THE INFLUENCE OF CASEY V. LEWIS ON ACADEMIC COLLECTIONS LOCATED IN INDIANA PRISON LIBRARIES

by David W. Wilhelmus, Martin University

Since the advent of *Bounds v. Smith*[1], in 1977, the United States Supreme Court has been relatively silent concerning the constitutional rights of inmates to have access to the state and federal court systems. It is the purpose of this article to briefly review the series of United States Supreme Court decisions on the issue of correctional facilities being mandated to provide inmates with legal collections and persons trained in the preparation of legal pleadings to assist illiterate offenders.

The decision of *Casey v. Lewis* will have a significant and long lasting influence on professionals involved in both corrections and library science. In terms of the impact upon correctional facilities, the decision of *Casey v. Lewis* can be translated into having the potential to lessen the need to provide inmates with expensive and space occupying legal collections. Correctional facilities will now be able to better meet the needs of their offender/student populations by developing academic collections to support technical and college programs that are based in Indiana prisons.

For professionals engaged in library science, the *Casey v. Lewis* decision will mean that prison librarians will need to develop new strategies to ensure that their offender/patrons are afforded the opportunity to have access to appropriate legal collections. That opportunity culminated with the landmark case of *Bounds v. Smith* that established the doctrine of an offender's right to have access to the judiciary. The article will then analyze the significance of the 1996 United States Supreme Court decision of *Casey v. Lewis*.[2] The prison librarian will also be able to develop or expand the library's academic collection to better meet the needs of their offender/student populations.

Irrespective of the philosophical or political position that a person might hold concerning convicted felons' legal rights, even to a stated position that perhaps they should be denied their civil rights altogether because of their convictions, no less moral authority than the United States Supreme Court has consistently ruled that offenders are constitutionally entitled to "equal and meaningful access to the courts."[3] The linchpin upon which "equal and meaningful access to the courts" is premised is a belief inherent in American thought and character. The belief was expressed more than a century and a half before the United States Supreme Court would first be called upon to involve itself in the issue, that wrongly convicted individuals should be afforded the opportunity to challenge prosecution and that the federal judiciary should be enabled in its review of the current conditions of an offender's imprisonment.[4] Perhaps, the same principle that has been established by the United States Supreme Court should also be applied to an offender/students' right to have access to academic materials in support of their educational programs.

THE LEGAL FRAMEWORK

One of the ever persistent problems confronting the incarcerated in America, past and present, is a high rate of illiteracy, which translates into the inability of inmates to conduct adequate legal research, draft appropriate pleadings, and present grievances effectively to the court. This problem was addressed in a landmark case that established that illiterate inmates may be helped by other inmates who are self-taught in reading the law and preparing petitions for writs of habeas corpus, who are recognized as "jail-house lawyers" or "writ-writers."[5] This fundamental right to legal assistance was established by the United States Supreme Court in *Johnson v. Avery*,[6] decided in 1989.

In this case, Johnson, the petitioner, a Tennessee prisoner, was disciplined by the correctional authorities of his state for violating a prison regulation that prohibited inmates from assisting other inmates in the preparation of writs. The trial court (the Federal District Court) ruled that the Tennessee Department of Corrections' regulation prohibiting inmates from assisting illiterate fellow inmates was void because it had the effect of "barring illiterate prisoners from access to federal habeas corpus."

The Court of Appeals, then, reversed the trial court's ruling on the grounds that the "state's interest in preserving prison discipline and limiting the practice of law to attorneys justified any burden the regulation might place on access to habeas corpus." Eventually, this case was appealed to the United States Supreme Court, which reversed the ruling of the Federal Appeals Court on the grounds that illiterate prisoners must be given access to the courts to protect their habeas corpus

rights. The doctrine of Johnson was based on the Supreme Court's interpretation of the United States Constitution, as applied to incarcerated persons who are without adequate legal representation.

Although the United States Supreme Court, in the Johnson case, recognized the importance of illiterate offenders receiving assistance from inmates trained in legal research and writing, the actual application of the ruling was limited by the willingness of correctional facilities to adopt prison policies that would allow for contact between inmates. Administrative acceptance of the concept that illiterate offenders should receive assistance in the preparation of legal pleadings by inmates trained in legal procedures was further limited by a prison's need to maintain a high degree of security.

The doctrine that offenders are constitutionally entitled to present their grievances to both state and federal courts has also been qualified by the procedural insertion of intermediate hearings held before direct presentation to the court is permitted. Specifically, these include administrative hearings held within the correctional system itself.

In the case of *Grayson v. Eisenstadt*,[7] the Federal District Court of Massachusetts ruled that offenders are required to exhaust all available in-house administrative remedies before the court will hear complaints. The exhaustion-of-administrative-remedies requirement is further enforced by the United States Code, 42 U.S.C. s1997e (1988).[8]

It should be noted that along with the exhaustion-of-administrative-remedies requirement of federal statutes, such as 42 U.S.C. s1997e, state legislatures have enacted laws that require offenders to exhaust first their administrative remedies before the state courts of Indiana are able to hear grievances. Such state laws of Indiana require an absolute exhaustion of the offenders' remedies within a state's department of corrections.

The doctrine of Johnson was enlarged to include civil rights claims in a ruling made by the United States Supreme Court in *Wolf v. McDonnell*.[9] In the Wolf case, an inmate at a Nebraska prison filed a complaint for damages and injunctive relief, employing a civil rights statute (42 U.S.C. s1983) in which the inmate "alleged that disciplinary proceedings at the prison violated due process and that the inmate legal assistance program did not meet constitutional standards; and that the regulations governing inmates' mail were unconstitutional and restrictive." The United States Supreme Court ruled that the Johnson doctrine should include actions brought under 42 U.S.C. S1983, to insure that inmates' rights are protected by having access to federal courts.

Among diverse legal interpretations, the State of Massachusetts interpreted the *Wolf v. McDonnell* case as a mandate for its correctional facilities to provide offenders with legal collections located within prison libraries. In a separate case, *Stone v. Boone*,[10] the Massachusetts Department of Corrections acceded in a consent decree. Settling the Stone case in 1974, the Massachusetts Department of Corrections established on-site law libraries within correctional facilities that housed a minimum of 250 offenders.[11] The Massachusetts Department of Corrections further augmented its law library program by offering offenders in medium security prisons a sixteen-week training session in legal research and writing.[12]

It should be noted that medium security facilities such as the Massachusetts facility in Norfolk house inmates with less serious offenses, and who have shorter sentences to serve than those housed in maximum-security institutions. Providing offenders who are rapidly approaching their release dates with both law libraries and training in legal research is perhaps not the best utilization of the state's resources. Would not legal collections and training in legal research be better spent in assisting offenders who are facing longer prison terms, giving them the opportunity to change the legality of their convictions?

Indiana correctional facilities allow offenders to meet with specially trained inmates who assist them in the preparation of legal pleadings. Normally, inmates trained in legal research and writing are located in the prisons library where they have access to typewriters and some legal materials.

Perhaps the most significant United States Supreme Court ruling during this period of defining what is meant by an inmates "right to access the courts" was handed down in 1977 with the case of *Bounds v. Smith*.[13] In *Bounds*, the United States Supreme Court ruled that correctional facilities were duty-bound to provide offenders with an on-site prison library that contained an adequately stocked legal collection, although an alternative was allowed. Under the alternative, in lieu of providing the offender with an adequately stocked on-site law library, the prison would be required to make available to inmates, trained individuals who knew legal research and writing procedures so that they might assist the indigent and the illiterate in drafting legal pleadings.

Thus, at this early stage of its interpretation, *Bounds* stood for the principle that correctional facilities have two options to select from in order to meet their obligation of allowing offenders to have access to the courts: (1) providing offenders with an adequately stocked, on-site law library or (2) providing the inmate with legal assistance. It is essential to note that it is not uncommon to find America's correctional facilities se-

lecting the assistance model as a means of ensuring that inmate populations will have access to the judiciary.

In an interview with the author, Mr. Don Hipps, Librarian of the Indiana Women's Prison, stated he had trained several offenders as legal researchers who, in turn, now provide prison inmates with legal assistance.[14]

Providing offenders with legal assistance from inmates who have received specialized training in legal research is perhaps a more efficient method of ensuring the offenders' right to access to the courts. However, a problem has been identified by correctional facilities in instances of offenders found to be charging for services, making them subject to administrative discipline when caught. The Massachusetts Department of Corrections has, in fact, already established regulations prescribing discipline for their offenders who charge for legal research skills.[15]

In 1988, the Federal District Court of Eastern Michigan combined requirements for an on-site library and a legal assistance program in the case of *Hadix v. Johnson*.[16] The court ruled that correctional facilities within its jurisdiction were required to provide offenders with both an adequately stocked on-site law library and individuals who were trained in legal research and writing to assist inmates with the preparation of their pleadings. The case of Hadix was affirmed by the Federal Court of Appeals for the Sixth Circuit in 1992.[17] Under these rulings, the "either-or" of *Bounds* became a requirement of "both" (library and writ-writers) within the Sixth Circuit, where the district court's ruling had effect.

The *Bounds* doctrine was not materially altered, since the *Hadix* decree was limited jurisdictionally to only the Sixth Federal Circuit. As of this writing, no other federal district or circuit court has recognized or adopted the consent decree of *Hadix*. Further, the *Hadix* consent decree is presently being challenged under the provisions of the Prison Litigation Reform Act.[18] In summary, the *Bounds* doctrine has not been modified by the *Hadix* consent decree since it is both jurisdictionally limited and seriously challenged by both U.S. Attorneys and State Attorney Generals, who are interested in reducing the number of lawsuits filed by inmates.

ARGUMENTS AGAINST PRISON LAW LIBRARIES AND INMATE ASSISTANCE PROGRAMS

It is the purpose of this section of the article to explore the arguments against the establishment of legal collections and the training of inmates to assist other prisoners in the preparation of their legal pleadings that are to be filed in both Indiana Courts and or U.S. District Courts.

The preferred method chosen by American correctional facilities to provide offenders with access to the courts is by making prison law libraries available to them as well as allowing inmates trained in legal research and writing to assist other inmates in the preparation of their legal documents. This method of compliance, however, is not universally recognized by all correctional experts as being the most appropriate option available to prison administrators. According to an article written by Attorney Richard Crane, "Access to a Law Library and Inmates Assisting Inmates May Not Be the Best Ways of Guaranteeing Prisoners' Right to Court Access."[19]

Such criticism is premised on the belief that difficulties arise when offenders assist one another in the preparation of their legal documents. The argument broached in the article points out that in order for inmate assisted programs to be effective, the correctional facility must first provide the offenders with a law library. The establishment and maintenance of a law library for an administrator of an Indiana prison is a costly and space consuming undertaking.

The second criticism raised in the article by Attorney Crane is that offender assisted programs require the correctional facility to train inmates in legal research and writing if the offenders are to "provide any actual assistance to their fellow confinees."

The problem of providing offenders with training in legal research and writing has been recognized and addressed by the courts. The courts have, in the past, ordered prison administrators to provide some level of legal training in research and writing for would-be inmate law clerks.

A third criticism raised by Crane is that "inmate paralegals can influence whether other inmates have their day in court." The ability to prepare legal documents can be misapplied and thus lead to abuses of the inmate assisted programs. This problem has been personally witnessed by the author in Indiana prison environments where individuals trained in legal research and writing had offered to draft legal documents for other offenders in return for payments in such commodities as cartons of cigarettes and coffee.

Crane further points out the inconsistency with which correctional facilities allow inmates trained in legal research and writing to assist other inmates in the preparation of their legal documents on the grounds that "the courts have made it clear that no inmate can be put in a position of authority over another inmate." Crane points out that courts have found it to be improper for "inmates to screen prisoners seeking medical care" or to serve as "guards" or "building tenders." Crane argues that writ-writers (inmates trained in legal research and writing) hold unusual power and author-

ity over members of the prison population who seek help in the preparation of legal documents. Crane states that the courts have approved the practice of correctional facilities' use of offenders trained in legal research and writing to assist other inmates as a result of the lobbying powers of West Publishing Company, which has a vested interest in the establishment and maintenance of prison library legal collections.

Crane states that he had represented the Commonwealth of Puerto Rico to defend against an inmate lawsuit concerning the conditions of the island's correctional facilities. Crane indicates that at that time, Puerto Rico's official response to the lawsuit was to place law libraries in its correctional facilities.

Crane points out a problem with the development of legal collections in the present situation in that 90 percent of Puerto Rico's prison population spoke only Spanish and that none of the federal reporters were printed in the offenders native language. This problem was not dealt with by either the correctional facilities or by the courts.

The problem cited above by Crane concerning prison inmates whose principal means of communication is in Spanish is a harbinger of future difficulties facing Indiana correctional administrators as well as prison librarians during the twenty-first century. The demographics of the United States (including Indiana) are undergoing a substantial change with a disproportional increase in the numbers of persons whose principal language is Spanish. Does this mean that prison library legal collections should contain both materials in the English and Spanish languages? This is an issue requiring further debate by Indiana's library community.

Crane further criticizes the court imposed mandate of *Bounds* that correctional facility libraries are required to have legal collections on the grounds that prison administrators are faced with the "great expense of moving inmates from one facility to another just so that they can have access to a law library." The criticism is also raised by Crane that the use of writ-writers in segregation units will increase the risk of the transmittal of contraband in lockdown areas of the prison. The issue of prison security is a real problem confronting all Indiana prison librarians.

It is the author's suggestion that a possible alternative for correctional facilities that in lieu of prisons establishing and maintaining costly law libraries and training inmate assistance, would it not be reasonable for correctional facilities to hire attorneys to represent offenders as the state now does for inmate trials, appeals, probation and parole revocation hearings, etc. It is further the belief of the author that the only reason why state operated correctional facilities have not taken this route is the fear of allowing the fox in the hen house. Thus, prison administrators have elected to adopt and maintain systems that are less efficient and secure and more burdensome and expensive, all for the purpose of not letting attorneys into their facilities because they're afraid of being sued.

Crane's observation that prison administrators are perhaps not necessarily interested in reducing the number of lawsuits filed against the correctional institutions, but rather, the threat of in fact losing lawsuits. Crane's statement reinforces the author's position that such a mind-set or rationale is the linchpin to why prison administrators have not chosen the least restrictive option of employing attorneys rather than relying upon expensive law libraries and placing inmate assistants in positions of authority.

The author believes that the perceived higher cost of lawyers versus law libraries also has been a factor in institutions' decision not to use lawyers. However, there is growing evidence that this is an incorrect assessment of the true costs of these alternatives.

Attorney Crane further states that it has been his experience that inmate paralegals are not trained effectively in legal research. Although an inmate paralegal may be able to find a court decision in some jurisdiction that he believes would be favorable to his inmate client, the problem is that the decision may not be binding in the jurisdiction that the offender's lawsuit was filed. In other words, "the paralegal must first analyze it, and many inmate paralegals don't have the analytical skills to make this type of evaluation."

Clearly attorneys are better trained in the practice of law and thus, the offenders' interests would be better represented if correctional facilities would utilize attorneys rather than inmate paralegals. Attorney Crane also states that he believes that attorneys are better prepared to negotiate settlements of offenders lawsuits than are inmate paralegals.

Crane concludes by stating that attorney legal assistance programs will meet with resistance from both correctional staff and inmate writ-writers who are unwilling to give up their positions of power within the prison system. Notwithstanding the problems confronting the establishment of attorney legal assistance programs, correctional administrators would become advocates of such programs once they have had the opportunity to evaluate the cost-effectiveness of the programs.

In an interview of Attorney Richard Crane[20], he stated that since the publication in February 1995 of his article "Access to a Law Library and Inmates Assisting Inmates May Not Be the Best Ways of Guaranteeing Prisoners' Right to Court Access," he is convinced that lawyers should be used in place of law libraries and inmate assistance programs. Attorney Crane further stated that he believes that a large percentage of frivolous lawsuits filed by offenders would be eliminated and the quality

of inmate representation would be enhanced. To this end, Attorney Crane referred me to a second article that he published, "Are Lawyers the Answer to Reducing Frivolous Litigation?"[21]

In this article, Attorney Crane states that since the publication of "Access to a Law Library and Inmates Assisting Inmates May Not Be the Best Ways of Guaranteeing Prisoners' Right to Court Access" in February 1995, the United States Congress (both the House of Representatives and Senate) have enacted legislation addressing the same issue of offenders litigation. Notwithstanding congressional attempts to resolve the problem of inmate litigation, according to Attorney Crane, Congress's efforts have "ranged from the absurd to the unconstitutional."

According to Attorney Crane, both houses of Congress have passed legislation to address the issue of offender's rights while incarcerated in American correctional facilities. Congress' response to the problem of inmate litigation is found in a bill that members of Congress refer to as Stop Turning Out Prisoners Act (STOP).

The Act limits attorney fee awards, limits the use of special materials, and allows virtually automatic vacating of orders in conditions of confinement cases after a period of only two years. Thus, the intent of the Act is to limit or reduce offender litigation by restricting inmates access to the courts.

The House of Representatives has also passed the Stopping Abusive Prisoner Lawsuits Act (SAPLA). The scope of SAPLA is to stop abusive lawsuits by offenders, or as Attorney Crane states, to stop "abusive lawsuits by all prisoners?" Irrespective of the full impact of SAPLA, before an offender is allowed to file a lawsuit under 42 U.S.C. S 1983, the inmate must first exhaust their administrative remedies. The Act also gives prison administrators as much time as they want to react to an offender's grievance. Presently, prison administrators are required to respond to an inmate's grievance within 180-days.

Thus, the NAAG (National Association of Attorneys General) model legislation is based on the categorical elimination of offender lawsuits and not the restriction of only frivolous inmate litigation. The focus of the NAAG proposals is to limit pesky offender lawsuits and to get them thrown out of court in order that the attorney general's office does not have to become involved with the litigation.

As pointed out by Attorney Crane, the NAAG's proposals, if enacted by Congress, will not in the long run reduce the actual number of lawsuits that will be filed by inmates. The NAAG's task force failed to recognize that the goal of new legislation should be to reduce the burden on prison officials by preventing the actual filing of lawsuits in the first place and not merely to kick them out of court once inmates have commenced litigation. At the point that an offender has filed a lawsuit, correctional administrators have a responsibility to respond to the litigation, which is time consuming. According to Crane, model legislation should deal with the problem of limiting the filing of lawsuits in the first place and not having them thrown out of court at some future date.

After a critical review of Attorney Crane's two articles and the interview conducted, it would seem that he has raised some interesting and valid concerns regarding the use of inmate assistance programs and the establishment of law libraries within correctional facilities. The problem of inmates screening other inmate legal pleadings is a serious issue and to say that it does not occur would show a misunderstanding of basic human nature.

Crane's contention that attorneys should be employed to handle offenders' lawsuits is of course preferable over the use of inmates assisting inmates in the preparation of their legal pleadings. However, the cost to the correctional institution would be prohibitive. We should also keep in mind that Crane is an attorney and the advancement of the use of lawyers in prisons to represent offenders would of course expand the client base for attorneys. This fracture should be kept in mind while reviewing Crane's recommendations.

Crane makes a valid observation when he states that inmates are not able to research and draft pleadings at the same quality level as attorneys. However, Crane fails to note that some inmates in American correctional facilities are attorneys and that they are oftentimes assigned to the library. Thus prisons are able to take advantage of such inmates in the training programs that prepare inmates to assist inmates.

The arguments raised above by the practitioners of law and professional organizations advocating placing limitations on inmates access to the judicial system are shared by the majority of the United States Supreme Court as exemplified in *Casey v. Lewis.*

A CHANGE IN THE INMATES RIGHT TO ACCESS THE COURTS

The decision of *Casey v. Lewis* has substantially reduced the right of prison inmates to access the judiciary with legal pleadings concerning such issues as prison conditions, treatment by correctional officials, and injuries sustained as the result of the behavior of other offenders.

In *Casey*, the federal court restated that *Bounds v. Smith* stood for the principle 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."

The petitioners in the *Casey* case were prison officials of the Arizona Department of Corrections (ADOC). The ADOC claimed that the United States District Court of Arizona was in error when the court found ADOC in violation of *Bounds* and that the court's order exceeded the lawful remedies that the court could enter.

The respondents in *Casey* were twenty-two inmates incarcerated in several correctional facilities operated by ADOC. In January 1990, the respondents filed a class action suit representing all offenders who were presently incarcerated in ADOC and all future inmates who were to be incarcerated in the ADOC. The suit alleged that ADOC was "depriving {respondents} of their rights of access to the courts and counsel protected by the First, Sixth, and Fourteenth Amendments." Initially, the District Court ruled on behalf of the offenders, finding that "prisoners have a constitutional right of access to the courts that is adequate, effective and meaningful."

The District Court further found that "ADOC's system fails to comply with constitutional standards." The trial court also determined that ADOC failed to meet the offenders needs in such general areas as not properly training inmates in the use of the law library by the library staff, the failure to update the legal collection, and the lack of photocopying services. The trial court found there were two groups of offenders who are disproportionally provided with inadequate services.

The first special interest group was composed of inmates on "lockdown" status (segregated offenders from the general facilities' populations as a result of security or discipline problems), who "are routinely denied physical access to the law library" and "experience severed interference with their access to the courts." The second group is offenders who are non-English-speaking or illiterate and do not receive adequate legal assistance from ADOC.

Thus, the District Court based its ruling on the *Bounds* doctrine concerning the offenders' constitutional right to have access to the courts. The trial court ruled ADOC to be liable for the above stated shortcomings and the court appointed a special master "to investigate and report about" what relief should be granted. The court wanted to know "how best to accomplish the goal of constitutionally adequate inmate access to the courts."

After consultation with the parties and completion of eight months of investigation, the special master submitted a proposed permanent injunction to the District Court. The Court adopted the recommendation and issued a twenty-five page injunctive order.

The court's order was intended to ensure that ADOC would "provide meaningful access to the Courts for all present and future prisoners." The order further mandated specific hours that the library would be open, each offender would be allowed ten hours of library access per week, the librarians minimal educational level was set where the librarian was required to hold either a library science degree, paralegal degree, or a law degree.

The Court further ordered that ADOC was required to offer offenders a videotaped course that would train them in legal-research that was to be prepared by the special master. The order also addressed the special interest of the Court concerning offenders who were on lockdown by mandating that "ADOC prisoners in all housing areas and custody levels shall be provided regular and comparable visits to the law library." However, that such visits "may be postponed on an individual basis because of the prisoner's documented inability to use the law library without creating a threat to safety or security, or a physical condition if determined by medical personnel to prevent library use."

In terms of the second special interest group about which the court expressed concern, the order stated that non-English-speaking and illiterate offenders were entitled to "direct assistance" from paralegals, attorneys, or "a sufficient number of at least minimally trained prisoner legal assistants."

Thus, the District Court clearly addressed the issues concerning inmates' constitutional right to access the court system by drafting an injunctive order that mandated ADOC to ensure that all offenders, irrespective of their level of security, intellectual development, or ability to speak the English language, have access to law libraries or persons trained in legal research to assist such inmates with the preparation of their legal pleadings. The District Court's order placed a heavy burden on ADOC, and naturally the State of Arizona filed a request for review of the order with the Court of Appeals for the Ninth Circuit.

The Court of Appeals for the Ninth Circuit affirmed both the finding that ADOC was in violation of *Bounds* and with only minor exceptions, the terms of the injunctions as entered by the District Court. At this time, the United States Supreme Court granted cerriorari.

In its review of *Casey v. Lewis*, the United States Supreme Court was requested by the petitioners who raised only one question concerning whether the Districts Court's order "exceeds the constitutional requirements set forth in *Bounds*." The petitioners brief attacked the trial court's findings of *Bounds* violations concerning non-English-speaking, illiterate, and offenders on lockdown. The petitioners also attacked the trials courts injunctions. The most significant issue raised by

the petitioner challenge was that the trial court findings that the inmates were, in fact, injured was inaccurate. The petitioners alleged that the inmate's injuries were inadequate to support the District Courts findings of system-wide injury and thus the granting of statewide relief was not necessary.

The petitioners' attack on the issue of inmate injury has two issues that need to be explored. First, the petitioners state that the trial courts order based on a *Bounds* violation predisposes that in fact, the offenders experienced actual damages or injuries. Thus, the offenders must demonstrate that they were injured as the result of inadequacy of the prison's law library or legal assistance program. This refers to "actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim."

Secondly, the petitioner states that the trial court did not find enough situations in which inmates were actually damaged or injured that would support the District Court's system-wide order.

The United States Supreme Court agreed with the petitioner's claim that there was not a system-wide problem within the prisons managed by ADOC. Thus, the trial court's finding of a systemic *Bounds* violation was invalid as the respondents failed to demonstrate that there were enough instances of actual harm occurring to inmates throughout the correctional facilities operated by ADOC to justify system-wide relief.

In order for an offender to claim a violation under *Bounds*, the inmate must prove that he or she had experienced actual harm which is derived from the legal doctrine of standing. Standing is a constitutional principle that prohibits courts from hearing cases that should be resolved by one of the political branches of government. The inmates alleged that *Bounds* had established such a right to have access to both law libraries and legal assistance and the denial of such "right" would result in the offenders experiencing actual harm. The United States Supreme Court stated that Bounds did not "establish" a right for inmates "to a law library or to legal assistance." Thus, the inmates could not claim that they were actually harmed by ADOC and therefore, the offenders did not have the requisite "standing" in order to receive relief from the judiciary.

The United States Supreme Court further stated "that *Bounds* acknowledged was the (already well-established) right of access to the courts."

Thus, the United States Supreme Court has placed limitations on *Bounds* that interprets the purpose of prison law libraries and legal assistance programs as not being the principal focus of *Bounds*, but rather as being only "a reasonably adequate opportunity to present claimed violations of fundamental constitutional right to the courts." The court has clearly stated that *Bounds* did not establish an actual "free-standing right to a law library or legal assistance." Therefore, an offender is unable to claim actual harm or damages by merely providing that the correctional facility law library or legal assistance programs are theoretically inadequate.

In order for an offender to have standing, the inmate must go beyond the argument that the prison law library or legal assistance program is inadequate and demonstrate that the claimed inadequacies in the law library or legal assistance programs impaired their efforts to litigate a claim. The United States Supreme Court in *Casey* clearly states this principle by indicating that *Bounds* did not establish an absolute right for inmates to have standing only because there was some perceived problem with the adequacy of the prison law library or legal assistance programs. But, rather, that *Bounds* stood for the principle that inmates should have "meaningful access to the courts is the touchstone."

The court, in *Casey*, has made it more difficult for inmates to file lawsuits against correctional authorities which reflects the general trend found in both federal and state legislatures, as well as in the nation's courts. It is no longer enough for offenders to argue that the prison law libraries or legal assistance programs are inadequate. The inmates must demonstrate that their access to the courts is impaired by the inadequacies of such programs to the extent that they suffer actual injuries. *Casey* provides a substantial change in the philosophy of the United States Supreme Court's view of inmate's rights to access prison law libraries and legal assistance programs.

CONCLUSION

As can be seen from this analysis, the *Casey* decision offenders are not required to demonstrate to the court that, in fact, they have the requisite standing in order to file a legal complaint against the correctional facility for the failure to provide adequate legal collections and access to same. This new legal standard will decrease the legal pressure being placed on correctional facilities and state and federal courts; however, correctional facilities are still required to make legal collections accessible to offenders. How that service is provided in the future will bear scrutiny and further discussion as case law is established regarding *Casey*.

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