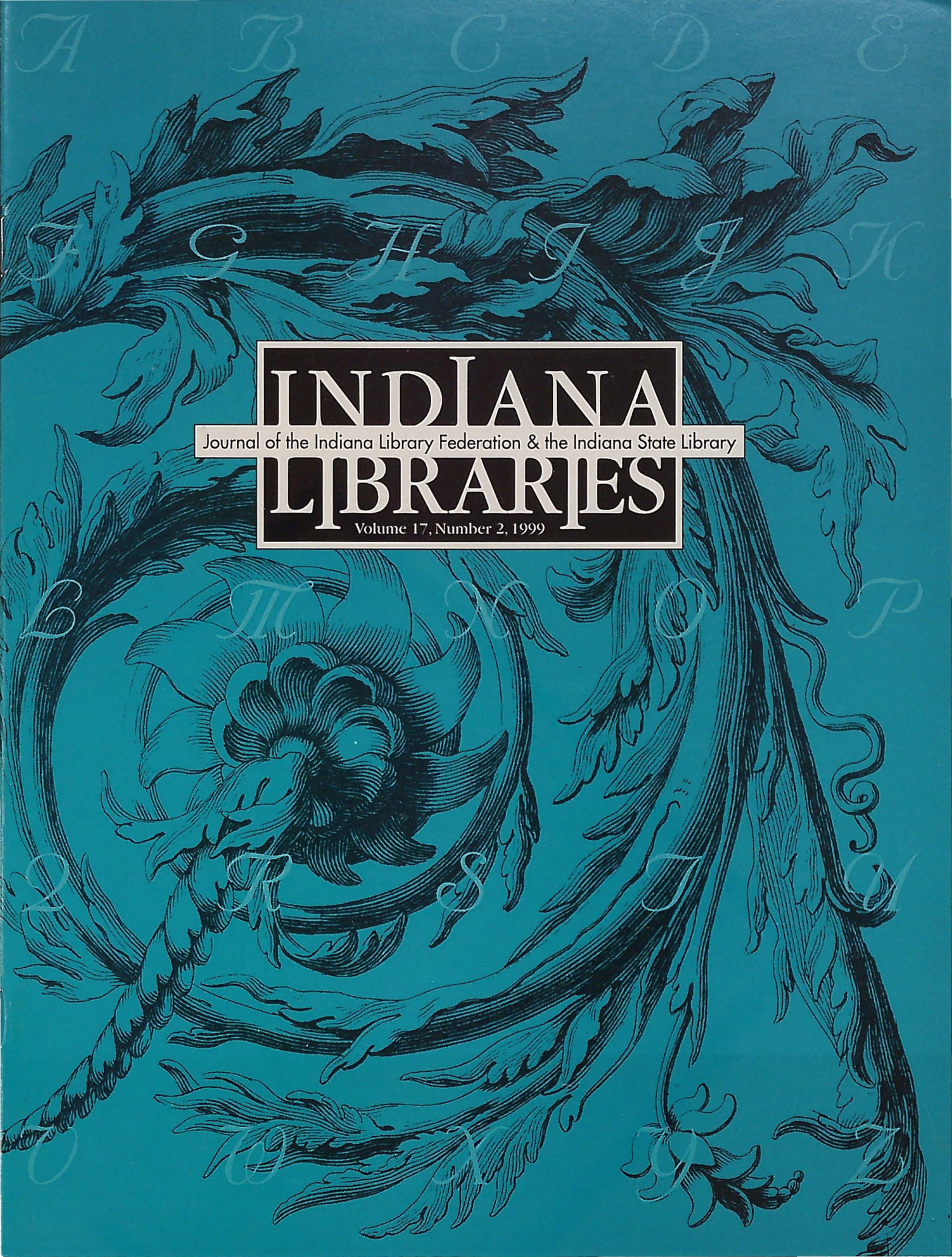

INDIANA LIBRARIES

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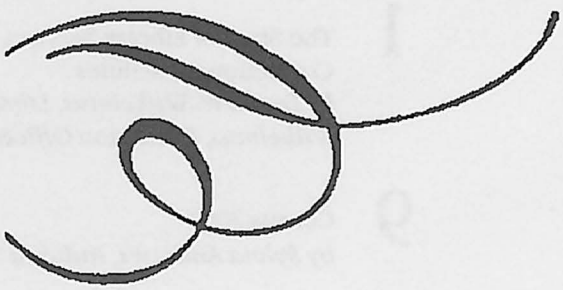

THE STATE OF LIBRARY SERVICES SUPPORTING UNIVERSITY PROGRAMS LOCATED IN INDIANA CORRECTIONAL FACILITIES

by David W. Wilhelmus
Martin University
and
Heather Wilhelmus
Marion County Juvenile Court

With the advent of University-sponsored degree-awarding programs offered within correctional facilities in Indiana, the prison librarian is confronted with the newly heightened responsibility of providing offender-patrons with materials to support academic course requirements. In recognition of the revitalization of an important duty, this article identifies and analyzes the obstacles confronting an Indiana prison librarian when selecting academic materials and making such materials accessible to the offender-patrons.

PRISON LIBRARY COLLECTIONS

The academic collection found in a prison library is not for the sole use of offenders matriculating through university programs, but is used as well by offenders who are enrolled in other educational programs offered by the Indiana Department of Corrections. These programs cover a wide spectrum of interests, ranging from General Education Diploma (GED) preparation classes to technical and vocational training programs, such as auto mechanics and cosmetology.

Of necessity, the prison library must contain a broad educational collection to meet the diverse needs of offender-patrons with mixed educational levels and assorted educational goals. The resources of prison libraries are limited, as are resources with academic libraries in general. Complicating matters further, the prison librarian is faced with a division, often a conflict, of needs: (1) the problem of obtaining appropriate academic materials in support of the institution's educational programs and (2) the responsibility of collection development in two areas external to academics, namely, legal research and recreational reading.

UNIVERSITY PROGRAMS LOCATED IN INDIANA PRISONS

From 1973 through 1992, one of the authors of this article was the director of a college program operated by Martin University on what is known as the Lady Elizabeth Campus (Martin University's appellation for the Indiana Women's Prison). Students who successfully matriculate through the four-year program earn a Bachelor of Arts degree with a major in the humanities and a minor in one of three fields of study: criminal justice, business administration, or psychology.

It should be noted that Martin University is not the only institution of higher education that offers college programs in Indiana correctional facilities. The list of higher education institutions include Ball State University, Indiana State University, Vincennes University, and Purdue University Northwest campus.

The courses are taught in the classrooms of the correctional facility's Education Building. The Indiana Women's Prison provides necessary security and arranges for offender-students to attend class. The atmosphere of close security is an element not found in conventional classrooms.

There are approximately 350 offenders incarcerated at the Indiana Women's Prison. Martin University has an average enrollment of thirty-five offender-students who are matriculating through its program. Ball State University has also an average enrollment of thirty-five students. Thus, 20 percent of the total prison population is attending college.

Courses taken by offender-students at the Indiana Women's Prison are offered only during the evening hours. During the day, offender-students are required to participate in either vocational educational programs or to perform the duties of a prison job. This round-the-clock schedule does not allow much time for recreational pursuits or studying. The offender-student must be, of necessity, focused and dedicated in her resolve to earn a college degree.

Offender-students who earn baccalaureate degrees while incarcerated are rewarded by the State of Indiana with the reduction of their sentences. The legislature of the State of Indiana in Public Law 240-1991(552)[1] recognized the importance of education to offenders both in the rehabilitation process itself and in education's potential for reducing future criminal activity among released offenders.

Indiana Public Law 240-1991(552) states that a person may petition the sentencing court for a reduction of sentence if that person successfully completes a sub-

stance abuse program, a vocational program, or any of several educational programs — specifically a general equivalency diploma and, of greatest importance to this present study, an associate's degree or other college degree.

Recognition of education as a principal factor in rehabilitation and in eventual reintegration of offenders as productive members of the community is a significant new mind-set for an ultra conservative legislative body such as the Indiana General Assembly. The role that the prison library plays through its efforts in providing academic materials to offender-students is given greater focus by such legislative recognition of the prison's potential academic functions and the rewards that can be forthcoming from their delivery of services to offender-students.

Indeed, the institutional library is being given new imperative in the correctional facility of today. The prison librarian now must be knowledgeable of the informational needs of the offender-patrons in terms of the academic materials required to support vocational, technical, and college programs being offered in the enhancement of the rehabilitation process.

HISTORICAL DEVELOPMENT OF PRISON LIBRARIES

In a sense, the new role is really the strengthening of an old educational concern. Going back to the earliest records available, Alexander Maconochie, while administrator of Norfolk Island off the cost of Australia, one of Britains worst prisons, established an educational program and encouraged the inmates to read.[2] Maconochie was one of the first prison administrators to recognize the importance of reading materials in supporting an educational program designed to reform the anti-social behavior of offenders. Maconochie went so far as to award prizes to inmates who read an established number of books — books available through one of the first prison libraries.[3]

The spirit of reform was also stirring in the United States. In 1870, a national prison organization met in Cincinnati and published its *Declaration of Principles*. The declaration consisted of twenty-two recommendations. Eight of the recommendations cited "religion and education" as being the "most important agencies of reformation."

This *Declaration of Principles* clearly documents the interest held by prison reformers in providing offenders with both religious and educational training. In truth, by the middle of the eighteenth century, there was a growing awareness of the importance of providing reading materials to offenders for their religious and educational growth.

Further changes in philosophy were yet to come. With the advent of the twentieth century, there was a marked move away from the belief that offenders should be solely punished, to a more liberal belief that inmates should be rehabilitated. To this end, educational services have become the linchpin of modern rehabilitation programs.

THE LITERACY PROBLEM AND THE SPECTRUM OF EDUCATIONAL NEEDS

The problem confronting prison librarians engaged in the delivery of academic materials and services is the low level of literacy among offenders which is apparent when inmates, as a group, are contrasted with the general population of America. This issue becomes important to the prison librarian as more state legislatures recognize the need to enact legislation rewarding offenders for involvement in self-improvement programs and, especially, for earning college degrees.

According to *The Bureau of Justice Statistics: Comparing Federal and State Inmates, 1991*,[4] which contains the most recent statistics available, offenders with an eighth-grade education comprise 11 percent of the federal prison population and 14.2 percent of state prison populations. The report also indicates that offenders with some high school education made up 12.3 percent of the inmate population in federal prisons and 26.9 percent of the inmate populations in state prisons. The report further indicates that offenders with a high school education account for 48.5 percent of the inmate population of federal prisons and 46.5 percent of inmate populations in state prisons.

In terms of higher education levels, the report states that offenders with some college training comprise 18.8 percent of the inmate population in federal prisons and 10 percent of inmate populations in state prisons. The report indicates that offenders with a college education or advanced graduate study constitute 9.3 percent of the federal prison population and only 2.3 percent of state prison populations.

Table One
1991 Federal and State Educational Levels of Inmates

Educational Level	Federal	State
8th grade or less	11.0%	14.2%
Some high school	12.3	26.9
High school graduate	48.5	46.5
Some college	18.8	10.0
College graduate or more	9.3	2.3
Median education	12 yrs	12 yrs

In summary, for all offender populations in the United States, federal and state, the median educational level for inmates is 12 years, the point at which college study typically begins.

The statistics just cited are significant in establishing the educational levels of the offender-student served by the prison library. Clearly, there are a substantial number of offenders who could benefit from participating in college programs. In fact, from a review of the statistics, it can be ascertained that in the federal prison system, 48.5 percent of the federal offender population is made up of high school graduates; and 18.8 percent is comprised of inmates having some college credits. This combination amounts to 67.3 percent of the total federal population that would be academically eligible to participate in college programs.

The state prison systems are statistically similar in terms of the composition of their offender populations to that of the federal system. As stated previously, 46.5 percent of inmates incarcerated in state correctional facilities are high school graduates; and 10 percent have some college credits. Taken together, the percentages total 56.5 percent of state prison populations — a number greater than one half of the total population — which is eligible to attend college in the state prison systems.

Coupled with statistics relating to previous educational achievement levels of offenders, there is another demographic consideration that should strongly influence the need for and establishment of college programs within correctional facilities. That second relevant factor is the ages of offenders incarcerated in America's prisons.

According to *The Bureau of Justice Statistics: Comparing Federal and State Prison Inmates, 1991*, 9.3 percent of the federal prison population falls into the age range of 18 to 24 years of age while 21.3 percent of state prison populations fall into the same age range. Of the federal prison population, 36 percent is included in the age range of 25 to 34 years of age while 45.7 percent of state prison populations is found to be in that same age range.

Lastly, 32.9 percent of the federal prison population is to be found in the age range of 35 to 44 years of age while 22.7 percent of state prison populations is found to be in the same age range.

Table Two
1991 Federal and State Inmate Age

Age	Federal	State
17 or younger	0%	.6%
18-24	9.3	21.3
25-34	36.0	45.7
35-44	32.9	22.7
45-54	15.0	6.5
55-64	5.7	2.4
65 or older	1.1	.7
Median age	36 yrs	30 yrs

Collectively, 78.2 percent of the federal prison population falls within the age range of 18 to 44 years of age; and 89.7 percent of state prison populations falls within the same age range. In summary, there is a large number of potential students of college age incarcerated in America's correctional facilities who are eligible to attend college-based instructional programs, based on the demographic characteristics of educational achievement and chronological age.

THE NATURE OF THE PRISON LIBRARY PATRONS AND THE ROLE OF THE PRISON LIBRARY

The prison librarian is faced with a dichotomy of offender-patrons that must be served. On the one hand, the library is required to provide materials in support of the prisons efforts to offer offenders remedial instruction in order to raise low educational levels of a large number of illiterate inmates. On the other hand, the prison library is faced with the responsibility of providing materials to support college-level programs.

Not all correctional facilities allow higher educational institutions to operate college programs within their prison walls. In the State of Indiana there are approximately thirty correctional facilities;[5] only five of them have agreements with institutions of higher education to operate college or university programs within their facilities.

THE OTHER ROLES OF THE PRISON LIBRARY

Educational uses, the first obligation of the prison library, must share a place with two other functions of the prison library's tripartite role. As libraries became established in correctional facilities, their duties expanded to the second obligation of the prison library. That is to include providing recreational reading materials to assist offenders in finding some diversion from the harsh, bleak, and saturnine conditions experienced while incarcerated. Hence, this was added to the role of serving educational ends.

Perhaps the most extended statement of the diversionary role of the prison library has been set forth by Charles Perrine in his promotion of the concept of the prison library as a center for the dissemination of culture, supervised by a library professional rather than by an "undermanned educational staff." In his article "A Correctional Institution's Library Service,"[6] Perrine states that he believes the "library in a correctional institution must be conceived of as a cultural center for the community of man within prison walls."

Perrine outlines how he would organize and implement the prison library and its programs. He would first establish a society to develop prison libraries as cultural centers within correctional facilities. Perrine further proposes that the following actions be taken in developing cultural centers and prison libraries:

(1) Perrine advocates the acquisition of materials that would broaden the offender's intellectual horizons;

(2) he believes that it is necessary to strengthen the technical, vocational, and reference book collections;

(3) he feels there should be more displays of arts' and crafts' books;

(4) he asks that the library provide picture and pamphlet collections;

(5) he urges that the library develop CD collections and music programs;

(6) he suggests that the library offer informal lectures on a wide variety of topics;

(7) he proposes that the prison librarian organize book and creative writing clubs; and

(8) his last proposal and the one of greatest importance in terms of the role of the prison library which is the focus of this article, Perrine affirms that there should be an integration of the library and the academic and educational programs.

The third obligation of the prison library within its tripartite role is that of providing offender-patrons with legal reference materials to enable them to access the judicial system in fulfillment of their court-established right to such access.

The prison library has also had the obligation of providing offender-patrons with "writ-writers," who are persons trained in legal research and the preparation of pleadings for the purpose of assisting illiterate offenders in court-related matters.

These mandates contrast sharply with the professional training of most librarians. Only a few are trained as law librarians; yet prison librarians have been mandated by the courts to provide offenders with legal materials and to offer training to offender law clerks in the preparation of legal pleadings in order that they may assist illiterate inmates.

As a result of a series of federal court cases (*Johnson V. Avery* in 1969, *Wolff v. McDonnel* in 1974, *Bounds v. Smith* in 1977, and *Hadix v. Johnson* in 1988), correctional facilities were required to expand their libraries to comply with a progressively revised legal mandate. As early as 1974, at the time of the *Wolff v. McDonnel* decision, the Massachusetts Department of Corrections was forced to respond to the then-current mandates by placing a legal collection in each of its correctional facilities with an offender population of 250 or more.[7] The same department of corrections also developed a sixteen week course which was offered in its medium-security prisons, as training for offenders in the skills of legal research and writing.

As a result of cumulative court decisions, the prison librarian had been mandated by no less authority than the United States Supreme Court to provide an offender-patron with both an adequately stocked legal collection, and training in the techniques of legal research and writing. The term "adequately stocked law library" has been most clearly defined by the American Association of Law Libraries in its publication *Recommended Collections for Prison and Other Institution Law Libraries*.[8]

In summary, the prison librarian must become familiar with the support programs offered by the correctional facility which employs him/her and the duties it is required to carry out so that the librarian can make appropriate collection development decisions and best utilize the limited resources which are typically his/her lot.

WHO ARE PRISON LIBRARIANS?

Gordon states in "Correctional Libraries: Provide Services by the Book"[9], that because of the isolated and bleak nature of correctional facilities the prison librarian has a dual role to play. First, he/she must provide library materials to offender-patrons with censorship always present. Second, the librarian must be ready to act as counselor, social worker, and ombudsman to help offender-patrons through serious life issues.

Gordon's findings support the proposition that prison life is at best a dismal existence, fostering isolation and a deprivation of the information most needed by offenders to meet the academic requirements of educational programs.

Prison life is equally as hard on the librarian, forcing him/her to work against obstacles to develop professionally. Yet most in the library profession would hold that a library remains as strong as the skills and

professionalism of the librarian who holds the administration.

Personal character has a strong role to play in a librarian's success. Gordon states that prison librarians need to be "fair, firm, and consistent in dealing with offenders, although materials that threaten the institution's security may have to be censored."

A basic conflict confronts administrators of Indiana correctional facilities who in fact, hire prison librarians. These administrators are faced with the problem of hiring qualified professional librarians and also of hiring individuals who will follow without question the policies of the Indiana Department of Corrections, which may be in conflict with the codes of ethics espoused by professional library associations.

The issue of potential censorship raised by Gordon's report indicates that there is a clear and present need to study the adequacy of academic collections located within correctional facilities to ensure that offender-students' educational programs are receiving appropriate support and not being obstructed in their development.

A. R. Roberts conducted research in 1980 to answer the need just indicated above by Gordon's study. Roberts has reviewed his findings in the article "Library Services and Censorship in Corrections."[10]

Roberts interviewed twenty-eight offenders in prisons located in the states of Maryland, New Jersey, and New York concerning the library services that the offenders were receiving. The offenders interviewed reported that their prison libraries were important to them for "entertainment, information, and personal growth" and, in last place, for supporting educational programs. Offenders indicated that the strong point of the prison library system within the surveyed facilities was the librarians' efforts to secure books required by the inmates.

Roberts indicates in his survey that a two-page questionnaire that was sent to a selected sample of fifty of the most populated correctional facilities listed in the American Correctional Association Directory. Roberts received responses from twenty-four of the fifty prison libraries surveyed. The responses were from libraries in all regions of the United States.

The findings indicated that the most frequently censored materials were books that posed a perceived "threat to security" and hard-core pornography. Definitions of publications or collections that threatened security varied widely, but the list of books to be watched or handled with care included the legal collections of the prison libraries. The findings also indicated that educational materials were reviewed with the institution's security being an issue.

Clearly the prison librarian faces the professional dilemma of compliance with the policies of the correctional facility, and on the other hand, failing to follow the guidelines of the *Library Bill of Rights* that opposes censorship of library materials.[11] In fact, section three of the *Library Bill of Rights* states that "Librarians should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment." Although the *Library Bill of Rights* is an important philosophical document that all librarians must be aware of, perhaps the issue of prison security warrants a modification of this document in order to meet the informational needs of an increasing large library population that will need to be served in the future.

Roberts found that only one-third of the respondents to the survey had final responsibility for acquiring library materials. The study further indicated that twenty-five of the thirty-four respondents did not have any training from graduate library science programs.

Roberts summarizes the article by stating: "considering the importance of libraries to inmates, efforts should be made to hire professional librarians." Roberts' survey indicated that there is a need to review the current standards for prison librarianship and to continue to study the adequacy of the educational collections of prison libraries to ascertain if censorship is in operation within these libraries. The presence of censorship is undeniably, a major collection development issue which will affect the building of academic collections, as well as all other types of collections, recreational, legal or general-educational.

THE TECHNOLOGY PROBLEM

Technology is another area of concern for the librarian who has the responsibility of providing materials to support academic programs within the Indiana prison system. Correctional facilities are reluctant to permit the use of prison library computers to access outside databases or to access the Internet, out of fear that the institution's security would be compromised.

Indeed, all contact with the world outside the prison is suspect as the censorship of mail — an old practice — makes evident. Notwithstanding the prison administrator's need to maintain a high level of security in terms of offender's contact with outside entities, the prison librarian often does have access to computer systems operated by the institution.

Added to the administrative-imposed restrictions just mentioned, the prison library characteristically has a limited academic collection because of a lack of shelf space and the competing court-imposed mandate of providing offenders with legal materials and services.

In a series of three articles published in *Corrections Today*, Brenda Vogel has brought the issues surround-

ing the prison library use of computers under extended examination. In her first article, "Ready or Not, Computers are Here,"[12] Vogel states that computers have a role to play in correctional facilities. Such a statement is often met with disbelief and suspicion by prison personnel.

Some correctional officials fear they will lose control of prisons if offenders are allowed access to modern technology. Vogel, however, points out how "the future of corrections depends on whether we embrace new technologies and make them a part of our regular work routine."

Vogel states that computers can be used in the prison workplace without jeopardizing public safety. She offers the example of being able to load software onto the computer with a password." She points out to correctional employees that it is possible for prisons to utilize tamper-proof modems. Vogel also includes among her ideas the suggestion that prisons should use "external modems that can be removed from the computer when the employee leaves." Another method of maintaining security involving the use of modems is to "secure the phone line at the main console when the employee is not present."

Although the suggestions offered by Vogel may seem simplistic to academic librarians and other information specialists, it should be kept in mind that the readership of her article is composed of individuals with little, if any, experience in the use of information technology, and for whom the maintenance of prison security is of paramount interest.

Vogel further states that "technology will be a boom to the administrative sector of correctional agencies in much the same way that computerized security equipment has been to facilities." In this statement, Vogel points out to correctional personnel that information technology has the same potential importance to the secure operation of a prison that the adoption of computer-operated security systems has had.

It is a compelling argument for acceptance of the whole of a technology's applications on the basis of the part which has already been tested and has won acceptance. Continuing her argument, Vogel states that correctional administrators should foster the development of electronic information systems to enhance the effectiveness of their organizations. Importantly, present-day and archival uses being considered together, in-house documents could be better managed through computerization. As examples of such applications, computers could be used to post rules and regulations, bulletins in making available program descriptions, administrative orders, and personnel regulations. They could be used to maintain offender manuals and lastly, to further human resources development through various programs, some clearly instructional.

In Vogel's second article of her series, "Meeting Court Mandates: the CD-ROM Solution,"[13] the author reviews the problems confronting correctional administrators of accommodating increasingly larger prison populations and, at the same time, meeting the court mandates that prisons provide offenders with necessary legal information. As Vogel states, "[usually, the more inmates you have, the more materials you need — which...means you spend more money use more space and need more staff]"

As stated previously, one of the three principal roles of the prison librarian is to comply with the courts' mandate to provide offenders with an adequately stocked law library and persons trained in legal research to assist illiterate inmates with the preparation of legal documents. The domain of law itself, of course, occupies a professional and technical niche of the world of academia. Indeed, a related field, criminal justice, is one of the possible minors in the Martin University program on the Lady Elizabeth Campus located on the grounds of the Indiana Women's Prison. (What separates the literature of law from the rest of academic holdings, for the purposes of this present study, is the source of its being mandated as a concern of the prison library, not a lack of scholarly nature or content.)

Vogel acknowledges the responsibilities of the prison librarian and offers correctional administrators with a solution to the facility's increasing problem of limited space. Vogel states the "law library is one court-mandated program that can employ this [new] technology." She states that "[replacing shelves of law books with compact disc read only memory (CD-ROM) products has reduced the cost of operating these libraries.]"

Vogel indicates that the majority of states rely on the American Association of Law Libraries' *Recommended Collections for Prison and Other Institution Law Libraries* as the model for individual collections. According to Vogel, although such legal collections are relatively inexpensive to a law library (costing an average of $40,000 as an original purchase price and only $5,000 annually to maintain), the cost to a correctional facility can be disproportionately high.

The problem that arises for a correctional institution is the requirement that "these collections must be accessible to all inmates." Hence, adding to the expense of having an adequately stocked legal collection may be the necessity of requiring additional collections so that extra volumes will be available for classifications of offenders not allowed to visit the prison library. These classifications would include offenders who are on death row and those who are segregated from contact with the general prison population.

The advantage of CD-ROM products to the prison library is that they can take the place of printed books. In her third article, "The Print Law Library: From Print

to CD-ROM,"[14] Vogel offers the example of the fact that one disc can hold "an entire state code, an encyclopedia or the *Code of Federal Regulations*." The correctional administrator will no longer be faced with the problem of finding additional space to expand the physical size of the prison library. Less new shelf space is required to accommodate an increase in the size of the legal collection.

Vogel further states that computerization of information systems will also save prisons substantial amounts of time by reducing the time that offenders spend in the library as a result of the speed of electronic searching. It will additionally save time spent by correctional officers who conduct "shakedowns" (searches) of offenders "for materials" (contraband that might be hidden inside books or other library materials).

Vogel states that the initial investment for computerized information systems will be steep for correctional facilities. However, the eventual operational savings that will be realized is well worth such outlays of capital. The prison librarian will save time doing "inventory, returning volumes to shelves, rebinding, mending, photocopying or delivering books on carts to cells."

The prison librarian can learn from practicing attorneys who "cannot justify the cost of maintaining the space needed to house books that are essential to their practice." As a fact, CD-ROM technology has improved the quality of materials donated by attorneys. Today, donated legal collections are often current and have been well-maintained, simply because they rapidly were replaced by a CD-ROM equivalent.

The academic librarian can gain some insight into the actual operation of a prison library and the difficulties of collection development from the encounters in building legal collections. Clearly, the advantages derived from the use of computerized information systems, such as local area networks (LANs) utilizing CD-ROM products, would also be useful to prison librarians attempting to develop academic collections within limited space and, given the long-term operational savings, within limited budgets.

The reluctance of correctional administrators to utilize technology, based on a fear of jeopardizing the security of facilities, will continue to confront prison librarians involved in collection development, academic or legal. This issue is one of several which are common to both the legal mandate to provide offenders with a law collection and the need to provide inmates with academic materials in support of college programs.

Correctional facilities are legal entities created by legislatures to carry out the law of the state. Hence, the fulfillment of a legal mandate takes top priority. However, from conversations with correctional administrators, the authors have ascertained that a large percentage of those administrators feel that academic collections will prove to be more useful to offender populations as educational programs continue to prepare inmates to re-enter society, becoming productive members of communities. That goal of re-entry may be the new cynosure — a new point of orientation that will have increasing force as the old priorities diminish.

RECENT CHANGE IN THE LEGAL MANDATE

A de-emphasis of the once-commanding legal priority is currently taking place. The mandate imposed by the *Bounds*' case, which created the duty for correctional facilities of providing offenders with legal collections, was substantially changed recently by the United States Supreme Court's ruling in *Casey v. Lewis*.[15] The United States Supreme Court in *Casey v. Lewis* stated that *Bounds* did not establish a "free-standing right to a law library or legal assistance." Thus, in a major recent case, offenders of Arizona state prisons could not claim that they were actually harmed by the Arizona Department of Corrections in this case. The Court held that law libraries and legal assistance programs are not the principal focus of *Bounds*, but only a "reasonably adequate opportunity to present claimed violations of a fundamental constitutional right to the courts."[16]

Since *Bounds* did not establish a free-standing right to law libraries or legal assistance programs, offenders are unable to claim damages by merely proving that correctional facilities law libraries or legal assistance programs are inadequate. They must go beyond proof of that condition to proof that actual harm had resulted from the condition

With such limitations placed on *Bounds* through court interpretation, the force of *Bounds* will be diminished and the other roles of the prison library should rise to greater importance.

CONCLUSION

The development of academic collections may be the emerging role of the prison library. Many of the issues that need to be resolved for development of academic collections to take place (e.g., the acceptance and controlled governance of computer use) have already been faced in maintaining and bettering the legal collections of prison libraries. Indeed, in many respects, development and maintenance of the legal collection has been a testing ground for academic collection development within prisons.

The mandate imposed by the *Bounds'* case, which created for correctional facilities the duty of providing offenders with legal collections and services, was substantially changed by the United States Supreme Court's ruling in *Casey v. Lewis*. This change in Court interpre-

tation seems to indicate a shift of direction and in importance among the three roles that the prison library has played.

There is a shortage of resources available for developing collections in support of prison-based college and technical educational programs, as there are shortages in other academic libraries throughout the state of Indiana. Academic collections in prisons have, up to now, been forced to take a subordinate role when competing for resources with court-mandated legal collections. However, with the advent of the recent decision in *Casey v. Lewis*, correctional facilities now have a greatly reduced obligation to provide offenders with legal materials. This apparent de-emphasis of an old obligation may be interpreted as a new and excellent opportunity for prison librarians to turn their attention to developing adequately stocked academic collections to meet the educational needs of offender-students.

Academic librarians of institutions of higher education in the State of Indiana can be of the greatest assistance to prison librarians by offering professional advice.

This new investment of time in academic collection building and academic programming holds great promise. In one of the author's experience as a former director of a college program offered within an Indiana prison, he can give personal testimony that none of the graduates from his program who have been released has been re-incarcerated — an end result that librarians, correctional administrators, politicians, educators, offenders, and members of the public in general, all desire.

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[12] Brenda Vogel, "Ready or Not, Computers Are Here," *Corrections Today*, v.57, no.6 (August 1995): 162

[13] Brenda Vogel, "Meeting Court Mandates: The CD-ROM Solution," *Corrections Today*, v.57, no.7 (December 1995): 158

[14] Brenda Vogel, "The Prison Law Library: From Print to CD-ROM," *Corrections Today*, v.58, no.3 (June 1996):100

[15] *Casey v. Lewis*, 116 S.2174

[16] *Bounds v. Smith*, 430 U.S. 817 (1977)

CENSUS 2000

by Sylvia Andrews,
Indiana State Data Center

Census 2000 is fast approaching and the Indiana State Data Center in the Indiana State Library is anticipating a flood of new statistics and data products. The Data Center cooperates with the Census Bureau in a program that makes census data available to the public through a network of state agencies, libraries, and universities. The Data Center also helps promote access to Census Bureau data through print and electronic formats such as value added data products, CD-ROMs, and Internet sites. Following this article is a list of some recent Census Bureau Products available to the public. Also listed are some short videos that are available from the Data Center to libraries or other community agencies who wish to inform the public about Census 2000 and other surveys, or establish partnership efforts with the Census Bureau.

To ensure an accurate and efficient census, the Census Bureau is seeking to establish partnerships with local communities. Two of the earliest and most critical preparatory steps for Census 2000 are updating the geographic information system, the TIGER (Topologically Integrated Geographic Encoding and Referencing) database, and building a national address list.

Because local communities are knowledgeable about the locations of their streets and addresses, and because this information is critical to the outcome of the census, the Census Bureau began working with tribal, state, and local governments to update the TIGER database over a year ago, and still is actively seeking partners in that ongoing effort.

In addition to the traditional decennial census, the Census Bureau is planning to do a new survey called the American Community Survey. It is a monthly household survey and as part of the Continuous Measurement System, is a new approach for collecting accurate, timely information needed for critical government functions. This new approach will provide more accurate and up-to-date profiles of America's communities every year, not just every ten years. This would mean that community leaders and data users would have more timely information to use for planning public programs for everyone from newborns to the elderly.

The American Community Survey will provide estimates of housing, social, and economic characteristics every year for all states, as well as for all cities, counties, metropolitan areas, and population groups of 65,000 persons or more. For smaller areas, it will take two to five years to sample the same number of households as sampled in the decennial census. For example, for rural areas and city neighborhoods or population groups of less than 15,000 people, it will take five years to accumulate a sample the size of the decennial census. Once the American Community Survey is in full operation, the multi-year estimates of characteristics will be updated each year for every governmental unit, for components of the population, and for census tracts and block groups.

THE GOALS OF THE AMERICAN COMMUNITY SURVEY ARE:

- To aid state and local officials in meeting their new responsibilities under devolution.
- To provide users with timely, comparative housing, social, and economic data throughout the decade.
- To improve the infrastructure for the Federal statistical system.

With regard to the ongoing controversy over sampling, the following letter from Ann Azari, Chair, Census 2000 Advisory Committee found on the State Data Center listserve may be of interest:

"During the March meeting of the 2000 Census Advisory Committee, many members raised concerns over several key issues. Because we are the Commerce Secretary's 2000 Census Advisory Committee, I write this letter to relay those concerns to you.

In light of on-going public debate, not only on Capitol Hill, but in the media, among statisticians, and throughout the land, we feel strongly that not only the credibility of the Census Bureau, but the census itself is at stake. There needs to be reinforcement that the Census Bureau is a credible, capable, professional organization within the Department of Commerce. The Census Bureau is the best in its class at what they do. People come from all over the world to learn from the Census Bureau. We have to remember that this organization needs to keep about its business of doing the census right.

The Advisory Committee is deeply concerned with the uncertainty regarding the method for conducting Census 2000. The Census Bureau, based upon expert scientific advice, is planning for a process that includes the use of statistical methods in order to conduct a Census that is both more accu-

rate and less costly than prior censuses. At the same time, members of Congress have raised concerns about the operational feasibility, legality, and reliability of the Census Bureau's plans. We understand that the intense debate over the method for conducting Census 2000 may have resulted in a delay in the ultimate decision until at least February 1999. In order to be prepared and make the best decision, complete, accurate, and timely information is critical. Therefore, the Advisory Committee urges the Secretary to prepare and provide the maximum amount of information to the Congress as is needed in order to make an intelligent and informed determination.

It is important to keep in mind an historical perspective as we look at this. It isn't the first time that the Census Bureau has been in controversy. For the 1970 decennial census, the Census Bureau wanted to conduct a 'mail out/mail back' enumeration. This enumeration methodology was controversial because it hadn't been tested on a nation-wide basis. It wasn't until late in the decade that the Census Bureau even knew it was going to be permitted to use that methodology. In a sense, just like with Sampling for Nonresponse Follow-Up today, nobody knew that 'mail out/mail back' would absolutely work in this context. Historical perspective reminds us that the Census Bureau can weather its way through such controversy and that the Census Bureau does have a record of innovation."

And from the National Academy of Sciences: In recent decades, as the cost of administering the U.S. census has risen, the accuracy of the population count has declined. Between 1970 and 1990, census costs increased by $1.3 billion, but the 1990 census missed four million people, an undercount greater than occurred in the 1980 census. As a result, the Bureau of the Census is completely redesigning the census for the year 2000. The new census will use sampling and statistical estimates as key components for achieving a more thorough count at a lower cost.

Sampling procedures are necessary for significantly improving the accuracy and cost efficiency of the census, and there is no reasonable alternative for reaching these goals, says a new report from a panel of the National Research Council. After evaluating results from tests conducted in 1995 on the new design, the panel concluded that redesign plans are moving in the right direction to ensure more reliable data. It recommended refinements in sampling plans that would enhance the quality of geographical data and improve survey techniques.

The new census would begin much like the prior ones, with an attempt to count everyone through an improved mailed questionnaire. Reminders and a second round of questionnaires would be mailed as needed, and questionnaires also would be available for pick-up at public locations. A statistically representative sample of people who fail to respond would then be contacted by census-takers. At the next stage, a large independent sample would be used to estimate those still not accounted for. Statistical procedures would be used to integrate results from each step for the final population count.

In conclusion, the Indiana State Data Center staff hopes that this discussion of Census 2000 and the sampling controversy will help clarify some of the challenges that the Census Bureau faces in its mission to provide timely, relevant and quality data about the people and economy of the United States.

LIST OF RECENT DATA CENTER CENSUS BUREAU PRODUCTS:

REIS 1969-1995 Personal Income and Employment estimates for all counties and metropolitan areas in the United States

LandView III Environmental Mapping Software - Includes database extracts from the Environmental Protection Agency, the Bureau of Census, the U.S. Geological Survey, the Nuclear Regulatory Commission, the Department of Transportation and others. These databases are presented in a geographic context on maps that show jurisdictional boundaries, detailed networks of roads, rivers, and railroads; census block group and tract polygons, and schools, hospitals, churches, cemeteries, airports, dams, and other landmark features.

Income and Poverty: 1996 - from the Current Population Survey this CD presents poverty and income statistics for several geographic areas, age groups, races etc.

Census Transportation Planning Package: Urban Element -- A set of special tabulations of 1990 census data tailored to meet the data needs of transportation planners. Software is provided to retrieve the data.

Zip Code Business Patterns 1995 - This CD has economic data arranged by Zip Code similar to the Economic Census.

CENSUS VIDEOS

1. Census 2000 Economic Census - January 6, 1998. Run Time 13:29.

2. Census 2000 Dress Rehearsal Advertising Campaign. Run Time 11:32.

3. The Plan for Census 2000. Run Time 7:00.

4. Tiger: Putting America on the Map. Run Time 27:09.

5. Census 2000 Building Partnerships. Run Time 6:30.

Check our out website or call to check out materials. Indiana State Data Center Website address: http://www.statelib.lib.in.us - Click on State Data Center.

Indiana State Data Center, 140 N. Senate, Indianapolis, IN 46204; (317) 232-3733, (317) 232-3729.

MULTI-AGE PROGRAMMING IN STORY HOUR

by Lori Caskey Sigety
and
Roanna Hooten,
St. Joseph County Public Library

The Virginia M. Tutt Branch of the St. Joseph County Public Library, IN offers story hours for children. Until recently, the story hours were offered four times per week (excluding additional programming). They were divided into specific-age groups: two sessions of two to three year-olds, and two sessions of three to five year-olds. The groups met on Tuesdays and Wednesdays. To balance the sessions, one of each specific age group met on Tuesday and Wednesday.

Although the story hours were successful, there were also negative consequences:

- Additional desk coverage required for circulation and reference
- Additional preparation time needed for story hours
- Additional time spent in story hours
- Limited time for outreach
- Tendency to experience burnout

EXPERIMENT

Scott Sinnett, Branch Manager at the Tutt Branch, attended a seminar on multi-age programming. He was impressed with the seminar and so approached Lori Caskey Sigety and Roanna Hooton at the next staff meeting to see if they would try a new approach to the library's story hour. Although both Sigety and Hooton were apprehensive about it from the start, they agreed. Two story hours were eliminated and the remaining two were lumped into multi-age groups, covering ages 0 to five. The story hours would meet on Tuesdays and Wednesdays from 10:00 a.m. to 10:45 a.m. for eight weeks. Since this was an experiment, all of the children and the caregivers would be surveyed.

Sigety and Hooton divided the workload: one prepared four story hours, and the other prepared the remaining four. Identical themes were used for both days. They also used large books, props such as silly shakers, puppets, music, and occasional crafts.

SURVEY

Halfway during the sessions, the children's caregivers were invited to fill out a survey. The survey contained the following questions:

1. How many children do you bring to story hour? What are their ages?

2. We have been trying the multi-age approach for this story hour session. Do you find this approach helpful or not? Why or why not?

3. What do you like most about story hour? If applicable, what changes would you like to see?

Nineteen caregivers filled out the survey. These are the responses:

1. How many children do you bring to story hour? What are their ages?

Of the nineteen caregivers, ten brought one child, five brought two children, and three brought three children. None of the respondents brought more than three children.

2. We have been trying the multi-age approach for this story hour session. Do you find this approach helpful or not? Why or why not?

Eighteen caregivers liked the multi-age approach. One respondent felt the attendance was too large. Two caregivers noted that they liked both approaches (the former age-specific and the new multi-age). Thirteen mentioned that they liked seeing the interaction between the younger and older children. Six caregivers said that it was easier for them to bring both (or all) of the children to story hour at the same time.

3. What do you like most about story hour? If applicable, what changes would you like to see?

All responses were constructive. They appreciated the use of props, music, puppetry, and crafts. Suggestions for improvement included more age-appropriate literature, longer story hours, and smaller sessions.

STORY HOUR STATISTICS

1. Tuesday
   - Average age of children - 3.46
   - Average number of children per session - 9.875
   - Average age of caregivers - 34 years *
2. Wednesday
   - Average age of children - 3.08
   - Average number of children per session - 20
   - Total average of attendance (including caregivers) - 15*
3. Combined Averages
   - Average age of children - 3.27
   - Average number of children per session - 15

*Statistics for caregivers were documented differently.

DISCUSSION

Sinnett, Sigety and Hooton conferred to talk about the results. They categorized the results into three segments: advantages, disadvantages, and solutions.

ADVANTAGES

- Caregivers can bring more than one child to story hour. They can save time this way
- Children of different ages can interact
- Discipline problems are eliminated with caregivers in the room (Caregivers are required to be in the room with children age three and under)
- Story hour attendance does not have to be limited (within reason)
- Story hour attendance tends to flow into other library programming
- Decreasing story hours conserves preparation time and staff time

DISADVANTAGES

- Story hour sessions can become unbalanced if one group is significantly larger than the other group
- Literature and crafts are limited because of the necessity of age-appropriate materials
- Finding literature that appeals to both older and younger children can be challenging

SOLUTIONS

- Collect age-appropriate books to use
- Keep track of sign-ups in order to balance both days
- Reduce time from forty-five minutes to one half-hour to help with restlessness in the younger children

CONCLUSION

The results were a pleasant surprise. The Tutt Branch staff found that the multi-age story hour was not only feasible, but also successful. Future story hours will be presented in the multi-age method.

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

by David W. Wilhelmus, Martin University

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

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

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

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

THE LEGAL FRAMEWORK

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARGUMENTS AGAINST PRISON LAW LIBRARIES AND INMATE ASSISTANCE PROGRAMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A CHANGE IN THE INMATES RIGHT TO ACCESS THE COURTS

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

In *Casey*, the federal court restated that *Bounds v. Smith* stood for the principle that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners

with adequate law libraries or adequate assistance from persons trained in the law."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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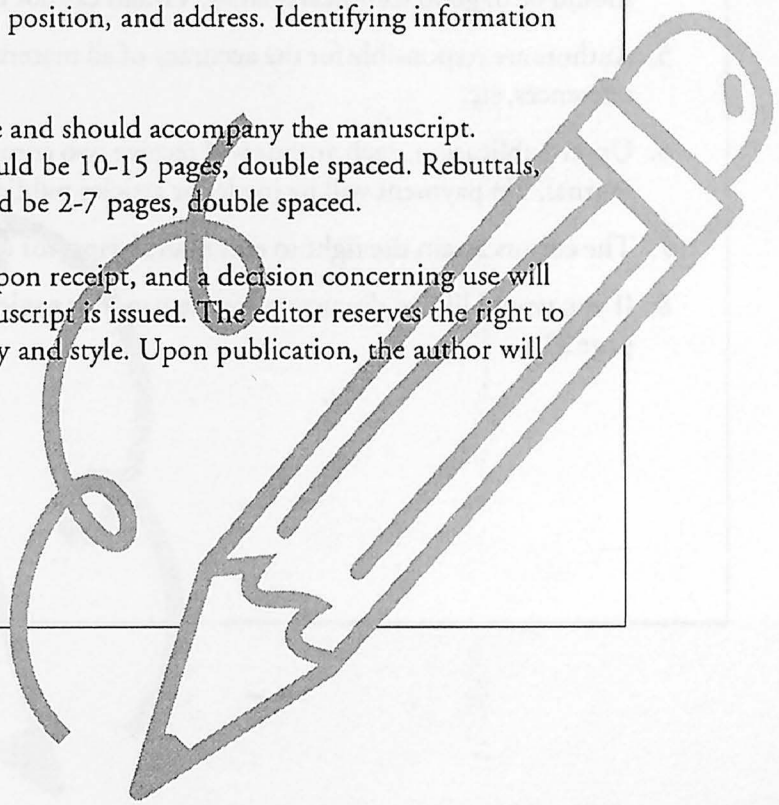

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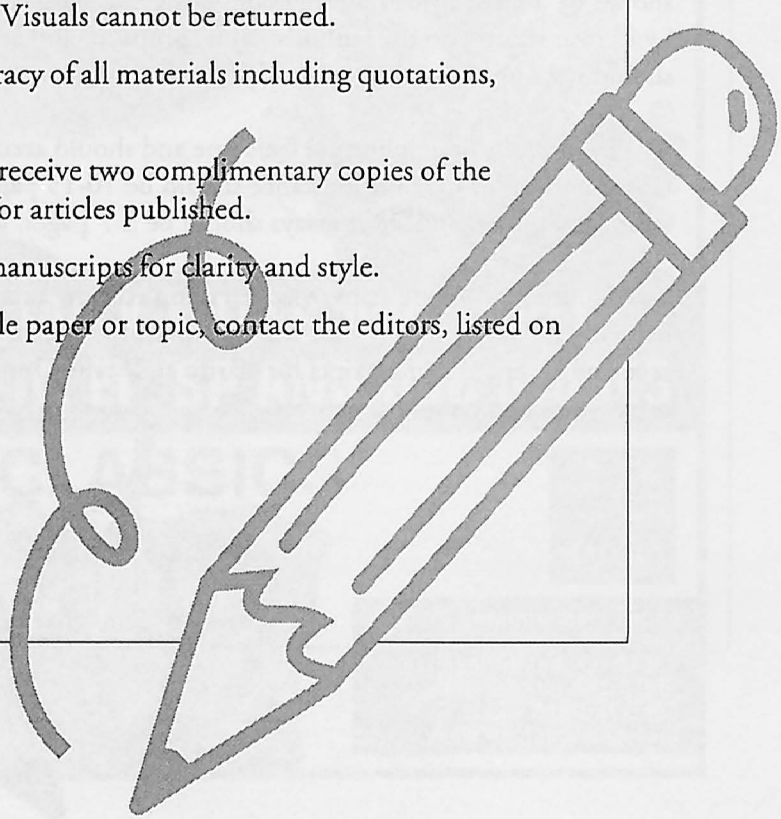

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