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Access to Courts and Legal Information

A troublesome issue for prisons and jails has been the need to provide assistance and resources to prisoners and detainees to pursue legal claims in court. While prisoners and detainees have a constitutional right of access to the courts, prison and jail administrators need to know the boundaries of that right, and just what they are required to provide—and what they are not.

The article which follows does not pretend to be exhaustive, and does not address, in any depth, issues concerning prisoner's legal mail and phone calls to and from their attorneys, or issues concerning visitation at correctional facilities by lawyers. Instead, it focuses on issues concerning the rights of prisoners unrepresented by counsel to pursue legal claims, and the parameters of what must be provided to them to do so.

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1. Legal Standard for Prisoners' Right of Access to the Courts

The U.S. Supreme Court, in [Bounds v. Smith](#), No. 75-915, 430 U.S. 817 (1977), stated 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." This appeared to be a very broad ruling, and prisoners and advocacy organizations operating on their behalf attempted for a time to push to interpret it as broadly as possible. In recent years, however, the Supreme Court has narrowed significantly what is required.

The current federal constitutional parameters of what is required, insofar as prisons and jails allowing prisoners and detainees access to the courts is governed by the U.S. Supreme Court's decision in [Lewis v. Casey](#), 94-1511, 116 S.Ct. 2174 (1996). That

case makes it clear that to establish a violation of the right of access to the courts, a prisoner must show that the alleged shortcomings in the library, available legal assistance, or other resources provided have hindered or are presently hindering the prisoner's ability to pursue a "non-frivolous claim."

The Court also ruled that showing injury to such a non-frivolous claim did not encompass "just any type of frustrated legal claim," but rather must be related to what 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." Prisoners, therefore, do not have to be provided with everything needed to litigate everywhere from "shareholder derivative actions to slip and fall claims."

Law libraries, and access to them, therefore, must be provided to the prisoner only in relation to the need to challenge their convictions or sentences, or to challenge their conditions of confinement. If they are represented by counsel, therefore, in their criminal appeal, they do not have to be provided with access to legal materials for pursuing that themselves, as their attorney can handle that, and the same may prove true if they are represented by counsel as to a specific lawsuit related to challenging their conditions of confinement. The Court in Casey v. Lewis made it clear that what the prisoner has is not an independent right to browse through a law library, as some seemed to think from prior case law, but rather, the right to what is necessary to pursue a limited range of claims if unable to otherwise do so because of the absence of legal representation.

2. Recent Applications of the Legal Standard

What does it mean to say that a prisoner must show an "actual injury" in order to pursue, in a lawsuit, a claim for denial of access to the courts?

It must mean either the inability altogether to pursue non-frivolous legal claims relating to challenging a criminal conviction, sentence or conditions of confinement, or else the dismissal or prejudice to such claims. In one case, for instance, an alien incarcerated in Connecticut argued that prison officials unconstitutionally limited his access to the law library, which he needed to visit to pursue his habeas corpus petition fighting against proceedings aimed at removing him from the country. The federal court rejected this claim, based on a record showing that he was allowed to visit the library every other day for about an hour, as well as on 63 additional occasions during a three-month period, and that he managed to file numerous motions in court. Since his habeas petition remained pending, he could not show that the alleged "deprivation" caused him any actual injury. Auguste v. Department of Corrections, No. 3:03CV2052, 424 F. Supp. 2d 363 (D. Conn. 2006).

A Louisiana prisoner, on the other hand, was found to have stated a valid claim for denial of access to the courts, based on allegations that his law books were confiscated when he was transferred to a new facility, and that he was also denied access to a law

library or legal assistance, making him unable to adequately prepare for pending legal proceedings. Gray v. State of Louisiana, No. 2005-617, 923 So. 2d 812 (La. App. 2006).

It is worth noting that a prisoner must not himself raise obstacles to the efforts of prison officials to supply him with resources needed to obtain access to the courts. In Ferrell v. Beard, No. 3:CV-01-0924, 2006 U.S. Dist. Lexis 70825 (M.D. Pa.), for instance, prison officials were entitled to summary judgment in a lawsuit claiming that the inmate was denied access to legal materials he needed to pursue civil lawsuits and criminal appeals, based on evidence that the defendant officials had attempted to provide him with access to his materials, but that the plaintiff prisoner failed to cooperate, and in some instances would even refuse to accept the property.

Similarly, a federal prisoner's right of access to the courts was not violated by his placement in a facility without a law library when he only remained there for twenty-two days during a one year period he had to file a motion challenging his conviction, and after his transfer elsewhere, he again had access to a law library. The court further noted that the prisoner admitted that he himself had delayed writing the motion, which went against his argument that any prejudice to his claim resulted from the temporary lack of access to a law library. Mathison v. Swenson, No. 04-2626, 143 Fed. Appx. 730 (8th Cir. 2005).

If a court reaches the merits of a prisoner's legal claims, as opposed to simply dismissing them for failure to meet filing deadlines or other procedural requirements, and finds them non-meritorious, it may be difficult, if not impossible, for the prisoner to argue that an alleged denial of access to the law library or other legal resources denied him access to the courts to pursue a non-frivolous claim. This is illustrated by Gordon v. Morton, No. 04-4754, 131 Fed. Appx. 797 (3rd Cir. 2005), in which the court ruled that correctional officers' alleged confiscation of a prisoner's legal materials did not violate his right of access to the courts when he failed to show that this caused actual injury to his attempt to obtain post-conviction relief on his criminal conviction, since the court ultimately ruled that none of his post-conviction claims could be asserted under applicable law.

Similarly, some very litigious prisoners may face difficulty attempting to prove that the denial of specific books or materials violated their "right of access" to the courts. In Davidson v. Murray, No. 92-CV-0283, 371 F. Supp. 2d 361 (W.D.N.Y. 2005), a federal court was singularly unimpressed with a claim by the plaintiff prisoner that correctional officers interfered with his right of access to the courts by failing to respond to certain requests for legal writing supplies and law books. During the three-year period during which he claimed that his right of access to the courts was "restricted," the court noted, he had managed to file at least 49 lawsuits in both federal and state court!

Also see Knight v. Castellaw, No. 03-16870, 99 Fed. Appx. 790 (9th Cir. 2004), rejecting a prisoner's claim that he was improperly forced, during a modified lockdown following a prison riot, to choose between his constitutional right to regular outdoor exercise and his constitutional right of access to the courts. The court found that, during the period in question, he had participated in between two to six hours of outdoor

exercise per week, as well as managing to use the law library for a sufficient period of time to amend his complaint in one lawsuit, and to also successfully file the lawsuit making the immediate claim for denial of access to the courts, showing that neither right was actually denied.

Particular care may need to be taken with respect to making sure that prisoners suffering from disabilities are provided any special accommodations necessary to ensure that they are provided with effective access to the courts. In such instances, apart from any issue of a federal constitutional claim, such prisoners may have a statutory claim for disability discrimination. In [Tennessee v. Lane](#), No. 02-1667, 124 S. Ct. 1978 (2004), the U.S. Supreme Court ruled that states may be sued for money damages under the Americans with Disabilities Act (ADA) for acts of disability discrimination that allegedly interfere with the constitutional right of access to the courts, and that such claims are not barred by the Eleventh Amendment immunity ordinarily afforded to states and state agencies. While that case did not involve prisoners, the reasoning would appear to apply to claims brought by them.

3. "Jailhouse Lawyers"

A prison regulation that barred one prisoner from aiding another prisoner in preparing legal documents, such as a habeas corpus petition was ruled unconstitutional by the U.S. Supreme Court in [Johnson v. Avery](#), No. 40, 393 U.S. 483 (1969) as violative of the right of access to the courts. This ruling was further expanded in [Wolff v. McDonnell](#), #73-679, 418 U.S. 539 (1974) in a manner which made it clear that the right of access to the courts involved also encompassed filing federal civil rights lawsuits concerning conditions of confinement, as well as issues arising from criminal convictions and sentences.

The Supreme Court subsequently made it clear, however, in [Shaw v. Murphy](#), #99-1613, 532 U.S. 223 (2001), that a "jailhouse lawyer" does not have their own free-standing First Amendment right to provide legal assistance to another prisoner, and that assistance of this nature can be restricted by institutional regulations that are "reasonably related" to legitimate penological interests. Based on this, the Court stated, deference will generally be appropriate for the courts in upholding such regulations against constitutional challenge based on the judgments of prison officials, and restrictions on communications between prisoners will not be given greater protection simply because they include legal advice.

Such interests can clearly include concerns about institutional security, as illustrated by [Nicholas v. Miller](#), 109 F. Supp. 2d 152 (S.D.N.Y. 2000), a case in which the court found that such concerns were adequately demonstrated in connection with an attempt to organize a "legal defense center" for prisoners at a correctional facility.

If such assistance by another prisoner is required, however, to provide "meaningful access" to the courts, the prisoner rendering the assistance cannot be lawfully punished for doing so, according to the Hawaii Supreme Court's decision in [Hutch v. State of](#)

Hawaii, No. 25711, 114 P.3d 917 (Hawaii 2005). In that case, the prison was allegedly enforcing a rule that had previously been repealed, and the prisoner argued that he was assisting the other inmates with the warden's permission, so that punishing him for being in possession of other inmates' legal documents was improper.

An interesting recent discussion of "jailhouse lawyers" is ['Power of the Pen': Jailhouse Lawyers, Literacy, and Civic Engagement](#)," by Jessica Feierman, 41 Harvard Civil Rights-Civil Liberties Law Review No. 2, pg. 369 (Summer 2006).

4. Photocopies

Prisoners involved in litigation frequently request that they be supplied with voluminous photocopying of legal documents and exhibits to be used in filing lawsuits.

A number of relatively recent court decisions have upheld limitations on the supplying of photocopies to be used by prisoners in legal matters. For instance:

*Jail's limitations on the supplying of photocopies that a prisoner wanted to use in his habeas corpus case was not a violation of his constitutional right of access to the courts since he did not show that the court rejected his habeas petition because of missing attachments. The prisoner, therefore, failed to prove that he suffered any harm. Additionally, the prisoner had no right to free unlimited photocopies. [Logue v. Chatham County Detention Center](#), No. 05-10983, 152 Fed. Appx. 781 (11th Cir. 2005).

*Prison officials' alleged refusal to provide prisoner free photocopies of legal documents he claimed he was required to serve on the defendants in his federal civil rights lawsuit did not deny him his constitutional right of access to the courts. The prisoner did not claim that the federal court would not accept service of hand-copied documents or that he was unable to produce them. His lawsuit was therefore properly dismissed as frivolous. [Miller v. Donald](#), No. 04-13695, 132 Fed. Appx. 270 (11th Cir. 2005).

*[Mears v. Thomas](#), No. 94-2270, 1996 U.S. App. Lexis 9979 (10th Cir.). Decision by trial court held that there was no constitutional right to free photocopies, that regulations applied were reasonable and necessary for budgetary constraints and to prevent abuse, and that the inmate failed to show that prejudice occurred. Appeals court upheld the result.

*[Hewes v. Magnusson](#), 350 F. Supp. 2d 222 (D. Maine 2004) (100 limit on free photocopies did not prevent prisoner's access to the courts).

In the 9th Circuit, there is the case of [Hiser v. Franklin](#), 94 F.3d 1287 (9th Cir. 1996), which merely held that the prisoner was not barred from litigating the issue of whether denying him photocopying denied him access to the courts, as prior litigation between the parties had not addressed the issue. In a subsequent "unpublished" opinion in the same case, the 9th Circuit ruled that the defendants who had enacted the allegedly

unconstitutional photocopying policy could not be held liable as the denial of photocopy requests had not involved documents necessary for access to the courts. Hiser v. Franklin, 1999 U.S. App. Lexis 20371 (9th Cir.).

There would appear, therefore, to be support for the notion that at least a reasonable limit on such photocopying, will be upheld by most courts so long as the prisoner cannot affirmatively show that this prevented his pursuit of a meritorious legal claim related to either a challenge to his conviction or sentence, or a challenge to his conditions of confinement.

5. Typewriters, Computers, and Writing Implements

There are a number of cases establishing that prisoners do not have a constitutional right to typewriters, computers, or particular types of writing instruments to prepare their legal documents. Many, indeed most, courts accept handwritten pro se inmate filings. See the following:

- * Furnishing prisoners in segregation unit with crayons to write with instead of pens did not violate their constitutional right of access to the courts; limiting writing instruments to crayons did not completely prevent them from drafting legal documents which could be filed with court. Kirsch v. Endicott, 549 N.W.2d 761 (Wis. App. 1996).

- *New correctional policy denying inmates possession of typewriters did not violate the right of access to the courts. Wenzler v. Warden of G.R.C.C., 949 F.Supp. 399 (E.D.Va. 1996).

- *End of twenty-year policy allowing prisoners to have typewriters and word processors did not violate inmate rights; access to pen and paper was adequate for access to the courts. Roberts v. Cohn, 63 F. Supp. 2d 921 (N.D. Ind. 1999).

- *Prison directive forbidding prisoner from possessing a typewriter with a memory beyond a specified capacity did not violate his right of access to the courts or his First Amendment rights. Taylor v. Coughlin, 29 F.3d 39 (2nd Cir. 1994).

- *Barring prisoner from acting as a "jailhouse lawyer" and seizing his typewriter was justified when he had filed a flood of lawsuits, most of them either frivolous or non-meritorious, and he had engaged in perjury, falsification of evidence, and breaking of institutional rules barring payment for providing legal services. Wiideman v. Angelone, 848 F.Supp. 136 (D. Nev. 1994).

- *Prisoner had no constitutional right to use and possession of typewriter; he suffered no harm from its confiscation, despite presence of a legal document he had been writing in the typewriter's memory, when he was allowed to contact his outside attorney who then filed a document on his behalf with the court. Howard v. Leonardo, 845 F.Supp. 943 (N.D.N.Y. 1994).

*West Virginia Supreme Court upholds state policy barring prison inmates from possessing computers in their cells; prior practice allowing such possession did not create any vested right to continue to possess them, and deprivation of computer possession did not result in denial of meaningful access to the courts. West Virginia, State of, Ex Rel. Anstey v. Davis, 509 S.E.2d 579 (W. Va. 1998).

On the other hand, in one case the court found that prisoners' claims that they lost legal materials and documents when prison's policy on use of memory and disk-based word processors and computers changed could be the basis for a lawsuit for interference with the right of access to the courts. Waff v. South Dakota Dept. of Corrections, #01-3501, 51 Fed. Appx. 615 (8th Cir. 2002). The difference, clearly, is that in this instance, the use of the equipment was previously allowed, and the prisoners legitimately stored materials on them essential to the pursuit of their arguably non-frivolous claims.

Ultimately, the legal standard for a prisoner seeking to convert a simple denial of a particular piece of equipment or type of writing implement into a constitutional claim for denial of access to the courts is simply that set forth by Casey v. Lewis: whether he or she is actually impeded in pursuing a non-frivolous legal claim connected with challenging either a criminal conviction or sentence or with challenging conditions of confinement.

This is illustrated by the recent case of Pratt v. Tarr, No. 05-4470, 2006 U.S. App. Lexis 24298 (7th Cir.), in which the court ruled that the prisoner stated an adequate claim for denial of access to the courts by alleging that prison officials denied him writing materials and legal materials, and that this resulted in the loss or dismissal of pending litigation.

When particular materials or equipment, or processes are definitely needed to comply with court requirements, however, their denial may violate the prisoner's constitutional right of access to the courts. In Phillips v. Hust, No. 01-1252, 338 F. Supp. 2d 1148 (D. Ore. 2004), for instance, the court found that a prison law librarian's alleged refusal to allow a prisoner to bind, in a timely manner, his petition for a writ of certiorari, if true, would violate his right of access to the courts.

6. Some Useful Resources

Every prison or jail manager or administrator must develop their own policies concerning prisoner or detainee access to the courts, legal information, and the necessary resources to pursue non-frivolous claims. In doing so, they must keep in mind the particular circumstances they face, and any requirements imposed by state or local law or regulations, as well as the federal constitutional standards. But in doing so, it is helpful to look at what others have done or recommended.

The federal Bureau of Prisons (BOP) and the approach it takes to these issues can be examined by looking at both its Program Statement Number 1315.07 on "Legal Activities, Inmate," (11/5/99), and the applicable section of the Code of Federal

Regulations on prisoner "Legal Matters," [28 C.F.R. Sec. 543](#). The Program Statement, in particular, contains a list of required legal materials for federal prison law libraries, and also makes reference to applicable standards of [American Correctional Association](#) (ACA).

Also worth taking a look at are the [American Bar Association](#) (ABA) Standards on the Legal Status of Prisoners, which address: access to the judicial process (Sec. [23-2.1](#)), access to legal services (Sec. [23-2.2](#)), and access to legal materials (Sec. [23-2.3](#)).

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