

Inmate Access to Legal Resources & Materials —

How Do We Provide Inmates Access to the Courts?

The question posed in this article's title has challenged correctional administrators for decades. Just when most thought they had it right, the U.S. Supreme Court in 1996 handed down their landmark decision in *Lewis v. Casey*. In that decision, the justices reviewed the "meaningful access to the courts" requirement established in their prior decision in *Bounds v. Smith*. During that same period, Congress passed the Prison Litigation Reform Act. This act places strict regulations on inmate litigation, the most notable being that a prisoner must exhaust all available administrative remedies before filing suit. These two actions together have altered the way law library programs are implemented and maintained today.

We must recognize that there is no one perfect law library access program. Unfortunately, *Lewis* did not provide detailed guidelines for one. However, *Lewis* did define what rights must be provided, and, for corrections professionals who were awaiting change, *Lewis* did not disappoint. The justices clarified that there is no constitutional right to a law library, only a "right of access to the courts." Almost immediately, many administrators across the country took this decision as a green light to eliminate their law libraries altogether.

Such an extreme action should not be taken lightly:

- A recent nationwide survey among large jails showed that 41% have had litigation regarding law library services.
- Even more eye-opening is the fact that 32% of the agencies reporting were under court orders on the issue.

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History of *Lewis v. Casey*

The right of access to the courts for inmates was established in 1977 in *Bounds v. Smith*:

[T]he 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.

Lewis v. Casey was originally a class action lawsuit brought by Arizona state prisoners. Following a 3-month bench trial, the district court held that the plaintiffs had been denied access to the courts and ordered system-wide changes. The court identified a number of systemic deficiencies related to the law libraries system and found specific prison practices deficient in regard to illiterate prisoners and prisoners in "lockdown."

In 1996 the U.S. Supreme Court reversed the lower court's judgment and held that the "success of [the plaintiffs'] systemic challenge" to the adequacy of the Arizona prison law libraries "was dependent on their ability to show widespread actual injury, and that the court's failure to identify anything more than isolated instances of actual injury renders its findings of a systematic *Bounds* violation invalid." The Court reasoned that "*Bounds* did not create an abstract, freestanding right to a law library or legal assistance," and therefore, "an inmate cannot establish relevant actual injury simply by establishing that a prison's law library or legal assistance program is subpar in some theoretical sense." Rather, "the inmate must...go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim."

Establishing a *Bounds* injury requirement is no easy task for inmates. The *Lewis* court explained, "[T]he *Bounds* injury requirement for an inmate's claim of denial of access to the courts is not satisfied by just any type of frustrated legal claim; *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; rather, the tools it requires to be provided are those that inmates need in order to attack their sentences, directly or collaterally, and in order to challenge conditions of confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration."

As might be expected, the core holding of *Lewis*, and particularly the actual injury requirement, now present a significant impediment to an inmate's effort to prove deprivation of the right of access to the courts. Does this mean we can totally eliminate inmates' access to legal resources and materials? Of course that answer is no, but we can and should continue to improve the legal access services we already provide.

ACA Legal Access Standards

The American Correctional Association (ACA) has dealt with this sensitive issue for many years and has adopted the following legal access standards for agencies seeking accreditation:

Access to Courts: 3-ALDF-3E-01 / *Written policy, procedure, and practice ensure the right of the inmate to have access to courts.*

Comments: The right of access to the courts minimally provides that inmates have the right to present any issue, including the following: challenging the legality of the conviction or confinement; seeking redress for illegal conditions or treatment while under correctional control; pursuing remedies in connection with civil legal problems; and asserting against correctional or other government authority any other rights protected by constitutional or statutory provisions or common law. Inmates seeking relief are not subjected to reprisals or penalties because of the decision to seek such relief.

Access to Counsel: 3-ALDF-3E-02 / *Written policy, procedure, and practice ensure and facilitate inmate access to counsel and assist in making confidential contact with attorneys and their authorized representatives; such contact includes, but is not limited to, telephone communications, uncensored correspondence, and visits.*

Comments: Facility authorities should assist inmates in making confidential contact with attorneys and their authorized representatives; these representatives may include law students, special investigators, lay counsel, or other persons who have a legitimate connection with the legal issue being pursued. Provision should be made for visits during normal facility hours, uncensored correspondence, telephone communications, and after-hours visits requested because of special circumstances.

Access to Law Library: 3-ALDF-3E-03 / *Written policy, procedure, and practice provide that inmates have access to legal materials if there is not adequate free legal assistance to help them with criminal, civil, and administrative legal matters.*

Inmates have access to paper, typewriters or typing service, and other supplies and services related to legal matters.

American Association of Law Libraries

The American Association of Law Libraries (AALL) has been in existence since 1906, but, surprisingly, many in the corrections community have never heard of it. The organization has been committed to serving inmates and prison law libraries since the early 1970s. To fulfill this mission, it has undertaken a variety of projects, including publications, consultation activities, and official representation for related organizations.

The AALL publication, *Recommended Collections for Prison and Jail Law Libraries*, has frequently been cited in litigation focusing on inmate access to the courts. In addition, the association has a standing special interest committee on Law Library Service to Institutional Residents (www.aallnet.org/sis/srsis/lisirhome.html) and an online database where institution residents can locate local law library services (www.aallnet.org/sis/srsis/lisp/).

American Civil Liberties Union

Mention the American Civil Liberties Union (ACLU), and many correctional administrators become defensive. I must admit that was my reaction when AALL invited my colleague and me to speak on a program panel that included David Fathi, Staff Counsel for the ACLU National Prison Project (www.aclu.org/Prisons/PrisonsMain.cfm). Even more intimidating was the fact that Mr. Fathi was co-counsel for the plaintiffs in the *Lewis v. Casey* case. The Orange County Corrections Department (OCCD) law library system was to be explained and discussed in this program.

The program's main topic was "Prison Law Librarians and AALL, Five Years After *Lewis v. Casey*." Though many challenging issues and topics were discussed, Fathi confirmed our position that OCCD was moving in the right direction. In his appreciation letter to OCCD Chief Timothy P. Ryan, he stated, "The hands-on, real world perspective Officers Mark Cacho and William Jackson brought to the panel was extremely valuable. I was impressed both with the law library program, and by the knowledge, initiative, and dedication shown by these officers. I hope that they and their program will continue to enjoy your full support."

Elements of an Exemplary Law Library Access Program

An exemplary inmate law library access program must demonstrate compliance with the following principles:

- The program must provide inmates the tools necessary to challenge the legality of their conviction or confinement; seek redress for illegal conditions or treatment; and pursue remedies to address their civil legal matters.
- The program must have a clear and specific purpose, stated in a formal mission statement.
- The program must have specific and measurable goals and objectives.
- The program must be effective, efficient, and creative in addressing the legal information needs of inmates.

In addition, if ACA accreditation is desired, then ACA's legal access standards must be adopted into the agency's policies and procedures.

OCCD's Law Library Access Program

The mission of the Orange County Corrections Department Law Library is to secure all offenders' constitutional right to access the courts by providing a law library access program that enhances meaningful access to legal resources, materials, and services.

After the *Lewis* decision, OCCD modified its law library program into what it is today. It is a centralized system with one extensive legal collection at the main facility. All satellite facilities and inmates who are classified special risk are served via the Inmate Legal Material Request Procedure. Three certified correctional officers with formal legal training serve a population of approximately 3,500 inmates.

By using mediated electronic and online research, the law library provides current, accurate, legal information in a cost-effective and efficient manner. This approach reduces the expense in terms of both money and space for purchasing most new court reports. Our program provides timely service to all inmates, regardless of their location, and eliminates the need to establish extensive legal collections at every residential facility.

The law library is a member of AALL and is actively involved with AALL's Law Library Service to Institutional Residents special interest committee. This membership and committee affiliation give our staff an opportunity to gain invaluable knowledge, skills, and resources necessary to fulfill our mission. Attending AALL's annual conference also gives us exposure to the latest technologies and trends in legal information gathering. The expertise we acquire helps to reduce our agency's costs. It also allows us to bring back vital legal information resources for the entire department, not just the inmate population. These and other activities assist in creating an environment that enhances an inmate's access to the courts, while also allowing for a meaningful and educational experience for classified offenders who choose to visit the law library physically. The law library has numerous self-help materials, and a number of legal software companies have recruited OCCD to enroll in their pilot programs relating to inmate legal research.

For example, one new product is the law library research unit, TSTLL, developed by Touch Sonic Technologies, Inc. (www.touchsonic.com/index.php). This unique technology includes a hardware unit and a complete system of monitoring, maintenance, and service to deliver a complete law library to inmates. The key is the use of a shatter-proof touch screen that allows users, even those with no computer experience, to research every type of legal data that must be available to inmates. This type of law library investment may not meet your agency's needs, but it is an example of the valuable tools that are available.

The Value of an Investment

You may assume that an exemplary law library program is beyond your agency's available budget. At OCCD we have found that since we modified and implemented our program, the law library budget is now less than when the library first began operations. This cost reduction has resulted from applying the efficiencies learned through our various activities.

As mentioned earlier, there is no textbook formula for a perfect and flawless law library program. What works for one agency may not work for others. However, correctional administrators who are committed to supporting a progressive and proactive law library program can reap far more rewards than they ever anticipated. ■

Resources

Information contained in this article has been obtained in part from the following sources, which are highly recommended for those researching the subject.

Caselaw and Statute

Bounds v. Smith, 430 U.S. 817 (1977).

Lewis v. Casey, 518 U.S. 343 (1996).

Prison Litigation Reform Act—Section Titled, "Suits by Prisoners." 42 USC § 1997(e).

Articles

Karen Westwood, "Meaningful Access to the Courts and Law Libraries: Where Are We Now?" 90 Law Libr. J. 193 (1998).

Peter Hobart, "The Prison Litigation Reform Act: Striking the Balance Between Law and Order," 44 Vill. L. Rev. 981 (1999).

Margo Schlanger, "Inmate Litigation," 116 Harv. L. Rev. 1555 (2003).

Joseph Gerken, "Does *Lewis v. Casey* Spell the End to Court-Ordered Improvement of Prison Law Libraries?" 95 Law Libr. J. 49 (2003).

American Association of Law Libraries 2002 Conference Program, "Breaking Connections or Making Connections—Prison Law Librarians and AALL Five Years After *Casey v. Lewis*." To order program, contact Mobiltape at 1-800-369-5718 or on-line at www.mobiltape.com/search.asp. Utilize SKU#02AALL-E6.

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