



## Law Libraries for Correctional Facilities

O. JAMES WERNER

UNTIL 1969 American courts had been very reluctant to interfere in the administration of correctional facilities even in cases where prison regulations obviously discouraged prisoners from exercising their rights by seeking court remedies. Unless an inmate was patently denied access to the courts, the courts followed a "hands off" doctrine of not questioning a prison administration's regulations.<sup>1</sup>

In 1969, however, the U.S. Supreme Court handed down its influential *Johnson v. Avery* decision,<sup>2</sup> which started a trend that culminated in the leading case of *Gilmore v. Lynch*.<sup>3</sup> In the *Johnson* case the Supreme Court held that a state may not enforce a prison regulation which forbids inmates from helping other inmates to prepare legal papers, unless the state provides some reasonable alternative to help them prepare their petitions to the courts. The Supreme Court affirmed the principle that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed.<sup>4</sup>

In the *Gilmore* case, a federal court in California went a logical step further and declared that reasonable access to the courts is a constitutional imperative, and that prisoners have a constitutional right to an adequate law library unless an equally effective method of legal assistance is offered them by their institutional authorities. The U.S. Supreme Court affirmed the decision on appeal, approving the lower court's decision. The lower court said that access to the courts encompasses all the means an inmate petitioner might require to get a fair hearing on all grievances alleged by him. The court implied that a prisoner needs a law library comparable to that of a criminal lawyer,<sup>5</sup> and that a certain amount of legal expertise is required just to file an acceptable petition with a court. It found that regulations of the California Department of Corrections infringed on the rights of

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O. James Werner is Librarian, San Diego County Law Library, San Diego, California.

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prisoners to reasonable access to the courts by restricting them to an inadequate list of law books. The *Gilmore* case has been the one cited most often in regard to the prisoner's right to legal reference materials; since it was decided, the situation has improved measurably, to the benefit of inmates seeking court remedies and more adequate assistance in preparing their petitions to the courts.

RECENT COURT CASES

Some of the cases that have been decided since *Gilmore v. Lynch* should be noted. In *Mead v. Parker*<sup>6</sup> inmates at the federal penitentiary on McNeil Island, Washington, petitioned for relief, alleging that the prison had refused to provide them access to legal materials. The lower court dismissed their suit on grounds that it was not the function of courts to superintend the control and management of prisoners in a federal institution, again relying on the "hands off" doctrine. The U.S. Court of Appeals reversed the decision and sent the case back to the lower court, stating that the prisoners' petition did state a legitimate claim upon which relief could be granted if the allegations could be proved.

In *White v. Sullivan*<sup>7</sup> inmates in the Alabama Penal System filed a civil rights complaint alleging, among other things, that they were denied access to a law library by the prison authorities. The court said that their library, which consisted of incomplete copies of the *Alabama Code*, did not constitute a sufficient law library. It said that a prison must provide inmates either reasonable law library facilities, legal aid, or legal services, in order to provide them with full access to the courts. The court ordered acquisition of the following materials: *United States Code*, *Code of Alabama*, *Alabama Reports* after volume 269, *Alabama Appellate Reports* after volume 44, *Supreme Court Reporter* after volume 75, *Federal Reporter, Second Series* after volume 274, *Federal Rules of Civil and Appellate Procedure*, *Federal Rules of Criminal and Appellate Procedure*, *Alabama Rules of Civil Procedure*, *Black's Law Dictionary*, a *Harvard Law Review* volume on habeas corpus, and a book of legal forms. The court also ordered that the inmates must have reasonable access to the law library.

The case of *Adams v. Carlson*<sup>8</sup> involved inmates of the federal penitentiary in Marion, Illinois, who sought an injunction to prevent prison officials from retaining legal materials confiscated from the inmates after a disruption and a fire in the cells. The U.S. Court of Appeals ordered the return of all legal materials that had been

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confiscated and said that prisoners must have access to legal materials, particularly when they are unable to retain attorneys and must act *pro se* (representing themselves in court). It is a violation of due process of law, the court said, to deprive an inmate of materials he needs for reasonable access to the courts. Legal materials should not be withheld on the dubious ground that they might serve as matter to burn during some future disturbance (the excuse given by the prison officials) that is not anticipated.

In *Johnson v. Anderson*<sup>9</sup> officials of the Delaware Correctional Center at Smyrna tried to limit inmates to a single law book, twice a week for one and one-half or two hours. The federal district court held that such a rule unlawfully deprived inmates of their right of fair access to legal research materials. It said that effective access to the courts is simply too crucial a right to be awarded or withheld as a disciplinary tool, and it enjoined the prison from applying such a limitation. The court said that it is up to the prison officials to prove that other sources of legal assistance were available to inmates if the prison put such a limitation on legal materials. In this case the officials had failed to show that this was true.

*Battle v. Anderson*<sup>10</sup> is a case in which inmates of the Oklahoma State Penitentiary claimed they were denied access to the courts because: (1) the prison officials failed to provide them with an adequate law library or a reasonable and adequate alternative, and (2) the officials refused to allow inmates to have personal legal reference materials in their possession or to assist each other with their legal problems. The federal district court concluded that the prison's law library and legal assistance program failed to provide constitutionally adequate access to the courts. It ordered the officials to prepare a plan that would insure access to the courts by inmates, and it enjoined the officials from interfering with the acquisition or possession of legal materials by inmates, including court transcripts, law books, legal periodicals, court documents, etc. The officials were ordered to arrange for capable and experienced inmates to help other inmates with their legal work. They were also told they must advise inmates that they may subscribe to any legal periodical and may obtain law books and legal assistance through correspondence.

*Cruz v. Hauck*<sup>11</sup> involved inmates of the Bexar County jail in Texas who sought judicial relief from jail regulations restricting the use and possession of legal materials. The appeals court said: "Access to legal materials is but one source, albeit an important one, of providing an adequate pathway to the courts." It sent the case back to the lower

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court to determine whether all inmates, not just those charged with a state offense, had adequate access to the courts through the services of a court-appointed lawyer (one of the acceptable alternatives to an adequate law library). The court said that if inmates are not allowed to store softcovered legal books in their cells, the authorities should arrange to store them in other available areas of the jail. It also said that prison rules should permit inmates to obtain law books from any source, subject only to screening for security, and that procedures should be established for prisoners to use legal materials in their cells for a reasonable period.

A case involving detainees in a city jail is *Giampetruzzi v. Malcolm*.<sup>12</sup> In that case, unconvicted detainees in the administrative segregation unit of the New York City House of Detention for Men sought relief from a jail limitation on the number of legal books and other materials that might be kept in a cell. The federal district court held that, under a state regulation, the jail limitation on legal books was unlawful, even though a limitation of five nonlegal books would be considered reasonable. Detainees in the administrative segregation unit were not allowed as much time in the law library as other inmates, but the court felt the amount of time was sufficient in proportion to the number of persons in the unit compared with the number in the general jail population.

In *Padgett v. Stein*,<sup>13</sup> inmates of the York County Prison in Pennsylvania alleged that their law library was inadequate because it possessed only the annotated statutes of Pennsylvania. The federal district court ordered the prison authorities to submit a plan to guarantee inmates effective access to the courts, either by reasonable access to attorneys, by reasonable access to legal materials, or by any other reasonable means devisable. As alternatives, the court mentioned: a legal services program at the prison, perhaps in conjunction with the county legal services; establishment and maintenance of an adequate law library; limited access to the county law library, perhaps through the establishment of a legal clinic in the prison; or the transfer of inmates to an institution that has an adequate law library.

A prisoner at the Middle Georgia Correctional facility sent a handwritten letter to the federal district court in *Wilson v. Zarhadnick*,<sup>14</sup> and the court deemed it to be a civil complaint that legal materials taken from the prisoner denied him due process of law by denying him access to the courts. A hearing revealed that there was no law library in the facility, and that there were no plans for one. The court held that the state must furnish a law library of basic legal

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materials to research the major areas of immediate concern to prisoners, namely, habeas corpus and civil rights. It added that essential materials would include annotated statutes of state and federal laws, and reports of modern state and federal cases. The court felt that a law library was called for in this case because legal counsel provided by the state was not adequate. It said that a prisoner without legal assistance has such a severe handicap in pursuing his rights that denial of assistance is in effect denial of access. The state's obligation to provide viable access to the courts requires as a minimum that it furnish legal materials to inmates, unless other adequate means of legal assistance is provided.

A case that may have major impact in this area is *Smith v. Bounds*,<sup>15</sup> which was accepted for review by the U.S. Supreme Court on April 3, 1976. The U.S. Court of Appeals approved a district court order and plan for North Carolina prisoners to have law libraries. The plan called for one central library and seven core libraries around the state that would each have a minimum legal collection. The district court said that the state has the obligation to provide prisoners with legal research facilities or an acceptable alternative, but it is not obligated to provide additional assistance in the form of independent attorneys' services. The U.S. Court of Appeals agreed; however, it found the district court's plan deficient in one respect: female prisoners would be afforded less accessibility to legal research facilities than would male prisoners. It ordered that the plan be modified by removal of such discrimination.

The fact that the Supreme Court has agreed to hear the *Smith v. Bounds* appeal implies that the present Court may wish to reconsider the direction in which courts have been going concerning prisoners' rights to law libraries and legal services; it could easily have refused to hear the appeal by referring to the holding in the *Gilmore* case. It does seem that recent cases decided by the Supreme Court have evidenced a tendency to restrict rather than to broaden the rights of prisoners.<sup>16</sup>

A case which questions the adequacy of an existing legal collection in a federal prison is *Gaglie v. Ulibarri*.<sup>17</sup> Inmate Gaglie asked the federal court to direct the prison authorities to provide an adequate law library as required by the *Gilmore* case. The lower court ruled in his favor, and the U.S. Court of Appeals affirmed the decision, holding that the Bureau of Prisons Policy Statement 2001.2B did not provide for an adequate law library, nor did the law school legal assistance program or public defender's office provide effective research assistance. The Bureau of Prisons list called only for reports

of federal cases since May 1972, but the court ordered the library's reports to begin about 1960. It said that the law school program provided only limited aid, and that the public defender had a heavy case load, making it doubtful that he was able to provide effective assistance to the inmates. The court of appeals, however, said that it was not deciding whether some lesser number of books than that ordered by the lower court might be sufficient, because that issue had not been presented on appeal.

In *Hooks v. Wainwright*<sup>18</sup> inmates of a Florida correctional institution brought a civil class action alleging that they were denied their federal constitutional rights because the prison law library was inadequate, or alternatively because the state provided inadequate legal counsel to assist prisoners. The federal district court held that Florida has a duty to furnish inmates with extensive law libraries, or to provide professional or quasi-professional legal assistance. After finding that the prison authorities did not furnish lawyers to indigent inmates, the court said: "It is constitutionally mandated that the prison authorities furnish indigent inmates with some form of legal assistance which to that extent assures meaningful access to the courts." The court reasoned that to deny indigent prisoners adequate law libraries or legal assistance would be to deny them equal protection of the law, for there can be no equal justice when it depends on the money a person has. Such denial also deprives a prisoner of due process of law, because it hinders his reaching the threshold of the courts and therefore the guarantees of due process. The court said that the cost of legal services is not an adequate or reasonable justification for not providing those services, and it directed the parties to submit a comprehensive and detailed proposal and timetable for establishing adequate prison legal services and/or law libraries.

Inmates in the Nevada State Prison, in a class action on behalf of all the inmates,<sup>19</sup> presented evidence that the law library was woefully inadequate. They asked that the prison maintain a roster of writ writers (nonlawyers, usually fellow inmates, who are able to prepare petitions to courts), and that it notify incoming prisoners of their availability. The court held that the state must provide reasonable access to an adequate legal reference collection, and it remarked that the state's interest in curtailing expense was not an acceptable excuse for failing to make such provision. The court said that prisoners should have access to the decisions of the U.S. Supreme Court and of other federal courts, the *Pacific Reporter*, *Shepard's Citations* for all such decisions, the *Nevada Revised Statutes*, the *Nevada Digest*, the *Modern*

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*Federal Practice Digest*, and reference works on criminal law, such as the *Criminal Law Reporter*. It suggested also that the Nevada Board of Prisons might obtain the advice of the attorney general, the state public defender, and others regarding the composition of the law library collection.

In *Noorlander v. Ciccone*<sup>20</sup> a regulation of the U.S. Medical Center at Springfield, Missouri, provided that excess legal materials in an inmate's cell must be sent to his home or, if he prefers, destroyed. The court held the regulation to be reasonable and said the right to represent himself did not require that an inmate be provided with a law library by the medical center unless the public defender program was ineffectual and other alternatives were not adequate to assure his access to the courts. It also stated that a full evidentiary hearing must be held to evaluate the adequacy of an institution's law library or the adequacy of the public defender program.

The importance of keeping the prison law library open for inmates' use is underscored by one of the holdings in *Liddy v. Wilkinson*.<sup>21</sup> In that case the prison law library was closed because the sole inmate library clerk was transferred to another job (as a form of punishment, he alleged). The court held that in the absence of justifying circumstances, an inmate law library clerk should not be reassigned until a suitable replacement has been made available to keep the library open during regular hours.

Not all cases brought by prisoners to obtain reasonable law libraries require a decision by the court. Some of them are concluded by the parties (the prisoners and the institutional authorities) reaching an agreement which is accepted by the court and embodied in a consent judgment. One such case is *Black v. Duffy*,<sup>22</sup> brought by inmates of the San Diego County (California) jail against the sheriff. The consent judgment stated that in order to meet or exceed the minimal constitutional standards regarding access to the courts by inmates, the jail authorities were required to purchase and maintain legal materials listed in the judgment, and to place them in the jail in a cell physically accessible to all inmates. It further required the jail authorities to use their best efforts to establish a borrowing system satisfactory to the San Diego County Law Library to provide inmates with access to additional legal materials not available in the jail law library. The list of legal materials required for the jail library included selected state codes, court rules, federal court rules of civil and criminal procedure, selected titles of the *U.S. Code*, volumes of criminal forms, a law dictionary, a volume on search and seizure law, a treatise on habeas

corpus, practice books on California criminal law, evidence and criminal procedure, a Spanish-English dictionary, the *Criminal Law Reporter*, and the local legal newspaper.

There have been a number of court cases in which the denial of access to legal materials for prisoners has been upheld for one reason or another. *Farrington v. State of North Carolina*<sup>23</sup> is a case which appears to contradict the *Smith v. Bounds* decision. Both are North Carolina cases, but from different federal districts. A state prisoner claimed he was denied access to the courts because the institutional authorities did not provide a law library for prisoners. The federal district court said that the U.S. Constitution does not require a state to furnish law libraries to prisoners if the state appoints lawyers to represent indigent inmates in postconviction proceedings and does not prohibit inmates from preparing writs for other inmates. Because North Carolina did follow that policy, the court held that a law library was not needed in order for its prisoners to have access to the courts. The court mentioned that there are approximately 12,000 prisoners in North Carolina, and that fewer than 100 had prepared petitions for postconviction relief.

In *Bauer v. Sielaff*<sup>24</sup> an inmate of the State Correctional Institution in Huntington, Pennsylvania, sought damages and injunctive relief, alleging that he was improperly deprived of his personal legal materials while he was in maximum security. The court held that the deprivation was not improper because the inmate had not proved that he was denied access to the courts. He had failed to produce evidence that he was intentionally denied his legal materials, and he had failed to prove that he had suffered actual damage thereby. The court pointed out that his lawyer had still pursued his pending appeal and that he could still communicate with the lawyer. He had in fact been able to file a handwritten complaint that included legal quotations and citations.

In the Oregon case of *Chochrek v. Cupp*,<sup>25</sup> the U.S. Court of Appeals affirmed the lower court's denial of a writ of habeas corpus to a prisoner who had alleged that he was denied access to the courts because he was denied sufficiently frequent access to the prison law library. His case was dismissed on grounds that he had failed to allege that other adequate means of legal assistance were unavailable to him. This again shows how the courts consider a law library as only one alternative available for assuring reasonable access to the courts.

The inmates of the Colorado State Penitentiary alleged in *Hampton v. Schauer*<sup>26</sup> that their right of access to the courts was infringed by



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the inadequacy of their law library, as well as by other factors. The suit was dismissed by the federal district court, however, because the court found overall legal facilities and assistance to prisoners to be effective and free from restrictions. The court said there was no evidence that any inmate had been unable to present his cause to a court as a result of the law library's inadequacy, noting that inmates had testified that there was a 100 percent improvement from the unworkable law library of two years before. Lawyers had testified to the present inadequacy of the library, and the prisoners had offered in evidence the recommendations of the American Association of Law Libraries for an adequate prison law library. On the other hand, the warden testified regarding the institution's plans to continue to improve the library. The court said that a prison's law library is but one factor bearing upon inmates' access to the courts. Although there was evidence of some delay, the court was more impressed with the following factors: inmates' free access to the public defender who had discretion to pursue postconviction relief; liberal prison regulations which allowed prisoners to contact lawyers, help each other, purchase law books, and obtain free writing supplies and free photocopying; and the availability of an inmate law librarian to help the prisoners.

In *Knell v. Bensinger*<sup>27</sup> an inmate of the Illinois State Penitentiary was denied access to legal materials and legal assistance while he was in disciplinary isolation. The lower court denied his petition for an injunction and damages. The U.S. Court of Appeals affirmed that decision, stating that it was not unreasonable to deny the inmate access to legal materials and assistance where his disciplinary isolation was imposed for violation of prison regulations and was limited to fifteen days or less. The court felt that such denial of access to the courts was *de minimis* (too trifling to take notice of), because it was for a short period of time.

Once an inmate refuses the services of a government-appointed lawyer, he can not complain that jail officials will not provide him with a law library to help him prepare his own defense. When an inmate of the Fulton County (Georgia) jail awaiting trial on a charge of mail fraud did that,<sup>28</sup> the court said that he could not claim denial of either due process or equal protection of the laws because the government had fully satisfied the requirement of providing access to the courts by offering him a lawyer. The prisoner has no constitutional right to choose which kind of access to the court he prefers. In response to the inmate's allegation that he was refused delivery of mail which contained law books, the court affirmed that he was entitled to receive all

mail properly sent to him, including law books, but the mail was subject to security censorship.

If an inmate awaiting trial is represented by a lawyer, the county sheriff is not required to supply him with law books, according to the U.S. Court of Appeals in *Page v. Sharpe*.<sup>29</sup> The court distinguished this case from the *Gilmore* ruling by pointing out that, in *Gilmore*, "jail-house lawyers" rather than "real lawyers" were helping other inmates.

In *Russell v. Oliver*<sup>30</sup> an inmate in the Virginia Correctional System claimed he was denied access to the courts because of the lack of access to law books. The court, however, held that his right of access was not unconstitutionally restricted by the lack of law books because: (1) prisoners were free to file complaints (and a large volume were filed each year), (2) lawyers were appointed if a material issue of fact existed, and (3) the state had a program under which the court appointed attorneys to counsel and assist indigent prisoners regarding legal matters relating to their incarceration. The court said that the state need only provide some reasonable and effective opportunity for a prisoner to gain equal access to the courts, and that the plaintiff had not shown that an inadequate law library resulted in lack of opportunity to secure postconviction relief in the courts.

Although it was not one of the issues in contention in *People v. Heidelberg*,<sup>31</sup> the court said that the U.S. Constitution does not require that an inmate who is representing himself in court be provided with law books if he had been offered a lawyer appointed by the court and had refused one.

Even though a prison's law library may lack older volumes of the court reports which an inmate feels he must have for his research, that may not be sufficient to show he is being denied access to the courts. In *Stover v. Carlson*,<sup>32</sup> inmate Stover challenged the sufficiency of the law library at the Federal Correctional Institute in Danbury, Connecticut. The library contained federal court reports beginning in 1950, relevant parts of the *U.S. Code*, a federal digest, a legal encyclopedia, and some lesser titles. His petition for a writ of habeas corpus was dismissed on the merits because he had failed to show he was denied meaningful access to the courts by the absence of the older court reports in the library. The court pointed out that prisoners at Danbury had access to an excellent legal assistance project of the Yale Legal Services. The court felt that such services, plus the existing law library, assured prisoners of reaching the courts, which is all that the Constitution requires. The court said that prison officials had struck a

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salutary balance between inmates' right of access to the courts and the government's need to spend its money carefully. It said there was no showing in this case that the prisoner's rights had been burdened, while on the other hand the cost of meeting his demands would have been financially high.

In *Wilson v. Zarhadnick* an inmate of the county prison farm of the Georgia Prison System complained that the warden had confiscated or withheld his personal legal materials. Even though he had not complained about the absence of a law library in his institution, the lower court required the state to furnish a law library containing a basic legal collection. The U.S. Court of Appeals said the lower court went too far, because the question of a law library had not been an issue in the controversy. It said further that if an inmate is not indigent, as this one apparently was not, and if he has adequate financial resources to employ an attorney, the state is not under a constitutional obligation to furnish him legal research materials.<sup>33</sup>

Even though a prison may have a law library of sorts, the question may be raised as to whether that is enough when many of the prisoners are illiterate. Inmates in the Mississippi State Penitentiary brought an action claiming they were entitled to access to an adequate law library *and* state-supplied lawyers.<sup>34</sup> During the trial a consent order established an adequate central law library with rules that provided reasonable access by inmates. The court ultimately ordered the prison authorities to devise a plan that would insure that inmates who needed assistance in gaining access to the courts would be able to call upon competent writ writers. The court said that the right of access to the courts required the state to provide some source of assistance for literate and illiterate inmates alike. It pointed out that the widely scattered residential camps in Mississippi and the administrative prohibition against intercamp visits operated as a *de facto* bar to inmates' procurement of the assistance of competent writ writers.

*Jordan v. Johnson*<sup>35</sup> is a case involving the hours a prison law library is open. Inmates at Southern Michigan Prison claimed that the warden's regulation regarding law library hours violated their constitutional right of access to the courts. The court held that a flexible eleven and one-half hours per week came within the sphere of discretionary actions of prison officials for the orderly administration of the prison. In addition to the eleven and one-half hours per week, additional time was allowed when an inmate had to meet a court-imposed deadline.

## PRISONS IN OTHER COUNTRIES

In the United States, court decisions in recent years have resulted in the creation and improvement of law libraries in correctional facilities, but in Great Britain the situation is as it was in the United States several years ago. Until recently no prisoner in England could consult with a solicitor (attorney) without the Home Secretary's permission, let alone initiate court proceedings. Following a complaint to the European Commission on Human Rights,<sup>36</sup> however, the Home Office modified its practice so that permission would not in the future be denied in cases involving physical injury to a prisoner.

The British rule was further challenged before the European Commission on Human Rights by a prisoner who had been denied access to legal advice.<sup>37</sup> He claimed that the rule regarding prisoners violated a provision in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which guarantees the determination of a person's legal rights by an ordinary court.<sup>38</sup> When the case was referred to the European Court of Human Rights, it held that Great Britain had breached Articles 6 and 8 of the convention by refusing the prisoner access to a solicitor so that he could bring a court action against prison officials. The officials had refused the prisoner's request to correspond with a solicitor and had accused him of involvement in a prison riot.<sup>39</sup> The court held that Article 6, Section 1 secures to everyone—including prisoners—the right to have any claim relating to one's civil rights brought before a court. Consequently, the article embodies the right to a court, of which the right of access to a court constitutes one aspect. The court also held that under Article 8 a prisoner has the right to respect for his correspondence, including correspondence with his solicitor.

New prison rules were promulgated in England to comply with this decision, but they have been criticized as being so restrictive that they negate the spirit of the court's ruling. The new rules provide that visits from one's solicitor must be in the sight and sound of a prison officer, and when the matter involves a complaint against the prison staff, it must be investigated under normal internal procedures. Once proceedings are begun in a court, visits with an inmate's solicitor need only be in the sight of a prison officer.<sup>40</sup> Apparently, prisoners in England are an exception to the principle laid down in the twenty-ninth chapter of the Magna Charta of Edward I (1297), i.e. that a person is entitled to unimpeded access to the courts for the enforcement of his civil rights.<sup>41</sup>

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In Sweden prison regulations are far more liberal than in the United States, so much so that there would seem to be little need for prison law libraries, except for self-education. Swedish prisoners are allowed to have private legal assistance whenever they want it, and they have a right to bring complaints about prison officials to the national ombudsman. Swedish prisoners do not lose their general civil rights; they can still vote, they can correspond with or visit any person, they can write to other prisoners, and they have a right to organize for their own interests.<sup>42</sup>

In Canada the rights of prisoners do not seem to have produced many court cases, but in one case it appears that the Ontario courts are inclined to follow a "hands off" policy. It was held in *Re Armstrong v. Whitehead*<sup>43</sup> that a disciplinary hearing by a jail superintendent was not an inquiry in the nature of a judicial or quasi-judicial hearing (at which an inmate is entitled to a lawyer's representation). The court said that proceedings relating to discipline in a correctional institution are not subject to review by the courts.

### STANDARDS FOR CORRECTIONAL FACILITY LAW LIBRARIES

In recent years standards relating to prisoners have been offered by the American Bar Association, a national commission, the National Sheriffs' Association, the American Correctional Association, the American Library Association, and the American Association of Law Libraries. Only the last three, however, have produced standards directed specifically to law libraries within correctional institutions.

#### AMERICAN BAR ASSOCIATION

*ABA Standards*—In 1968 the American Bar Association (ABA) published "Standards Relating to Post-Conviction Remedies." Standard 3.1 states that the initial step in postconviction relief is the preparation and filing of a court application, and that it is usually done by a layman in prison without the assistance of an attorney and without access to more than limited legal materials. It goes on to say that minimum conditions desirable in a prison would include: "(i) availability of stationery and writing supplies, (ii) the right to purchase and retain legal reference materials in reasonable amounts, (iii) reasonable access to any legal reference materials in the prison library, and (iv) free and uninhibited access to courts and to private counsel" (one's own attorney).<sup>44</sup>

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Beyond the minimum conditions, the ABA states that it is desirable to arrange for, or to permit, counseling of prisoners on the validity of their legal claims. It suggests that in doing so the following may be appropriately considered:

- i. regular visits by lawyers or law students . . . arranged by an independent agency, such as the local bar association or defenders association or a law school;
- ii. establishment and supervision of an adequate collection of legal reference materials related to criminal law and procedure in the prison library;
- iii. distribution of specially prepared pamphlets or brochures to prisoners, prepared by reliable and independent agencies, outlining the scope of post-conviction relief in language and form understandable to the prisoner.<sup>45</sup>

The American Bar Association says that the state optimally should establish a regular agency to provide legal advice and to represent prisoners in court. It suggests that either the public defender or a special agency created by the state could do that work.

As the court cases discussed earlier have shown, the minimal requirement that prisoners should have uninhibited access to the courts is the principle from which flows the need for adequate prison law libraries, unless the authorities provide such alternatives as legal counsel or some kind of program that assists prisoners in preparing documents to be filed in court.

*ABA Report*—The ABA Commission on Correctional Facilities and Services published a report in 1973 entitled *Providing Legal Services to Prisoners: An Analysis and Report*<sup>46</sup> which discusses at some length the importance of a law library in a correctional institution. It states that a law library is a minimal requirement for any prison law program, although it is not a sufficient means of assuring access to the courts. Law libraries are fundamental in overcoming the barrier of distance which the state has erected between inmates and their access to the courts. Any person petitioning a court, whether attorney, paralegal or prisoner, needs to survey legal materials. The report points out that even after the *Gilmore* case, prisons in 1973 did not afford inmates meaningful law libraries, thereby frustrating their access to the courts.

The report further says that states must provide a substantial library, one that an average attorney would need in order to deal

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effectively and competently with the variety of cases that prisoners have.<sup>47</sup> The report continues, however, that law libraries are not enough, because many prisoners are illiterate. It refers to the president's crime commission finding in 1967 that 82 percent of all prisoners had not completed high school, and that 55 percent had not even finished the eighth grade. By 1974 the educational level of inmates of state correctional facilities had risen, but still 61 percent of them had not completed high school, and 26 percent had only an eighth grade education or less.<sup>48</sup>

Apropos of the latter statement, it should be mentioned that in the 1975 case of *Stevenson v. Reed*,<sup>49</sup> expert testimony established to the court's satisfaction that reading materials found in law libraries generally are college- or college-graduate-level reading. Of the inmates at the Mississippi prison, 88.2 percent had not finished high school and 56.3 percent had completed less than the ninth grade. Statistics on state correctional facilities in 1974 showed that, nationally, 8 percent of the inmates had completed one to three years of college, and only 1 percent had completed four or more years.<sup>50</sup>

The ABA report refers to a survey which shows that public defenders are overworked; that law student programs are erratic, diverse in competence and scope, and concerned with other goals; and that bar association programs suffer from geographic distance which is costly to private attorneys. The report affirms that alternative solutions must therefore be sought. It recommends comprehensive legal services, provided primarily by staff lawyers and supplemented by paralegals, law students, and in some cases, prisoner assistants, social work students and volunteer attorneys. The report states that a prison legal services office should be independent from the corrections department but located within or near the institution served.

In regard to prison law libraries, the report says that states should establish law libraries in their institutions for prisoner use in addition to providing resident legal services. This should be done for the following reasons: (1) some prisoners do not trust lawyers or paralegals, and wish to represent themselves; (2) inmates benefit from doing legal research because skills employed may be useful later; and (3) the resident legal counsel can also use the law library.

In a discussion of the contents of a prison law library, the report mentions that one set of basic legal materials for each 300-500 prisoners has been recommended. It says that smaller institutions can be served by (1) transferring inmates to a larger institution to use its library (the most common method), (2) circulation of books and

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photocopies from outside libraries, (3) reference service by an outside library, (4) service by a mobile unit, or (5) utilizing a small institutional law library backed up by an outside library.

Concerning the staffing of prison law libraries, the report recognizes that a certain amount of expertise is required in running such a library, and suggests that law librarians and lawyers might be relied on to provide consulting services. It also indicates the disadvantages of relying on guards to run the law library, namely, that they are seldom sufficiently educated, and that they have dual loyalties that can result in halfhearted assistance to inmate researchers. There are also drawbacks to having a prisoner librarian, despite the fact that the low pay and high incentive might make this an attractive choice to the prison administration. Inmates are subject to transfer and reprisals; not many of them have a good education; and they would usually require considerable training before they could actually serve as prison law librarians.

The ABA report mentions a program offered by West Publishing Company, the major legal publisher, for training inmate library staff. In the program, four lawyers conduct a series of training sessions for fifteen prisoners at a time, utilizing films, lectures and textbooks. The results are reported to be surprisingly good. These fifteen prisoners in turn teach other prisoners how to use the legal materials and assist them in doing their legal research. Writ writers have not usually been among those seeking the training offered by West Publishing Company.

Among other programs mentioned in the report is one in which professional law librarians have instructed inmates in legal bibliography and research, and another in which legal aid personnel do the teaching. The former program was carried out by Morris Cohen (then law librarian at the University of Pennsylvania) and members of the Law Librarians' Society of Washington, D.C.; the latter was operated by the Legal Aid organization in New York City.

NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS  
AND GOALS

In 1973 the National Advisory Commission on Criminal Justice Standards and Goals issued its correctional standards,<sup>51</sup> some of which touched on prison law libraries. Standard 2.3 deals with access to legal materials, and provides that each correctional agency should establish policies and procedures to guarantee the right of offenders to have reasonable access to legal materials. It says that an appropriate



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law library should be established and maintained at each facility with a design capacity for 100 or more inmates, and that a plan should be devised and implemented for smaller residential facilities to assure reasonable access to an adequate law library. The commission maintains that this standard would apply to all prisons and one-eighth of the county and municipal jails (about 500). In all, 1,000 institutions would be affected.

The same standard further provides that the law library collection should include the state constitution, state statutes, state court decisions, state procedural rules and decrees thereon, and legal works that discuss the foregoing materials. Also to be included are federal court decisions, court rules and practice texts, one or more legal periodicals, and appropriate digests of cases and indexes for the described materials.

#### NATIONAL SHERIFFS' ASSOCIATION STANDARDS

The National Sheriffs' Association published "Standards for Inmates' Legal Rights" in 1974;<sup>52</sup> two of the rights enumerated concern prison law libraries. The fourteenth right provides that if a prisoner has no legal counsel, he or she has the right to prepare and file legal papers with the court. From this can be inferred the right to have access to law books and other legal materials, including reasonable amounts of writing materials, and the right to confer with other prisoners about his case. This latter right is based on the *Johnson v. Avery* decision. Right 15 provides that inmates must have unrestricted and confidential access to the courts and to executive agencies of government. It says the same rules apply to correspondence in this area as apply in the case of the prisoner's correspondence with his attorney—that is, no examination or censorship of correspondence. Mail from an attorney should be examined only for contraband and may not be read by prison staff.

#### AMERICAN CORRECTIONAL ASSOCIATION/AMERICAN LIBRARY ASSOCIATION STANDARDS

"Library Standards for Juvenile Correctional Institutions," produced by the American Correctional Association (ACA) and the American Library Association (ALA),<sup>53</sup> include some standards relating to legal reference materials. These standards, two years in the making, apply to libraries in institutions for delinquent youth, but not to short-term detention facilities where juveniles stay less than sixty days. Standard 2.3.3.3 provides that the book collection in a juvenile

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correctional institution should include legal reference materials which satisfy user needs and court mandates, and in regard to the latter it cites the ACA's *Guidelines for Legal Reference Service in Correctional Institutions*.<sup>54</sup> Standard 2.5.4, while discussing the size of the library, states that there should be space adequate to house legal reference materials, and Standard 2.6.3.5 points out that the budget should include funds to provide access to adequate legal collections, as recommended by the American Association of Law Libraries (AALL), in its *Guidelines for Legal Reference Services in Correctional Institutions*.

This writer feels that it would be advisable for any standards addressed to the funding of legal reference collections to note particularly that there must be continuing funding for the upkeep and expansion of such a collection. It is not unusual for some law libraries to spend as much as 80 percent of their annual book budget for upkeep materials. For example, the estimated cost of annual upkeep for the minimum collection for Wisconsin prisons recommended by the AALL was \$1,000, which is 14 percent of the initial cost of the Wisconsin minimum collection.

The ACA/ALA Standard 2.6.4 states that its formula dollar amount per inmate for the annual budget of the juvenile correctional institution library does not include funds for legal materials. Funding for legal materials should be added after the formula is applied to an institution. Standard 2.10 wisely provides that the institutional librarian should have specialized training in the use of legal reference materials, probably through continuing education programs.

*American Correctional Association Guidelines for Legal Reference Service*—The second edition of the ACA's *Guidelines for Legal Reference Services in Correctional Institutions: A Tool for Correctional Administrators*,<sup>55</sup> published in 1975, aims to help administrators fulfill the judicial mandate for access to courts through the alternative of an adequate law library. It recommends that the legal reference collection be in an area generally accessible to all inmates, and that it be adequate to house the recommended collection and ten years of growth materials. The collection it calls for is that recommended by the AALL, which it reprints fully. Besides the usual advice to provide good ventilation, temperature control and lighting, it recommends that an area for counseling should be provided, although it need not be in or adjacent to the library. For the sake of legal researchers, this writer strongly recommends that this area *not* be in the library!

The guidelines recommend that library functions in the institution

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be coordinated under a professional librarian who has had special training in audiovisual and legal reference services. If the law library is not a special section of the institutional library, it should be located in an adjacent area where supervision by one library director can effect economy of staff and provide maximum use of paraprofessionals. The legal reference staff, both professionals and paraprofessionals, should have continuous training by law librarians, attorneys, and others qualified in using legal materials.

It is imperative, state the guidelines, that the law library be open for use by all inmates a maximum number of hours per week in order to allow optimal use of the materials. Space requirements should be empirically tested in order to arrive at both a workable formula for seating in proportion to the total inmate population and a formula to determine the hours the library needs to be open. Factors to be weighed in arriving at a formula are: (1) the average time a prisoner needs for his research, (2) the number of inmates needing to use the library during a given period, and (3) the number of inmates the library can comfortably accommodate at one time. Using these factors, it suggests the following formula to determine how many hours the library needs to remain open during a given period: the number of researchers multiplied by the average time each needs in the library, divided by the number of persons who can work in the library at one time, equals the number of hours the library should be open during the given period. The writer suggests that after one arrives at the number of hours the library should be open, one still ought to use a reservation system so that inmates can count on certain times for doing their legal research. Such a reservation schedule should also take into account the times an inmate can get to the library in view of his work assignments and other activities. The guidelines add that special consideration should be given to inmates who have a court date set. It also states that correctional administrators find that doing research in the prison law library has definite therapeutic value for inmates and contributes to their rehabilitation and paraprofessional vocational training.

*Connecticut Department of Corrections Program*—Some state departments of correction appear to be making a bona fide effort to provide legal assistance to prisoners in accordance with the *Johnson* and *Gilmore* decisions. An exemplary program is that of the Connecticut Department of Corrections, which describes its program in its booklet entitled "Legal Assistance to Prisoners."<sup>56</sup> The booklet explains

that in criminal cases, the Connecticut court will appoint a private attorney and the state will pay for the attorney if the inmate is indigent. For civil cases, the Connecticut Prisoner Association operates a project under contract with the Department of Corrections, which supplies an attorney for indigent inmates.

The booklet also describes the legal reference materials that are made available to inmates. In each institution there is a basic law book collection, backed up by a microfilm collection of the more voluminous basic research materials, such as court decisions. By using microfilm for those materials, each institution is able to provide a fairly comprehensive library of statutes, cases and related materials for approximately \$1,000, including the microfilm reader. The filming is done by the state library on its own equipment, filming its own books. The state library also provides photocopies on request from its law collection. In addition to the basic research materials for Connecticut law, the state library has also put on microfilm approximately 100 landmark cases on correctional law from all jurisdictions.

Another worthwhile booklet produced by the Connecticut Department of Corrections is *Landmark Decisions in Correctional Law*,<sup>57</sup> which lists and annotates in fifty-eight pages many important prisoner court decisions under seventeen topics.

*American Correctional Association Standards for Adult Correctional Institutions*—At the time of this writing, the “Library Standards for Adult Correctional Institutions” of the ACA’s Committee on Institution Libraries is in its final draft stages and is yet to be adopted.<sup>58</sup> The draft standards will be discussed here, however, rather than awaiting their final adoption.

The ACA draft standards are directed to state and federal adult institutions only and are not appropriate for jails, work farms, or other similar institutions. Standard 2.3.4.2 provides that an institution’s book collection shall include legal reference materials that satisfy user needs and court mandates. A footnote referring to the ACA guidelines and to the *Gilmore* and *Johnson* cases states that every inmate must have available legal assistance or an adequate law library collection that meets court mandates.

In Standard 2.4 the various services that should be available to inmates are enumerated, and legal reference services are included in reader services. Standard 2.4.2.6.1 says that the legal collection and reference services should be coordinated with total institutional services and should be supervised by a person who has been trained in

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the use of legal materials. It adds that in a small institution the legal collection and services may be administered as part of the general library, and that in some cases it may be a specialized branch of the main library. Standard 2.4.2.6.2 provides that specialized training in legal reference service should be continuously available to the staff of each institutional library, including the library director and paraprofessional library aides from the inmate population. It further states that training should be given by law librarians or lawyers who are familiar with the needs of inmates of various types of correctional institutions and with all types of legal materials and services. Standard 2.4.2.6.3 defines legal reference service as making legal resources available to inmates who wish to study legal aspects of their cases, usually with the intention of preparing court writs. The writer feels that this definition is too narrow and that legal reference service should provide inmates with library materials that will help them to determine their rights in both criminal and civil matters that affect them. The standard points out that this requires that inmates have immediately available to them the basic legal resource materials in state, federal and general law, and it refers to the recommendations of the American Association of Law Libraries in ACA's guidelines.<sup>59</sup> Legal reference services, it says, should also include copying equipment, microform reader-printers, and a sufficient number of typewriters for typing petitions to the courts. (The writer would add: "or for typing any other legal document.") Arrangements should be made, says the standard, with large law libraries for requesting reference service and for copies of needed materials not available in an institution's library.

Standard 2.5.6 calls for library space that is ample for reading, conferences, and legal reference and research. This standard, as well as similar ones discussed earlier, assumes that legal materials will be kept with the other library materials. It is the writer's opinion, however, that legal research is generally a more serious activity than other library usage, with more immediately at stake for the inmate, namely, his possible freedom. For that reason, the legal collection should be in a separate room, or in a walled-off area, for the sake of quiet and to avoid distractions.

According to Standard 2.6.2.5, the budget of the institutional library should include funds for an adequate legal collection, such as that recommended for each state by the AALL. This standard is subject to possible misinterpretation because of the reference to materials recommended for each state. The AALL Committee on

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Law Library Service to Prisoners specifies certain recommended federal materials and general legal materials that should be in all prison law libraries, and it also recommends which state materials are appropriate for correctional institutions in each state. The federal materials are extremely important even in state institutions, because most of the court cases involving prisoners' rights have been in federal courts and have involved federal law.

The formula for the annual purchase of library materials, set forth in Standard 2.6.3, states specifically that it does not include funds for initial collections and for legal materials. Funds for legal materials must be added to those called for by the formula. As pointed out earlier, funds for the annual upkeep of legal materials should be approximately 15 percent of the initial cost of the materials, increasing during periods of inflation.

The qualifications of the correctional librarian, discussed in Standard 2.10, include specialized training in the use of legal reference materials, such training to be gained in continuing education.

COMMENTS ON THE VARIOUS STANDARDS

All of the standards described above, to the extent that they are followed and implemented, will improve the quality of law libraries in correctional institutions, and for that reason they should be communicated to institutional administrators and publicized as attainable goals. It is the writer's opinion, however, as well as the opinion of others,<sup>60</sup> that legal collections and reference service in prisons can not ultimately provide what is really needed. Prisoner self-help is not what is required; it is merely an expedient substitute. What is needed are legal services.

The court in *Thibadoux v. LaVallee* put it very well, after it had to deny prisoner Thibadoux's petition for habeas corpus for the fifteenth time:

This case presents an unfortunate example of the difficulties and frustrations experienced by a convicted defendant who does not have reasonable access to legal counsel to assist him in presenting his legal argument to the court. Simply to provide penal institutions with law libraries and the aid of inmate legal clerks is not enough. There must be some opportunity for inmates to have access to counsel who would be able to assess the validity of the constitutional deprivations which they have suffered in their convictions. . . . In most cases, the opportunity given to an inmate to discuss his

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problem with someone not connected with the prison system would help alleviate the feeling of unfairness which develops in the minds of some prisoners. In situations in which there is an arguable claim, the petitioner would be able to set forth his argument in a clear and forceful manner.<sup>61</sup>

Because of the high degree of illiteracy and the lack of education among inmates, it is unrealistic to expect them to handle their own legal problems above a very simple level. Such expectations are akin to expecting them to deal with their medical problems by providing medical collections in the prison library. It may work for minor aches and pains, but beyond that the inmates must have access to a doctor and medical facilities. When one considers that a minimum basic legal collection initially costs about \$7,000, and then about \$1,000 a year to remain current, it may be more economically feasible for some institutions to provide access to attorneys and paralegals who work on inmates' legal problems than to establish large law libraries that offer little more than frustration to poorly educated or illiterate inmates. The compromise worked out by the Connecticut Department of Corrections may offer a practical solution that satisfies both the inmate who wants to act as his own attorney and the inmate who is not equipped to do so. By providing both attorneys and a basic law library that relies heavily on microforms and is backed up by the state library, the Connecticut Department of Corrections appears to be meeting the needs of its inmates within reasonable economic bounds. Their program certainly merits close watching by the library and legal community.

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