

Handout 1

Nonfiction Source Evaluation

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

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

Handout 2

Prison Legal News Article

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

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

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

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

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

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

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

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

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

Unit 2: Lesson 1
Prisoners' Rights

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

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

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

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

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

Handout 3

Prison Legal News (PLN) v. Redwood County

Introduction

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

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

Facts

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

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

Unit 2: Lesson 1
Prisoners' Rights

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

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

Law

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

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

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

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

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

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

The Court articulated four factors for application of this test:

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

Unit 2: Lesson 1
Prisoners' Rights

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

Applying the Law

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

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

Excerpt 1

Bell v. Wolfish

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

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

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

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

Excerpt 2

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

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

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

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

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

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

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

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

Nor are we persuaded by Sheriff Leslie's argument that access to television provides an adequate alternative to newspapers. Television cannot supply the depth and diversity of coverage that newspapers can provide. Mr. Barnett's affidavit states he was unable to watch news programs because of the majority vote rule controlling what programs were watched.... Moreover, it is not up to the [county sheriff] or this court to decide that television can adequately service the first amendment right to receive protected materials. Rather, we must apply the principle that a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.