2006

Electronic Research in State Prisons

Camilla Tubbs

UC Hastings College of the Law, tubbsc@uchastings.edu

Follow this and additional works at: http://repository.uchastings.edu/faculty_scholarship

Part of the [Legal Writing and Research Commons](#)

Recommended Citation

Camilla Tubbs, *Electronic Research in State Prisons*, 25 *Legal Ref. Serv. Q* 13 (2006).

Available at: http://repository.uchastings.edu/faculty_scholarship/1386

This Article is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

Electronic Research in State Prisons

Camilla Tubbs

ABSTRACT. This article addresses the proliferation of electronic legal research in state prison law libraries as well as inmate access to justice post the Supreme Court's decision in *Lewis v. Casey*, which stalled state court-ordered prison library improvements. In particular, this article explores how electronic legal databases have changed prison law libraries, why it is changing them, and whether this change will promote better access to justice for prisoners. This analysis will include exploring why some institutions are abandoning print resources entirely, while other institutions are blending print legal research with electronic tools. Finally, this article addresses whether, in light of *Lewis v. Casey*, this is a positive change. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2006 by The Haworth Press, Inc. All rights reserved.]

KEYWORDS. State prisons, law books, judicial supervision, access to information, Westlaw, LexisNexis

INTRODUCTION

Although the Supreme Court's decision in *Lewis v. Casey* may have signaled the end of court-ordered improvements to prison law libraries,

Camilla Tubbs is Reference Librarian, Yale Law School, New Haven, CT. This article was written while Ms. Tubbs was a student in the law librarianship program at the University of Washington Information School. Ms. Tubbs is also a graduate of Marquette University Law School.

The paper that was the basis for this article won the 2005 Earl Borgeson Research in Law Librarianship Award.

Legal Reference Services Quarterly, Vol. 25(1) 2006
Available online at <http://www.haworthpress.com/web/LRSQ>

© 2006 by The Haworth Press, Inc. All rights reserved.

doi:10.1300/J113v25n01_02

the landscape of the typical state prison law library is changing.¹ Whether it is an indication of improvement in state facilities, a reflection of harsh economic times, or merely the sign of an advancing technological society, it cannot be denied that the more than half of the America's state prison library systems are moving towards, or are completely handled by, electronic or CD-ROM legal databases, thereby replacing some or all of its print collections. This article will explore how the typical state prison law library is changing, why it is changing, and whether this change will promote access to justice for prisoners. This analysis will include exploring some of the pioneers of this digital plantation, as well as those state prison institutions who are blending print legal research and electronics. Finally, this article will address whether, in light of *Lewis v. Casey*, this is a positive change.

THE BASIS FOR PRISONER ACCESS TO THE COURTS

The United States Supreme Court decision in *Lewis v. Casey* left many wondering whether court-ordered improvements to prison law libraries would become a thing of the past.² Prior to the *Casey* decision, prison law librarians typically looked towards the Supreme Court decision *Bounds v. Smith* and its progeny when determining which library materials and services would guarantee prisoners, under the Constitution, "meaningful access to the courts."³ "In *Bounds v. Smith*, the Supreme Court considered whether North Carolina's failure to supply prison inmates with an adequate law library, in the absence of some reasonable state-supported alternative legal assistance program, violated prisoners' constitutional right of access to the courts."⁴

Justice Marshall, in his majority opinion for the Supreme Court in *Bounds*, articulated 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."⁵ The Court found that pro se petitioners were capable of using law books "to file cases raising claims that are serious and legitimate even if ultimately unsuccessful."⁶ Hence, adequate law libraries became a "constitutionally acceptable means of providing prisoners with access to the courts."⁷

Rather than focusing on the recommended content for an "adequate" law library, Justice Marshall dedicated most of his opinion towards defending law libraries as but one constitutionally acceptable method for

providing inmates access to the courts. In particular, he described potentially preferable alternatives to law libraries, such as a legal assistance programs that utilized attorneys and law students.⁸ With the exception of questioning the omission of “several treatises, Shepard’s Citations, and local rules of court,” from the state’s proposed relevant law book collection,⁹ Marshall concluded that North Carolina’s proposed collection adhered to “a list approved as the minimum collection for prison law libraries by the American Correctional Association (ACA), American Bar Association (ABA), and the American Association of Law Libraries.”¹⁰

In essence, the jurisprudence that evolved after *Bounds* suggested that prison authorities needed to enable prisoners to discover grievances and file various types of legal claims. However, the *Bounds* decision, by leaving considerable deference to the states in experimenting and creating “adequate” law libraries or “responsible” legal assistance programs, left prison officials, law librarians and inmates to ponder what types of library services would constitutionally suffice. Needless to say, the *Bounds* Court opened a floodgate for prisoners’ litigation to question on a case-by-case basis what legal assistance programs and libraries were deemed “adequate.” For nineteen years, the adequacy definition “varied from court to court, and only by reading dozens of cases annually were law librarians able to get an overall sense of the type of law library services that would meet the *Bounds* standard. . . .”¹¹ Perhaps to add to the confusion, the multiple claims arising every year dealt not only with whether law libraries were inadequate, but also whether the delivery methods of law library materials to segregated inmates were adequate, and whether non-English-speaking prisoners were denied meaningful access to the courts, “since they were unable to effectively utilize law books.”¹²

In regards to minimum collection standards, many states followed, and state and federal courts began citing to, the American Correctional Association’s (ACA) Legal Access Standards and the American Association of Law Libraries’ (AALL) recommended minimum list of law books which that Association considered necessary to meet the adequacy requirement. Various courts found that a prison law library should at least contain “state and federal constitutions, annotated federal code volumes containing titles 18 and 28, all federal procedural rules, state-specific statutes, federal and state case reporters from 1960 to present, Shepards Citations for federal and state cases, local court rules, selected treatises, indexes, and a law dictionary.”¹³ Despite a growing consensus on what a prison law library should contain, inmates

continued to file law suits each year alleging inadequate access to the law library, incomplete or damaged collections, as well as alleging that legal assistance programs were needed in conjunction with law library access.

Then in 1990, in *Lewis v. Casey*, twenty-two prisoners in the custody of the Arizona Department of Corrections (“ADOC”) brought a class action suit pursuant to federal law, claiming that ADOC prison officials unconstitutionally denied them meaningful access to the courts.¹⁴ In particular, the inmate class asserted that the ADOC’s law libraries and legal assistance programs were inadequate. After a three-month bench trial, U.S. District Judge C. A. Muecke ruled in favor of the inmate class by “finding that the contents of the library, the access to the libraries, the legal assistance for prisoners who are illiterate or who do not speak English, the library staffing, and the indigency standard for receiving legal supplies,” all to be constitutionally deficient.¹⁵ Despite this, after the trial and upon the issuance of an investigative report on behalf of a court-appointed Special Master, the court issued an injunctive order which “mandated sweeping (and specific) changes designed to ensure that ADOC would ‘provide meaningful access to the Courts for all present and future prisoners.’”¹⁶

On appeal, the Ninth Circuit court agreed with the district court and found, among other things, that the contents of the ADOC’s law libraries were inadequate. It was noted that,

In several libraries, volumes of various reporters, as well as the pocket parts to various secondary sources (were) missing. Updated inventories are unquestionably an essential element of an adequate library system. Several libraries also do not contain self-help manuals to instruct inmates on how to use the law books. The complexities of legal research at the very least require these aids to enable inmates to use the books effectively. As the Court in *Bounds* mandated, access must be “adequate, effective, and meaningful.”¹⁷

The Court further found that all Arizona inmates were entitled to access the law libraries and browse the library stacks, absent a showing that an inmate was a security risk.¹⁸ In finding that the procedures and conditions provided by the ADOC were in violation of *Bounds*’ standards, the Ninth Circuit maintained the terms of the injunction.¹⁹

The Supreme Court granted certiorari in 1995, and various states joined in on amicus briefs to the Court claiming that the procedures

mandated by the district court were an unreasonable intrusion. In regards to the mandated library improvements, those in support of the petitioners did not deny that libraries needed to be adequate in order to provide “meaningful” access;²⁰ however, these groups argued about what would be considered “adequate.” In particular, those in support of the ADOC argued that Arizona should not have been required by the district court to provide both the Arizona State Reporter and the Pacific Reporter. The Ninth Circuit Court had rationalized that inmates with claims from outside Arizona, or with Shepardized citations to cases outside of Arizona, needed both the Pacific and the Arizona Reporter to affectively advocate their claims. Conversely, the ADOC supporters argued against libraries having both the state and the regional reporters by stating that “an adequate prison law library should contain the basic resources necessary to conduct legal research. . . it does not follow that every resource that could be useful in a legal research project must be on the shelves of every prison law library.”²¹

Further, these groups in support of the ADOC feared that allowing inmates direct access to library stacks would affect both the availability of books, as inmates would be able to destroy materials, and would create an increased security risk “in that inmates (could) easily pass notes to each through the unchecked use of the library books.”²²

Despite what the lower courts saw as library deficiencies, the Supreme Court reversed the judgment and annulled the permanent injunction against the ADOC by ruling that, “the District Court’s findings of *Bounds* violations of injury were inadequate to justify the findings of systemwide injury and hence the granting of statewide relief.”²³ Since the district court failed to identify anything more than isolated instances of injury,²⁴ it lacked the authority to intervene in the government’s statewide management of its facilities. Furthermore, the Court articulated that *Bounds* did not create a freestanding right to a law library; instead, “[t]he rights that *Bounds* acknowledged was the already well-established right of access to the courts.”²⁵

[A]n inmate therefore must go one step further and demonstrate that the legal assistance program hindered his efforts to pursue a legal claim. He might show, for example, that . . . he had suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable even to file a complaint.²⁶

Therefore, the majority equated an “actual injury” with having a non-frivolous legal claim dismissed, or being unable to file a non-frivolous complaint, and that the courts should not impede on correction departments’ legal research programs until “some inmate could demonstrate that a *non-frivolous* legal claim had been frustrated or was being impeded.”²⁷ And should a claimant actually meet that burden, the remedy prescribed by the court must be “limited to the inadequacy that produced the injury in fact that the plaintiff has established,” rather than statewide relief.²⁸

The majority further reasoned that *Bounds* did not guarantee the right of inmates to research all types of legal claims while in prison; therefore, inmates did not need elaborate library collections and legal services.²⁹ As Justice Scalia, in writing for the majority stated, “[t]o demand the conferral of such sophisticated legal capabilities upon a mostly uneducated and indeed largely illiterate prison population is effectively to demand permanent provision of counsel, which we do not believe the Constitution requires.”³⁰ Instead, the facility need only provide inmates with the materials they need “in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of incidental (and perfectly constitutional) consequences of conviction and incarceration.”³¹

The *Lewis* decision created an interesting paradox for prisoner litigants. As one scholar noted, “there may be some inmates who have the persistence and wherewithal to pursue their claims despite the total inadequacy of the law library. In doing so, these inmates will have demonstrated that they were not actually injured, since they were able to gain access to court with their claims.”³² Conversely, those inmates who cannot overcome the inadequacies of their prison law library will not be able to effectively petition the courts.³³

The *Lewis* decision was rendered the same year that President Clinton signed the Prison Litigation Reform Act (PLRA) into law.³⁴ Through establishing “new guidelines for Federal courts when evaluating legal challenges to prison conditions,” this Act intended to discourage inmates from overburdening the courts with frivolous claims and also to “restrain liberal Federal judges, who (saw) violations on constitutional rights in every prisoner complaint and who (had) used these complaints to micromanage State and local prison systems.”³⁵ Specifically, and among other things, the PLRA statutorily restricted the ability of judges to improve prison conditions through court intervention,³⁶ while at the same time placing new challenge upon inmate litigants.³⁷ “[T]he courts

which have addressed the PLRA's statutory requirements in light of the (*Lewis v. Casey*) decision have concluded that when plaintiffs allege a violation of their right of access to courts, they must show actual injury" on a system-wide basis.³⁸

It is important to note the PLRA's effect on the law when looking at *Lewis*'s potential impact on prisoner litigation. By "2001, filings by inmates were down forty-three percent since their peak in 1995, notwithstanding a simultaneous twenty-three percent increase in the number of people incarcerated nationwide."³⁹ There are relatively few court cases post-*Lewis* that even address prison law libraries, and of those claims, most deal with inmate access to the library materials or the sufficiency of providing legal council as an alternative to library access, rather than addressing the content of that library's collection.⁴⁰ Further, of those cases addressing the material sufficiency problems, the Department of Corrections have generally prevailed against prisoner litigants.⁴¹ In those rare instances where the courts have found the library content to be inadequate, the libraries lacked essential titles such as a handbook of the prison's directives, or a copy of federal statutes that address federal habeas corpus practice for state prisoners.⁴²

IN THE AFTERMATH OF LEWIS v. CASEY, ELECTRONIC LEGAL RESEARCH EXPANDS

The "actual injury to a non-frivolous claim" requirement articulated in *Casey* created a significant barrier to inmates desiring an improvement in their prison law library. Against this backdrop of *Lewis v. Casey*, and its reinforcement of *Bounds*' notion of allowing local prisons to experiment with how to provide inmates adequate access to the courts, different states' corrections departments began to explore the notion of electronic libraries. This advent was foreshadowed during the legal wrangling of *Lewis*. When one Supreme Court Justice asked Arizona Attorney General Grant Woods, during *Lewis*'s Supreme Court oral arguments, whether libraries were a waste, or a less efficient method to provide prisoners assistance, Woods responded that the "old style law library may some day be a thing of the past" given the advent of computers and technological changes.⁴³ Less than ten years later, more than half of the state prison library systems are moving towards, or are completely handled by electronic databases.⁴⁴ In light of *Lewis* and budgetary constraints, different state institutions are experimenting with providing electronic materials similar to what was already offered

in print. Westlaw, LexisNexis, LoisLaw, and Versus Law are all competing to dominate in this new trend of state prison law libraries relying less on print collections and more on electronic resources, by creating specific CD-ROM tools and restricted databases for prisons.⁴⁵

Those state penal institutions who are replacing print prison law libraries with electronic resources include Wisconsin, Illinois, Oregon, and West Virginia. California and Hawaii are conducting electronic legal research test programs, and states such as Florida and Minnesota are experimenting with combining both print and electronic research.

Of those Department of Corrections (DOC) officials questioned,⁴⁶ the overriding reason why state institutions are experimenting or transitioning to electronic databases is not the *Lewis* decision, but rather economic pressures. On average, the "initial start-up costs for one prison library offering the basic core collection of state and federal materials is between \$60,000 to \$70,000. Upkeep costs run between \$8,000 and \$10,000 per year. With the rapid rate of prison population growth and prison building expansion in the United States, law libraries are a major expense item."⁴⁷ Furthermore, replacement costs for legal publications is high, as prison library clerks must continuously check for vandalism of legal materials, as well as books missing pages and pocket parts.

To compound the problem, all law libraries are struggling with the rising costs of print legal information.⁴⁸ The budgetary pressures caused by these rising costs "have led to the mass cancellation of reporters, codes, citators, treatises and looseleafs and a concurrent reliance on electronic access to the law" by many law librarians.⁴⁹ As one author noted,

[s]eemingly arbitrary and excessive price increases have made it impossible for law librarians to accurately assess the cost of maintaining, yet alone enhancing, their collections. Because of the lack of any credible empirical data on the pattern of price rises in the legal publishing industry, requests for the significant budget increases needed to simply sustain existing collections have often been supported by little more than the anecdotal information shared among librarians.⁵⁰

A study of the increased price of legal materials from 1991 to 2000 found that Reporters increased in price by 49.07%, Citators by 91.12%, Encyclopedias by 89.74%. "According to the new *Price Index*, from 2001 to 2002 prices rose as follows: Reporters 15.13%; Digests 25.26%;

Citators 7.96%; Encyclopedias 1.60%; Codes 6.97%.”⁵¹ And perhaps ironically, the same year that the Supreme Court rendered its opinion in *Lewis v. Casey*, the West-Thompson merger occurred, resulting in an average increase of 20% in affected titles.

In regards to specific examples of how economic pressures are pushing institutions towards electronic legal research databases, California’s DOC spends more than \$4 million every year to buy current print law publications in order to provide court-mandated legal information services to inmates.⁵² That cost does not include the “processing, maintenance, preserving, and storage of the printed materials.”⁵³ The Riverside County in California, which is currently a part of the LexisNexis test program, is paying an annual fee of \$94,400 to provide the kiosks in five county jails.⁵⁴ The government will pay a monthly fee of \$300 to \$1,200 per kiosk which covers rent, the database and maintenance.⁵⁵ “Since kiosk electronic database information will be available at 49 percent of the cost of the printed materials, annual savings of approximately \$1.9 million could be realized after the anticipated installation costs.”⁵⁶ It is estimated that “approximately 300 kiosks will be required in order to provide the same level of service to the inmates as is currently being provided by the printed publications.”⁵⁷ This equates to one server, serving all the kiosks at the prison, and about ten kiosks at each of the states’ thirty-two prisons.⁵⁸

The Wisconsin DOC was paying roughly \$70,000 in their institutions, per year, to maintain the print collection library in the prison system.⁵⁹ With its shift to Westlaw, the annual cost will vary between \$9,000 to \$25,000 depending on yearly maintenance, and the license size, type, and use within the institutions.⁶⁰

Similarly, the principle consideration for expanding use of electronic materials in Florida state institutions is economic. Florida currently spends approximately \$1.9 million a year on legal research publications for inmate law libraries, and those costs could potentially be reduced to half with converting CD-ROM.⁶¹ With books, the Florida Department of Corrections has to account for up to 12,000 receivables a year in order to lawfully certify invoices for payment.⁶² With the conversion to electronic resources, this cost, as well as the labor costs that were associated with this invoicing would be reduced.⁶³

Other motivations cited by DOC officials for prisons switching to electronic resources include fire prevention, space reduction, and the prevention of damage or destruction to library materials.⁶⁴ According to Touch Sonic Technologies Vice President Jack Long, the corrections industry has been looking to deliver this data electronically, as regular

print books may be defaced, have pages torn out, or simply disappear from library collections.⁶⁵ Librarians are always concerned about space limitations as “[l]aw libraries grow at an annual rate of about six percent.” Technological developments and a decrease in book usage has not eliminated limited space concerns.⁶⁶ Further, the fears once articulated prior to *Casey*, of inmates passing notes within books, may be eliminated with the usage of computer databases.

Touch Sonic Technologies representatives also point out specific instances, not mentioned by those DOC officials questioned, where these electronic databases may be more useful or cost-effective than print materials.⁶⁷ One, databases that require an inmate to log-in to a system prior to using the database, could create a tracking record of that inmates research process; this tracking record could then potentially be used in court or in arbitration to rebut an inmate’s claim that there was a lack of accessible law materials. Second, placement of electronic database stations in key cellblock locations could reduce prisoner escort costs. Third, institutions could charge inmates for the printing of legal information from databases.⁶⁸

STATES EXPERIMENTING OR TRANSITIONING TO ELECTRONIC DATABASES

The Wisconsin Department of Corrections (DOC) is getting rid of almost its entire print collection and moving towards one statewide system and interface that utilizes a Westlaw CD-ROM.⁶⁹ The Wisconsin DOC oversees nineteen adult institution libraries. Currently, eleven of those facilities have electronic legal resources, but within the next year, all of these institutions will have electronic resources, as Wisconsin’s DOC is in the process of finalizing negotiations with Westlaw. Once these negotiations are complete, the whole Wisconsin prison law library system will be controlled by, and connected to, a single server interface and one Westlaw CD-ROM-controlled network. The prison institutions will not be linked to the World Wide Web, but they will be linked to one another with this interface.

As a result of this electronic transition, most of the print collection in Wisconsin state prison law libraries will be discarded. Vibeke Lehmann, a Wisconsin DOC official, estimates that all but two shelves worth of print legal works will be discarded. In its stead, a Westlaw CD-ROM system will contain the entire United States Code Annotated, the entire Supreme Court Reporter, the Federal Reporter 2d from 1980

till present, the Federal Supplement from 1980 till present, the Wisconsin Reporter, the Wisconsin Statutes Annotated, Wisconsin Court Rules and Procedures: State and Federal, Wisconsin Administrative Code. These research computers will be housed behind safety screens to ensure the safety of the equipment, materials, and the inmates.

Wisconsin is a public law state, meaning that anyone with an Internet connection may access Wisconsin case law and statutes for free online.⁷⁰ Although these documents are available through the Wisconsin State government's homepage, the search capabilities of the government's database is not as sophisticated as that of Westlaw. In fact, Vibeke Lehmann mentioned that Westlaw was selected, over LoisLaw and Versus Law, for its more advanced search capabilities. Further, there is much discussion within both the government, library, and legal community regarding the futility of allowing inmates access to the Internet.⁷¹

Illinois currently has a print law library system, and allows law library staff to electronically updated cases for inmates.⁷² Similar to Wisconsin, administrators in Illinois are talking about moving towards Westlaw through an online Internet connection. Source of the money for this expansion would come out of Illinois's educational program budget.

Other states moving towards electronic databases are Oregon, Oklahoma, West Virginia, and Wyoming. The Oregon Department of Corrections is replacing many of the law books in its twelve state institutions with a Westlaw CD-ROM containing the Pacific Reporter and case law.⁷³ Although nine Oregon prison facilities have law libraries, only print secondary materials will be kept in-house. Oklahoma's Department of Corrections is also transitioning.⁷⁴ Despite having law libraries in sixteen of its seventeen institutions Oklahoma's DOC will no longer be updating these print systems, as they transition to an all-electronic database. Prison wardens and librarians will have access to a LexisNexis database and will print requests for inmates. All other inmate requests will be sent to Oklahoma's state prison legal office. West Virginia will do away with paper legal resources entirely for a LexisNexis CD-ROM terminal in each prison facility.⁷⁵ While inmates in Wyoming do not have direct access to Westlaw or LexisNexis, they may request case law from these resources through the prison librarian at the Wyoming State Penitentiary in Rawlins.⁷⁶ In addition Wyoming's DOC provides inmates with state statutes in both print form and through CD-ROM.

Texas and Mississippi also fulfill inmate requests for legal information through electronic databases. Since 1996, the Texas Department of Criminal Justice (TDCJ) has provided a limited collection of electronic legal research materials in all of its units.⁷⁷ The TDCJ started its automation process with Shepard's citation system, and went on to providing case law. Currently, inmates' requests for information are sent to one centrally located office, where information is retrieved through a LexisNexis database. Inmate requests are processed and delivered in one business day. In addition, the TDCJ has the State Counsel for Offenders Division, comprised of attorneys and legal assistants, that assists offenders with appellate and writ issues. Similar to Texas, Mississippi's DOC did away with the book libraries in 1997.⁷⁸ Presently, the staff members of the Inmate Legal Assistance Program (ILAP) conduct research for inmates using computers and Westlaw. The inmates are not allowed to use the computers; instead they submit request forms for support to the ILAP. In turn the ILAP, which consists of attorneys and paralegals, assists inmates with their appeals, post-conviction petitions, habeas corpus petitions and any civil claims under 42 U.S.C. § 1983.⁷⁹

Perhaps one of the most exciting changes is occurring in certain states like California and Hawaii, who are currently involved in a test program of touch screen kiosks that are wired to a LexisNexis database, but not the live Internet. Touch Sonic Technologies has installed seven wall-mounted, touch-screen kiosks in California jails and four in Hawaii prisons. "The kiosks retrieve information from a comprehensive central legal information database stored on a server housed in the existing personal business switch room of each institution. The information will be transmitted to each kiosk station via wireless link, provided by the contractor, at no additional cost to the state."⁸⁰ "The kiosks are made of shatterproof glass and no mouse or external keyboards are used. According to Touch Sonic, these kiosks are specifically constructed for a prison's tough environment and can withstand daily abuse. In fact, Touch Sonic said they tested the endurance of the kiosks with crowbars and all the kiosks withstood the abuse."⁸¹

The facilities in California which offer this service provide inmates with "access to all California state codes and cases, including title 15 and parts of title 24 which deal with housing issues for inmates."⁸² Included with the LexisNexis package are all federal cases and codes, as well as Supreme Court decisions, and a Shephards system. However, the databases do not have access to secondary materials such as legal periodicals or newspaper articles.

Inmates are allowed to conduct simple searches by typing in particular keywords onto the screen and then selecting which sources to consult (i.e., state statutes, cases, etc.). The database then retrieves the results in either English or Spanish, depending on which language the inmate has selected. The LexisNexis search engine does not recognize spelling errors of entered keywords when retrieving documents; therefore, inmates should consult legal dictionaries. Further, the “keys” on the Touch Sonic keypad are arranged in alphabetically order, rather than the traditional typewriter key placement setting, for easier usage.⁸³

***THOSE STATE PRISON LAW LIBRARY INSTITUTIONS
THAT ARE BLENDING ELECTRONIC, PRINT,
AND PERSONAL SERVICES***

Florida currently uses CD-ROM to a limited degree in all of five of its law libraries.⁸⁴ One collection at a work camp is nearly all CD-ROM, while the other four institutions have federal case materials in that format. However, the Florida DOC considering different vendors to convert some of their print resources, including the Annotated Florida Statutes, West’s Federal Practice Digest, and Florida Jurisprudence II. They are also considering some form of electronic cite-checking services. However, they would not convert any of the court rules pamphlets, legal texts or form manuals to CD-ROM.

If this conversion were to take place, the inmate law libraries would retain case reporters permanently, in the expectation that inmates just interested in older case law could access them instead of taking up research time on the computers. Further, as noted by Florida DOC Operations and Management Consultant Manager for Library Services, Allen J. Overstreet,

With all the law offices and court houses dumping print collections, the used book market is saturated and we likely wouldn’t receive more than 1-2 cents on the dollar in any sale. It would not be cost-effective for us to keep these. For these titles, I’d likely ask National Law Resource if they were interested or put them out for bid as surplus property. . . . If we found that there were no interested purchasers, we’d probably make it available to any interested public library, county jail, school, etc., or just throw it away. . . after receiving approval from agency leadership staff.

The Montana Department of Corrections system will also blend electronics with print resources to assist inmates with their legal research needs.⁸⁵ Montana's DOC is in the final stages of signing an agreement with LexisNexis and it intends to provide all state and regional prisons access to electronic research of state case law, case law of the federal district courts, and the 9th Circuit Court of Appeals. Further, the electronic database will have a Shephards system. Aside from the electronic resources, inmates will also have access to a law library with a multitude of print books to assist inmates in filings ranging from post conviction relief and habeas corpus actions to section 1983 lawsuits. Further, Montana's Inmate Welfare Counsel will purchase additional books to assist in their litigation.

But perhaps the most interesting blend of electronic with print resources exists in Minnesota. Minnesota's Correctional Facilities have skeletal law libraries as well as a Law Library Service to Prisoners (LLSP) which provides those incarcerated with assistance in finding and using legal information. "These circuit-riding law librarians visit each of the adult correctional facilities on a regular basis" to assist inmates in their legal research needs.⁸⁶ "If a question cannot be answered at the prison . . . the Law Librarian may supplement the core collection of legal materials available at each prison with the resources at the Minnesota State Law Library."⁸⁷ This helps to reduce the cost of maintaining extensive law libraries, because the updating is performed by the State Law Library, and because LLSP ensures that the used books are not defaced or damaged. Further, in 2003 "[t]he LLSP librarians each received new computers from the Law Library and the Law Library purchased a subscription to Lexis-Nexis. . . . This database has provided librarians with a valuable research tool to locate both published and unpublished cases and statutory information for inmates."⁸⁸ Not only may citations be Shephardized electronically with this service, Shephards allows librarians to find cases, statutes and law review articles that examine, discuss or refer to a particular case or citation.⁸⁹ Finally the Law Library purchased other on-line databases useful in finding law reviews and journal articles.⁹⁰

IS THE TREND TOWARDS MORE ELECTRONIC MEDIA IN STATE PRISONS A POSITIVE CHANGE?

As an initial matter, it cannot be denied that there are good intentions behind states' Departments of Corrections consolidating print

collections for electronic databases. Now institutions, consistently threatened by economic pressures, are able to provide, even though they are not necessarily required to by law, the full United States Code or an entire states' code on single CD-ROM. This feat is amazing, considering with the advent of *Lewis v. Casey*, a state institution could abandon all those codes not relating to criminal law or challenging prison conditions, in the interest of saving money and space. Further, those institutions providing online citation checkers, are offering updating services that are simply superior to that provided in print. It also cannot be denied that institutions will not need to worry about the same security concerns that print books create. Inmates are even beginning to petition the courts for access to online legal databases.⁹¹

Despite these good intentions, and advantages in moving towards electronic resources, one cannot help but wonder whether this transition to electronic resources, in the long run, will lead to more problems than it intended to prevent.

It appears that the primary motive behind switching from print to electronic resources is economic, but there exists many factors that could lead this important justification to fail. First, there is no guarantee that the vendors who are offering these electronic services will consistently provide these materials at a low cost over time. Inevitably, costs will vary between states based on the number of updated CD-ROMs that are produced every year, but price inflation is consistent in society. Are those institutions who are completely abandoning their print collections putting themselves in the hands of database vendors, or will the bargaining powers of state institutions remain substantially similar to what exists today? It has been noted that "when publishers bundle titles into a single product, libraries lose their ability to cancel individual items and not only control their budgets, but discipline publishers in the process."⁹² Knowing that law library needs a certain title may give publishers the capacity to achieve, what Professor McCabe coins as "monopoly returns" and price inflation.⁹³ In other words, publishers will raise prices as they choose knowing libraries cannot or will not eliminate a title and replace it with another even if the price goes up.

Unfortunately, and potentially to the detriment of various states' Corrections Departments, "[i]t is not possible to predict future expenditures based on past costs because of the volatility in the factors affecting price increases."⁹⁴ Given this volatility, West does not provide annual billing on national and regional reporters.⁹⁵ "There is 'no consistency at all' in the number of times a publisher will raise prices in a given year, the dollar or percentage amount of those increases, and the number of volumes

published or supplements issues that will be affected by those increases.”⁹⁶ It is not unreasonable to assume that the pricing of CD-ROM materials may become as unpredictable as that of print materials.

Furthermore, it is not uncommon for a law firm, that subscribes to electronic database through flat fee service plans, to pay more for that flat service when additional lawyers from that firm gain access to the database. Will the same scenario occur in state institutions, whereby the costs of CD-ROM databases escalating along with incarceration rates? If costs were to escalate, how would state government administrations react? Would these institutions continue to pay increased fees for the databases? It would be interesting to see if state governments who offer public law materials for free on the web, would evolve and create their own CD-ROMs and search databases, should the costs of electronic legal database become too absorbenant.

Second, will the costs expended on training and upkeep of these systems remain consistently low, or will they too end up costing more each year? “[A]lthough digital media is supposed to cost less than the same information stored in traditional media (CD-ROM) storage is equivalent to six feet of shelving in traditional book format), they do not last physically as long as acid free paper, which can last more than 500 years, and additionally, the machinery necessary to read them becomes obsolete relatively quickly.”⁹⁷ Although many of the computers utilized in state institutions are protected from physical damage, technology naturally falters. Will vendors continue to repair and provide low-cost maintenance to these databases? Furthermore, how often will computers and databases need to be replaced, and how much will this cost the state? Will the costs of replacing computers, potentially every three to four years, continue to be lower than print collection maintenance?

In addition, should a database fail, what will be the backup for these systems in the absence of a print collection? Would a complete system failure in Wisconsin create a denial of the access to the courts, if an inmate had a legitimate claim yet there were no reasonable services provided while the technology was being repaired? In regards to court cases post-PLRA and *Lewis v. Casey*, delay of legal materials to an inmate, who is still able to file an acceptable legal pleading within the court deadline, “cannot claim that he was prejudiced by shortcomings in a prison facility’s law library, because he has sustained no relevant actual injury.”⁹⁸ But what of those inmates not able to file an acceptable legal pleading due to a technological failure? Should those institutions completely abandoning print collections, institute a back-up plan?

Third, will inmates be able to effectively utilize these electronic databases as well as they handle print materials? In the aftermath of *Bounds*, various scholars and court opinions expressed skepticism regarding inmates' abilities to affectively use even print legal research materials. Although providing inmates with law libraries over legal assistance programs, has been the preferred method of ensuring inmates access to the courts, many have complained that merely providing inmates, many of whom are functionally illiterate, with only law books, amounted to inadequate access.⁹⁹ 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,¹⁰⁰ but even with extensive training, will inmates understand how to use sophisticated databases such as Westlaw and LexisNexis? In light of *Lewis v. Casey*, will this potential problem even matter?

Further, some people prefer the ease of searching an entire code on paper, and the context with which that medium puts its provisions in, rather than viewing the piece-meal sections of statutes text online. Will inmates miss important provisions before and after the section they think is applicable because of the particular layout and display of online materials? Prior to *Casey*, the Fourth Circuit rationalized that,

Simply providing a prisoner with books in his cell, if he requests them, gives the prisoner no meaningful chance to explore the legal remedies he might have. 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. New theories may occur as result of a chance discovery of an obscure or forgotten case.¹⁰¹

Will online searches restrict or expand an inmate's ability to explore his or her legal options?

Fourth, without having legal treatises online or treatises updated in some of these facilities moving to electronic resources, will inmates understand the blanket law they are provided with? Should these state prisons switching to all electronic resources to inmates, only provide statutes and case law; or do prisoners need updated legal treatises to better understand whether or not they are filing a legitimate claim?

Perhaps only time will give answers to the above questions. Conversely, many of the questions above could be answered through *Lewis*

v. Casey. In terms of providing inmates adequate access to the courts, the legal research problems and inconveniences with which this transition to electronics could create may only matter if inmates, or a class of prisoners, could demonstrate that it materially affected a non-frivolous claim. Regardless of the legal implications surrounding the *Lewis* decision, law librarians, as a profession, should encourage correction departments and state governments to strengthen prison law libraries through blending electronic and print resources. Minnesota's Law Library Service to Prisoner's program gives prisoners the legal materials and legal assistance to understand those materials, while penological safety concerns are protected. Library materials are not destroyed nor are messages transferred between inmates, because the library service monitors the use of books. And yet the inmates still benefit from the library service conducting specialized searches on electronic databases, and providing updated legal materials. If institutions find it as impossible to maintain any sort of print collection, they may wish to follow Mississippi's Inmate Legal Assistance Program, which combines Westlaw and those educated in the law to assist inmates with their appeals to the court. This too is a compromise between the economic, space and penological concerns which plague state institutions, and the desire to provide inmates with an affective avenue to petition the courts.

CONCLUSION

While Supreme Court's decision in *Lewis v. Casey* lessened the ability of the judiciary to order systematic improvements of state prison law libraries, these libraries are changing. Some institutions are completely abandoning print law library collections for CD-ROM legal databases, while others are combining electronic legal resources with prisoner assistance programs to provide inmates access to the courts. Either way, state institutions are exploiting *Lewis v. Casey* and *Bounds v. Smith's* notion of experimentation, with this new technology.

The primary motivation behind prison law libraries switching from print to electronic collections appears to be economic. Other problems such as space limitations, destruction of resources, and safety concerns are also resolved through using CD-ROM resources rather than books. Only time will tell whether this switch to electronic materials will create additional burdens on the penal system; however, from a legal standpoint, any burdens that this switch may create on inmates will only be deemed inconveniences without proof of actual injury. From a profes-

sional standpoint, law librarians should encourage institutions to blend both legal research materials with legal assistance programs to ensure that prisoners are given access to the law, the tools to understand the law, and the wherewithal to effectively advocate under the law.

ENDNOTES

1. *Lewis v. Casey*, 518 U.S. 343, 116 S.Ct. 2174 (1996).
2. See 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).
3. *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491 (1977).
4. Steven D. Hinckley, *Bounds and Beyond: A Need to Reevaluate the Right of Prisoner Access to the Courts*, 22 U. Rich. L. Rev. 19 (1987-1988).
5. *Bounds v. Smith*, 430 US 817, 828.
6. *Id.* at 430 U.S. 826-27.
7. *Id.* at 830.
8. The *Bounds* court alludes to preferring legal assistance programs over law libraries. As Justice Marshall stated: "Legal service plans not only result in more efficient and skilful handling of prisoner cases, but also avoid the disciplinary problems associated with writ writers." *Id.* at 831. Despite the Court's apparent preference, far more prisons have opted for law libraries rather than legal assistance programs.
9. In its initial response to the allegations of library collection inadequacy, the state proposed the establishment of more libraries, legal forms, and the inclusion of relevant law books. The law books selected for the collection were the: North Carolina General Statutes, North Carolina Reports (1960-present), North Carolina Court of Appeals Reports, Strong's North Carolina Index, North Carolina Rules of Court, United States Code Annotated: Title 18, Title 28 §§ 2241-2254, Title 28 Rules of Appellate Procedure, Title 28 Rules of Civil Procedure, Title 42 §§ 1891-2010, Supreme Court Reporter (1960-present), Federal 2d Reporter (1960-present), Federal Supplement (1960-present), Black's Law Dictionary, Sokol: Federal Habeas Corpus, LaFave and Scott: Criminal Law Hornbook (2 copies), Cohen: Legal Research, Criminal Law Reporter, Palmer: Constitutional Rights of Prisoners.
10. *Bounds v. Smith*, 430 U.S. 817, 819 nt. 4. To view what the American Association of Law Libraries deems as appropriate for a prison law library collection, see Rebecca S. Trammell, RECOMMENDED COLLECTIONS FOR PRISONS AND OTHER INSTITUTION LAW LIBRARIES AND GUIDELINES FOR PRISON LAW LIBRARIES (Chicago, Ill.: American Association of Law Libraries, 1996).
11. Karen Westwood, "Meaningful Access to the Courts and Law Libraries: Where Are We Now?" 90 Law. Libr. J. 193, 195 (Spring 1998) (citing *Campbell v. Miller*, 787 F.2d 217) (7th Cir. 1986) (regulation requiring "exact-cite" deemed reasonable); *Fluhr v. Roberts*, 460 F. Supp. 536 (W.D. Ky. 1978) (limited collection supplemented by interlibrary loan program deemed adequate); *Johnson v. Moore*, 948 F.2d 517 (9th Cir. 1991) (incomplete sets are not a violation of adequate access); *Petrick v. Maynard*, 11 F.3d 991 (10th Cir. 1993) (failure to provide foreign-state legal materials to attack prior convictions used to enhance sentence is denial of meaningful access); *Miller v. Evans*,

832 P.2d 786 (Nev. 1992) (combination of prison law library and access to Supreme Court law library through paging system held adequate).

12. To see a listing of applicable cases, see Karen Westwood, "Meaningful Access to the Courts and Law Libraries: Where are We Now?" 90 Law. Libr. J. 193, ft. 23-25 (Spring 1998).

13. Steven D. Hinckley, *Bounds and Beyond: A Need to Reevaluate the Right of Prisoner Access to the Courts*, 22 U. Rich. L. Rev. 19, 35 nt. 103, citing *Cepulonis v. Fair*, 563 F. Supp. 659, 660 (D. Mass. 1983), *aff'd in part and vacated in part*, 732 F.2d 1 (1st Cir. 1984); *Fluhr v. Roberts*, 460 F. Supp. 536, 538 (W.D. Ky. 1978); *Harwick v. Ault*, 447 F. Supp. 116, 133-34 (M.D. Ga. 1978).

14. 42 U.S.C. §1983 (2002).

15. *Casey v. Lewis*, 834 F.Supp. 1553 (D.Ariz.1992). The court cited only two instances in which the ADOC deficient policies prevented prisoners from pursuing their claims, and both of these instances involved illiterate inmates.

16. *Lewis v. Casey*, 518 U.S. 343, 347 (1996).

17. *Casey v. Lewis*, 834 F.3d. at 1266, citing *Lindquist v. Idaho State Board of Corrections*, 776 F.2d 851 (9th Cir.1985) (affirming district court's order that state must furnish essential and up-to-date law books).

18. *Casey v. Lewis*, 43 F.3d at 1266-1267.

19. *Casey v. Lewis*, 834 F.3d 1261.

20. *See Lewis v. Casey*, 518 U.S. 343, 347 (1996). No. 94-1511, Amicus Brief of the National Conference of State Legislatures, Council of State Governments, National Governors' Association, National Association of Counties, International City/County Management Association, and National League of Cities, in support of petitioner. Available at 1995 WL 782807 (1995); Brief of Amicus Curiae States of California, Alaska, Florida, Hawaii, Idaho, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Jersey, New York, Ohio, Oregon, Rhode Island, Utah and Vermont in Support of Petition for Writ of Certiorari. Available at 1995 WL 17013854 (1995).

21. *Lewis v. Casey*, 518 U.S. 343, 347 (1996). No. 94-1511, Amicus Brief of the National Conference of State Legislatures, Council of State Governments, National Governors' Association, National Association of Counties, International City/County Management Association, and National League of Cities, in support of petitioner. 1995 WL 782807 (1995). Page 16.

22. *Lewis v. Casey*, 518 U.S. 343, 347 (1996). No. 94-1511, Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit. Brief of Amici Curiae States of California, Alaska, Florida, Hawaii, Idaho, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Jersey, New York, Ohio, Oregon, Rhode Island, Utah and Vermont in Support of Petition for Writ of Certiorari. 1995 WL 17013854 (1995). Page 3-4.

23. *Lewis v. Casey*, 518 U.S. at 348.

24. In regards to the two instances of actual injury involving illiterate inmates, the *Casey* Court "reasoned that these inmates would not have benefited from an adequate law library since they could not read. Therefore, the actual injury to the illiterate inmates was insufficient to support the remedial order as it related to the adequacy of the prison law libraries." See Joseph L. Gerken, *Does Lewis v. Casey Spell the End to Court-Ordered Improvement of Prison Law Libraries?* 95 Law Libr. J. 491, 498 (Fall 2003) (citing *Lewis v. Casey*, 518 U.S. at 359-360).

25. *Lewis v. Casey*, 518 U.S. at 350.

26. *Id.* at 351.

27. *Id.* at 352.

28. *Id.* at 357.

29. The majority rejected the statement articulated in *Bounds* that “the State must enable the prisoner to discover grievances, and to litigate effectively once in Court.” *Id.* at 354, citing *Bounds*, 430 U.S. at 825-826, and n. 14. For criticism of the *Casey* Court’s interpretation of *Bounds* see Joseph A. Schouten, Not So Meaningful Anymore, *Why a Law Library is Required to Make a Prisoner’s Access to the Courts Meaningful*, 45 Wm and Mary L. Rev. 1195 (2004).

30. *Lewis v. Casey*, 518 U.S. 343, 354.

31. *Id.* at 355.

32. Joseph L. Gerken, *Does Lewis v. Casey Spell the End to Court-Ordered Improvement of Prison Law Libraries?* 95 Law Libr. J. 491, 499 (Fall 2003).

33. “[T]he paradox that ability to litigate a denial of access claim is evidence that the plaintiff has no denial of access claim!” *Walters v. Edgar*, 163 F.3d 430, 436 (7th Cir. 1998).

34. Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321-66 (1996) (codified as amended at 18 U.S.C. §§ 3624(B), 3626, and in scattered sections of 28 and 42 U.S.C.).

35. Cong. Rec. S.14, 413 (daily ed. Sept. 27, 1995) (statement of Sen. Dole). During his introduction of S. 1279, a bill nearly identical to the enacted PLRA statute, Senator Hatch noted that, “[t]his landmark legislation will bring relief to a civil justice system overburdened by frivolous prisoner lawsuits. Jailhouse lawyers with little else to do are tying our courts in knots with an endless flood of frivolous litigation. Our legislation will also help restore balance to prison conditions litigation and will ensure that Federal court orders are limited to remedying actual violations of prisoners’ rights, not letting prisoners out of jail.” 141 Cong. Rec. S14, 418 (daily ed. Sept. 27, 1995) (statement of Sen. Hatch).

36. In regards to prison conditions, a court “shall not grant or approve of any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than is necessary to correct the violation of the Federal right.” 18 U.S.C.A. sec. 3626(a)(1)(A) (2001). For a detailed explanation of how the PLRA affected the ability of prisoners to bring claims challenging prison conditions, and how the Act also affected judicial screening of such claims, see Kristin L. Burns, *Return to Hard Time: The Prison Litigation Reform Act of 1995*, 31 Ga. L. Rev. 879 (Spring 1997).

37. For instance, this Act requires the inmate to completely exhaust all administrative remedies in accordance with the prison’s grievance procedure, before addressing the courts. (42 U.S.C. § 1997e(a)) (2001). The Act also contains a three-strike provision to discourage claims without merit, or those that are frivolous or malicious. 28 U.S.C. § 1915(g) (2001). Each time a reviewing judge dismisses an inmate lawsuit on the basis that it is frivolous, malicious, or does not state a proper claim for relief, it counts as a “strike.” Once an inmate accumulates three of these “strikes,” that inmate cannot file again unless he or she pays the entire court filing fee up front, rather than in forma pauperis. *Id.*

38. *Benjamin v. Kerik*, 102 F.Supp.2d 157, 162 (S.D.N.Y. 2000) (citing *Hadix v. Johnson*, 182 F.3d 400 (6th Cir.1999); *Thompson v. Gomez*, 993 F.Supp. 749 (N.D.Cal.1997)). In the context of prison law library deficiencies, under the PLRA, the inmate must show that the deficiencies hindered his or her efforts to pursue a non-frivolous civil legal claim, or that the delay encountered in receiving library materials was more than a mere delay or inconvenience. 18 U.S.C.A. sec. 3626(a)(1)(A).

39. Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1659-60 (2003). This article offers a comprehensive examination of inmate litigation before and after the PLRA.

40. Furthermore, the actual injury requirement has stymied systemic improvement of prison law libraries. For specific examples see 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).

41. See, e.g., *Klinger v. Department of Corrections*, 107 F.3d 609 (8th Cir.1997). Prisoners failed to establish they were denied meaningful access to the courts even though they did show a complete and systematic denial of access to law library or legal assistance, where they failed to further show that any prisoner at facility suffered actual injury or prejudice as a result of that denial of access.

42. In *Egerton v. Cockrell*, the state failed to make available to a prisoner the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which contains the procedural rules that the prisoner must follow in order to avoid having his habeas petition summarily thrown out of court. 334 F.3d 433 (5th Cir. Tex 2003). Since AEDPA was invoked to render the inmate's petition time-barred, the state's failure to provide this Act constituted an "impediment" for purposes of invoking habeas relief. See also *Glover v. Johnson*, 931 F.Supp. 1360 (E.D.Mich.1996) (Mini-libraries, that did not even contain the Michigan Department of Corrections policy directives, were found deficient. Since this issue was brought before the court during civil contempt proceedings against the institution, inmates did not need to show actual harm). See also *Carty v. Farrelly*, 957 F.Supp. 727, 741-42 (Dis.Ct. of the Virgin Islands 1997) (The law library was inadequate because it lacked recent volumes of legal reference materials and was not comprehensive). But see *Sanders v. Carnley*, 100 Fed.Appx. 236 (5th Cir. Tex. 2004) (Inmate failed to show how law library materials that were not up-to-date were inadequate).

43. See *Lewis v. Casey*, 518 U.S. 343, 347 (1996). No. 94-1511 (statement of Grant Woods) available at 1995 WL 712349.

44. For the purposes of this study, I contacted every state's department of corrections. One of the officials who responded via email was Jason Nelson from the Montana Department of Corrections (DOC) (October 29, 2004) (notes on file with author). Mr. Nelson had conducted similar research for the Montana DOC, and provided me with the following information. Those states who are considering moving towards electronic databases, using electronic databases, or are completely replacing its print collections with electronic databases are: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Washington, West Virginia, and Wisconsin. I took the information provided by Mr. Nelson, and again contacted states, DOCs for more information. My paper is based on those who responded to my telephone and email inquiries, and based on published articles area.

45. Generally, state institutions are selecting CD-ROM materials over internet databases from these publishing companies due to the problems and concerns over inmate access to the internet. For more information regarding inmate access to the internet, see Karen J. Hartman, *Prison Walls and Firewalls: H.B. 2376-Arizona Denies Inmates Access to the Internet*, 32 Ariz. St. L.J. 1423 (Winter 2000).

46. Data was pooled from research on California, Florida, Oregon, Washington, Wisconsin.

47. Vibeke Lehmann, Prisoners' Right of Access to the Courts: Law Libraries in U.S. Prisons. Paper presented at the 60th IFLA General Conference (August 21-27, 1994). Available at <http://www.seorf.ohiou.edu/~xx132?iflacorr.htm> (Last viewed 4/24/2005).

48. Julius J. Marke and Richard Sloane, *LEGAL RESEARCH AND LAW LIBRARY MANAGEMENT* (Rev. Ed. Law. Journal Seminars-Press 1990). For more than a decade, law libraries have struggled to cope with the effects of unrelenting price increases on all types of print materials. While academic law libraries continue to grow despite rising print costs, limited availability of business space, and increased user comfortability with electronic resources has pushed private law firms into developing more electronic collections. For an interesting discussion of how firm law librarians have been impacted by the push for electronic legal research in private law firms see Rachel Wilson, Law librarians say technology has them more in demand. *Memphis Business Journal*: <http://www.bizjournals.com/memphis/stories/2004/12/13/focus4.html?page=1>.

49. *Id.* Referring to lib@ucdavis.edu for anecdotal information between law librarians on price increases.

50. *Id.*

51. *Id.*

52. SO23 Provide Electronic Law Libraries for Prisons to Save Money, available at <http://www.report.cpr.ca.gov/cprprt/issrec/stops/it/so23.htm> (Last viewed October 30, 2004).

53. *Id.*

54. Bob Norberg, SR Firm's Kiosks Replace Prison Law Libraries; Touch Sonic Technologies' Touch-Screen Terminals Allow Inmates to do Legal Research, *The Press Democrat*, March 17, 2004.

55. *Id.*

56. SO23 Provide Electronic Law Libraries for Prisons to Save Money, available at <http://www.report.cpr.ca.gov/cprprt/issrec/stops/it/so23.htm> (Last viewed October 30, 2004).

57. *Id.*

58. *Id.*

59. Telephone interview with Vibeke Lehmann, of the Wisconsin Department of Corrections (November 4, 2004).

60. *Id.*

61. E-mail correspondence with Allen J. Overstreet, Operation and Management Consultant Manager of Library Services, Florida Department of Corrections (November 18, 2004) (on file with author).

62. *Id.*

63. According to Mark S. Cacho, Law Library Officer of the Orange County Corrections Department in Orlando, Florida, after implementing a LexisNexis database system from Touch Sonic Technologies, the total law library budget was less than when the library first began operations. See Mark S. Cacho, "Inmate Access to Legal Resources & Materials—How Do We Provide Inmates Access to the Courts," *LJN Exchange* 2004, p. 19-24.

64. Telephone interview with Vibeke Lehmann, of the Wisconsin Department of Corrections (November 4, 2004); telephone interview with Trent Axen of the Oregon Department of Corrections (November 4, 2004).

65. Bob Norberg, SR Firm's Kiosks Replace Prison Law Libraries; Touch Sonic Technologies' Touch-Screen Terminals Allow Inmates to do Legal Research, *The Press Democrat*, March 17, 2004.

66. Julius J. Marke and Richard Sloane, *LEGAL RESEARCH AND LAW LIBRARY MANAGEMENT* (Rev. Ed. Law Journal Seminars-Press 1990) (*Citing* Professor S. Blair Kauffman, Law Librarian at Yale speaking at the 2001 American Association of Law Libraries meeting). Law Libraries collections are growing so quickly that the libraries could double in size probably every fifteen years. Sec. 34.02[2A], *supra*. Despite increased usage of Westlaw and LexisNexis for primary law materials, mainly court reporters, Kauffman emphasized that print remain the only medium available for accessing most legal information beyond primary source legal materials, and is more preferred. Julius J. Marke and Richard Sloane in their guide, *LEGAL RESEARCH AND LAW LIBRARY MANAGEMENT*, suggest that law firms could control their growth simply by making the decisions to keep no court reports in hard-copy (book) form longer than 100 or seventy-five or even fifty years.

67. Touch Sonic Website for frequently asked questions at: <http://www.touchsonic.com/rfaqs/> (last checked 05/09/05).

68. *See Mayfield v. Wilkinson*, 117 Fed.Appx. 939 (5th Cir. La. 2004) (Although indigent inmates must be provided legal supplies and postage at state expense, prisons are permitted to recoup such expenses from funds deposited in the inmate's trust account); *See also Guajardo v. Estelle*, 580 F.2d 748 (5th Cir. 1978). However, administrative agencies may not have the power to determine what the costs of prints should be, such monetary assessments may be only for the legislature to make. *See e.g. Smith v. Florida Department of Corrections*, 2005 Fla. App. LEXIS 7670, 30 Fla. L. Weekly D 1299 (May 23, 2005) (Provision in the Florida Statutes did not authorize the Florida Department of Corrections "to make monetary assessments, it simply authorized the Department to collect monetary assessments").

69. All the information I have about the Wisconsin Department of Corrections for this paper is based on a telephone interview I conducted with Vibeke Lehmann, of the Wisconsin Department of Corrections.

70. *See* <http://www.legis.state.wi.us/rsb/stats.html> (last updated February 1, 2005); <http://www.courts.state.wi.us/> (last updated February 17, 2005).

71. *See* Karen J. Hartman, *Prison Walls and Firewalls: H.B. 2376—Arizona Denies Inmates Access to the Internet*, 32 *Ariz. St. L.J.* 1423 (Winter 2000).

72. E-mail correspondence with the Webmaster at WEBMASTER@idoc.state.il.us (November 3, 2004) (on file with author). All other information regarding Illinois's potential expansion into electronic research was provided by Jason Nelson via e-mail correspondence (Oct 29, 2004) (on file with author).

73. All information regarding Oregon DOC was provided in a telephone interview with Trent Axen of the Oregon Department of Corrections (November 4, 2004).

74. Information regarding Oklahoma's Department of Corrections was provided by Jason Nelson via e-mail correspondence (Oct 29, 2004) (on file with author) and through Ron J. Ward, OKLAHOMA STANDARDS FOR FACILITY OPERATIONS, OP-030115 (May 4, 2004) available at: <http://www.doc.state.ok.us/offtech/op030115.htm> (last viewed Nov. 18, 2004).

75. Information regarding West Virginia's Department of Corrections was provided by Jason Nelson via e-mail correspondence (Oct 29, 2004) (on file with author).

76. All information regarding the Wyoming Department of Corrections was provided in e-mail correspondence (November 8, 2004) (on file with author).

77. All information regarding the Texas Department of Criminal Justice was provided in e-mail correspondence with James Chandler (October 29, 2004) (on file with author).

78. All information regarding the Mississippi Department of Correction was provided through e-mail correspondence with Gia McLeod, Director of the ILAP via e-mail (November 1, 2004) (on file with author). For additional information on this program see www.mdoc.state.ms.us (Last viewed May 16, 2005).

79. Curiously, about four years ago the State Library of Mississippi asked the Mississippi DOC if it would like some of its duplicate case reporters. Mississippi's DOC declined the offer as part of its decision to eliminate all print in prison. According to Charlie Pierce, e-mail November 8, 2004, the decision was to eliminate print libraries entirely and use Westlaw only or exclusively.

80. SO23 Provide Electronic Law Libraries for Prisons to Save Money, available at <http://www.report.cpr.ca.gov/cprpt/issrec/stops/it/so23.htm> (Last viewed October 30, 2004).

81. *Id.*

82. *Id.*

83. A recent demonstration of this database was given by Mark S. Cacho at the LISP/RIPS/SR-SIS "Joint Roundtable on Service to Pro Se Patrons and Prisoners" during the A.A.L.L. Annual Conference, July 18, 2005.

84. The information I have obtained from Florida is based on an e-mail correspondence with Allen J. Overstreet, Operation and Management Consultant Manager of Library Services, Florida Department of Corrections (November 18, 2004) (on file with author). Subsequent to speaking with Mr. Overstreet, I was informed that certain Florida DOCs are experimenting with the LexisNexis database system provided by Touch Sonic Technologies.

85. The information about Montana comes from e-mail correspondence with Jason Nelson from the Montana Department of Corrections (DOC) (Oct 29, 2004) (on file with author).

86. Law Library Service to Prisoners 2003 Annual Report, available at <http://www.lawlibrary.state.mn.us/llsp.html> (last updated May 1, 2003).

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. Perhaps not surprisingly, these types of challenges have been unsuccessful, thus far. See *Dickens v. Fillion*, 2003 WL 1621702 (S.D.N.Y.) (Inmate complained that the refusal to provide him with copies of decisions that are only available to through Internet access or access to Westlaw computer databases interferes with his right of access to the court and his right to challenge his criminal conviction. However, with a few exceptions, the principals of the law that were determinative to the issues raised in the petition were taken from decisions with reporter citations. Therefore, the inmate could not demonstrate actual injury). See also *Reinholtz v. Campbell*, 64 F.Supp.2d 721 (W.D.Tenn.1999) (Plaintiff failed to demonstrate how prisons refusal to provide a computerized legal research system denied him access to the courts. To the extent that a

lack of computerized research makes it more difficult for him to prepare pleadings, such inconvenience is merely part of the penalty that criminal offenders for their offenses against society).

92. Julius J. Marke and Richard Sloane, *LEGAL RESEARCH AND LAW LIBRARY MANAGEMENT* (Rev. Ed., Law Journal Seminars-Press 1990).

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id. Citing* Mae. M. Clark and Donna Alsbury, *Back to the Future: Predicting Materials Costs by Analyzing Past Expenditures*, 92 Law. Lib. J. 147 (2000).

97. Julius J. Marke and Richard Sloane, *LEGAL RESEARCH AND LAW LIBRARY MANAGEMENT* (Rev. Ed., Law Journal Seminars-Press 1990).

98. *Benjamin v. Kerik*, 102 F.Supp 157, 164 (S.D.N.Y. 2000), *citing Kensu v. Haigh*, 87 F.3d 172, 175 (6th.Cir.1996).

99. “[M]eaningful access to the federal courts can seldom be realistically advanced by the device of making law libraries available to prison inmates untutored in their use.” *Bounds*, 430 U.S. 817, 836 (Stewart, J. dissenting). For a strong argument against merely providing inmates with the books and nothing more *see Glover v. Johnson*, 931 F.Supp. 1360 (E.D.Mich.1996). *See also* Arturo A. Flores, *Bounds and Reality: Lawbooks Alone Do Not a Lawyer Make*, 77 Law. Lib. J. 275 (1984-1985).

100. *See Franklin v. McCaughtry*, 110 Fed. Appx.715, 718 (7th Cir. 2004) Unpublished Order. In that case, the inmate alleged that “prison officials directed him to do his legal research by computer but refused to provide computer training, and that this kept him from successfully litigating his petition for habeas corpus. The only legal injury he allegedly suffered was an inability to find and cite legal authority for his habeas corpus claims, but the district court’s dismissal of that case . . . was not premised on any failing by Franklin to cite relevant legal authorities. Thus, he will be unable to demonstrate any actual injury flowing from the conduct alleged in the complaint, and his claim was properly dismissed.”

101. *Williams v. Leeke*, 484 F.2d 1339 (4th Cir. 1978).

Received: 07/13/05

Revised and Accepted: 09/13/05