North Dakota Law Review

Volume 54 | Number 1 Article 4

1977

Constitutional Law - Prisons - Prison Law Libraries Are an Acceptable Means of Providing Prisoners with Their Constitutional Right of Access to the Courts

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RECENT CASES

CONSTITUTIONAL LAW—PRISONS—PRISON LAW LIBRARIES ARE AN ACCEPTABLE MEANS OF PROVIDING PRISONERS WITH THEIR CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS

North Carolina State Prison inmates instituted actions under 42 U.S.C. § 1983,[1] alleging that the State of North Carolina, by failing to provide them with adequate legal library facilities, was denying them reasonable access to the courts and, therefore, equal protection of the laws as guaranteed by the first[2] and fourteenth[3] amendments to the United States Constitution. The United States District Court for the Eastern District of North Carolina granted the inmates' motion for summary judgment, finding that the sole prison library in the state was severely inadequate and that there was no other legal assistance available to inmates.[4] The court recognized, however, that determining the appropriate relief presented a difficult problem in view of North Carolina's decentralized prison system.[5] It left to the state the task of devising a constitutionally sound program to assure inmates access to the courts.[6] The State of North Carolina responded by proposing the establishment of seven libraries in institutions located across the state to best serve all prison units.[7] The district

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1. 42 U.S.C. § 1983 (1970), Civil action for deprivation of rights, provides as follows:
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

2. U.S. CONST. amend. I, states as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievances."

3. U.S. CONST. amend. XIV, § 1, provides in part as follows: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws. . . ."

4. Bounds v. Smith, ——U.S.——, 97 S. Ct. 1491, 1493 (1977). The district court had originally granted summary judgment for the state officials in one of the three actions consolidated here. On appeal, the fourth circuit appointed counsel and remanded that case with the suggestion that it be consolidated with the other two cases, then still pending in district court. *Id.*

5. *Id.* North Carolina's 13,000 inmates are housed in 77 prison units located in 67 counties. Sixty-five of these units hold fewer than 200 inmates. Smith v. Bounds, 538 F.2d 541, 542 (4th Cir. 1975).

6. ——U.S. at ——, 97 S. Ct. at 1493.

7. *Id.* North Carolina proposed inclusion of the following law books: General Statutes of North Carolina; North Carolina Reports (1960-present); North Carolina Court of Appeals Reports; Strong's North Carolina Index; North Carolina Rules of Court; United States Code Annotated, Title 18, Title 28 §§ 2241-2254, Title 28—Rules of Appellate Pro-

court approved this plan,[8] and the decision was affirmed with slight modification by the fourth circuit.[9] On petition by North Carolina for review, certiorari was granted,[10] and the United States Supreme Court *held* that the fundamental constitutional right of access to courts requires prison authorities to assist inmates in preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or assistance from persons trained in the law. *Bounds v. Smith*, ——U.S.——, 97 S. Ct. 1491 (1977).

Although equality in justice has been a recognized goal of societies since Biblical times,[11] the judicial system's philosophy of prisoner rights and the penal institution's obligation concerning those rights have evolved slowly.[12] Courts have traditionally adopted a "hands off" attitude toward the incarcerated felon, and have rationalized this view by judicial recognition of prison management needs and by admitting that the courts are poorly equipped to resolve the problems of prison administration.[13]

Recently, with the growth of the civil rights movement in the 1960's and a growing public awareness of the plight of prisoners, the courts have become the most effective forum for the redress of prisoners' grievances.[14] Prison inmates scored early judicial victories in the area of general prison conditions,[15] and the recognized rights of prisoners have since been judicially expanded to include the right of communication,[16] the right to a hearing prior to disciplinary punishment,[17] and the right to sufficient medical treatment.[18]

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cedure, Title 28—Rules of Civil Procedure, Title 42 §§ 1891-2010; Supreme Court Reporter (1960-present); Federal Reporter, Second Series (1960-present); Federal Supplement (1960-present); Black's Law Dictionary; Sokol, Federal Habeas Corpus; Lafave and Scott, Criminal Law Hornbook (2 copies); Cohen, Legal Research; Criminal Law Reporter; Palmer, Constitutional Rights of Prisoners. 538 F.2d at 544.

8. ——U.S. at ——, 97 S. Ct. at 1494.

9. 538 F.2d 541 (4th Cir. 1975). The court found that the library plan denied women prisoners the same access rights as men to research facilities. *Id.* at 544. Because there was no justification for this discrimination, the court ordered it eliminated. *Id.* at 545.

10. Bounds v. Smith, ——U.S.——, 96 S. Ct. 1505 (1976).

11. *Leviticus* at 19:15. "Ye shall do no unrighteousness in judgment: thou shall not respect the person of the poor, nor honour the person of the mighty; but in righteousness shalt thou judge thy neighbor."

12. *See* Stone v. Powell, 428 U.S. 465 (1976); Meachum v. Fano, 427 U.S. 215 (1976); Wolff v. McDonnell, 418 U.S. 539 (1974); Cruz v. Hauck, 404 U.S. 59 (1971); Beard v. Alabama Board of Corrections, 413 F.2d 455 (5th Cir. 1969).

13. *See* Comment, *Prisoners and Their Basic Rights*, 11 IDAHO L. REV. 45, 45-47 (1974).

14. Note, *Recent Developments in the Law of Prisoners' Rights*, 11 CRIM. L. BULL. 405 (1975).

15. Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971).

> [T]he concept of "cruel and unusual punishment" is not limited to instances in which a particular inmate is subjected to a punishment. . . . In the Court's estimation confinement itself within a given institution may amount to cruel and unusual punishment . . . where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people. . . .

309 F. Supp. at 372-73.

16. Pell v. Procunier, 417 U.S. 817 (1974); Procunier v. Martinez, 416 U.S. 396 (1974).

17. Wolff v. McDonnell, 418 U.S. 539 (1974).

18. Jones v. Lockhart, 484 F.2d 1192 (8th Cir. 1973). *See also* Thomas v. Pate, 493 F.2d 151, 158 (7th Cir. 1974).

The courts have now expanded prisoners' rights to include a constitutional right to access to the courts.[19] The Supreme Court first recognized that right in *Ex Parte Hull,*[20] when it struck down a regulation prohibiting state prisoners from filing petitions for habeas corpus unless they were found to be "properly drawn" by the "legal investigator" for the parole board.[21]

More recent decisions have struck down restrictions and have required remedial measures to insure that inmate access to the courts is adequate, effective, and meaningful.[22] Thus, in order to prevent effectively foreclosed access, indigent prisoners must be allowed to file appeals without payment of docket fees,[23] states must provide trial records to inmates unable to buy them,[24] and counsel must be appointed so that indigent inmates might have a meaningful appeal of their convictions.[25]

The roots of an inmate's right of access to the courts, however, are embedded in the first and fourteenth amendments to the United States Constitution, and it was upon these amendments that *Bounds v. Smith*[26] was decided.[27] The first amendment provides as follows: "Congress shall make no law . . . abridging the right of the people to petition the Government for a redress of grievances."[28] Through the fourteenth amendment, this right is protected, not only against interference by federal authorities, but also against interference by state authorities.[29]

In *Johnson v. Avery,*[30] a Tennessee prisoner was disciplined for violating a prison regulation prohibiting inmates from assisting other prisoners in preparing writs. The Court held that in the absence of a "reasonable alternative" to assist illiterate or poorly educated inmates in preparing petitions for post-conviction relief, the state may not validly enforce a regulation which absolutely bars inmates from furnishing such assistance to other prisoners.[31] The impact of this holding was that penal institutions must affirmatively provide inmates

19. Bounds v. Smith, ——U.S.——, 97 S. Ct. 1491, 1494 (1977).
20. 312 U.S. 546 (1941).
21. *Id.* at 548.
22. *See* Douglas v. California, 372 U.S. 353 (1963); Burns v. Ohio, 360 U.S. 252 (1959); Griffin v. Illinois, 351 U.S. 12 (1956).
23. Burns v. Ohio, 360 U.S. 252, 257 (1959).
24. Griffin v. Illinois, 351 U.S. 12, 20 (1956).
25. Douglas v. California, 372 U.S. 353, 358 (1963).
26. ——U.S.——, 97 S. Ct 1491 (1977).
27. *Id.* at ——, 97 S. Ct. at 1493. In a strong dissenting opinion, Mr. Justice Rehnquist stated that there is nothing in the United States Constitution which requires a "right of access to the federal courts in order to attack his sentence." *Id.* at ——, 97 S. Ct. at 1503.
28. U.S. CONST. amend. I.
29. U.S. CONST. amend. XIV.
30. 393 U.S. 483 (1969).
31. *Id.* at 490. The Court did note, however, that even in the absence of such alternatives, the state may still impose reasonable restrictions and restraints upon the acknowledged propensity of prisoners to abuse both the giving and seeking of assistance in the preparation of applications for relief. *Id.*

with a reasonable alternative to effectively foreclosed access to the courts.[32]

In *Younger v. Gilmore*,[33] the inmates at various California Department of Corrections facilities challenged the constitutionality of prison regulations which established an exclusive list of prison rules and required all legal papers to remain in the possession of the inmate to whom they pertained.[34] The Court held per curiam that states must protect the right of prisoners to access to the courts by providing them with law libraries or alternative sources of knowledge.[35]

Because the *Younger* decision provided direct recent authority to support the inmates' allegations in *Bounds*, the petitioners urged the Court to overrule its prior holding.[36] The state officials contended that the constitutional duty to provide meaningful access to the courts merely obligated the states to allow inmate "writ writers" to function.[37] They argued that under *Avery*, as long as inmate communications on legal problems were not restricted, there was no further obligation to expend state funds to implement affirmatively the right of access.[38]

Mr. Justice Marshall, writing for the Court in *Bounds*, explained that neither the availability of "jailhouse lawyers" nor the necessity for affirmative state action was dispositive of the inmates' claims.[39] The inquiry was rather whether law libraries or other forms of legal assistance were needed to give prisoners a reasonably adequate opportunity to present to the courts their claim of unconstitutional violation of their rights.[40]

The Court also pointed out that although it is essentially true, as petitioners argued, that a habeas corpus petition or civil rights complaint need only set out the facts giving rise to the cause of action,[41] it does not follow that a law library or other legal assistance is not essential to frame such documents.[42] It is necessary to know what the law is in order to determine whether a colorable claim exists, and

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32. ——U.S.——, ——, 97 S. Ct. 1491, 1496 (1977).
33. 404 U.S. 15 (1971).
34. Gilmore v. Lynch, 319 F. Supp. 105, 107 (N.D. Cal. 1970).
35. *See, e.g.*, Younger v. Gilmore, 404 U.S. 15 (1971); Cruz v. Hauck, 404 U.S. 59 (1971); Hooks v. Wainwright, 352 F. Supp. 163 (M.D. Fla. 1972).
36. ——U.S. at ——, 97 S. Ct. at 1493.
37. *Id.* at ——, 97 S. Ct. at 1495-96.
38. *Id.*
39. *Id.*
40. *Id.*
41. FED. R. CIV. 8(a) provides as follows:
Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.
42. ——U.S. at ——, 97 S. Ct. at 1497.

if so, what facts are necessary to state a cause of action.[43]

The officials of the State of North Carolina further urged[44] that libraries or other forms of legal assistance are unnecessary to assure meaningful access to the courts, in light of the Court's decision in *Ross v. Moffitt*.[45] Mr. Justice Marshall, though, suggested that the *Moffitt* rationale supported the *Bounds* decision.[46] *Moffitt* held that the right of prisoners to "an adequate opportunity to present their claims fairly" does not require appointment of counsel to file petitions for discretionary review of criminal convictions in state courts.[47] Mr. Justice Marshall noted that a court addressing a discretionary review petition is not primarily concerned with the correctness of the trial court's judgment,[48] but generally grants review only if a case raises an issue of significant public interest or jurisprudential importance.[49] In *Bounds*, however, the Court was concerned in large part with original actions seeking a new trial, release from confinement, or vindication of civil rights.[50] Habeas corpus and civil rights actions are of "fundamental importance . . . in our constitutional scheme" because they directly affect our most valued rights.[51]

The Supreme Court explained that it was not putting itself in the place of prison administrators by preserving the prisoner's right of access to the courts.[52] The district court held only that the petitioners had violated the fundamental constitutional guarantee of access to the courts; the court did not, thereby, thrust itself into prison administration.[53] Rather, the state officials themselves were given the opportunity to devise a constitutionally acceptable remedy, and that remedy, namely an adequate law library, was subsequently accepted by the Court.[54]

It should be noted that while adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts, *Bounds* does not foreclose alternative means to achieve that goal.[55]

> Among the alternatives are the training of inmates as paralegal assistants to work under lawyers' supervision, the use of paraprofessionals and law students, either as volunteers or in formal clinical programs, the organization of volunteer attorneys through bar associations or other groups, the hiring

43. *Id.* at ——, 97 S. Ct. at 1496-97.
44. *Id.* at ——, 97 S. Ct. at 1497.
45. 417 U.S. 600 (1974).
46. ——U.S. at ——, 97 S. Ct. at 1497.
47. 417 U.S. at 616.
48. ——U.S. at ——, 97 S. Ct. at 1497.
49. *Id.*
50. ——U.S. at ——, 97 S. Ct. at 1498.
51. *Id.*
52. ——U.S. at ——, 97 S. Ct. at 1499.
53. *Id.*
54. *Id.*
55. *Id.*

of lawyers on a part-time consulting basis, and the use of full-time staff attorneys, working either in new prison legal assistance organizations or as part of public defender or legal service offices.[56]

Although the American Correctional Association[57] has issued a manual which includes certain "essential elements of a correctional library,"[58] there is currently no universally recognized set of standards by which the constitutionality of a given prison law library may be judged.[59] Courts which have sanctioned prison law library proposals as a means of protecting inmates' constitutional right of access to the courts have consistently required comprehensive libraries equipped with up-to-date legal materials.[60] Nevertheless, any plan must be evaluated as a whole to ascertain its compliance with constitutional standards.[61]

North Dakota, in complying with the *Avery* and *Younger* decisions, has chosen the law library alternative by which to protect the constitutional right of access to the courts of its incarcerated felons.[62] Although the constitutionality of the North Dakota State Penitentiary

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56. ——U.S. at ——, 97 S. Ct. at 1499-1500.

57. The American Correctional Association is an organization consisting of correctional administrators, wardens, parole board members, psychologists, sociologists, and other individuals whose function it is to improve correctional standards and to study crime and methods of crime control. 1 ENCYCLOPEDIA OF ASSOCIATIONS 375 (1977).

58. AM. COR. ASS'N., MANUAL OF CORRECTIONAL STANDARDS 504 (3d ed. 1966). These essentials are as follows: (1) statement of objectives and standards for the prison library; (2) library collection and services; (3) library personnel; (4) budget; (5) library facilities and supplies; and (6) system for maintaining teamwork.

59. *See* Note, *The Evolving Law of Prison Law Libraries*, 3 NEW ENG. J. PRISON LAW 131 (1976).

60. In White v. Sullivan, 368 F. Supp. 292 (S.D. Ala. 1973), the court accepted a proposed library which included the following: United States Code; Code of Alabama, Recompiled, 1958; Alabama Appellate Reporter (Vol. 45-present); Supreme Court Reporter (Vol. 76-present); Federal Reporter, Second Series (Vol. 275-present); Federal Rules of Civil and Appellate Procedure; Federal Rules of Criminal and Appellate Procedure; Law Dictionary, Black's or Ballantine's; Harvard Law Review; a recognized form book. *Id.* at 296-97.

In Gaglie v. Ulibarri, 507 F.2d 721 (9th Cir. 1974), the Federal Bureau of Prisons 1972 Policy Statement was held insufficient because the law books required were not up-to-date.

61. ——U.S. at ——, 97 S. Ct. at 1500.

62. Letter from Herbert O. Jensen to Scott E. Boehm (September 15, 1977). In an inventory taken by Herbert O. Jensen, a North Dakota State Penitentiary inmate, on September 15, 1977, the law library at the North Dakota State Penitentiary contained the following materials: North Dakota Century Code; North Dakota Reports; West's Dakota Digest (Jan. 1974-present); United States Code; United States Code Service, Lawyer's Guide; Laws of North Dakota; Northwestern Reporter, Second Series (Feb. 1972-present); Atlantic Reporter, Second Series (Sept. 1976-present); Pacific Reporter, Second Series (Jan. 1974-present); Southeastern Reporter, Second Series (Feb. 1973-present); Northeastern Reporter, Second Series (Dec. 1976-present); Southwestern Reporter, Second Series (June 1974-July 1974); California Reporter (Dec. 1976-present); New York Supplement, Second Series (July 1976-present); Supreme Court Reporter (Nov. 1973-Aug. 1976); United States Supreme Court Reports, Lawyer's Guide (May 1969-present); Federal Reporter, Second Series (Sept. 1973-present); Federal Supplement (Feb. 1973-present); Federal Tax Guide (1961-1968); American Law Reports, Annotated; American Jurisprudence, Proof of Facts; American Jurisprudence, General Index; Am. Jur. Trials; American Jurisprudence 2nd, Federal Taxation; Corpus Juris; Corpus Juris Secundum; Martindale-Hubbell Law Directory; Black's Law Dictionary; Casner and Leach, Cases and Text on Property; Kirkwood, Cases on Conveyances; American Casebook Series, Cases on Creditor's Rights; Chadbourn, Cases on Federal Courts; American Casebook Series, Cases on Public Utilities; Fraser, Cases on Property; Cases on Common Law Pleading; Cases in Business Organizations; Cases in Contracts; Cases on Damages; Cases

law library has not yet been judicially tested,[63] it may be possible to anticipate the ruling of the court, should a case arise, by comparing the North Dakota State Penitentiary law library with those prison law libraries which have successfully withstood constitutional scrutiny.[64] It is evident that the law library at the North Dakota State Penitentiary is equipped with up-to-date legal decisions handed down by the nation's courts and the documents and materials necessary to conduct competent legal research.[65] The library appears to meet or surpass both the comprehensiveness standards[66] and the currency requirements[67] set forth by recent judicial decisions. Therefore, the constitutional right of North Dakota prisoners of access to the courts seems to be effectively protected by the North Dakota State Penitentiary's law library. It must be emphasized, however, that this is a mere projection, and that the Court in any case would consider the constitutional adequacy of a prison law library in light of all the circumstances at the particular penal institution, including the availability of staff attorneys, volunteer lawyers, or trained paraprofessionals.[68]

Whether the "law library alternative" expounded in the *Avery, Younger, Bounds* trilogy will be the final word on prisoners' right of access to the courts at all levels of the judicial system remains to be seen. The future may dictate that penal institutions provide a more direct avenue to the courts than are offered by research facilities. This direct avenue could be the requirement that free legal counsel, or perhaps a para-legal's assistance in researching and drafting documents, be provided.[69] For the present, however, it seems clear that if a penal institution elects to protect its prisoners' constitutional right of access to the courts by furnishing a prison law library, that library must contain, at a minimum, a comprehensive collection of up-to-date judicial decisions and the additional materials necessary to conduct competent legal research.

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on Evidence; Hanna, Cases on Security; Wharton's Criminal Law; Brown on Immigration; Prosser, Law of Torts; Clark, Summary of American Law; Rottschaeffer, Cases on Taxation; Court Martial Reports; Encyclopedia of Automobile Law and Practices; West's General Digest, Fifth Series; Transactions of the National Congress on Penitentiary and Reformatory Discipline; United States Code Congressional and Administrative News (1966); Documents Retrial Index; Federal Tax Regulation; Internal Revenue Acts; Interim Index to Federal Practice and Procedure; Nichol's Encyclopedia of Legal Forms; Shepard's Federal Citations (1973-present); Typewriter Manual, Royal No. KMN12-2724267; Hollinger, Annotated Forms of Pleading and Practice; Domestic Relations from American Jurisprudence; Federal Practice and Procedure Rules; Federal Rules Decisions (July 1974-present).

63. *Cf.* Havener v. Glaser, 251 N.W.2d 753 (N.D. 1977) (imprisonment in the North Dakota State Penitentiary does not preclude certain constitutional protections).

64. *See supra* note 60.

65. *See supra* note 62.

66. White v. Sullivan, 368 F. Supp. 292 (S.D. Ala. 1973).

67. Gaglie v. Ulibarri, 507 F.2d 721 (9th Cir. 1974).

68. ——U.S. at ——, 97 S. Ct. at 1500.

69. *See, e.g.*, Hooks v. Wainwright, 352 F. Supp. 163 (M.D. Fla. 1973).