

## CHAPTER 3

### YOUR RIGHT TO LEARN THE LAW AND GO TO COURT\*

#### A. Introduction

Although many rights are suspended while you are in prison, courts have protected a prisoner's constitutional right to access the state and federal courts (referred to as "right of access").<sup>1</sup> This right includes a prisoner's ability to prepare and submit petitions and complaints, including federal habeas corpus petitions and civil rights actions.<sup>2</sup> The Supreme Court held in *Bounds v. Smith* that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."<sup>3</sup> In other words, the Supreme Court believes that prisoners have a right to legal resources to prevent harmful legal outcomes. If the state stands in the way of your ability to do legal research or get legal assistance, you may be able to file a suit claiming that you have been denied access to the courts. You may also be able to file a suit claiming a denial of court access if the state prevents you from creating and mailing your legal papers by withholding necessary resources or materials. The Supreme Court stated in *Bounds* that the right of access to the courts includes the state's obligation to provide indigent prisoners "with paper and pen to draft legal documents, with notarial services to authenticate them, [and] with stamps to mail them."<sup>4</sup>

The Supreme Court has limited the circumstances in which a prisoner can win a denial of access suit. In 1996, the Court held in *Lewis v. Casey* that to win a right of access case, a prisoner must show: (1) that he suffered an "actual injury," and (2) that this injury was connected to a "non-frivolous legal claim."<sup>5</sup> The Court explained the "actual injury" requirement: "[A]n inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is sub par in some theoretical sense."<sup>6</sup> In other words, you cannot simply base your claim on any perceived harm caused by the denial of access. The harm must be related to the loss of an opportunity to raise a specific substantive legal claim.<sup>7</sup> One example could be losing the opportunity to file an appeal.<sup>8</sup>

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1. *See* *Procunier v. Martinez*, 416 U.S. 396, 419, 94 S. Ct. 1800, 1814, 40 L. Ed. 2d 224, 243 (1974) (describing right of access to courts as part of constitutional due process of law requirements); *see also* *Murray v. Giarratano*, 492 U.S. 1, 11 n.6, 109 S. Ct. 2765, 2771 n.6, 106 L. Ed. 2d 1, 12 n.6 (1989) (tracing right of access to courts to due process and equal protection clauses of United States Constitution).

2. *Bounds v. Smith*, 430 U.S. 817, 828 n.17, 97 S. Ct. 1491, 1498 n.17, 52 L. Ed. 2d 72, 83 n.17 (1977). For an explanation of federal habeas corpus petitions and how to use them, see *JLM*, Chapter 13. Civil rights actions involve the violation of your constitutional rights. For more information about your constitutional rights and how to sue those who violate your constitutional rights, see Chapter 16 of the *JLM*, which discusses Section 1983 and *Bivens* actions.

3. *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72, 83 (1977). For recent cases discussing the right of access, see *Hebbe v. Pliler*, 627 F.3d 338 (9th Cir. 2010) (holding that the prisoner Hebbe satisfied the *Lewis* "actual injury" requirement, because while the prison was on lockdown, Hebbe was denied access to the law library to file a brief for his appeal); *Benjamin v. Kerik*, 102 F. Supp. 2d 157, 164–69 (holding that three of the eight allegations of "actual injury" fulfilled the *Lewis* requirement).

4. *Bounds v. Smith*, 430 U.S. 817, 824–25, 97 S. Ct. 1491, 1496, 52 L. Ed. 2d 72, 81 (1977).

5. *Lewis v. Casey*, 518 U.S. 343, 352–55, 116 S.Ct. 2174, 2180–2182, 35 L. Ed. 2d 606, 618–20 (1996).

6. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996).

7. *Lewis v. Casey*, 518 U.S. 343, 351–53, 116 S. Ct. 2174, 2180–81, 135 L. Ed. 2d 606, 617–19 (1996). *Lewis* was a class action claiming denial of prisoners' right of access to courts. The Supreme Court reversed a Ninth Circuit decision ordering Arizona to provide prisoners with extensively equipped law libraries and experienced library staff.

8. *Lewis v. Casey*, 518 U.S. 343, 350–51, 116 S. Ct. 2174, 2179–80, 135 L. Ed. 2d 606, 617–18 (1996); *see also* *Christopher v. Harbury*, 536 U.S. 403, 413–15, 122 S. Ct. 2179, 2185–86, 153 L. Ed. 2d 413 (2002) (distinguishing between forward-looking claims, where future adjustments can solve the problem, and backward-looking claims, where the opportunity was already lost. In both cases, the complaint must describe the legal opportunity that will be or was missed. In backward-looking claims, the complaint must identify a remedy that could not be awarded in some other suit that can still be brought).

Congress has also limited the ability of prisoners to bring denial of access suits. In 1995, Congress enacted the Prison Litigation Reform Act (“PLRA”) which, among other things, requires prisoners to exhaust their prison’s administrative remedies before filing claims alleging violation of civil rights under 42 U.S.C. Section 1983 in federal court. The information provided in this Chapter is to be used *only as a supplement* to the information provided in Chapter 14 of the *JLM*. **If you decide to pursue any claim in federal court, you must read Chapter 14 of the *JLM* on the Prison Litigation Reform Act.** Failure to follow the requirements of the PLRA can lead to, among other things, the loss of your good-time credit and the loss of your right to bring future claims in federal court without paying the full filing fee at the time you file your claim.<sup>9</sup>

This Chapter explains what constitutes a violation of your right of access to the courts. Parts B and C explore the threshold requirements you must prove before the court will examine your opportunities for access: (1) that you suffered an actual injury, and (2) that you did so because the state failed to fulfill its duty to provide access to the courts. Part B explains the actual injury requirement, as stated in *Lewis*. Part C outlines the reach of the state’s<sup>10</sup> duty to provide you access to the courts. The later Parts explain your rights once these requirements have been met. Part D explains what adequate law libraries must contain. Part E explains what constitutes adequate assistance from persons trained in the law (including the role of jailhouse lawyers<sup>11</sup> in providing adequate assistance). Part F explains the state’s duty to provide you with legal materials. The Appendix at the end of this chapter provides a list of useful, publicly accessible online resources. Most of these websites provide access to searchable databases of recent trial and appellate decisions, in addition to Supreme Court cases. The Appendix highlights websites that integrate various types of secondary resources most effectively. Be aware, however, that these organizations usually charge a fee for access to their services.

Because the rights described in this Chapter relate to the conditions of your confinement, **the PLRA requires you first try to protect your rights through your institution’s administrative grievance procedure. Read Chapter 15 of the *JLM* for further information on inmate grievance procedures.** If you are unsuccessful or do not receive a favorable result through these procedures, you can then either bring a case under 42 U.S.C. Section 1983, file a tort action in state court (or in the Court of Claims if you are in New York), or file an Article 78 petition in state court if you are in New York. More information on all of these types of cases can be found in Chapter 5, “Choosing a Court and a Lawsuit;” Chapter 14, “The Prison Litigation Reform Act;” Chapter 16, “42 U.S.C. § 1983;” Chapter 17, “Tort Actions;” and Chapter 22, “Article 78,” of the *JLM*.

## B. Fulfilling the Actual Injury Requirement

The Supreme Court in *Lewis* narrowly interpreted the *Bounds* decision by holding that establishing a violation of your right to access the courts requires showing “actual injury” from the alleged violation.<sup>12</sup> The

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9. 28 U.S.C.A. § 1915(g) (2015)

10. “State” in this chapter means either a state government or the federal government. In other words, if you are a federal prisoner, when we refer to “state” in this chapter, for you it means the federal government.

11. Black’s Law Dictionary 963 (10th ed. 2014) defines a jailhouse lawyer as “[a] prison inmate who seeks release through legal procedures or who gives legal advice to other inmates.”

12. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 617–18 (1996); *see also* *Chirceol v. Phillips*, 169 F.3d 313, 317 (5th Cir. 1999) (finding that denial of access to funds from prison accounts to pay for filing fees did not constitute an actual injury because the complaint had been successfully filed); *Tourscher v. McCullough*, 184 F.3d 236, 242 (3d Cir. 1999) (finding that defendant failed to allege facts demonstrating that the number of hours he was required to work frustrated his access to the courts); *Klinger v. Dep’t of Corr.*, 107 F.3d 609, 617 (8th Cir. 1997) (showing a complete and systematic denial of access to the law library or legal assistance was not enough to demonstrate actual injury); *Oliver v. Fauver*, 118 F.3d 175, 178 (3d Cir. 1997) (dismissing a claim because the prisoner suffered no injury as a result of alleged interference with legal mail); *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996) (holding that *pro se* prisoners failed to demonstrate that inadequacy of the prison law library or legal assistance caused actual injury); *Sabers v. Delano*, 100 F.3d 82, 84 (8th Cir. 1996) (finding prisoner had to show actual injury due to denial of access to courts, even if denial was systemic; specifically, prisoner had the burden of showing that the “lack of a library or the attorney’s inadequacies hindered [her] efforts to proceed with [the] legal claim in a criminal appeal, post-conviction matter, or a civil rights action.”); *Stotts v. Salas*, 938 F. Supp. 663, 667–68 (D. Haw. 1996) (holding that a state prisoner transferred to another state must show actual injury to have law books sent from the state of his former prison); *Cody v. Weber*, 256 F. 3d 764, 769–70, (8th Cir. 2001) (holding that there was no “actual injury” when the inmate was not allowed to access his computer which stored his legal data, because no specific injury was demonstrated; rather the inmate vaguely claimed that the data would set him free); *Hartmann v. O’Connor*, 415 Fed. Appx. 350, 352–53, 2011 WL 681094 (C.A.3 (Del.)) (3rd Cir. 2011) (holding that there was no “actual injury” when the inmate was allegedly denied

actual injury requirement is not a new concept, but the *Lewis* approach makes things harder for prisoners. Establishing that the prison's law library or legal assistance program is inadequate is not enough to prove actual injury. You must also show that you were kept from pursuing a non-frivolous claim—that is, “a claim for relief that is at least arguable in law and in fact”<sup>13</sup>—because of these inadequacies.<sup>14</sup>

One way to prove an actual injury may be to show a complaint you prepared was dismissed for failure to meet a “technical requirement” you could not have known about because of the insufficient legal assistance provided at your prison facility.<sup>15</sup> “Technical requirement,” in this context, could refer to a procedural or document-related rule of a court that, if broken, might be grounds for dismissal of the claim.<sup>16</sup> Another way may be to show you were prevented from filing a claim in the first place because of weaknesses in the legal facilities provided.<sup>17</sup> If you and others bring a class action, you must show that the injury was systemic—that is, you must show a system-wide problem.<sup>18</sup>

### C. How The State's Limited Duty to Provide Access to the Courts May Apply to You

There are a few things to keep in mind when developing your claim:

- (1) the state's duty to provide you with adequate law libraries or adequate assistance by persons trained in law may not extend to the type of action you want to bring;
- (2) your correctional facility can choose how it will meet its duty to provide legal information or expertise;
- (3) the state's duty almost always applies, regardless of the kind of facility in which you are incarcerated;
- (4) it is currently unclear how far the state's duty to provide access extends; and
- (5) the state's duty applies whether or not you are considered indigent (meaning whether or not you can afford to sue).<sup>19</sup>

First, courts disagree about whether your right of access to the courts is applicable in all cases or only in those cases involving constitutional rights. In *Lewis*,<sup>20</sup> the Supreme Court stated that your right of access does not guarantee your right to file any claim. Instead, this right is limited to non-frivolous lawsuits that attack prison sentences or challenge the conditions of confinement.<sup>21</sup> Though this language is somewhat

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access to the internet, because the inmate eventually made his legal claims in court).

13. *Lewis v. Casey*, 518 U.S. 343, 399, 116 S. Ct. 2174, 2203, 135 L. Ed. 2d 606, 662 (1996).

14. *Lewis v. Casey*, 518 U.S. 343, 352–53, 116 S. Ct. 2174, 2179, 135 L. Ed. 2d 606, 616 (1996). The Court said, “the inmate ... must ... demonstrate ... the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.” *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996).

15. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996).

16. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996).

17. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996) (arguing that a prisoner could prove actual injury if the “inadequacies of the law library” prevented him from even filing a complaint).

18. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 349, 116 S. Ct. 2174, 2179, 135 L. Ed. 2d 606, 616 (1996) (holding that “isolated instances of actual injury” are not enough to show a systemic *Bounds* violation).

19. *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72, 83 (1977) (holding federal habeas corpus or state or federal civil rights actions are encompassed within right of access to the courts); *see also Knop v. Johnson*, 977 F.2d 996, 1009 (6th Cir. 1992) (determining that requiring a state to provide affirmative legal assistance to prisoners in actions unrelated to constitutional rights or their incarceration would be “an unwarranted extension of the right of access”); *cf. Glover v. Johnson*, 75 F.3d 264, 269 (6th Cir. 1996) (finding female prisoners *not* entitled to legal assistance in child custody matters); *John L. v. Adams*, 969 F.2d 228, 235–36 (6th Cir. 1992) (holding states do *not* have a duty to provide affirmative assistance to prisoners on civil matters arising under state law, but noting that “states are required to provide affirmative assistance in the preparation of legal papers in cases involving constitutional rights and other civil rights actions related to their incarceration ... [and also that] in all other types of civil actions states may not erect barriers that impede the right of access of incarcerated persons”); *Walters v. Edgar*, 900 F. Supp. 197, 229 (N.D. Ill. 1995) (finding prisoners have no constitutional right to assistance from the state to pursue child custody matters).

20. *Lewis v. Casey*, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996).

21. The Supreme Court in *Lewis* held:

“*Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.”

*Lewis v. Casey*, 518 U.S. 343, 355, 116 S. Ct. 2174, 2182, 135 L. Ed. 2d 606, 620 (1996).

unclear, *Lewis* and subsequent cases have narrowly defined the claims to which the right of access to the courts extends.<sup>22</sup> For example, some courts have held that the state's duty extends only to the initiation of habeas corpus proceedings, direct appeals, and civil rights actions,<sup>23</sup> because these are the only actions specifically mentioned in *Bounds*.<sup>24</sup> Thus, your state's duty to provide access to the courts may not extend to ordinary civil proceedings.<sup>25</sup> Nonetheless, you should check your state's law on this issue, which *may* extend the right of access to cover civil proceedings.

Second, the state may choose how to fulfill its duty.<sup>26</sup> The state may provide you with an adequate law library, adequate assistance from persons trained in the law, a combination of the two, or something slightly different.<sup>27</sup> For example, an inadequate or non-existent law library may not violate a prisoner's right of access when the state provides some other sort of legal assistance.<sup>28</sup> At the same time, while the state is free to devise its own legal access plan, there is no guarantee that courts will find it sufficient to satisfy your right of access to the courts.<sup>29</sup>

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22. See, e.g., *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999) (holding that "a prisoner's right to access the courts extends to direct appeals, habeas corpus applications, and civil rights claims only"); *Wilson v. Blankenship*, 163 F.3d 1284, 1291 (11th Cir. 1998) (holding that the civil forfeiture case that the plaintiff was attempting to litigate was "not a type of case that is included under the right of inmates' access to courts under *Lewis*").

23. *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999).

24. *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72, 83 (1977) (holding federal habeas corpus or state or federal civil rights actions are encompassed within right of access to the courts); see also *Knop v. Johnson*, 977 F.2d 996, 1009 (6th Cir. 1992) (determining that requiring a state to provide affirmative legal assistance to prisoners in actions unrelated to constitutional rights or their incarceration would be "an unwarranted extension of the right of access"); cf. *Glover v. Johnson*, 75 F.3d 264, 269 (6th Cir. 1996) (finding female prisoners *not* entitled to legal assistance in child custody matters); *John L. v. Adams*, 969 F.2d 228, 235–36 (6th Cir. 1992) (holding states do *not* have a duty to provide affirmative assistance to prisoners on civil matters arising under state law, but noting that "states are required to provide affirmative assistance in the preparation of legal papers in cases involving constitutional rights and other civil rights actions related to their incarceration ... [and also that] in all other types of civil actions states may not erect barriers that impede the right of access of incarcerated persons"); *Walters v. Edgar*, 900 F. Supp. 197, 229 (N.D. Ill. 1995) (finding prisoners have no constitutional right to assistance from the state to pursue child custody matters).

25. See *Glover v. Johnson*, 75 F.3d 264, 269 (6th Cir. 1996) (holding female prisoners *not* entitled to legal assistance in child custody matters); *John L. v. Adams*, 969 F.2d 228, 235–36 (6th Cir. 1992) (holding that states do *not* have a duty to provide affirmative assistance to prisoners on civil matters arising under state law).

26. *Morello v. James*, 810 F.2d 344, 346–47 (2d Cir. 1987) ("The right of access to the courts is substantive rather than procedural. Its exercise can be shaped and guided by the state but cannot be obstructed, regardless of the procedural means applied." (citations omitted)); *Ramos v. Lamm*, 639 F.2d 559, 583 (10th Cir. 1980) ("*Bounds* does not hold that inmates have an absolute right to any particular type of legal assistance. The states are still free to choose among a variety of methods or combinations thereof in meeting their constitutional obligations [to provide access to the courts]." (citations omitted)); *Glover v. Johnson*, 75 F.3d 264, 266–67 (6th Cir. 1996) (holding that state could terminate funding for prison legal services program that provided female prisoners with assistance on child care matters because the termination did not violate the right of access to courts).

27. The Supreme Court has pointed out that "while adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts," alternative programs may be acceptable. *Bounds v. Smith*, 430 U.S. 817, 830, 97 S. Ct. 1491, 1499, 52 L. Ed. 2d 72, 84 (1977). The *Bounds* Court suggested some alternatives to having a law library:

"Among the alternatives [to providing law libraries] are the training of inmates as paralegal assistants to work under lawyers' supervision, the use of paraprofessionals and law students ..., the organization of volunteer attorneys through bar associations or other groups, the hiring of lawyers on a part time consultant basis, and the use of full-time staff attorneys, working either in new prison legal assistance organizations or as part of public defender or legal services offices."

The *Bounds* Court did not consider this list of proposed alternatives complete, stating that "a legal access program need not include any particular element we have discussed, and we encourage local experimentation." *Bounds v. Smith*, 430 U.S. 817, 831–32, 97 S. Ct. 1491, 1499–1500, 52 L. Ed. 2d 72, 84–85 (1977).

28. Prison authorities may "replace libraries with some minimal access to legal advice and a system of court-provided forms ... that asked the inmates to provide only the facts and not to attempt any legal analysis." *Lewis v. Casey*, 518 U.S. 343, 352, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618–19 (1996) (citations omitted). See also *Blake v. Berman*, 877 F.2d 145, 146 (1st Cir. 1989) (finding law school clinical program might be considered an adequate alternative to a law library).

29. See *Novak v. Beto*, 453 F.2d 661, 663–64 (5th Cir. 1971) (finding that a prison legal access program consisting of a small "library," permission to use the law books of fellow prisoners, the prison employment of two full time attorneys, and three senior law students employed one summer may not be a sufficient alternative to allowing prisoners to provide some form of legal assistance to one another).

Third, the state's duty to provide you with access to the courts is not limited to those in state prison, but also extends to prisoners in county and city jails,<sup>30</sup> incarcerated juveniles,<sup>31</sup> persons serving brief sentences in local jails, pretrial detainees, and mental patients under commitment. Prisoners who are transferred from one state correctional facility to another or from a state correctional facility to a federal correctional facility retain their right of access to the courts and therefore must be provided some legal access program.<sup>32</sup> However, as in *Blake v. Berman*, the court may find that the state has fulfilled its duty by providing you with persons trained in the law but no legal materials pertaining to the state in which you were convicted.<sup>33</sup> For example, a federal court in New York has suggested that a state might fulfill its obligation to provide access to the courts by either supplying law books or providing legal counsel to state prisoners incarcerated in federal facilities.<sup>34</sup>

Fourth, the extent of a state's duty to assist your access to the courts is unclear. For instance, is it enough for a state to assist only until you are finished writing your complaint? *Lewis* greatly limits the *Bounds* decision by explaining that prison authorities have no duty to enable the prisoner to find or recognize violations of his rights<sup>35</sup> or to "litigate effectively once in court."<sup>36</sup>

Finally, the right of access to the courts applies to prisoners regardless of their financial status.

#### D. What is an Adequate Law Library?

The Supreme Court has never defined exactly what an "adequate" law library is.<sup>37</sup> The American Association of Law Libraries' ("AALL") Special Committee on Law Library Services to Prisoners has a suggested list of resources that should be in a prison law library, but states are not required to follow the AALL's guidelines, and various lower courts have come up with their own list of what a prison law library should contain.<sup>38</sup> Even if a prison has a law library that meets either a circuit's requirements or the AALL's

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30. *See Leeds v. Watson*, 630 F.2d 674, 676–77 (9th Cir. 1980) (finding that there is a question of obstruction when prisoners in a county jail are required to get a court order to have access to a law library close by, and must be accompanied by a guard, and are not given sufficient information concerning these requirements); *Williams v. Leeke*, 584 F.2d 1336, 1340 (4th Cir. 1978) (finding that a situation where a prisoner in a city jail was only allowed access to legal resources 45 minutes a day, three days a week was "on its face a constitutional violation"); *Cruz v. Hauck*, 475 F.2d 475, 476–477 (5th Cir. 1973) (holding that prison regulations must not unreasonably invade the relationship of the prisoner to the courts in a case where the prisoner was in a county jail); *Tuggle v. Barksdale*, 641 F. Supp. 34, 36–37 (W.D. Tenn. 1985) (discussing how the fundamental right of access to the court may be applied in a county jail).

31. *John L. v. Adams*, 969 F.2d 228, 233 (6th Cir. 1992) (holding that incarcerated juveniles have a constitutional right of access to the courts).

32. *Messere v. Fair*, 752 F. Supp. 48, 50 (D. Mass. 1990) (holding that neither a copying service providing Massachusetts law that required specific citations, nor a Connecticut legal assistance program that refused to work on Massachusetts legal materials, provided a prisoner "meaningful access to the Massachusetts courts within the contemplation of *Bounds v. Smith*").

33. *Blake v. Berman*, 877 F.2d 145, 146 (1st Cir. 1989) (finding prison program providing legal assistance instead of full law library satisfied access requirements).

34. *See Kivela v. U.S. Att'y Gen.*, 523 F. Supp. 1321, 1325 (S.D.N.Y. 1981) (holding prisoners' right of access to courts satisfied where state has provided either law books or legal counsel), *aff'd*, 688 F.2d 815 (2d Cir. 1982).

35. *Lewis v. Casey*, 518 U.S. 343, 354, 116 S. Ct. 2174, 2181, 135 L. Ed. 2d 606, 619 (1996) (denying that "the State must enable the prisoner to discover grievances" (emphasis omitted)).

36. The *Lewis* Court restricted the *Bounds* ruling to require states to provide the tools "that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Lewis v. Casey*, 518 U.S. 343, 355, 116 S. Ct. 2174, 2182, 135 L. Ed. 2d 606, 620 (1996).

37. The Court simply stated that prisoner access to the courts should be "adequate, effective, and meaningful" and that "[m]eaningful access" to the courts is the touchstone." *Bounds v. Smith*, 430 U.S. 817, 822–23, 97 S. Ct. 1491, 1495, 52 L. Ed. 2d 72, 79–80 (1977) (quoting *Ross v. Moffitt*, 417 U.S. 600, 611, 615, 94 S. Ct. 2437, 2444, 2446, 41 L. Ed. 2d 341, 351, 353 (1974)).

38. In *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 856 (9th Cir. 1985), the Ninth Circuit held that the following list of books "meets minimum constitutional standards and provides inmates with sufficient access to legal research materials to prepare *pro se* pleadings, appeals, and other legal documents" for Idaho State: Idaho Code; Idaho Reports; United States Reports, from 1962 to present; Federal Reporter Second Series, beginning with volume 273 [1960]; portions of the United States Code Annotated, including Federal Rules of Appellate Procedure and Federal Rules of Evidence; Appellate Rules of the Ninth Circuit Court of Appeals; Local Rules of the United States District Court for the District of Idaho; various Nutshells on procedure, civil rights, criminal law, constitutional law, and legal research; West Pacific Digest Second Series; various volumes of Federal Practice & Procedure; Manual for Complex Litigation Pamphlet Subscription; Federal Practice & Procedure, Criminal Pamphlet; West Federal Practice Digest 2d; Pacific

guidelines, a court may still decide that access to the court has been denied if books are frequently missing<sup>39</sup> or if prisoners cannot use the library.<sup>40</sup> For example, functionally illiterate prisoners,<sup>41</sup> non-English speakers,<sup>42</sup> and the blind cannot use typical law libraries.<sup>43</sup> When prisoners cannot use the law library because of illiteracy, an inability to speak English, or a disability, the state may need to provide a legal assistance program consisting of persons trained in the law in addition to, or in place of, an adequate prison law library.<sup>44</sup>

Generally, the state may limit your access to law libraries and legal materials for security reasons.<sup>45</sup> The Supreme Court held in *Lewis* that, when restrictive practices are justified by security concerns, the restrictive practices will be upheld even if they make court access more difficult.<sup>46</sup> For instance, prison officials may restrict the amount of time an individual prisoner may spend in the library<sup>47</sup> and the amount of time the library is open “in light of legitimate security considerations.”<sup>48</sup> However, the state may not limit your access to law libraries or legal assistance to the point that it functionally blocks access to the courts.<sup>49</sup>

Prison regulations that affect segregated prisoners' access to law libraries, legal materials, and legal assistance have spawned a great deal of litigation. Courts have stopped states from enforcing regulations

Digest Second Series: Federal Supplement, beginning with volume 482 [1980]. In *Tuggle v. Barksdale*, 641 F. Supp. 34, 39 (W.D. Tenn. 1985), the court stated that the law library in this case should include the following: “[all] volumes and titles of U.S.C.A. ... which cover the United States Constitution, and Titles 5, 15, [and] 18 [of the U.S.C.A.] with complete rules of the various courts, [Title] 28 with complete rules, [Title] 42 and the General Index ... Federal Practice and Procedure by Wright and Miller, ... Tennessee Code Annotated Volume 7 and 10 and Criminal Law Library (2-volume set, latest edition)[,] ... [and] Black's Law Dictionary latest edition.” See also *Griffin v. Coughlin*, 743 F. Supp. 1006, 1020–25 (N.D.N.Y. 1990), in which the court detailed and examined the inventory of the Clinton Main law library and stated that it was constitutionally sufficient and provided prisoners with “access to a law book inventory which rises above the constitutional minimum.”

39. *Walters v. Edgar*, 900 F. Supp. 197, 226–27 (N.D. Ill. 1995) (finding that prison's replacement of missing volumes only once a year appeared to be inadequate maintenance of library, and holding that even if prisoners might be responsible for stealing the missing volumes, “each plaintiff's right of access to the courts is individual, and therefore a ... [prisoner] cannot be prevented access by ... theft”).

40. See, e.g., *Cruz v. Hauck*, 627 F.2d 710, 721 (5th Cir. 1980) (“Library books, even if ‘adequate’ in number, cannot provide access to the courts for those persons who do not speak English or who are illiterate.”); *Acevedo v. Forcinito*, 820 F. Supp. 886, 888 (D.N.J. 1993) (“[F]or prisoners who cannot read or understand English, the constitutional right of access to the courts cannot be determined solely by the number of volumes in, or size of, a law library.”).

41. See, e.g., *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 855–56 (9th Cir. 1985) (stating that “[a] book and a library are of no use, in and of themselves, to a prisoner who cannot read”); *U.S. ex rel. Para-Prof. Law Clinic v. Kane*, 656 F. Supp. 1099, 1105–07 (E.D. Pa. 1987) (the elimination of a jailhouse lawyer association, leaving only a law library for prisoners, would leave functionally illiterate prisoners without court access), *aff'd*, 835 F.2d 285 (3d Cir. 1987).

42. See, e.g., *U.S. ex rel. Para-Prof. Law Clinic v. Kane*, 656 F. Supp. 1099, 1106 (E.D. Pa. 1987) (stating that “Spanish-speaking inmates who cannot read or write English are unable to present, with reasonable adequacy, complaints to the courts without assistance”).

43. *Phillips v. United States*, 836 F. Supp. 965, 967–68 (N.D.N.Y. 1993) (stating that a prisoner's blindness may effectively deny him access to the prison law library).

44. *Phillips v. United States*, 836 F. Supp. 965, 967–68 (N.D.N.Y. 1993) (stating that in some circumstances denial of access to a legal assistance program may give rise to a claim of denial of access to the court).

45. *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 858 (9th Cir. 1985) (stating that “[p]rison officials of necessity must regulate the time, manner, and place in which library facilities are used”) (citing *Twyman v. Crips*, 584 F.2d 352, 358 (10th Cir. 1978)).

46. *Lewis v. Casey*, 518 U.S. 343, 361–62, 116 S. Ct. 2174, 2185, 135 L. Ed. 2d 606, 624 (1996) (holding that “delays in receiving legal materials or legal assistance” are “not of constitutional significance, even where they result in actual injury” as long as they come from “prison regulations reasonably related to legitimate penological interests”).

47. *Shango v. Jurich*, 965 F.2d 289, 292–93 (7th Cir. 1992) (holding that restrictions on library hours which included: being closed nights, weekends, and holidays; allowing general population prisoners to use library, optimally for 10 to 11 hours, one day each week; and limiting the library visitation hours for prisoners in segregation and protective custody to about three hours every third to fifth weekday, did not deny prisoners the constitutional right of meaningful access as described in *Bounds*); see also *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 858 (9th Cir. 1985) (stating that library being open a minimum of eleven hours each day was “an adequate amount of total library access time”).

48. *Shango v. Jurich*, 965 F.2d 289, 292 (7th Cir. 1992) (quoting *Caldwell v. Miller*, 790 F.2d 589, 606 (7th Cir. 1986)).

49. See *Straub v. Monge*, 815 F.2d 1467, 1469 (11th Cir. 1987) (stating that “[r]egulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid”) (quoting *Procnunier v. Martinez*, 416 U.S. 396, 419, 94 S. Ct. 1800, 1814, 40 L. Ed. 2d 224 (1974)).

restricting or withholding law books from prisoners in solitary confinement.<sup>50</sup> Several (but not all) courts have criticized “paging systems” where prisoners are given access only to legal books they specifically request.<sup>51</sup> Other request requirements for library access have also been criticized.<sup>52</sup> However, a prison can meet its obligation to provide a segregated prisoner with access to the courts by allowing some (but limited) access to legal materials or some access to legal assistance.<sup>53</sup>

### E. The State’s Duty to Permit Access to Adequate Legal Assistance

While the *Bounds* Court described various legal substitutes for law libraries,<sup>54</sup> it never defined the elements of an adequate legal access program or adequate assistance from persons trained in the law. Therefore, it is not exactly clear what “adequate” means in these contexts, but courts have occasionally described what might qualify.<sup>55</sup> For example, if the state only provides people to assist you who are *not* trained in the law, the court will most likely find that such assistance does not satisfy your right of access to the courts.<sup>56</sup>

Occasionally, the state may decide to fulfill its obligation to provide you with access to courts by allowing other prisoners to assist you.<sup>57</sup> Prisoners who provide other prisoners with legal assistance are called jailhouse lawyers or “writ writers.”<sup>58</sup> In *Johnson v. Avery*, the Supreme Court held that a state could not prevent one prisoner from assisting another prisoner in the preparation of his writ in the absence of reasonable alternatives to such assistance.<sup>59</sup> Therefore, if the state does not provide you with any sort of adequate legal access program, it cannot prohibit you from getting assistance from a jailhouse lawyer.<sup>60</sup>

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50. See, e.g., *Knell v. Bensinger*, 489 F.2d 1014, 1017 (7th Cir. 1973) (holding that, although a prisoner in isolation does not have unlimited rights to use the library, if a prisoner in solitary confinement is prevented from using the library or consulting an advisor to prepare a petition, the courts may find that the prisoner’s right of access was effectively denied); *U.S. ex rel. Para-Prof. Law Clinic v. Kane*, 656 F. Supp. 1099, 1104–05 (E.D. Pa. 1987) (finding prison’s program of providing a small number of cases or books to segregated prisoners was unconstitutional, and prison had a “duty to insure that the ‘opportunity to do legal research [given to segregated prisoners] must be at least the equivalent of the opportunity that is available to an inmate who is permitted to go personally to the prison library’”) (quoting *Wojtczak v. Cuyler*, 480 F. Supp. 1288, 1301 (E.D. Pa. 1979)); *Johnson v. Anderson*, 370 F. Supp. 1373, 1383–85 (D. Del. 1974) (holding prison rules allowing a prisoner in solitary confinement access to only one law book of his choosing on two times during the week violated the prisoner’s due process right), *modified on other grounds*, 420 F. Supp. 845 (D. Del. 1976).

51. The runner system or paging system, “also known as an ‘exact-cite system’ because an inmate must request materials by exact cite,” has been deemed an inadequate legal access system for both segregated and non-segregated prisoners by some courts. *Cannell v. Bradshaw*, 840 F. Supp. 1382, 1389 (D. Or. 1993) (holding paging system alone does not provide adequate access to the courts); *Griffin v. Coughlin*, 743 F. Supp. 1006, 1023 (N.D.N.Y. 1990) (finding book request system deprived protective custody prisoners of meaningful access to the courts).

52. See, e.g., *Cepulonis v. Fair*, 732 F.2d 1, 4 (1st Cir. 1984) (finding requirement that prisoners identify specific volumes sought prior to entering library to be suspect); *Williams v. Leeke*, 584 F.2d 1336, 1339 (4th Cir. 1978) (“It is unrealistic to expect a prisoner to know in advance exactly what materials he needs to consult.”).

53. See, e.g., *Lovell v. Brennan*, 566 F. Supp. 672, 696–97 (D. Me. 1983) (stating that an adequate legal access plan would provide segregated prisoners with access to law books and a prisoner advocate, or other persons trained in the law, depending on the circumstances), *aff’d*, 728 F.2d 560 (1st Cir. 1984).

54. *Bounds v. Smith*, 430 U.S. 817, 831, 97 S. Ct. 1491, 1499–500, 52 L. Ed. 2d 72, 84–85 (1977).

55. In *Gluth v. Kangas*, the Ninth Circuit upheld the district court’s imposition of a training program for prisoner legal assistants. The *Gluth* Court stated that “*Bounds* requires, in the absence of adequate law libraries, some degree of professional or quasi-professional legal assistance to prisoners. Although legal training need not be extensive, *Bounds* does require that inmates be provided the legal assistance of persons with at least some training in the law.” *Gluth v. Kangas*, 951 F.2d 1504, 1511–12 (9th Cir. 1991) (citations omitted). See also *Darby v. Schmalenberger*, 2012 U.S. Dist. LEXIS 160858, at \*19-20 (D.N.D. May 7, 2012) (holding that the inmate has “neither a right to internet access nor a right to file electronically” because the State has a “legitimate penological interest in restricting inmates’ internet access”).

56. *Valentine v. Beyer*, 850 F.2d 951, 956 (3d Cir. 1988) (“An untrained legal research staff is insufficient to safeguard an inmate’s right of access to the courts”) (quoting *Para-Professional Law Clinic v. Kane*, 656 F. Supp. 1099 (E.D. Pa. 1987), *aff’d*, 835 F.2d 285 (3d Cir. 1987), *cert. denied*, 485 U.S. 993, 108 S.Ct. 1302, 99 L. Ed. 2d 511 (1988)).

57. This has also been called “mutual assistance among inmates.” *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969).

58. See *Johnson v. Avery*, 393 U.S. 483, 487–88, 89 S. Ct. 747, 749–50, 21 L. Ed. 2d 718, 722–23 (1969) (discussing role of prisoners who provide legal assistance to other prisoners).

59. *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969) (striking down a prison regulation that forbade prisoners from providing each other with any sort of legal help or advice).

60. *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969) (“[U]nless and until the

Although the state may not be able to prohibit you from getting assistance from a jailhouse lawyer, the state still has the power to reasonably regulate the activities of jailhouse lawyers.<sup>61</sup> For example, the state can require that a jailhouse lawyer get approval from the state prior to helping another prisoner.<sup>62</sup> The state can also prohibit jailhouse lawyers from visiting the cells of the prisoners they are assisting<sup>63</sup> and from receiving payment for their services.<sup>64</sup>

### F. The State's Duty to Provide Materials

The Supreme Court has held that the right of access to the courts includes providing indigent prisoners “with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them.”<sup>65</sup> In other words, even if the state provides an adequate law library or assistance from persons trained in the law, failure to provide you with the materials necessary for drafting, notarizing, and mailing your legal documents may also violate your right to access the courts.

There are a few important things to remember before claiming that you have been denied access to the courts because of the state's refusal to provide you with materials. First, you may not be entitled to all or any of the materials that you request. The courts have held that prisoners may be given pencils instead of the pens mentioned in *Bounds*,<sup>66</sup> that prisoners have no constitutional right to use or possess computers or typewriters,<sup>67</sup> that the state is not required in all cases to provide free photocopying,<sup>68</sup> that the state need

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State provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, it may not validly enforce a regulation ... barring inmates from furnishing such assistance to other prisoners”). However, you have no right to demand the assistance of a specific jailhouse lawyer. *See* *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981) (prisoner had no right to “services of a particular writ writer”); *Prisoners' Legal Ass'n v. Robertson*, 822 F. Supp. 185, 190 (D.N.J. 1993) (holding a prisoner has no “right to the assistance of a particular prisoner”).

61. *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969) (“[T]he State may impose reasonable restrictions and restraints upon the acknowledged propensity of prisoners to abuse both the giving and the seeking of assistance ... for example, by limitations on the time and location of such activities ...”); *Sizemore v. Lee*, 20 F. Supp. 2d 956, 958 (W.D. Va. 1998) (holding the prisoner can be ordered not to engage in writ writing on an individual basis when the security of the prison requires the order and that writ writers were not mandated where the prison provided prisoners with a law library and legal assistance.)

62. *Rivera v. Coughlin*, 210 A.D.2d 543, 543–44, 620 N.Y.S.2d 505, 506 (3d Dept. 1994) (upholding determination of disciplinary violation by a prisoner who sent a letter to the FBI on behalf of another prisoner without receiving prior approval for providing such assistance pursuant to state directives).

63. *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984) (holding that prisoner was not denied effective assistance of counsel where jailhouse lawyers were prohibited from visiting his cell).

64. *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969) (discussing the state's power to regulate jailhouse lawyers in situations where they may be punished for receiving payment for legal assistance); *Henderson v. Ricketts*, 499 F. Supp. 1066, 1069 (D. Colo. 1980) (distinguishing that while right of access to the court cannot be denied but “[c]ompensation to jailhouse lawyers by other inmates may be prohibited”).

65. *Bounds v. Smith*, 430 U.S. 817, 824–25, 97 S. Ct. 1491, 1496, 52 L. Ed. 2d 72, 81 (1977).

66. *Canell v. Bradshaw*, 840 F. Supp. 1382, 1391 (D. Or. 1993) (“Security considerations may ... justify the issuance of two-inch ‘golf’ pencils.”) (citing *Jeffries v. Reed*, 631 F. Supp. 1212, 1215 (E.D. Wash. 1986)). However, the court also stated that if the prisoner in *Canell* had suffered from a medical condition preventing him from drafting legal documents longhand with a two-inch pencil, then “[u]nder those circumstances, a full-sized writing instrument or typewriter might become an indispensable tool for communicating with the court. If prison officials know of such a problem, then their denial of ... [the prisoner's] request could constitute a deprivation of necessary legal supplies unless that action was justified by a sufficient penological interest.” *Canell v. Bradshaw*, 840 F. Supp. 1382, 1391 (D. Or. 1993).

67. *See, e.g., Taylor v. Coughlin*, 29 F.3d 39, 40 (2d Cir. 1994) (finding “no constitutional right to a typewriter as an incident to the right of access to the courts ... [and] no constitutional right to typewriters of a specific memory capacity” (citations omitted)); *Sands v. Lewis*, 886 F.2d 1166, 1169 (9th Cir. 1989) (holding that prisoners have no constitutional right to a typewriter); *Am. Inmate Paralegal Ass'n v. Cline*, 859 F.2d 59, 61 (8th Cir. 1988) (“Prison inmates have no constitutional right of access to a typewriter and prison officials are not required to provide one as long as the prisoner is not denied access to the courts.”) (citation omitted); *Walters v. Edgar*, 900 F. Supp. 197, 229 (N.D. Ill. 1995) (“[P]risons are not required to provide inmates with typewriters.”); *Howard v. Leonardo*, 845 F. Supp. 943, 946 (N.D.N.Y. 1994) (“[I]nmates have no constitutional right to the possession and use of a typewriter ... since prisoners are not prejudiced by filing hand written briefs.”) (citation omitted); *Lehn v. Hartwig*, 13 F. App'x 389, 392 (7th Cir. 2001) (holding that “if prisoners have no constitutional right to a typewriter, they certainly do not have one to a computer”) (citations omitted); *but see Tuggle v. Barksdale*, 641 F. Supp. 34, 38 (W.D. Tenn. 1985) (holding jail must provide a sufficient number of usable typewriters in legal room unless they can be proven to be a security threat).

68. *Gittens v. Sullivan*, 670 F. Supp. 119, 122 (S.D.N.Y. 1987), *aff'd* 848 F.2d 389 (2d Cir. 1988) (finding a provision of carbon paper to prisoners was “sufficient to provide proper access to the courts .... The State should not be forced to provide free access to copier machines for prisoner use when there is an acceptable, less costly substitute.”);

not provide unlimited free postage,<sup>69</sup> and that a notary need not be available at all times.<sup>70</sup> Second, unlike its duty to provide adequate law libraries or assistance from persons trained in the law, the state's duty to provide you with materials may only apply to indigent prisoners. You may need to research the laws and regulations in your state to determine what the accepted standard for indigence is in your correctional facility and in your state.<sup>71</sup> Third, your right of access the courts may be balanced against the state's "legitimate interests, including budgetary concerns."<sup>72</sup> In other words, a court could determine that the state's duty to provide you with materials is limited by state budgetary or security concerns. Fourth, the state's duty to assist you may only apply to habeas corpus petitions and civil rights actions involving constitutional claims.<sup>73</sup>

Finally, when you sue on the basis of the state's refusal to provide necessary materials, you also need to show that you suffered an "actual injury" as a direct result of that refusal. Because standards vary depending on where you are, you will need to research this "actual injury" requirement in your state and circuit. *Canell v. Bradshaw* is an example of one state's particular requirements. In *Canell*, a prisoner claimed that he was denied access to the courts because the state would not make photocopies for him. The court stated that he could prove that the state had deprived him of meaningful access to the courts, but in order to do so he would have to demonstrate: (1) that he wanted to copy specific documents that could not be duplicated longhand, (2) that those documents were to be filed with the court as part of a specific document, (3) that he had advised [prison] officials of this need, (4) that his request was denied in accordance with a policy promulgated by the defendants, (5) that those documents were relevant and necessary to his particular case, and (6) that the documents had to be left out of the filing as a consequence of the prison officials' refusal to provide photocopying services.<sup>74</sup>

Remember, if you are going to pursue this type of action, you must bring a Section 1983 or a *Bivens* claim. Please see Chapter 16 of the *JLM* for more details on these claims.

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Dugar v. Coughlin, 613 F. Supp. 849, 854 (S.D.N.Y. 1985) (noting prisons may make prisoners pay for photocopies, as this is a "reasonable balance of the legitimate interests of both prisoners and the State"); *but see* Canell v. Bradshaw, 840 F. Supp. 1382, 1392 (D. Or. 1993) (holding that prisoners clearly have an established right to photocopying under certain limited circumstances).

69. Gittens v. Sullivan, 670 F. Supp. 119, 123 (S.D.N.Y. 1987) (holding that a provision of \$1.10 per week for stamps and an additional advance of \$36 for legal mailings to indigent prisoner satisfied the constitutional minimum for access to the courts); Dugar v. Coughlin, 613 F. Supp. 849, 853 (S.D.N.Y. 1985) (upholding the directive providing that prisoners could mail five one-ounce letters per week free of charge but would have to pay for any mail weighing more than one ounce, or in excess of five one-ounce letters in one week, because "a prisoner's constitutional right of access to the courts ... does not require that prisoners be provided with unlimited free postage"); *see also* Pacheco v. Commissioner, 897 F. Supp. 671, 681 (N.D.N.Y. 1995) (Department of Correctional Services's refusal to advance postage to prisoner for legal mail did not violate inmate's right of access to courts because prisoner could not show that the delay interfered with an upcoming legal action.).

70. The courts have held that correctional facilities must provide prisoners with notaries public. Tuggle v. Barksdale, 641 F. Supp. 34, 39–40 (W.D. Tenn. 1985) (holding the prison "must continue to afford notary publics for all inmates"). Correctional facilities, however, need not make the notary services available five days a week. Dugar v. Coughlin, 613 F. Supp. 849, 854 (S.D.N.Y. 1985) (holding that prisoners do not have a constitutional right to notary services five days a week).

71. *See, e.g.*, Gluth v. Kangas, 951 F.2d 1504, 1508–09 (9th Cir. 1991) (holding that the Department of Correction's indigency policy, which only allowed a prisoner to apply for indigency classification if his prison account balance was less than \$12.00 was unconstitutional because it forced prisoners to choose between purchasing the mandatory hygienic supplies and essential legal supplies, and that an indigency standard of \$46 was more appropriate).

72. *See* Gittens v. Sullivan, 670 F. Supp. 119, 122 (S.D.N.Y. 1987) ("The State should not be forced to provide free access to copier machines for prisoner use when there is an acceptable, less costly substitute."); Dugar v. Coughlin, 613 F. Supp. 849, 853–54 (S.D.N.Y. 1985) (holding that making prisoners pay for photocopies is a "reasonable balance of the legitimate interests of both prisoners and the State").

73. *See* Lewis v. Casey, 518 U.S. 343, 354–55, 116 S. Ct. 2174, 2181–82, 135 L. Ed. 2d 606, 620 (1996) (holding that *Bounds* only requires states to provide tools that "inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.").

74. Canell v. Bradshaw, 840 F. Supp. 1382, 1392 (D. Or. 1993), *aff'd*, 97 F.3d 1458 (9th Cir. 1996). *Compare* Woodward v. Subia, CIV S-07-498 JAMKJMP, 2008 WL 4196692 (E.D. Cal. 2008) (holding that the confiscation of the prisoner's computer that stored materials which the prisoner claimed would set him free was too vague to demonstrate actual injury).

### G. The State's Duty in the Internet Age

Internet and database search technologies have revolutionized legal research in recent decades and dramatically increased the accessibility of court documents and legal knowledge. Despite this, courts have not recognized a right to use these tools.<sup>75</sup>

### H. Conclusion

In this Chapter, you have learned that if you (1) exhaust your prison's administrative remedies for getting your complaint heard, (2) are not able to go to court or are hindered in pursuit of your claim by state interference, and (3) suffer an injury as a result of the state's interference or denial of your right to access the courts, you may pursue a claim against the state. You can request that the state provide you with access to an adequate law library, adequate assistance from someone trained in the law, or some other legal access program. A state can regulate its jails and prisons for the purpose of discipline and safety, but cannot completely deny a prisoner's right of access to the courts.

Pursuing a claim has several requirements. First, you must show that you suffered an actual injury from the state's failure to provide you with an adequate opportunity to litigate your claim.<sup>76</sup> Second, some state courts have held that the state only needs to provide you with an adequate law library or legal access program if you want to pursue federal habeas corpus petitions or state or federal civil rights actions. Third, the state, not you, decides what type of legal access you will get, though it must provide you meaningful access to the courts.<sup>77</sup> Fourth, the state must adhere to the requirements laid out in this Chapter whether or not you are considered indigent. Finally, the state can place reasonable limits on your ability to use the library or other legal access programs.

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74. *See, e.g.*, *Darby v. Schmalenberger*, 1:12-CV-033, 2012 WL 5471881 (D.N.D. May 7, 2012) (holding that the inmate has "neither right to internet access nor a right to file electronically" because the State has a "legitimate penological interest in restricting inmates' internet access").

76. *See Lewis v. Casey*, 518 U.S. 343, 350–51, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 617–18 (1996) (explaining that there is no general right to a law library or legal assistance except as they relate to a prisoner's actual ability to access the courts).

77. *Williams v. Leeke*, 584 F.2d 1336, 1339 (4th Cir. 1978) ("Under *Bounds*, the state is duty bound to assure prisoners some form of meaningful access to the courts. But states remain free to satisfy that duty in a variety of ways.").

## APPENDIX A

### DIRECTORY OF SELECTED LAW LIBRARIES OFFERING SERVICES TO PRISONERS AND OF ONLINE LEGAL RESOURCES\*\*

Section A covers national online resources. Section B covers circuit specific library and online resources. Lastly, Section C covers state specific library and online resources. Because the sections are divided by region, the new order should be helpful to your research. For example, if you are interested in state resources, you can refer to Section C.

#### A. General Online Resources

**Cornell University Law School Legal Information Institute (LII):** <http://www.law.cornell.edu>

LII is a great free online legal resource of federal and state statutes, summaries of laws, a legal encyclopedia, federal cases, and more. The LII is really good for finding statutes, the meaning of legal terms, and summaries of laws. You may have to register to access some information, but registration is free. To register, you will have to use an email for the system that will verify that you are a user (i.e. email confirmation).

**FindLaw:** <http://www.findlaw.com>

FindLaw is a good resource for learning about various areas of the law. There are over a dozen subjects, including criminal law, DUI, marriage/family and divorce law, civil rights, and more. The site provides a detailed and straightforward description of these areas of the law. FindLaw also has a legal forum, blog, current events section, and a question and answer section.

**Lexis Web:** <http://www.lexisweb.com/>

Lexis Web provides a range of material on legal matters, but the majority of the content requires registration at a fee.

**Wikipedia:** <http://www.wikipedia.org>

Wikipedia is a general online resource that also has information about legal issues. Wikipedia offers a broad range of information, including case summaries, case citations, history about the case or legal topic, definitions of legal terms, and more. Wikipedia provides straightforward information about some issues that may be more complicated to understand. It is important to remember that some of the information on Wikipedia is provided by the general public, so the information on the website may not always be correct. It would be a good idea to double-check the information on Wikipedia with another source.

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\*\* These are the libraries or facilities that provide materials in states where the most *JLMs* are sold. If you live in a different state than those listed, you should contact law school or governmental law libraries in your state.

## B. Federal Cases Online

**PACER:** <http://www.pacer.gov/>

[pacer@psc.uscourts.gov](mailto:pacer@psc.uscourts.gov)

PACER Service Center Number: (800) 676-6856

Public Access to Court Electronic Records (PACER) is a centralized electronic service that provides public access to information about cases that have been filed in the federal courts. PACER allows public users, including prisoners, to obtain information about cases filed in federal appellate, district, and bankruptcy courts. In addition to opinions, PACER includes case docket information and may provide briefs and other filings from the parties.

PACER is not a free service, and to use it, users must register online to receive a login and password. Fees for viewing cases online are \$.10 per page.

**The Supreme Court:** <http://www.supremecourt.gov/opinions/opinions.aspx>

The Supreme Court Website is a limited resource. The website contains a searchable database that is limited to opinions rendered since 2007. For an entire list of cases, you can click on the "opinions" link. It also contains PDF versions of the complete volumes of cases dating back to 1991.

**D.C. Circuit:** <http://www.cadc.uscourts.gov/internet/opinions.nsf>

The D.C. Circuit's official website provides all published D.C. Circuit opinions and summary orders and selected unpublished decisions since 1997 at no cost.

**1st Circuit:** <http://www.ca1.uscourts.gov/?content=opinions/main.php>

The First Circuit's official website provides First Circuit opinions and summary orders from 1992 at no cost. Opinions and orders before 1999 are available in HTML form only. Later opinions may be downloaded in PDF or WordPerfect form.

**2nd Circuit:** <http://www.ca2.uscourts.gov/decisions.html>

The Second Circuit's official website provides Second Circuit opinions and summary orders from 2002 at no cost.

**3rd Circuit:** <http://www.ca3.uscourts.gov/search-opinions>

The Third Circuit's official website provides Third Circuit opinions and summary orders from 1994 at no cost.

**4th Circuit:** <http://pacer.ca4.uscourts.gov/opinions/opinion.htm>

The Fourth Circuit's official website provides Fourth Circuit opinions and summary orders from 1996 at no cost.

**5th Circuit:** <http://www.ca5.uscourts.gov/Opinions.aspx>

The Fifth Circuit's official website provides Fifth Circuit opinions and summary orders from 1992 at no cost. The opinions are also available in a searchable database and for bulk download.

Keyword Search: <http://www.ca5.uscourts.gov:8081>

Bulk Download Server: <ftp://opinions.ca5.uscourts.gov> (Note: Accessing download database requires accessing an FTP server. This may not be available due to restrictions on your internet access.)

**6th Circuit:** <http://www.ca6.uscourts.gov/opinions/opinion.php>

The Sixth Circuit's official website provides published Sixth Circuit opinions from 2000 and unpublished opinions from 2004 at no cost. The opinions are also available in a searchable database and for bulk download.

**7th Circuit: <http://media.ca7.uscourts.gov/opinion.html>**

The Seventh Circuit's official website provides access to both published and unpublished opinions from 1999, as well as selected unpublished court orders, oral arguments, and other court documents from that period. The court's primary database must be searched by docket number. The court's library provides a complete listing of all decisions dating from 2007, along with a series of relevant terms for each decision on a single webpage. (<http://www.lb7.uscourts.gov/ArchivedURLs.html>). The court recommends using a web browser's "Find" function to perform a keyword search of these opinions. To use this function, press "Control F" (when using a Windows computer) or "Command F" (when using an Apple computer).

**8th Circuit: <http://www.ca8.uscourts.gov/all-opinions>**

The Eighth Circuit's official website provides all published Eighth Circuit opinions and summary orders, and selected unpublished decisions from 1995 at no cost. The database is searchable by docket number, keyword, party name, and attorney name. The website also provide Mp3 audio recordings of all oral arguments from 2009. To find an oral argument, use the "One Stop Search" option.

**9th Circuit: <http://www.ca9.uscourts.gov/opinions/>**

The Ninth Circuit's official website provides all published Ninth Circuit opinions and summary orders from 1995 and unpublished opinions from 2002 at no cost. For published opinions prior to January 3, 2005, you can contact the clerk's office at (413) 355-8000.

Published Opinions (2005–Present): <http://www.ca9.uscourts.gov/opinions/>

Unpublished Opinions (November 10, 2009–Present): <http://www.ca9.uscourts.gov/memoranda/>

Unpublished Opinions (December 8, 2008–November 10, 2009):

[http://www.ca9.uscourts.gov/memoranda\\_archive/](http://www.ca9.uscourts.gov/memoranda_archive/)

For unpublished opinions prior to December 8, 2008, you may call the clerk's office at (413) 355-8000 or send a request via email to [CA09Public\\_Information@ca9.uscourts.gov](mailto:CA09Public_Information@ca9.uscourts.gov).

**10th Circuit: <http://www.ca10.uscourts.gov/clerk/opinions.php>**

The Tenth Circuit's official website provides all published opinions from 1995 and all unpublished opinions from 1996 at no cost. The database is searchable by date, docket number, and keyword.

**11th Circuit: <http://www.ca11.uscourts.gov/opinions>**

The Eighth Circuit's official website provides all published Eighth Circuit opinions and summary orders from 1995 and all unpublished decisions from 2005 at no cost.

Published Opinions: <http://www.ca11.uscourts.gov/published-opinions>

Unpublished Opinions: <http://www.ca11.uscourts.gov/unpublished-opinions>

## C. Online and Library Resources By State

If your state is not listed you or someone you know should check the Southern Center for Human Rights' webpage (<http://www.schr.org>) for organizations providing legal materials to prisoners.

### CALIFORNIA

**Internet Resources:**

Many decisions (including all decisions published or ordered for publication) of California's appellate courts are available online. Some California Superior Court decisions are available online.

A note about the California court system:

- California's trial court is the California Superior Court.

- California's appellate courts are the California Supreme Court and the California Courts of Appeal. The California Courts of Appeal is California's second highest court and hears appeals from the California Superior Court. Appeals from any California Court of Appeal are heard by the California Supreme Court, California's highest court that makes binding decisions over all California lower courts.

### (1) California Appellate Decisions

**The California Official Reports:** <http://www.lexisnexis.com/clients/CACourts/>

All published California state appellate court decisions are available online at no cost. LexisNexis, the official publisher of the California Reports, provides access to opinions from 1850 to the present. The California Official Reports website is updated monthly, and generally decisions are made available online within sixty days of filing.

**Appellate Slip Opinions:** <http://www.courts.ca.gov/opinions.htm>

Slip opinions, which are uncorrected California opinions as filed, are available for free online at the California Courts official website. Slip opinions are opinions that have not been officially published in the California Reports but have been ordered to be published. Slip opinions are only available for recent matters – opinions that have been filed within the last 120 days. Where the option is available, it is generally preferable to cite to California Reports, as these include corrections and other changes that will not be incorporated into the slip opinions.

**Unpublished Appellate Opinions:** <http://www.courts.ca.gov/opinions-nonpub.htm>

Unpublished California appellate opinions are available online for up to 60 days on the California Courts official website.

### (2) California Trial Court Decisions

**The Guide to California Court Records:** <http://www.courtreference.com/California-Courts.htm>

Some California Superior Court opinions as well as docket information can be found online at the Guide to California Courts website.

#### Library Resources:

**Oakland**                      **Alameda County Law Library**  
 125 Twelfth Street  
 Oakland, CA 94607  
 (510) 208-4832  
<http://www.acgov.org/law/index.htm>

Serves Alameda County prisoners. Photocopies are \$1/page plus a \$10 handling fee, tax, postage and prepayment. Emailed materials are \$15/citation. The library requires correct citations and will not conduct legal research. Additional details about document delivery:  
<http://www.acgov.org/law/feeservices/docdelivery.htm>

**Los Angeles**                **Los Angeles County Law Library**  
 301 W. First Street  
 Los Angeles, CA 90012  
 (213) 785-2529  
<http://www.lalawlibrary.org/>

This library serves prisoners and other institution residents in California. No material is loaned. Correct citations are required and limited reference work is done. Prepayment is required. A debit account is formed with the library, and the library charges the debit account. The library emails or faxes the requested material.

Photocopies: \$12.00 transaction charge per document for the first 25 pages (includes postage and tax) and sales tax if applicable. \$0.25 per page over first 25 pages. Ask to speak to Christine.

Payee: Los Angeles County Law Library

**San Diego** **San Diego County Public Law Library**  
1105 Front Street  
San Diego, CA 92101-3904  
(619) 531-3900  
<http://sandiegolawlibrary.org/>

This library serves prisoners and other institutional residents located at institutions in California. It lends materials to prisoners of San Diego County Jail under procedures set up by the Sheriff under a federal court consent decree. Loan periods are 1, 3, or 7 days. Correct citations are required.

Photocopies: For mail, email, and local fax (i.e. San Diego area code) the price is \$15 for a package of 20 pages or less. For every additional page over 20 pages, the rate is \$1.25 per page. If the fax is long distance (an area code outside of San Diego) the price is \$30 for a group of 20 pages or less, and for every additional page the price is \$2.25. On the website, click on a link called "document request" that will provide a document delivery form on which you can make your document requests.

Payee: San Diego County Public Law Library

**Santa Clara** **Heafey Law Library**  
Attn: Prisoner requests  
Santa Clara University  
500 El Camino Real  
Santa Clara, CA 95053  
(408) 554-4452  
<http://law.scu.edu/library/>

The Heafey Law Library no longer provides services to individual prisoners. Interlibrary loan is the only way this library can offer material. The material is provided only to the prisoner libraries. However, the material that can be requested is limited. Heafey Law Library does not provide the following material: case reporters (including case law), statutes, journals, and treatises.

**Ventura** **Ventura County Law Library**  
800 South Victoria Avenue  
Ventura, CA 93009-2020  
(805) 642-8982  
<http://vencolawlib.org>

This library serves prisoners in California. Correct citations are required and only material that is available is provided. Material includes cases, statutes, and journal articles.

Photocopies: First 3 pages are free. Afterward the fee is \$0.25 per page, plus postage. Prepayment by cash or check is required; limit of 20 pages per letter.

Payee: Ventura County Law Library

## LOUISIANA

### Internet Resources:

#### (1) Louisiana Appellate Decisions and Supreme Court Decisions

##### Published Appellate Opinions:

The Louisiana Court of Appeals is made up of five circuit courts. Appellate opinions from each of the five circuits are accessible through the links provided on the website. Additionally, access to Supreme Court materials is available through a hyperlink on the site.

Louisiana Supreme Court: <http://www.lasc.org/>

Louisiana First Circuit Court of Appeal: <http://www.la-fcca.org/>

Louisiana Second Circuit Court of Appeal: <http://www.la2nd.org/>

Louisiana Third Circuit Court of Appeal: <http://www.la3circuit.org/>

Louisiana Fourth Circuit Court of Appeal: <http://www.la4th.org/>

Louisiana Fifth Circuit Court of Appeal: <http://www.fifthcircuit.org/>

#### (2) Louisiana Trial Court Decisions:

### Library Resources:

Statewide: State Library of Louisiana  
P.O. Box 131  
Baton Rouge, LA 70821-0131  
(225) 342-4913  
<http://www.state.lib.la.us/about-the-state-library/policies/interlibrary-loan-policy>

Serves only in-state institutions. No material is loaned. Photocopies are made by request.

## NEW JERSEY

### Internet Resources:

#### (1) New Jersey Appellate Decisions and Supreme Court Decisions

##### Published Appellate Opinions: <http://njlaw.rutgers.edu/collections/courts/>

The Rutgers University Law Library maintains a free online database containing all Supreme Court and published appellate level opinions issued since 1995. Additionally, the database contains all unpublished appellate level opinions issued since 2005. Library staff may be contacted via email to assist users.

Library Contact: [courtweb@camlaw.rutgers.edu](mailto:courtweb@camlaw.rutgers.edu)

##### Recent Appellate Opinions: <http://www.judiciary.state.nj.us/opinions/index.htm>

All appellate opinions are available on the New Jersey Judiciary official website for ten business days after filing. After that period, the decisions will be available in the Rutgers University database.

##### Unpublished Appellate Opinions: <http://njlaw.rutgers.edu/collections/courts/>

Unpublished appellate decisions filed after September 20, 2005 are available in the Rutgers University database. Unpublished decisions filed before that date are maintained by the Appellate Division and cannot be accessed electronically.

Appellate Division Contact: (609) 984-5761

#### (2) New Jersey Trial Court Decisions

**Recent Trial Court Decisions:** <http://www.judiciary.state.nj.us/decisions/index.htm>

Certain trial court opinions are made available for six weeks on the New Jersey Judiciary official website. This service is provided for the convenience of parties involved in the cases.

### **Library Resources:**

**Newark**                      **Seton Hall Law School, Rodino Law Library**  
One Newark Center  
1109 Raymond Boulevard  
Newark, N.J. 07102  
(973) 642-8720  
<http://law.shu.edu/library/>

Only provides documents via email or fax. Specific citations are required. Note that there is no formal document delivery service at this library and the librarians that receive the request have the discretion to decide whether to fulfill the request. There are no fees.

**Trenton**                      **New Jersey State Library**  
185 West State Street  
Trenton, N.J. 08608  
(609) 278-2640  
<http://www.njstatelib.org/>

For in-state, the fees are as follows: \$3 per citation plus \$0.50 per page. The minimum fee is \$5.00. For out-of-state requests, the fees are \$3 per citation plus \$1 per page. The minimum fee is \$10. For both in-state and out-of-state, the maximum pages per request are 100 pages. The material will be emailed to the appropriate prison administrator. There are no additional fees for emailing. The library does not work directly with inmates. Instead, inmates must make their requests to the appropriate prison administrator, who will then make that request with the library on inmates' behalfs.

## **NEW YORK**

### **Internet Resources:**

Many decisions from New York State's trial and appellate courts are available online.

A note about the New York State court system:

- The New York State Unified Court System is, like other states, divided into three levels, but the terminology used for these three levels differs from other states.
- The New York Supreme Court is New York State's trial court (the lowest level court). It is the primary civil court in New York and it also hears criminal prosecutions of felonies. The New York Supreme Court, Appellate Division is New York's second highest court and hears appeals from the New York Supreme Court. The New York Court of Appeals is New York State's highest court and makes decisions that bind all of New York's lower Courts.

### **(1) New York Appellate Courts**

**New York Official Reports Decisions:** <http://www.courts.state.ny.us/reporter/Decisions.htm>

Provides free access New York Supreme Court, Appellate Division and New York Court of Appeals decisions and motions. Coverage begins from roughly 2003, depending on the type of filing being searched.

**New York Official Reports Services:** <http://government.westlaw.com/nyofficial/>

Provides free access to all decisions appellate decisions published in the New York Official Reports from 1980. Has select coverage of landmark and other notable decisions prior to 1980.

## (2) New York Trial Courts

**New York Supreme Court:** <http://decisions.courts.state.ny.us/search/query3.asp>

Provides New York Supreme Court Civil and Criminal Cases, from select counties, from 2001.

### Library Resources:

#### Albany

#### **Prisoner Services Project—New York State Library**

Cultural Education Center

222 Madison Av.

Albany, NY 12230

(518) 474-5355

<http://www.nysl.nysed.gov/index.html>

Serves only prisoners located at institutions operated by New York State Department of Correctional Services. To access library services, you should send a letter to the library and the library will respond by sending you the proper forms. Some prison libraries already have these forms available, so it is best to check with your prison library first. No material is loaned and all material must be law-related. Correct citations are required and limited reference work is done, and no legal advice is given. If the requested material is covered by the project (e.g. case law, statutes, etc.), there is no charge for photocopies. But if the material is not covered, the following fees apply: \$10 for every group of 10 pages. (For example, if you requested 11 pages, the fee is \$20.) Prepayment is required.

## VIRGINIA

### Internet Resources:

#### (1) Virginia Appellate Decisions and Supreme Court Decisions:

#### **Opinions Search – Supreme Court of Virginia and Court of Appeals of Virginia:**

<http://www.courts.state.va.us/search/textopinions.html>

Provides Supreme Court of Virginia decisions from 6/9/95, published Court of Appeals of Virginia opinions from 5/2/95, and unpublished Court of Appeals of Virginia opinions from 3/5/02.

#### (2) Virginia Trial Court Decisions:

#### **District Court Decisions:**

Provides free access to Virginia Trial Court decisions for both civil and criminal cases.

### Library Resources:

#### Williamsburg

#### **Wolf Law Library**

William and Mary School of Law

P.O. Box 8795

Williamsburg, VA 23187-8795

(757) 221-3255

<http://law.wm.edu/library/home/index.php>

The library will provide cases if correct citations are given. No legal advice is given. In addition, prisoners may borrow certain materials that circulate (books and treatises, not statutes or case reporters) through inter-library loan if their prison library has an official ILL program. Alternatively, photocopies of documents can be used.

Photocopies: Prepayment is required. \$10 per citation plus \$.15 per page. \$.30 per page for microforms. Payment is by check, money order, or cash.

Payee: Wolf Law Library

## TEXAS

### Internet Resources:

**(1) Texas Appellate Decisions and Supreme Court Decisions:**

<http://www.search.txcourts.gov/CaseSearch.aspx?coa=coa01>

Provides free access to Texas Supreme Court and Courts of Appeals decisions.

**(2) Texas Trial Court Decisions:**

### Library Resources:

**Lubbock**                    **Texas Tech University Law Library**  
1802 Hartford Avenue  
Lubbock, Texas 79409-0004  
(806) 742-3957  
<http://www.law.ttu.edu/lawlibrary/>

Photocopies: Specific citations only. \$15 per citation plus \$.50 per page. Prepayment is required. Only money orders are accepted. To submit a request, send a letter to the address above with the specific citations. The library will send an invoice with the total cost. After you send the money order, the documents will be delivered.

Payee: Texas Tech University Law Library