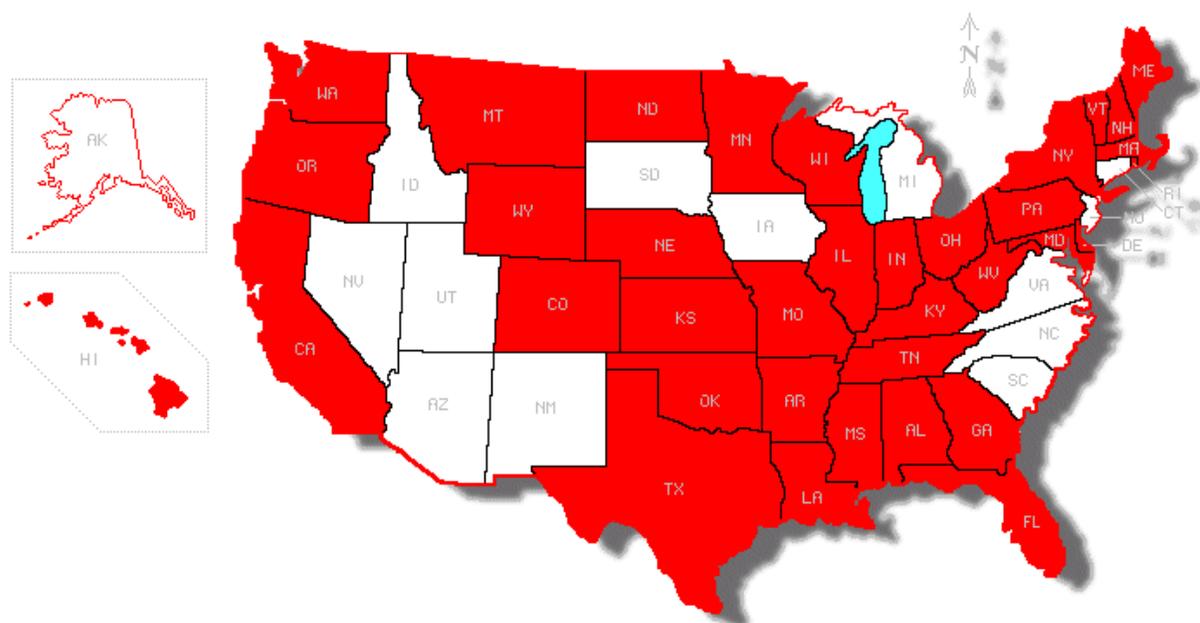


ELECTRONIC LEGAL RESEARCH IN STATE PRISONS:

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The Basis for Prisoner Access to the Courts:

Prisoners are constitutionally guaranteed the right to petition the government for redress of their grievances, including petitioning the courts in order to challenge unlawful convictions and to seek redress for violations of their constitutional rights. Denial or undue restriction of this right is a denial of due process of law under the Fourteenth Amendment. State institutions typically guarantee this right by furnishing inmates with either a prison law library or a legal assistance program. However, there is no such thing as a freestanding right to a law library or legal assistance program; therefore, an inmate cannot establish relevant actual injury claim simply by establishing that his or her prison's law library or legal assistance program is subpar. *Lewis v. Casey*, 518 U.S. 343 (1996). Rather, an inmate must demonstrate that these deficiencies hindered his or her efforts to pursue a valid legal claim attacking either his or her sentence, directly or collaterally, or the conditions of his or her confinement. *Id.*; see also *Bounds v. Smith*, 430 U.S. 817 (1977). Furthermore, there is no definitive law on what a law library should contain; rather, there are only case-by-case guidelines, as institutions are encouraged to experiment with how to provide inmates reasonable access to the courts. Should a court find deficiencies in a library, it may only provide enough relief to remedy the specific harm.



WHERE DO THE BOOKS GO?

- Law Offices and Courthouses are saturating the used-book market, resulting in small returns.
- Try to give them to a public institution.
- Obtain approval to throw the books away.

REASONS FOR THE SHIFT TO ELECTRONIC RESOURCES:

1. Casey Paradox: The ability to litigate a denial of access claim is evidence that the plaintiff has no denial of access claim!
2. Money:
 - a. \$60,000 – \$70,00 = Average initial start-up cost for one prison library offering just the basic collection of state and federal materials.
 - b. \$8,000 – \$10,000 = Upkeep for one print library that often suffers from vandalism.
 - c. 50% increase in price of print reporters from 1991-2000. Another 15% price increase for reporters 2001-2002.
3. Space:
 - a. Typical print law library grows at a rate of 6% annually
 - b. Increased incarceration rate: Increased 23% from 1995 – 2001. Bureau of Justice Statistics indicates that there was another 2.3% increase in 2004 alone.
4. Safety:
 - a. Inmates may pass notes in books to coordinate prison riots.
 - b. A collection of books is a fire hazard.
 - c. Computer databases allow for restricted access and log-in information for tracking.
 - d. Can put terminals closer to cells, rather than transferring inmate to actual library.

POTENTIAL REASONS JUSTIFYING A BLEND OF BOTH PRINT AND ELECTRONIC LEGAL RESOURCES RATHER THAN A CONVERSION TO ALL-ELECTRONIC RESOURCES:

1. Money:
 - a. Knowing that a law library needs a certain title may give publishers the capacity to achieve a monopoly of that legal information. In other words, publishers or database vendors could potentially raise prices as they choose knowing that the state cannot eliminate the title or replace it with another medium even if the price goes up.
 - b. Unknown whether the costs of CDROM databases will escalate along with increased incarceration rates.
2. Contracts with database vendors typically include service fees should the technology falter; however, what is the backup should a system-wide failure occur?
3. Will the search for pertinent legal materials become easier for inmates with the switch from print to electronic databases? It does not appear that the courts will provide legal relief to inmates who do not understand computer databases, absent a demonstration of actual injury, but even with extensive training, will inmates understand how to use sophisticated databases such as Westlaw and LexisNexis?
4. Legal research often requires browsing through various materials in search of inspiration; tentative theories may have to be abandoned in the course of research in the face of unfamiliar adverse precedent. *Williams v. Leeke*, 484 F.2d 1339 (4th Cir. 1978).
5. Institutions should continue to provide updated secondary sources.

FOR MORE INFORMATION PLEASE SEE:

1. Primary Law Sources

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

Lewis v. Casey, 518 U.S. 343 (1996). An inmate claiming denial of access to the courts cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense. Rather, the inmate must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered the inmate's efforts to pursue a legitimate legal claim relating to either the in attacking his sentence, or challenging the conditions of his confinement.

Prison Litigation Reform Act of 1995, P.L. 104-134, [18 USCS § 3601](#) nt. (1996). Law under which prisoners may bring claims against institutions alleging that their constitutional rights of access to legal research facilities have been violated.

2. Basic Background Information

George L. Blum, *Sufficiency of Access to Legal Research Facilities Afforded Defendant Confined in State Prison or Local Jail*, Annotation, 98 A.L.R.5th 445 (2002).

This annotation discusses the state and federal cases in which the courts have discussed the sufficiency of access to legal research facilities afforded to state and local prison inmates. It's a great starting point to learn where to look for primary law on a federal law, and to find out what the law is within a particular state.

Karen Westwood, *Meaningful Access to the Courts and Law Libraries: Where are We Now?* 90 Law Libr. J. 193 (Spring 1998). This article discusses the state of inmate litigation after the *Lewis v. Casey* decision by looking at three subsequent cases interpreting *Casey* rationale.

Joseph L. Gerken, *Does Lewis v. Casey Spell the End to Court-Ordered Improvement of Prison Law Libraries?* 95 Law Libr. J. 491 (Fall 2003). This law review article provides a comprehensive overview of what state penal institutions are constitutionally required to provide to inmates in order to ensure "reasonable access to the courts," and how the courts have interpreted these requirements over the years.

Rebecca Trammell, *Out of Bounds*, AALL Spectrum, p. 10 (Sept. 1997). This article discusses the state of inmate litigation after the *Lewis v. Casey* decision.

RECOMMENDED COLLECTIONS FOR PRISON AND OTHER INSTITUTION LAW LIBRARIES & GUIDELINES FOR PRISON LAW LIBRARIES (Rebecca S. Trammell ed., 1996). This resource is sponsored by the American Association of Law Libraries and details what *should* be in a prison's law library. This book is also referred to by judges in cases challenging the sufficiency of a library's materials.