

Lawsuit by magazine for inmates reinstated

First Amendment Watch

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A federal appeals panel has reinstated First Amendment lawsuits by the publisher of *Crime, Justice & America*, a publication for prison inmates, against two California county jails.

Ray Hrdlicka, publisher of CJA, sued after county sheriffs in Sacramento County and Butte County refused to distribute unsolicited copies of the free magazine to prisoners. Sacramento County originally allowed distribution but then cited safety and institutional concerns. Butte County denied the distribution requests from the beginning.

Hrdlicka filed federal lawsuits against both sheriffs, pointing out that his publication was distributed in 13 states and more than 30 California county jails. The sheriffs countered that an increased number of publications could lead to fires, clogged toilets and the blocking of lights in inmate cells.

Federal district courts granted summary judgment to the prison officials, but a divided three-judge panel of the 9th U.S. Circuit Court of Appeals reversed Jan. 31 in [Hrdlicka v. Reniff](#). Writing for the majority, Judge William A. Fletcher, joined by Stephen Reinhardt, examined the First Amendment claim under the Supreme Court's leading prisoner-speech case, [Turner v. Safley](#) (1987).

In *Safley*, the Court ruled that prison regulations affecting First Amendment rights must be reasonably related to legitimate penological concerns such as security and safety. The Court said four factors must be considered: (1) whether the regulation is rationally related to a legitimate and neutral government interest; (2) whether there are alternative avenues for exercising the right; (3) whether accommodating the First Amendment right will affect prison resources; and (4) whether alternatives to the regulation show that the prison's restriction was an exaggerated response.

Even though *Safley* is generally viewed as a standard for inmate First Amendment rights, it also applies to free-speech claims by publishers attempting to communicate with inmates.

"We have repeatedly recognized that publishers and inmates have a First Amendment interest in communicating with each other," Fletcher wrote. "A First Amendment interest in distributing and receiving information does not depend on a recipient's prior request for that information."

Applying the *Safley* test, Fletcher found that disputed factual questions prevented the

