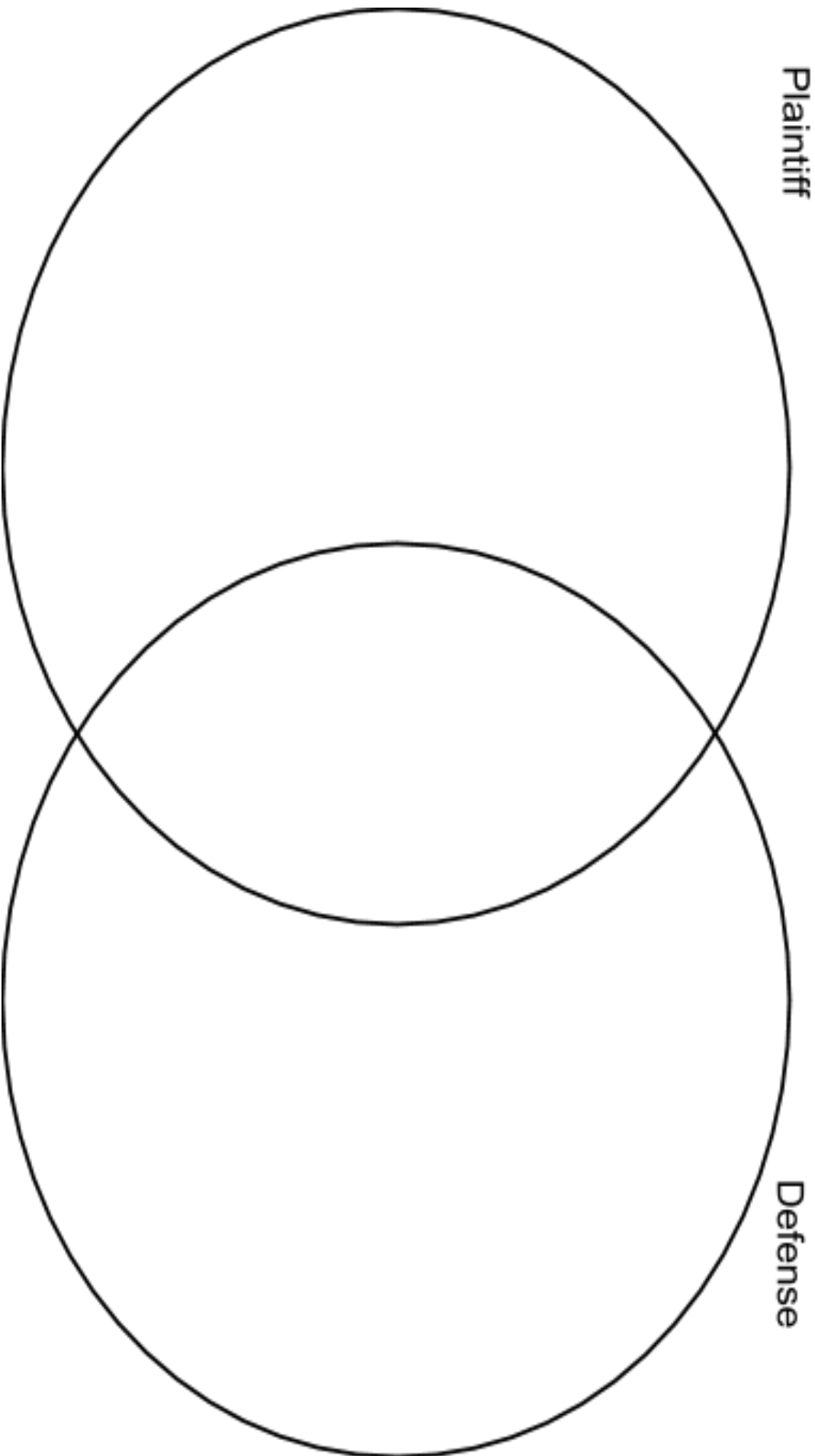
- Students should complete section H of the handout on their own.

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
The regulation must be rationally related to a legitimate and neutral governmental objective, unrelated to the content of the expression.	<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>
If alternative avenues remain open to the inmates to exercise the right, that weighs in favor of the legitimacy of the regulation.	<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>
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><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>
The existence of easy and obvious alternatives may indicate that the regulation is an exaggerated response by prison officials.	<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?*

Lesson 4 Preparing for Trial

Lesson Objectives

Students will be able to:

- Understand the fundamental rules of evidence.
- Prepare questions and documents for a mock trial.

Material

- Handout 8: Evidence Overview
- Handout 9: Trial Structure
- Handout 10: Courtroom Roles

Lesson Assessments

- Character Roles Response Sheet

Instructional Activities

- Distribute **Handout 8: Evidence Overview**. Ask students to read through the rules of evidence and respond to the following question.
 - What types of evidence is permitted?
 - How can lawyers admit evidence into the trial?
 - What types of questions can lawyers ask witnesses?
 - When should you object to the opposing counsel's questioning?Students will share out their responses.
- Distribute **Handout 9: Trial Transcript**. Inform students that the mock trial will follow proper court procedure. Briefly review the transcript to provide students with the structure of the trial. Remind students that once they have received their roles they will want to review the transcript to make sure they know what they have to say during the trial. Explain to the students that because the main issue in this case is the requested declaration and court order, not damages, it is appropriately tried to a judge, not a jury. (If the plaintiff wins, the next step would be to have a damages trial in front of a jury, but this exercise does not include that additional proceeding.)
- Assign roles to students. Roles can be combined or broken up based on the number of students in the room:

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1. Judge: In a real case, there would be just one, but you can choose to have more than one, assigning each to run the courtroom during a different part of the proceeding. At the end of the case the judge[s] will render and explain their verdict in a written opinion. Alternatively, the teacher can serve as the judge.
 2. Clerk who will call the case.
 3. Plaintiff's team, including
 - Witness 1: Betty Pale
 - Witness 2: Thomas Davis
 - Witness 3: Elizabeth Hewitt
 - Witness 4: Katherine Cahill
 - Witness 5: Austin Cahill
 - Attorneys to do the following (one or two students per attorney role):
 - Opening statement
 - Direct examination of Betty Pale
 - Direct examination of Thomas Davis
 - Direct examination of Elizabeth Hewitt
 - Direct examination of Katherine Cahill
 - Direct examination of Austin Cahill
 - Cross-examination of Bryan Cutright
 - Cross-examination of Kevin Parson
 - Cross-examination of Jeremy Meyer
 - Closing argument
 4. Defendants' team, including
 - Witness 1: Bryan Cutright
 - Witness 2: Kevin Parson
 - Witness 3: Jeremy Meyer
 - Attorneys to do the following (one or two students per attorney role):
 - Opening statement
 - Cross-examination of Betty Pale
 - Cross-examination of Thomas Davis
 - Cross-examination of Elizabeth Hewitt
 - Cross-examination of Katherine Cahill
 - Cross-examination of Austin Cahill
 - Direct examination of Bryan Cutright
 - Direct examination of Kevin Parson
 - Direct examination of Jeremy Meyer
 - Closing argument
 5. Media Reporters, who provide an oral or written account at different points throughout the trial.
- Provide students the appropriate section of **Handout 10: Courtroom Roles** based on their assigned roles. Give them with time to complete assigned tasks independently and to meet with group
 - Set aside time with each team to go over their roles and to make sure there are no questions before the trial begins.

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?

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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.

Lesson 5 **The Trial**

Lesson Objectives

Students will be able to:

- Participate in a mock trial.

Lesson Assessments

- Mock Trial Performance

Instructional Activities

- Review the steps in the trial with students, and then have the students conduct the trial.
 - Note: All references to “plaintiff” or “defendants” mean plaintiff’s and defendants’ attorneys.
 - During the trial the media reporters should be taking active notes so that they can submit their written or oral account of the trial.
1. Judge enters and takes the bench and clerk calls the case
 2. Opening statements:
 - a. Plaintiff
 - b. Defendant
 3. Plaintiff’s Case
 - a. Plaintiff’s witnesses
 - i. Plaintiff conducts direct examination
 - ii. Defendant cross-examines the witness
 - iii. Plaintiff conducts redirect examination if desired
 - b. Plaintiff rests
 4. Defendants’ Case
 - a. Defendants’ witnesses
 - i. Defendant conducts direct examination
 - ii. Plaintiff cross-examines the witness
 - iii. Defendant conducts redirect examination if desired
 - b. Defendants rest
 5. Closing arguments
 - a. Plaintiff
 - b. Defendant
 6. Judge decides what facts s/he believes, and applies the applicable law, given those facts. The judge can announce and explain the verdict or can be assigned to write an opinion.

Lesson 6 **Debrief and Reflection**

Lesson Objectives

Students will be able to:

- Evaluate their performance in the mock trial and reflect on the mock trial experience

Lesson Assessments

- Reflection on mock trial.

Instructional Activities

- Ask student to respond to the following questions, first in writing and then through discussion:
 - a. Was the trial conducted in a fair manner? Why or why not?
 - b. What were the strong points in the trial? What were the weak points?
 - c. Does the law that applies in a prisoner case like this one seem fair, or is it too pro-prisoner or too pro-government?
 - d. What did you learn from the mock trial?
- Ask media reporters to share out their accounts of the trial.
- Share with students the results of the real trial. Solicit their reactions.
- For homework, students should respond to the questions:
 - Is the litigation process an effective means for extending and protecting people's rights?
 - Was justice served in this case? Address the applicable legal standard, the trial process as means for deciding this case, and the decision reached in the actual case.