May It Please the Court:
Law Students and Legal Research Instruction in Prison Law Libraries

I. Introduction

Beginning in the 1960s and 70s, federal courts, which had previously taken a hands-off approach to state prisons, began to entertain increasing numbers of prisoner lawsuits. This increase was the result of U.S. Supreme Court decisions affirming prisoners’ right to seek redress in the courts for alleged constitutional violations, and requiring states to provide prisoners with the means to effectively petition courts for review of their grievances. Prison law libraries were the vehicle chosen by most states to secure prisoners’ access to the courts.

Today, prisoner litigation – often filed by inmates proceeding pro se with the assistance of the resources offered by their facilities’ law libraries – remains an important means of ensuring that the dictates of the U.S. Constitution have been followed in criminal prosecutions and are adhered to in subsequent confinement. However, the volume and quality of prisoner petitions also present significant challenges for the federal court system, where most prisoner complaints are lodged. The challenges in processing large numbers of poorly constructed petitions persist even though a legislative and judicial contraction of the right of access in the 1990s has to some extent reduced the overall number of prisoner suits filed today in federal court.

In states that provide law libraries as the means for ensuring that prisoners have meaningful access to the courts, these libraries accordingly signify both a challenge and an opportunity for the legal community. They present a challenge, because problems both for prisoners and the federal court system inherent in using law libraries as the sole means to secure prisoners’ access to the courts are apparent and have been well documented. At the same time, prison law libraries present an opportunity for law schools and their librarians to become directly involved in helping these institutions function more effectively. Anecdotal evidence suggests that such involvement could increase the quality of filings with federal courts in a way that would help to reduce the burden that prisoner litigation continues to place on the federal court system, while simultaneously improving prisoners’ ability to petition the courts effectively – two goals that legislative action in the late 1990s failed to achieve. This is an effort that the entire legal community should support.

This paper addresses the challenge and opportunity identified above by presenting a proposal for a formal program that could be established by or with the help of interested librarians in any academic law library, to provide law student legal research instruction and assistance in prison law libraries. This is an effort that would also help serve law schools’ goal of providing practical experience for their students, and address the need for developing improved research skills in law students. The proposal is based on discussions with prison librarians from around the country and an examination of four
different models of prisoner research assistance, in addition to conversations with the individuals involved in those programs.

The paper begins with an overview of prisoner litigation and its impact on the federal court system, including a description of prison libraries’ role in facilitating prisoners’ ability to present their grievances to the courts. It examines prison law libraries’ shortcomings, and discusses the burdens that prisoner litigation continues to impose on the federal court docket, despite legislative efforts to address the issue. The paper then moves on to discuss programs both past and present, formal and informal, which demonstrate the potential benefits for prisoner litigants and the court and prison systems of legal research assistance and instruction in prison law libraries. In the final part of the paper I present my recommendations for the form that such a program within a law school could take, based on lessons learned from the programs studied.

II. Overview of Prisoner Litigation and Its Impact on the Federal Court System

The U.S. Administrative Office of the Courts, which tracks, among other things, statistics related to the type and number of suits filed in the federal district and appellate courts each year, includes a separate category of statistics for “prisoner petitions.”1 Included in this category of litigation are motions to vacate sentence, habeas corpus petitions, petitions seeking mandamus and other immediate relief, civil rights suits, and suits related to prison conditions. For the 12-month period ending September 30, 2009, the total number of prisoner petitions filed in federal district court was 52,304.2 This was down slightly from the total for the preceding period and more significantly from the high of 68,235 in 1996.3 Despite the downward trend, however, prisoner petitions continue to make up a significant part of the federal district courts’ docket. For comparison, in 2009 all contract actions totaled nearly 20,000 fewer at 35,634, and the total of all product liability actions (which amounted to 58,335 actions filed), was only slightly higher.4

By far the vast majority of petitions and complaints filed by prisoners comprise civil rights and prison condition suits and habeas petitions. In 2009, for example, these cases

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made up nearly 87% percent of all prisoner litigation filed. Of these, civil rights and prison condition suits constitute the majority, at 48% of the total.

**A. History of Prisoner Litigation and Prison Law Libraries’ Role in Providing Access to the Courts**

1. **Expansion of Access to the Courts: 1960s – Mid-1990s**

Despite the present-day significance of prisoner litigation on the federal court docket, these types of suits were largely unheard of in the earlier part of the 20th century. In 1941, the Supreme Court’s decision in *Ex Parte Hull* confirmed the unequivocal right for state prisoners to petition the federal courts for review of asserted constitutional violations in trial and sentencing. Nonetheless, federal courts continued to operate under a “hands off” doctrine, under which they shied away from interference in state prison administration. In 1964, however, the Supreme Court decided *Cooper v. Pate*, which held that an inmate in the Illinois state penitentiary had standing to bring suit against prison officials under 42 U.S.C. § 1983. This decision marked the beginning of a steep increase in prisoner litigation, and the start of a period during which federal courts began to actively intervene in prison administration, issuing injunctive relief against civil rights violations or enforcing consent decrees aimed at ameliorating unconstitutional prison conditions.

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6 In 2009 there were 24,888 civil rights and prison conditions suits filed; habeas corpus petitions totaled 20,564. See Table C-2A, U.S. District Courts – Civil Cases Commenced, by Nature of Suit, During the 12-Month Periods Ending September 30, 2005 Through 2009, at 145, available at www.uscourts.gov/stats/index.html
7 *Ex parte Hull*, 312 U.S. 549, 549 (1941) (“the state and its officers may not abridge or impair petitioner’s right to apply to a federal court for a writ of habeas corpus”).
8 See, e.g., *Banning v. Looney*, 213 F.2d 771 (10th Cir. 1954) (stating that stating that federal courts are “without power to supervise prison administration or to interfere with the ordinary prison rules and regulations”).
11 As one commentator observed, “the Court’s early prison reform cases did less to set forth substantive rights than to develop procedural routes for getting such cases before federal district judges. By opening the door in the school desegregation cases for large-scale institutional reform through litigation, expanding the availability of 42 U.S.C. § 1983, and giving an expansive and
Prison law libraries soon found themselves playing a key role in prisoner litigation. In 1977, the Supreme Court in *Bounds v. Smith* expressly held for the first time that prisoners are entitled to “meaningful access to the courts,” an affirmative right which “requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers . . . .” The Court expressly identified prison law libraries as one of the means by which states could satisfy this duty. Following *Bounds*, the vast majority of states – 47 by one count – chose to provide law libraries as the means of providing prisoners with access to the courts. Prison law libraries thus became the tools with which prisoners pressed their habeas corpus petitions and civil rights complaints – actions for which the Supreme Court’s decision in *Cooper v. Pate* had cleared the way.

### 2. Post-*Bounds* criticism of prison law libraries

Despite the Supreme Court’s endorsement of prison law libraries and the near universality with which states adopted them in order to fulfill their constitutional obligations, criticism over the reliance on law libraries for this purpose soon emerged. O. James Werner, whose *Manual for Prison Law Libraries* became a standard text in this area, was an outspoken skeptic of law libraries’ ability, standing alone, to provide prisoners with meaningful access to the courts. Werner “maintained that exclusive reliance on law libraries . . . was like referring a sick person to a medical library rather than a doctor.” Other criticism was equally pointed, asserting that on the whole
prisoners lacked the education and literacy skills to permit them to effectively use legal resources. Following the Court’s decision in *Bounds*, prisoners brought numerous right of access cases challenging the sufficiency of prison law libraries, and courts faced with evaluating whether prison libraries were fulfilling their duty of providing prisoners with meaningful access also raised questions regarding the ability of prison law libraries to achieve this purpose.

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16 One commentator wrote after *Bounds* that “[t]he substantial reliance upon prison law libraries is doomed to fail in its assigned task of providing access to the courts because the vast majority of prison inmates are incapable of effectively utilizing legal resources. The capability to use legal materials in a law library for the preparation of legal claims requires two important sets of skills. First, prisoners must be proficient in reading and writing English. However, many prisoners lack basic literacy skills. . . . The second aspect of the skills problem involves legal research skills and knowledge about the court system and legal procedure. A prisoner who has college level reading ability would still not be able to utilize a law library effectively without extensive training and experience in legal research and procedure.” Christopher E. Smith, *Examining the Boundaries of Bounds: Prison Law Libraries and Access to the Courts*, 30 HOWARD L.J. 27, 34 (1987). Another opined that law libraries “are worthless to prisoners who lack the reading and writing skills or legal understanding to use them.” William Bennett Turner, *When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts*, 92 HARV. L. REV. 610, 656 n.216 (1979). A 1996 study on pro se inmate litigation supported this notion, concluding that 70% of prisoners “cannot comprehend or synthesize material from complex texts, which legal research requires.” Jill Schachner Chanen, *Banned in the Bighouse*, 84 A.B.A. J. 26, 26 (1998).

17 These cases, which were especially frequent during the 1990s, were aimed at “defining the requirements necessary to provide prisoners with adequate access to the courts,” and included challenges regarding library resources and hours of access. REBECCA S. TRAMMELL, WERNER’S MANUAL FOR PRISON LAW LIBRARIES, at 2 (3d ed. 2004). With respect to the core collection necessary for the libraries to function effectively, it should be noted that the American Association of Law Libraries had been interested in the issue of prison law libraries years prior to the *Bounds* Court’s pronouncement that they could serve as a vehicle to secure prisoners’ access to the courts. In 1972, AALL had issued collection standards for prison law libraries, and these regularly updated standards came to be used by most prison libraries as the minimum requirements to satisfy *Bounds*. See Vibeke Lehmann, *Prisoners’ right of Access to the Court: Law Libraries in U.S. Prisons*, 60th IFLA General Conference Proceedings, Aug. 21-27, 1994, available at archive.ifla.org/IV/ifla60/60-lev.htm.

18 As discussed during a meeting of the Law Library Services to Institutional Residents Special Interest Section of the American Association of Law Libraries, the judge in a large prison reform case in Oklahoma found as fact that only 30% of the prisoners had the ability and education to do legal research. *Prison Law Library Service: Questions and Models*, 72 L. LIBR. J. 598, 604 (1979)
There was also general recognition among law librarians and commentators following
*Bounds* that if the promise of law libraries as a means of providing truly meaningful
access to the Court was to succeed even in part, library staffing was crucial.\(^\text{19}\) However, a
1983 survey indicated that staffing in law libraries varied greatly in terms of training and
even existence.\(^\text{20}\) The absence of a “middleman” to assist prisoners in using the legal
materials in many prison law libraries could only exacerbate the challenges confronting
inmates who, lacking legal training, nonetheless had to rely on law books as their sole
source of legal assistance.

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\(^{19}\) As one commentator stated: “assistance in using the legal materials contained in a law library is
an integral part of effecting the law library alternative in meeting the Bounds requirements. . . .
Not only is there the obvious necessity to provide a law library staff of sufficient size, it is
imperative that the staff is trained and capable of assisting inmates.” Richard E. Ducey, *Survey of
Prisoner Access to the Courts: Local Experimentation a’ Bounds*, 9 NEW ENG. J. ON CRIM. &

\(^{20}\) For example, out of the 99 correctional facilities that responded to the author’s survey and
indicated that their facility provided a law library, over half had no law librarian (48) or were
staffed solely by one or more inmate clerks (7). Another 12 libraries were staffed with either
paralegals or individuals with a college degree unrelated to law or librarianship. Only 23 reported
being staffed by a librarian with an MLS or MLIS. Richard E. Ducey, *Survey of Prisoner Access
to the Courts: Local Experimentation a’ Bounds*, 9 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT
3. Mid-1990s: Restrictions on the Right of Access and Federal Relief

a. The PLRA and AEDPA

In the years following the Supreme Court’s move to open federal courthouse doors to prisoners and ensure the means of presenting their grievances, commentators began to register concern over courts’ ability to deal effectively with the meteoric rise in the numbers of prisoner lawsuits.21 Inmates’ civil rights suits, in particular, became the subject of increasing scholarly criticism.22 Courts who felt themselves besieged by the increased volume of litigation also complained,23 and language in judicial opinions often

21 As early as 1972, Justice Powell’s dissent in Boyd v. Dutton had expressed trepidation over the increase in prisoner filings resulting from the Court’s decisions: “The current flood of petitions . . . already threatens – because of sheer volume – to submerge meritorious claims and even to produce a judicial insensitivity to . . . petitioners.” Id., 405 U.S. 1, 5 (1972) (Powell, J., dissenting).

22 One article complained, “Prisoner civil rights suits create an undisputed drain on the federal courts. The number of suits filed has increased exponentially in the past twenty years, and is not likely to abate in the future. . . . Unfortunately, in addition to protecting legitimate claims, the right of access also provides a vehicle for an overwhelming number of patently frivolous claims filed by indigent prisoners to harass their incarcerators.” Wayne T. Westling & Patricia Rasmussen, Prisoners’ Access to Courts: Legal Requirements and Practical Realities, 16 LOY. U. CHI. L.J. 273, 303 (1985). In an often-cited article, Robert Doumar concluded in 1994, “It appears that the handling of prisoner petitions is becoming a judgeless system. Many prisoner complaints never receive more than a cursory review from a federal judge at either the district or appellate level. Meritorious prisoner civil rights cases will continue to be buried unless the deluge of prisoner civil rights cases can be stopped.” Robert G. Doumar, Prisoner Cases: Feeding the Monster in the Judicial Closet, 14 ST. LOUIS U. PUB. L. REV. 21, 30-31 (1994).

23 One commentator reported that “[j]udges regularly lament the effects of frivolous prisoner suits upon their courts and the administration of justice,” and quoted a federal judge who complained, “‘[t]he sheer volume of these prisoners’ cases causes extreme frustration and hardship for all who deal with them,’ beginning with prison officials and subsequently including court clerks, state attorneys, judges, magistrates and law clerks.” Note, The End of the Prison Law Firm?: Frivolous Inmate Litigation, Judicial Oversight, and the Prison Litigation Reform Act of 1995, 29 RUTGERS L.J. 361, 368 (1998). A 1988 study conducted by the district court for the Southern District of New York concluded that over half of the prisoner filings it received were “frivolous.” Robert C. Hauhart, Organizing a Prisoners’ Legal Aid Office, 22 CLEARINGHOUSE REV. 335, 339 (1988) (describing study). A 1979 article had concluded that those districts that have a large volume of prisoner litigation were finding it difficult to do justice in individual cases: “[i]n the districts faced with an exceptionally high volume of prisoner suits, the ability of the courts to do justice in individual cases, or even to give them fair consideration, is plainly handicapped.” William Bennett Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 HARV. L. REV. 610, 638 (1979). This article quoted the chief judge for the district of Maryland, a jurisdiction with an exceptionally heavy caseload of prisoner petitions, who described the impact of those petitions as “devastating.” As the backlog increases daily, this judge stated, “the chances of speedy disposition of a truly meritorious claim are diminished by the sheer weight of the numbers.” Id. at 638 & n.141.
expressed judges’ frustration with serial filers. Concern over the number and nature of prisoner lawsuits inundating federal courts was coupled with a backlash against what was perceived and characterized as federal meddling in matters of state interest by means of consent decrees and court orders regarding prison administration. In addition, some commentators suggested that providing law libraries without adequately trained staff increased the likelihood that prisoners would file frivolous petitions. Perhaps not surprisingly, the increase in prisoner litigation led to prison law libraries being blamed for “fostering jailhouse lawyers and providing means for excessive prisoner litigation.”


25 For example, in speaking as part of a panel at the annual meeting of the AALL Law Library Services to Institutional Residents Special Interest Section, Virginia Davis observed that “[b]ecause of an inadequate system of staffing, TDC’s [Texas Department of Correction] reasonably well-equipped law libraries are rendered inaccessible and useless to the vast majority of prisoners. This statement is supported by the TDC Evaluation Report’s conclusion that the number of frivolous writs and appeals has increased in the Texas courts and that this is due to the lack of professionalism which exists in the information gathering stages of the writ procedure.” Prison Law Library Service: Questions and Models, 72 L. LIBR. J. 598, 609 (1979). Prison law libraries in Washington State came under the same fire: “I conclude that the situation greatly resembles the one in Texas. Each unit has a law library equipped to follow the AALL checklists’ guidelines but these libraries are not kept up-to-date with the most current decisions, and staffing is not very adequate. The Head Librarian is usually a guard who has received minimal formal instruction for his duties at a seminar. In turn, he is supposed to train prisoners to help him perform his duties. As in Texas, lots of frivolous writs are reported from prisoners who are doing their own legal work.” Id.

26 REBECCA S. TRAMMELL, WERNER’S MANUAL FOR PRISON LAW LIBRARIES, at 3 (3d ed. 2004). An attempt to verify empirically the impact of prison law libraries on the litigation burden is beyond the scope of this paper, and I am unaware of any study that has examined the trends in prisoner filings in states who have chosen to dismantle their libraries following Bounds, or who selected not to provide them in the first place. However, the Supreme Court’s endorsement of prison libraries occurred in tandem with an increased willingness to pass judgment on prison administration practices. It would therefore likely be very difficult to determine whether the establishment of prison law libraries had a negative causal effect on the number of non-meritorious suits filed by inmates, or whether the Supreme Court’s opening of federal court doors would have led to the same or a greater number of suits by prisoners without access to law libraries as resources – however flawed they may be. It is at least plausible that the lack of law libraries through which prisoners have some hope of educating themselves about the merits of their claims would have resulted in even higher numbers of unsuccessful filings in the years preceding the PLRA and AEDPA. As one commentator argued, prison librarians “provide inmates with information, tools and programs necessary to research and prepare petitions to be filed with the courts. . . . Without libraries and librarians, inmates will seek to resolve frivolous issues by filing petitions. The prison and the public will find it costs more to process such petitions than it would to provide the information in the first place. . . . Without prison libraries and librarians to provide inmates with the information necessary to challenge their convictions, inmates would continue to flounder in an informational vacuum. This would lead to meritless lawsuits clogging the judicial system.” Jay M. Ihrig, Providing Legal Access, in LIBRARIES INSIDE, 200, 203 (Rhea Joyce Rubin & Daniel S. Suvak, eds., 1995). Similarly, although “some
The increased prominence of prisoner litigation on the federal court docket also sparked news stories relating tales of frivolous prisoner complaints, such as suits over towel color or whether inmates were entitled to creamy, rather than chunky, peanut butter. Such reports ultimately created a climate of pervasive hostility to prisoner litigation. It is debatable whether the increase in litigation was the result of prisoners filing a disproportionate number of frivolous suits, or whether it merely reflected the rise in the nation’s prison population during these years. Nonetheless, as one article noted, “a
general consensus about prisoner litigation seems to exist . . . that prisoners are filing lawsuits for entertainment and recreational purposes in epic proportions.”

In 1996 popular sentiment regarding prisoner litigation facilitated the passage of two pieces of legislation relating to prisoner suits: the Prison Litigation Reform Act (“PLRA”), and the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”). The PLRA was passed as a rider to an appropriations bill, leaving very little legislative history in its wake. The comments of its sponsors, which emphasized the flood of frivolous claims inundating federal courts, left little doubt as to its objective, however. The act’s supporters suggested that its provisions would also help improve the quality of filings, thereby facilitating identification and consideration of legitimate claims by the courts. As enacted, the PLRA imposes a number of significant procedural and substantive restrictions on the filing of prisoner suits in federal court. Similarly, the 1996


Senator Dole, for instance, stated during debates that “[f]rivolous lawsuits . . . tie up the courts, waste valuable legal resources, and affect the quality of justice enjoyed by law-abiding citizens.” 141 CONG. REC. 19, 27042 (1995).

Specifically, the act amended the Civil Rights of Institutionalized Persons Act and Federal Tort Claims Act to prohibit an inmate from bringing a claim for mental or emotional injury suffered while in custody, unless accompanied by physical injury. See 42 U.S.C. §1997e(e) (West 2010). The act also added restrictions to the statute governing filings in forma pauperis, which permits waiver of filing fees for indigent parties. See 28 U.S.C. §1915 (West 2010). The PLRA increased the federal courts’ screening power of prisoner complaints, directing courts to dismiss inmate claims against government officials before service, either upon the court’s motion or that of a party, if the claim is determined to be “frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. §1915A (West 2010). The PLRA also enacted a “three strike” rule, providing that an inmate who has previously had three lawsuits dismissed on the grounds that they are frivolous, duplicative, or fail to state a claim, will henceforth be ineligible for in forma pauperis status. See 28 U.S.C. §1915(g) (West 2010). The act further requires that prisoners exhaust all administrative remedies before filing suit in federal court. See 42 U.S.C. § 1997e(a) (West 2010). Finally, the
amendments to the federal habeas corpus statute, passed as the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”), considerably heighten the barriers to federal court review of prisoners’ convictions.

b. Lewis v. Casey

In same environment that led Congress to enact the PLRA and AEDPA, and in the midst of continued debate and litigation over the constitutional adequacy of prison law libraries as a means of providing access to the courts, in 1997 the Supreme Court handed down its landmark decision in Lewis v. Casey. This case, which grew out of a challenge to the adequacy of a prison law library by a group of Arizona prisoners, held that the Constitution requires meaningful access to the courts, but does not provide a “freestanding right” to a law library. Under Lewis, prisoners can no longer demonstrate a denial of the right of access by demonstrating that their library falls short in some theoretical sense. Rather, they must show that particular deficiencies actually prevented them from presenting their grievance to the courts. Lewis also significantly restricted the type of suits that can serve as the basis for a denial of access claim, holding that the access Bounds requires is only that needed for prisoners “to attack their sentences, directly or collaterally, and . . . to challenge the conditions of their confinement.” The majority opinion in Lewis appeared to reflect the popular antipathy to prisoner litigation in evidence at the time, admonishing, “Bounds does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims.”

PLRA also expanded courts’ ability to dismiss sua sponte non-indigent prisoner filings under §1983. See 42 U.S.C. § 1997e(c) (West 2010).


34 Among other things, AEDPA raised the substantive bar for relief, permitting relief only if the state court’s decision is contrary to “clearly established” federal law, and imposed a strict one-year filing deadline for all federal habeas corpus claims. See 28 U.S.C. §§ 2244, 2254(d)(1) (West 2009). The amendments also place limits on successive petitions and require exhaustion of state remedies prior to seeking relief in federal court. See 28 U.S.C. §§ 2244(b), 2254(b)-(c) (West 2009).


36 Lewis v. Casey, 518 U.S. 343, 351 (1997). Accordingly, the Court found, an inmate can demonstrate a denial of access based on an inadequate law library only by showing a concrete injury, such as evidence that “a complaint . . . was dismissed for failure to satisfy some technical requirement which, because of deficiencies in the prison’s legal assistance facilities, he could not have known. Or that he [the prisoner] 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.” Id.

37 Lewis, 518 U.S. at 355.

38 Lewis, 518 U.S. at 355. Interestingly, not a single library association filed an amicus curiae brief for the prisoners in Lewis. “The American Library Association is said to have declined to file one because it was not a First Amendment issue.” By contrast, “[o]n behalf of the correctional agency, no fewer [than] thirty-two states and Washington, D.C., filed amicus briefs along with the National Conference of State Legislatures and other state and municipal government
Although many states retain their correctional law libraries today, about half abandoned them soon after Lewis or in the years following. For its part, Arizona responded to the victory won in Lewis by closing its prison law libraries and contracting with paralegals to “answer inmate requests by mail or by visit if the inmate has a court deadline.” Overall, the result of Lewis “has been a marked contraction in the availability of law libraries and other legal services to prison inmates.”

B. Impact of Prisoner Litigation on Federal Courts Today

The PLRA has been somewhat successful in its objective of reducing the number of prisoner suits filed in federal court. However, it appears to have failed in its secondary associations.” Brenda Vogel, A Prisoner’s Locus Sanction: the Law Library, in THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY, 65 (2009).


Brenda Vogel, A Prisoner’s Locus Sanction: the Law Library, in THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY, 70 (2009). With respect to other states: “Iowa closed its prison law libraries (1999) and relies on attorneys. Idaho stopped providing case law and copies (2000) and assigned paralegals to each main facility instead. Michigan kept a minimum law library and hired attorneys or paralegals to train inmates to provide assistance to other inmates (2004); Mississippi opted for paralegals with attorney supervision; New Mexico kept skeleton libraries and assigned ‘educators’ who function as paralegals, but no cases, copies, or fill-in-the-blank forms are available; North Carolina contracted with N.C. Prisoner Legal Services.” Id. “Other states, such as Florida and California, severely cut back expenditures on law materials.” Evan R. Seamone, Fahrenheit 451 on Cell Block D: A Bar Examination to Safeguard America’s Jailhouse Lawyers from the Post-Lewis Blaze Consuming Their Law Libraries (2006), reprinted in THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY, at 93-94 (2009).

Margo Schlanger, Inmate Litigation, 116 HARV. L. REV. 1555, 1633 & n.268 (2003). In practical terms, the Court’s decision in Lewis makes it less likely that – whatever the parameters of the right of access – any prisoner has a chance of succeeding on such a claim. David C. Fathi, Staff Counsel with the ACLU National Prison Project, speaking at the AALL 2002 annual meeting, noted that “successful cases involving claims of denial of access to the courts based on inadequate law libraries are few and far between.” REBECCA S. TRAMMELL, WERNER’S MANUAL FOR PRISON LAW LIBRARIES, at 5 (3d ed. 2004). Similarly, an ALR annotation cites to 16 cases prior to Lewis where law library materials were held sufficiently inadequate to constitute a violation of prisoners’ right of access to the courts; similar cases following Lewis number only 4. See George L. Blum, Sufficiency of Access to Legal Research Facilities Afforded Defendant Confined in State Prison or Local Jail, 98 A.L.R. 5TH 445 (2002 & Supp. 2009)

Around 2003, Margo Schlanger, an associate professor at Harvard Law School, conducted an extensive empirical study to determine the impact of the PLRA on prisoner civil rights litigation. She observes that between 1995 and 1997 there was a 33% decrease in the number of civil rights
promise: that its restrictions would help clear the federal docket of frivolous claims and make way for courts to consider meritorious suits. Further, although yearly filings of habeas corpus petitions by state prisoners are down somewhat from their peak in 2000, AEDPA does not appear to have had the immediate and dramatic impact the PLRA had on civil rights filings.

Therefore, while there are now fewer prisoner petitions filed in federal court than during the late 1990s, the number of prisoner suits remains very high, far exceeding the numbers that provoked concern from scholars and judges at the outset of the Supreme Court’s expansion of prisoner access to the courts. The fact remains that these suits constitute a significant part of the federal docket – so much so that some courts rely on staff attorneys whose sole job is to read and make initial recommendations regarding the complaints. Further, some districts consistently receive a disproportionate number of filings, so that while the number of suits spread evenly among all district courts in the country has been lessened, many districts still labor under a very heavy prisoner docket. And, although it cases filed by prisoners, even though the prison population increased 10% during this time. Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1634 (2003). Schlanger also concludes that although the number of filings overall have decreased (taking into account the fact that there has been some migration of these claims to habeas petitions and state courts). Similarly, a 2006 report on confinement conditions noted that since the PLRA’s enactment, “prisoner lawsuits in federal court are dramatically down, by nearly half when the increase in prison population is taken into account.” JOHN G. GIBBONS ET AL., *CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA’S PRISONS* 87 (2006). This study notes that the year before the law took effect the rate of filings was 37 per 1000 prisoners, but that five years later that rate had dropped to 19 per 1000. Id. Prof. Schlanger concludes from her research that this reduction is most likely attributable to the impact of PLRA. Schlanger, 116 HARV. L. REV. at 1634.


44 Habeas corpus filings by state prisoners were at their high in 2000, four years after AEDPA was enacted. That year, they numbered 21,349. In 2008, that number had declined slightly to 18,450. See SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE, Table 5.65.2008, available at http://www.albany.edu/sourcebook/pdf/t5652008.pdf In 1977, five years after Justice Powell expressed concern that the volume of prisoner petitions threatened “to submerge meritorious claims and even to produce a judicial insensitivity to . . . petitioners,” *Boyd v. Dutton*, 405 U.S. 1, 5 (1972), prisoner petitions filed in federal court totaled just over 19,000. See SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE, Table 5.65.2008, available at http://www.albany.edu/sourcebook/pdf/t5652008.pdf

46 For instance, in the Eastern District of New York, where I clerked from 2005 to 2006, all cases filed in forma pauperis are initially screened by a staff attorney employed by the court, who transmits a draft of a memorandum and order – usually recommending dismissal – to the chambers of the individual judge who is assigned to the case for ultimate review and decision.

47 For instance, while there were only 355 habeas corpus petitions filed in the Western District of Texas in the 12 months ending September 30, 2009, there were 1594 petitions filed in the Central
is true that most civil prisoner litigation is dismissed at the screening stage and thus does not consume court time in the form of trials or other in-court proceedings, these cases can be more burdensome because they are not candidates for settlement. Unlike like other private lawsuits where the parties are represented by attorneys, prisoner litigation requires “some court action . . . on almost all cases.”48 In 2000, the processing of these cases was estimated to cost the federal court system over $31 million to process.49

1. Importance of prisoner litigation

Setting aside for the moment the demands that prisoner petitions place on federal district courts, where the vast majority of these suits are filed, it is important to recognize that prisoner litigation continues to serve crucial purposes within the legal system, as well as providing penological and societal benefits. As a primary matter, the right of prisoners to file habeas corpus petitions seeking federal court review of the constitutionality of their trials and convictions serves the important purpose of ensuring that states’ criminal justice systems – police, prosecutors, and courts – operate within the confines of the United States Constitution.50 Habears petitions prepared and filed by inmates proceeding pro se (often with the prison library as their only resource) are the means by which most prisoners present their constitutional challenges to the federal courts for review. Lest anyone forget or doubt the importance of this oversight, one need only review the newspaper headlines from the last decade. These headlines are a reminder of the alarming numbers of individuals sentenced to death row who have subsequently been exonerated by DNA evidence – many thanks to efforts of law school innocence projects – or who have had their questionable convictions reversed after egregious misconduct by prosecutors and defense attorneys alike.51

District of California in the same period. See Administrative Office of the U.S. Courts, Table C-3, U.S. District Courts – Civil Cases Commenced, by Nature of Suit and District, During the 12-Month Period Ending September 30, 2009 at 150, 152, available at www.uscourts.gov/stats/index.html

50 The federal habeas corpus statute, 28 U.S.C. §2254 (West 2009) provides that a state prison may apply for a writ of habeas corpus on the ground that he or she is “in custody in violation of the constitution or laws or treaties of the United States.”
51 In 2000 then-Governor George H. Ryan of Illinois declared a moratorium on the death penalty due to “grave concerns about [Illinois’] shameful record of convicting innocent people and putting them on death row.” See “Governor Ryan Declares Moratorium on Executions, Will Appoint Commission to Review Capital Punishment System” (press release dated January 31, 2000), available at www.illinois.gov/PressReleases/PressReleasesSearch.cfm. Examples of federal courts overturning state court convictions after finding state court proceedings infected with misconduct and incompetence are far from commonplace – especially given AEDPA’s heightened restrictions – but they are nonetheless unacceptably frequent. In just one example, a New York City law firm won the 2004 release from death row in Texas of a defendant who, without objection from his attorney, was doped with excessive doses of an unprescribed anti-psychotic medication throughout his trial, creating an affectless demeanor that the state used as a
Similarly, it should be recognized that the Supreme Court has consistently held that prisoners, despite a significant loss of liberty during the period of their confinement, retain certain constitutional rights while incarcerated.\(^{52}\) Suits challenging conditions of confinement and treatment by corrections personnel are an important means of not only vindicating these rights but also encouraging prisons to take proactive steps to ensure that these violations do not occur in the first place. It is worth noting that in 1995 over a quarter of state prisons were operating under a court order or consent decree.\(^{53}\) As the American Bar Association has observed, this figure “suggests that the possibility that legitimate concerns about prison practices, policies, and conditions have sparked or are sparking some pro se prisoners’ civil rights litigation is not a specious one.”\(^{54}\) Early prison condition cases detail some horrific confinement conditions, and prisoner lawsuits played a crucial role in putting a stop to such practices.\(^{55}\)

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\(^{52}\) Wolff v. McDonnell, 418 U.S. 539, 555 (1974) (“a prisoner is not wholly stripped of constitutional protections when he is imprisoned for a crime”); Bell v. Wolfish, 441 U.S. 520 (1979) (same); Pell v. Procunier, 417 U.S. 817 (1994 (prisoners retain First Amendment rights not inconsistent with their status as a prisoner or legitimate objectives of the correctional system). Under the 8th Amendment, prisoners are also entitled to “reasonably adequate ventilation, sanitation, bedding, hygienic materials, and utilities.” Lewis v. Lane, 816 F.2d 1165, 1171 (7th Cir. 1987).


\(^{55}\) See Note, Return to Hard Time: The Prison Litigation Reform Act of 1995, 31 GA. L. REV. 879, 883 (1997) (noting that “some of the conditions described in these [prison condition] cases defy the imagination. In Alabama, for example, up to six inmates might be simultaneously confined to the ‘doghouse’ as punishment; it measured the square footage of an ordinary door and had no lights, water, beds, or toilets. These prisoners often languished in the same doghouse, without exercise, for weeks on end. Similarly, the Supreme Court once described the Arkansas prison system as ‘a dark and evil world completely alien to the free world.’ In the Arkansas case [Hutto v. Finney, 437 U.S. 678 (1978)], the Court discovered that, in addition to overcrowding and guard brutality, inmates known as ‘creepers’ would crawl along the barrack’s floor at night, stalking their sleeping victims. As a result, ‘homosexual rape was so common and uncontrolled that some potential victims dared not sleep; instead they would leave their beds and spend the night clinging to the bars nearest the guards’ station. Further, inmates could get medical treatment only by bribing the ‘trusty,’ an inmate to whom the prison had entrusted certain functions, on medical care duty.’). Another commentator notes that “lawsuits of prisoners have played a strong role in
Permitting prisoners to petition the courts to address their grievances also serves broader penological and societal objectives. These include cultivating respect for the law as a means of redress when rights have been violated; rehabilitative benefits; and litigation’s function as a “safety valve,” which provides prisoners with a non-violent means of responding to wrongs by prison officials, whether actual or perceived.

56 The ABA’s 1997 study on the impact of pro se prisoner litigation on the federal courts, which was based upon extensive surveys and site visits of numerous federal district courts, state Attorneys General, and state departments of corrections, observed that “[i]t was clear from the feedback received from judges, correctional officials, Attorneys General, prisoners, and prisoners’ rights organizations” that the benefits resulting from prisoner litigation (in this case, prisoner civil rights suits), extended beyond the value of any damages or injunctive relief rewarded to improve prison conditions or put a stop to unconstitutional treatment as a result of the suits. Rather, other “unquantifiable benefits,” “no less real and important” were identified. “In fact,” the ABA study reported, “many survey respondents underscored that these benefits are of overriding importance.” Lynn S. Branham, LIMITING THE BURDENS OF PRO SE INMATE LITIGATION: A TECHNICAL-ASSISTANCE MANUAL FOR COURTS, CORRECTIONAL OFFICIALS, AND ATTORNEYS GENERAL, at 44 (1997).

57 With respect to the first of these latter three benefits, the ABA reported that “[e]nforcing prisoners’ constitutional rights can teach prisoners that the law does matter. The cynicism that can result when prisoners, who are incarcerated for violating the law, watch as some of their “keepers” violate the law with impunity can then be avoided. In short, providing inmates with redress when their rights under the law have been violated can help to inculcate a respect or the law in persons who tend to view the law as a tool of oppression.” Lynn S. Branham, LIMITING THE BURDENS OF PRO SE INMATE LITIGATION: A TECHNICAL-ASSISTANCE MANUAL FOR COURTS, CORRECTIONAL OFFICIALS, AND ATTORNEYS GENERAL, at 45 (1997).

58 The ABA study also recognized the “spin-off rehabilitative value of treating inmates with procedural fairness” that has been recognized repeatedly by the Supreme Court. Lynn S. Branham, LIMITING THE BURDENS OF PRO SE INMATE LITIGATION: A TECHNICAL-ASSISTANCE MANUAL FOR COURTS, CORRECTIONAL OFFICIALS, AND ATTORNEYS GENERAL, at 45 (1997) (citing Morrissey v. Brewer, 408 U.S. 471, 484 (1972)). This benefit has also been identified by those involved in legal assistance programs within prisons. For example, one author notes of the Fox Lake Paralegal Program, which provided paralegal assistance to Wisconsin inmates: “fairness in the resolution of such offender problems encourages an understanding of, and respect for, legal institutions. This, in turn, may complement rehabilitative efforts within the correctional system.” Ben Kempinen, Prisoner Access to Justice and Paralegals, The Fox Lake Paralegal Program, 14 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 67, 68 (1988). Another commentator observes that “[t]he ability to initiate a lawsuit and realize one’s civil rights reduces vulnerability and powerlessness. The ability to participate actively in a project which helps develop competence, usefulness, and legitimate political power removes much of the bitterness and hostility which incarceration has come to develop.” GEOFFREY P. ALPERT, LEGAL RIGHTS OF PRISONERS 47 (1978).

59 Regarding the reported safety valve function of prisoner litigation, the ABA has reported: “prisoners, it is said, will one way or the other react to mistreatment, whether constructively or destructively. A court action offers a peaceful way for inmates to air grievances about the alleged
2. Challenges posed by prisoner litigation

Despite the importance of prisoner litigation, and its crucial role in ensuring that the dictates of the constitution are upheld in conviction and confinement, this litigation continues to pose significant challenges for the federal court system. As noted above, the PLRA does not appear to have had any impact upon the legal merit of the suits filed with federal courts. This does not necessarily mean that most prisoners are intentionally using the system to harass their incarcerators (and by extension, the courts). However, given prisoners’ educational shortcomings and unfamiliarity with legal research, their ability to determine what grievances constitute legal cognizable claims is severely hampered. Therefore, the difficulty courts experienced in the past, of identifying and separating meritorious claims from the many other poorly written submissions that fail to state any grounds for relief, persists.

violation of their legal rights. Without such an avenue for redress, prisoners may unfortunately, but not surprisingly, respond to wrongdoing by doing wrong themselves – rioting and employing other violent modes of expression. As one Department of Corrections Administrator observed when being interviewed during this study, ‘I would rather have an inmate pick up a pen than a sword.’” Lynn S. Branham, LIMITING THE BURDENS OF PRO SE INMATE LITIGATION: A TECHNICAL-ASSISTANCE MANUAL FOR COURTS, CORRECTIONAL OFFICIALS, AND ATTORNEYS GENERAL, at 45 (1997). This observation has been echoed by other commentators. For example, one author noted that “the buildup of unresolved grievances may in fact cause the disturbances. If this is true, the airing of prisoner complaints both through administrative channels and in court would tend to defuse prison tensions and enhance the prisoners’ perception that justice is being done.” William Bennett Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 HARV. L. REV. 610, 637 (1979). In sum, “offenders who believe their problems are being attended to may be less likely to create disciplinary problems while confined.” Ben Kempinen, Prisoner Access to Justice and Paralegals, The Fox Lake Paralegal Program, 14 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 67, 68 (1988).

Dr. Christopher Smith, who as a law student at the University of Washington in the 1980s was involved in one of the prison research instruction programs discussed in section IV below, noted that in his experience the issue prisoners needed the most help in understanding was how to determine whether they had a legally valid claim that could be redressed by the courts. Telephone interview with Dr. Christopher Smith, Professor, Michigan State University School of Criminal Justice (Mar. 26, 2010). This is a challenge that becomes impossible in facilities located in states that have chosen to dismantle their prison libraries.

As Justice Jackson noted in his concurring opinion in Brown v. Allen, a habeas corpus case: “It must prejudice the occasional meritorious application to be buried in a flood of worthless ones. He who must search a haystack for a needle is likely to end up with the attitude that the needle is not worth the search.” Brown v. Allen, 344 U.S. 443, 536 (1953) (Jackson, J., concurring). “Many serious claims of mistreatment are doubtless lost in the sea of clumsy and prolix pleadings, while legally meritorious claims consume the time and erode the sympathy of court personnel.” William Bennett Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 HARV. L. REV. 610, 612 (1979). Similarly, Dr. Christopher Smith, who reviewed prisoner complaints while conducting research for his Ph.D. on magistrate judges, observed that the steady stream of poorly written and non-meritorious submissions made it difficult to approach each individual submission with the attitude that it could present a valid claim, rather than with a focus of merely disposing of the complaint. Smith interview, supra n.61.
Further, although as noted above there may be fewer suits and petitions filed in federal court today overall, the litigation that is filed still suffers from the same deficiencies that existed during years of peak filing.\footnote{62 In addition to the difficulties and challenges associated with prisoner litigation that have been well documented elsewhere, this discussion is informed by my own experience as a law clerk to a federal district judge in the Eastern District of New York from 2005 to 2006.} First and foremost, prisoner submissions are often poorly written and lack supporting research or citations. As discussed below, the education level among prisoners is often low, and submissions prepared without the assistance of counsel generally reflect these abilities.\footnote{63 As Wanda Heimann the law librarian at the Washington State Penitentiary in Walla Walla, Washington noted, legal research is challenging even for individuals with a college degree. Telephone interview with Wanda Heimann (April 5, 2010). Lynn S. Branham, LIMITING THE BURDENS OF PRO SE INMATE LITIGATION: A TECHNICAL-ASSISTANCE MANUAL FOR COURTS, CORRECTIONAL OFFICIALS, AND ATTORNEYS GENERAL, at 36 (1997). Another judge observed: “What makes a good case? Well, the first thing that makes a good case is good spelling, good typing, good grammar. You don’t see a lot of that in prisoner cases . . . . If I can read it, I take the time to read it. If it’s illegible, I don’t take the time to translate it. I just can’t. I don’t have the time.” Margo Schlanger, Inmate Litigation, 116 HARV. L. REV. 1555, 1589 (2003).} “Unfamiliar with the tools of legal reasoning and argumentation,” one commentator notes, “prisoners’ complaints and briefs are often written in an intellectual fog.”\footnote{64 Wayne T. Westling & Patricia Rasmussen, Prisoners’ Access to the Courts: Legal Requirements and Practical Realities, 16 LOY. U. CHI. L.J. 273, 308 (1985). See also William Bennett Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 HARV. L. REV. 610, 636 (1979) (noting the “deciphering-screening burden” imposed by pro se inmate litigation).}

The frequent inability of prisoners to supply a brief providing any useful assistance to the judge or law clerk faced with parsing a submission and determining whether it has legal merit also increases with amount of time needed to evaluate the submission. Attorneys on either side of a case who can identify relevant case law and governing principles to help orient a clerk or judge in an area of law greatly decrease the amount of time it takes for the court to educate itself in preparation for rendering a competent decision. Although it may be true that many prisoner suits and habeas petitions present less complicated legal issues, this is not always the case. Especially given that many prisoner suits are initially reviewed, researched and evaluated by law clerks who spend only one year with a federal judge and thus do not benefit from seeing many issues repeated, the lack of a coherent brief to guide processing makes even initial screening of these suits time-consuming.\footnote{65 Although processing of habeas petitions often benefit from a responsive brief by the state, where a prisoner files a suit against a government official, no service is made upon the defendant (and no answer or subsequent motion to dismiss required) before the court reviews the merits of the case. See 28 USC 1915A (West 2010).} Prison law librarians interviewed during research for this paper who assisted prisoners who had not had the benefit of any legal research or writing instruction confirmed that
many prisoners have no concept of what a submission to a court should look like.\textsuperscript{66} The rudimentary nature of the vast majority of prisoner filings is compounded by the Supreme Court’s long-standing directive that pro se pleadings must be liberally construed by the courts.\textsuperscript{67} Thus, the lack of a clear submission does not relieve the courts of the duty to comprehensively address any claims that are suggested or potentially raised (with however little support) by these submissions. Setting aside the accuracy of the assertion that prisoners file a disproportionate number of non-meritorious claims, the bottom line is the level of prisoner litigation remains high, and even where non-frivolous, is challenging for courts to process.

For those states that continue to provide law libraries, moreover, the problems initially identified following \textit{Bounds} as impacting libraries’ ability to provide truly meaningful access to the courts persist.\textsuperscript{68} This is especially true for libraries that are not staffed by professionals trained in legal research. Although my research did not undertake a systematic survey of prison law library staffing, discussions with prison librarians suggests that the uneven and sometimes inadequate staffing identified in the early 1980s\textsuperscript{69} persists today. For instance, Susan Trombley of Minnesota’s Law Library Service to Prisoners Program, discussed in section IV below, stated that there is no statewide standard for law library staffing that that only three or four libraries in the correctional system (of 8 total facilities) are staffed by individuals with training in librarianship.\textsuperscript{70} Wanda Heimann of the Washington State Penitentiary confirmed that the qualifications for prison law librarian positions in Washington State similarly do not require an MLIS or law library experience.\textsuperscript{71} The concern expressed by commentators and members of the legal community that prisoners’ limitations would negatively impact their ability to make effective use of prison law libraries is confirmed by individuals who staff prison libraries or assist prisoners with their research.\textsuperscript{72} All prison law librarians interviewed as part of

\textsuperscript{66} For instance, as the Washington State Penitentiary Law Librarian noted, she routinely observes inmates with no concept of the way the legal system works preparing duplicate and unnecessary documentation or preparing to make submissions to the courts without required forms. Heimann interview, \textit{supra} n. 64. Similarly, Thao Tiedt, a law student at the University of Washington during the 1980s and who was involved in one of the prison research instruction clinics discussion in section IV below, observed that inmates lacked basic understanding of proper brief structure or principles of procedure. Telephone interview with Thao Tiedt (Mar. 31, 2010).


\textsuperscript{68} See \textit{supra} pp. 4-6.


\textsuperscript{70} State guidelines provide only that a degreed librarian be available to prison law library staff for consultation, so the presence of these three or four degreed librarians within the system fulfills this requirement. Telephone interview with Susan Trombley, Librarian, Minnesota State Law Library Service to Prisoners Program (Mar. 25, 2010).

\textsuperscript{71} Heimann interview, \textit{supra} n.64.

\textsuperscript{72} One librarian who performs a screening of prisoner library loan requests states, “If you worked with inmates you would see the unbelievable requests we get. Many do not know how to verbalize their request or how to give proper citation. Some requests are unreasonable: . . . . ‘I’ll want all of the court cases relating to constitutional law.’ . . . If they asked us for all the statutes
the research for this paper had similar stories to tell of inmates’ inability to comprehend basic legal principles guiding their research and the mechanics of preparing legal papers. Thus, the same educational and ability-level challenges that make it difficult for a significant portion of the prison population to formulate coherent legal papers adversely impacts their ability to use the prison library resources as a preliminary step in doing so.

IV. Addressing the Challenges Associated with Prisoner Litigation

Despite Congress’s attempt to reduce prisoner litigation’s impact on the federal docket, the legislative fixes passed in the late 1990s have simply limited to some degree prisoners’ access to the courts, without improving the quality of the filings courts must process or improving the chances of those meritorious cases that are filed. As one commentator noted prior to the passage of the PLRA: “…we view the basic problem as twofold: (1) reducing the number of frivolous cases and (2) improving the ability of the courts to identify the meritorious cases and fairly adjudicate them.” These problems remain today.

73 For instance, Wanda Heimann, of the Washington State Penitentiary law library, noted that she has inmates who lack even the basic understanding of how to put together a court filing, using incorrect forms, duplicate documents, and lacking any understanding of the need to present an argument to the court. She also noted that inmates often simply do not understand the legal system (for instance, the difference between state and federal law, how the court system is structured, and the significance of jurisdictions). Ms. Heimann noted that this lack of understanding shows prisoners’ research methods, as they jump from one reporter to another without any rhyme or reason. Heimann interview, supra n.64. Similarly, Michael Tillman-Davis, who served close to two years as the Legal Coordinator in charge of the day-to-day library operations at Rikers’ Island in New York City, noted that some inmates need to be shown many times how to perform a research task before they grasp the procedure. Telephone interview with Michael Tillman-Davis (April 8, 2010). One of the students involved in the prisoner legal research instruction program through the University of Washington in the 1980s recalled in his article about his experience in that program that “prisoners experienced at using the law library regularly conducted legal research by thumbing through volumes of Federal Supplement and Federal Reported 2d looking for cases involving prisons.” Christopher E. Smith, Improving the Use of Prison Law Libraries: A Modest Proposal, 79 L. LIBR. J. 227, 232-33 (1987). Marc Lampson, an attorney who as discussed in section IV below taught legal research in state prison for many years also observed that many prisoners have surprisingly little grasp of the legal system, despite its impact on their lives. Interview with Marc Lampson (Mar. 25, 2010). (However, it should also be noted that many of these librarians are also quick to observe that inmates’ abilities vary greatly, and that some are perfectly capable of grasping the mechanics of legal research if shown. For instance, Mr. Davis noted that some of the jailhouse lawyers he encountered during his time at Rikers’ Island had skills that surpassed trained attorneys’. Davis interview, supra n.74.)

The question presented, then, is what the legal community might be able to do to help address the problems raised by the first part of this discussion. This paper proceeds to suggest one potential solution. As discussed above, one of the main problems with the effectiveness of prison law libraries in providing access to the courts is that many inmate users lack basic understanding regarding research tools, the research process, and the underlying legal system, and library staff is often not adequate to fully assist prisoners with the library’s use. Prisoners’ submissions to the courts in turn reflect this handicap, increasing the burden of processing these suits. One potential solution for improving libraries’ effectiveness would accordingly be to increase inmates’ understanding of the legal system and materials, through some form of research assistance or legal research instruction in prisons. This effort would increase inmates’ ability to research and evaluate potential claims, both to better determine which claims are worthy of pursuit and to present claims with a legal basis more clearly. It is an effort for which law students, aided by law librarians, would be well situated to employ.

This service model has not previously been attempted as a formal clinical program, and there are presently no similar efforts to guide the design of such a program. However, there are a number of models for prison research assistance that have been experimented with in the past, some of which continue today, that can be useful models in thinking about what a similar program involving law students might look like. Part IV.A below describes four different models of legal research assistance and instruction that have been employed in prison libraries or in conjunction with outside libraries providing service to prisoners. Based upon lessons learned from these programs, as well as conversations with a number of prison librarians, I outline, in general terms that could be adapted to particular prison settings and levels of faculty and student interest and time, how a law school program teaching research skills in prison libraries could be organized and implemented to be most successful and beneficial for both prisoners and the court system. The discussion also raises questions and choices that would need to be addressed in designing the program, as well as challenges likely to be encountered in its implementation and management.

Although no empirical evidence has been collected regarding the success of the programs described below, the anecdotal evidence from both participants and outsiders suggests that such efforts can be effective in improving the quality of submissions to the court, reducing frivolous filings, and helping prison law libraries better fulfill their intended purpose, in addition to providing other benefits discussed below.

A. Past and Present Programs Involving Research Assistance or Instruction in Correctional Facilities

Each of the following programs takes a very different tack in structure and delivery. However, each has certain features in common, and the programs’ participants identify key issues to be considered in developing a formal law school program involving prison

75 See discussion supra pp. 5-6; 19-20.
research assistance and instruction. Each program is described in turn, and commonalities among them are then identified and discussed.


For 11 years, from approximately 1991 to 2002, Marc Lampson, currently a practicing attorney in Seattle, Washington and then a legal research and writing instructor at Seattle University, taught a weekly legal research class to inmates in a women’s prison in Purdy, Washington. The class was instituted pursuant to a consent decree entered in the early to mid-1980s, which grew out of a lawsuit involving prison conditions at the prison. As part of this consent decree, the facility was required to establish a law library, and provide instruction on its use, at the state’s expense. The director of the prison law library during this time period had worked for the state library but had no library degree, and would have been unequipped to teach a legal research class – a common staffing situation, as the study discussed above demonstrates. Accordingly, the state looked elsewhere for qualified instructors.

Mr. Lampson organized his instruction as a 10-12 week course that met one evening per week in the prison library, for approximately 3 hours total. Because the prison at the time had no access to electronic resources, all instruction was in use of print resources, including primary and secondary materials and finding aids such as digests. The course was designed so that each class built upon skills learned in preceding classes, and inmates were therefore discouraged from joining the course once it was underway or attending only sporadically. The courses typically began with a large enrollment that diminished by two or three students once it was explained that the course would not offer legal advice. Generally, a core of around 12 inmates remained to complete the course in full, at which time the inmate received a certificate of completion to mark her achievement. Mr. Lampson encouraged students to repeat the course as necessary to master the skills and concepts taught.

The three-hour classes were structured to include a more formal lecture on the research topic of the day, followed by questions and discussion between the students and instructor, and then in-class exercises to practice the skills and concepts that had been learned. Students were then given time to work on their individual research projects, which were assigned at the beginning of the course and designed to complement the substantive issues presented by any litigation in which the inmate was then involved. During this time the instructor was available to give assistance and guidance on a one-on-one basis. According to Mr. Lampson, one of the biggest challenges in teaching this course was dealing with the wide range of abilities in the class. This one-on-one instruction time was a solution that permitted the instructor to give each student the

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76 All information in this section was gathered during an in-person interview with Mark Lampson (March 25, 2010).
77 See discussion supra page 6.
individualized help that was needed. Those students whose literacy issues made the course more challenging could receive additional attention, at a pace that suited her abilities.

As part of the course Mr. Lampson instructed his students on how to brief cases through the method that first-year law students are taught (identifying the court’s holding, rationale, and relevant facts). The final project for the course consisted of a legal memorandum related to an issue or issues presented by each inmate’s case. Along with the memo, students were required to submit three to five relevant cases that had been briefed according to the method taught by the instructor.

Mr. Lampson also taught students to research in specific substantive areas likely to be relevant to their cases (such as the 4th, 5th, and 6th Amendments to the U.S. Constitution). He also spent time explaining the general significance of these laws and constitutional provisions. Therefore, although this was a process-oriented class, it did not operate in a vacuum. Instead, it was geared toward those legal issues and concepts most likely to be relevant to the inmates.78

2. Outside law librarian research assistance: “Guerilla reference” through the Minnesota State Law Library Service to Prisoners (LLSP) Program79

For many years the American Association of Law Libraries has maintained a list of law libraries in each state that offer photocopy or other research-related services to prisoners.80 Law librarians outside the correctional setting have been moved to offer such services out of a shared sense of responsibility for meeting the legal research needs of inmates in prisons and jails whose libraries may be unable to supply certain reference materials or resources that are crucial to a prisoners’ case. Among law libraries providing such services to prisoners, however, the Law Library Services to Prisoners (“LLSP”) Program, which based at the Minnesota State Law Library, is unique.

The LLSP program moves beyond providing photocopies to prisoners who can supply outside libraries with citations, or even limited research services in response to prisoner requests. Instead, the program is staffed by two full-time and one part-time librarians who visit each of the eight prisons in the state on a monthly basis. At the prisons, the librarians meet with prisoners, discuss research requests, provide advice on research through the facilities libraries, deliver requested materials from the state libraries. They also take away research questions that cannot be answered or requests that cannot be filled using

78 In teaching his class, Mr. Lampson used The Legal Research Manual: A Game Plan for Legal Research and Analysis by Christopher G. Wren and Jill Robinson Wren. This book was authored by a husband and wife team and is based on the authors’ experience teaching a similar course. Lampson interview supra n.77.

79 Unless otherwise noted, information in this section was gathered during a telephone interview with Susan Trombley, law librarian for the Minnesota Law Library Service to Prisoners program (March 25, 2010).

80 The most recent list may be access online at http://www.aallnet.org/sis/srsis/llsp
the materials in the facility law library to be researched using the resources at the Minnesota State Law Library (where the librarians are assisted by a team of volunteers and interns from the College of St. Catherine’s Library School). Thus, the librarians in this program not only fill requests for materials, but provide one-on-one research consultation and informal instruction in legal research to the state’s prisoners. The librarians also review the prison law libraries’ core collections annually to make sure they contain titles necessary to provide access to essential legal information, and maintain a list of the recommended materials each library should hold. The philosophy of the program is “to emphasize legal information services rather than to establish large prison law libraries. . . . Inmates are encouraged to make use of the core collections, but questions that are more complex are researched by LLSP staff at the state law library.”

The LLSP program was started as a pilot program in 1984, with one state law librarian who regularly visited five correctional facilities. It is funded by an inter-agency agreement between the Minnesota State Law Library and the Minnesota State Department of Corrections, which has been highly supportive of the program – likely for the reasons discussed in more detail below.

Susan Trombley, a law librarian who has been part of the program for 9 years, describes a typical prison visit, which starts with the librarian entering the prison and leaving any mail (consisting of fulfilled requests for prisoners) in the mailroom. The librarian then meets individually with prisoners who have requested consultations through the “kite” system. The librarian meets with the inmate in the library if possible, but if not will visit the inmate where he or she is confined, including in segregated housing units or medical wards. A librarian sees 10 to 35 inmates in a three-hour period, and faces the challenge of quickly determining what the inmate is asking for, which often requires separating the legal issues from the many extraneous details offered by the prisoner. (The often intense pace spawned the term “guerilla reference” used by the librarians that are part of this program to refer to the assistance they provide). Because the majority of the research assistance requests come by kite, librarians sometimes know ahead of time what kind of substantive request the inmate will have, but inmates may be reluctant to provide specific details on their requests for fear of having them read by prison officials. The substance of

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84 See LAW LIBRARY SERVICE TO PRISONERS 2008 ANNUAL REPORT, available at http://www.lawlibrary.state.mn.us/llsp.html
85 The “kite” system uses forms that inmates fill out to request research assistance. The request forms are regularly batched at the library and sent to the state law library ahead of the librarians’ scheduled visits. Trombley interview, supra n.79.
requests range from issues related to conviction, to conditions of confinement, to other civil matters such as divorce.

The legal research instruction done by the librarians in the LLSP program is informal, occurring while librarians are meeting with prisoners in the library. Once their time with inmates is up, the librarians are then available to answer questions from the library staff (including the librarian and inmate clerk) on how to help prisoners in the library. While the law librarians cannot and do not give legal advice, they may offer suggestions regarding resources to help guide inmates.86

3. Law student instruction in prison law libraries: the student-run Prisoner Counseling Project at the University of Washington School of Law87

In what appears to be the only program to date to have involved law students in legal research assistance and instruction in prison law libraries, a student-run program for this purpose existed at the University of Washington School of Law from the early to late 1980s. This program was officially sanctioned as a student organization, but was entirely student-initiated and run and without faculty supervision. The program was sponsored by the Black Prisoners’ Caucus at the maximum security prison in Monroe, Washington, where the student consultation and instruction took place. According to Thao Tiedt, a law student who graduated from the University of Washington in 1983, the program existed at the time she matriculated at the University of Washington in 1981 as a second-year law student, but it had been moribund for some time. Ms Tiedt was instrumental in reactivating the program.

At its outset the program involved law students meeting individually with prisoners to provide guidance on research, and then evolved to encompass the prison law library, which had been neglected and was not well maintained. Recognizing these deficiencies, the students approached the prison administration to advise them that they were not providing prisoners with the tools required by Bounds, and offered to help the facility retool the library to meet its constitutional requirements. Upon receiving recommendations from the program, the prison improved their law library holdings, including purchasing a complete Revised Code of Washington and Washington Supreme and Appellate Court Reports. After improving the law library’s holdings, the program embarked upon a course of instruction for the prison population as a whole, including offering both a weekly course in legal research and a year-long course in brief-writing.

The legal research class met weekly, and was open to both inmates who attended regularly and those who did not. Lectures and exercises were accordingly kept simple.

86 For example, Ms. Trombley explained that if she observes an inmate using the wrong form to file his suit, she might suggest to the inmate that he consider whether the proper form would be more appropriate. Trombley interview, supra n.79.

87 Unless otherwise noted, information in this section is taken from telephone interviews with Thao Tiedt (March 31, 2010), Dr. Christopher Smith (March 26, 2010). Both were participants in the UW Prisoner Counseling Project.
enough to accommodate inmates who did not attend each week. Class attendance ranged from 8 to 12 inmates when classes were held in the law library, which occupied a small space, up to approximately 18 students when classes could be held in a larger classroom. Inmates were shown how to use the West key number system and digests, and how to Shepardize primary law. The instructor assigned search and find exercises to be completed using the library materials, so that the students could then practice the skills they had learned.88

The brief-writing course focused on educating inmates on how to write an effective appellate brief, with the goal of helping them to better understand how to organize their issues and complaints into a presentation that the court could understand.89 The class, which was structured to require regular attendance throughout the year, was held one to two times per month for the duration of the school year. It was open to the prison population as a whole, and was well attended throughout the year by approximately 40 inmates. Classes, which were two and a half hours long with a short break, consisted of lectures that were kept sufficiently informal to allow back-and-forth discussion with the students, a format that helped to accommodate the differing levels of ability among students. In addition to dealing with different ability levels by allowing a certain amount of informality, the instruction was kept as simple as possible, and broken down into basic concepts stripped of legalese.90

Both Dr. Smith and Ms. Tiedt observed that instruction in very basic legal concepts could go a long way in improving inmates’ understanding of the legal system, legal research, and their ability to prepare papers for the court. For instance, the brief-writing class helped inmates understand what sections need to be included in a brief, and taught them basic procedure, such as the need to cite case law in support of legal arguments and the general rule that on briefs on appeal or supporting a petition for post-conviction relief the inmates could not raise new facts that had not been presented to the trial court. Similarly, with respect to the legal research class, Dr. Smith observed,

[I]t was evident that the prisoners needed basic information about how to undertake legal research. Those prisoners experienced at using the law library regularly conducted legal research by thumbing through volumes of Federal Supplement and Federal Reporter 2d looking for cases involving prisons. Law student instructors made a significant contribution to the prisoners’ education simply by explaining the use of digests and creating exercises that required inmates to look for various cases and legal concepts within the digests. . . . These examples illustrate how simple the prison library teaching programs can be. The prisoners’ need for information about legal research can be so basic that law

88 Smith interview, supra n. 87.
89 Tiedt interview, supra n.87.
90 Tiedt interview, supra n.87.
students can make a contribution just by explaining how to use reporters, digests, and other legal materials.91

The students in the University of Washington program also included some elementary substantive instruction. For instance, one student taught an informal class in criminal procedure that consisted mainly of discussions with the inmates about basic criminal procedure concepts.92 Similarly, in the brief-writing class, Ms. Tiedt recalled that the first thing she taught inmates was how to determine what legitimate issues they might have, and what issues might be recognized by a court. As part of the effort to help inmates better understand what claims were viable, inmates were given basic information about the elements of certain claims that they often wished to bring but that are very difficult to prevail upon, such as ineffective assistance of counsel.93

The program appeared to be very successful and well received by both prisoners and the state during the time it operated. After her involvement ended, Ms. Tiedt received an award from the state of Washington in recognition of her contribution to criminal justice.94

4. Formal research instruction by prison law librarians: legal research course at the Norfolk, Massachusetts Correctional Facility95

A fourth model of research instruction involves a formal legal research class taught by a prison law librarian. William Mongelli, the prison law librarian at the Massachusetts Correctional Institution in Norfolk, Massachusetts began teaching such a class after the Massachusetts Department of Corrections established law libraries in all prisons with populations over 250 in 1974, and wrote about his experience in his 1994 article, De-

92 Smith interview, supra n. 87.
93 Tiedt interview, supra n.87. Another aspect of the program not strictly related to legal research instruction was a mock trial held at the prison at the end of the school year. The students recruited a sitting judge to preside over the trial, which involved a defamation claim, and 10-12 inmates who had remained active in the research classes throughout the year were empaneled as jurors. Both the jurors and audience members were allowed to cast votes for the verdict at the end of the trial, and the following week the students led a discussion of what had occurred during the trial. Many inmates said they had not realized how difficult it was to make a decision as a juror. Tiedt interview, supra n.87.
94 March 26, 2010 email from Thao Tiedt, on file with the author.
95 Unless otherwise noted, information in this section is taken from an email interview with William Mongelli, Law Librarian at the Massachusetts Correctional Institution, Norfolk, Massachusetts (April 2, 2010).
Mystifying Legal Research.96 The 16-week class continues today in substantially the same format.97

The course is held once per week (twice weekly, if time permits), for 2 hours at a time. Two hours permits sufficient time for legitimate questions following lecture, and holding the class at least once per week helps preserves continuity.98 (Mr. Mongelli notes that for the latter reason, the more often the class can be held, the better.)99 When the course is held only weekly, the first ten minutes of class are set aside for reviewing the substance of the previous course, a practice implemented because inmates “in general seem to possess a short memory and attention span.”100 The class generally begins with an enrollment of 25 to 35, a number that quickly reduces to a core of 8 to 12 inmates who complete the course.101

Class is somewhat informal, allowing for discussion with inmates, but the syllabus is highly structured, teaching ten core research competencies:

(1) course rules/library terminology;
(2) primary sources/secondary material/finding tools;
(3) institution grievance procedure;
(4) state/federal court structure;
(5) framing the legal question (3 weeks);
(6) case briefing (3 weeks);
(7) digests, state and federal;
(8) Shepard’s (3 weeks);
(9) specialty publications; and
(10) “bringing it all up-to-date.”102

In the last two years training on the Lexis research system (including instruction on how construct search queries), has also been added to the syllabus.103 Handouts are regularly used because Mr. Mongelli has found that inmates find it “generally like to be shown, not

96 William D. Mongelli, De-Mystifying Legal Research for Prisoners, 86 L. LIBR. J. 277 (1994). Mr. Mongelli has also published a book aimed at individuals interested in teaching a legal research class in the prison setting, titled CONCENTRATING ON THE LAW: A PROGRAM OF SELF-DIRECTED LEGAL RESEARCH FOR PRISON COURSE GIVERS. The book is aimed at individuals interested in teaching a prison legal research course and is available through LMC Source, at www.lmcsource.com. Email from William Mongelli, April 1, 2010, on file with author.
97 Mongelli interview, supra n.95.
99 Mongelli interview, supra n.95.
102 Mongelli interview, supra n.95.
103 Mongelli interview, supra n.95.
told.104 In-class exercises and quizzes are used to allow students to practice the skills they are learning and evaluate their grasp of the concepts, in addition to “cell work” (assignments that inmates are required to complete between classes, on their own time).105 The in-class exercises, quizzes, and cell work are “arguably the most important part[s]” of the course.106

The students are assessed at the end of the course with a final exam that is cumulative and comprised of questions from previously administered in-class quizzes.107 Some librarians in the Massachusetts prison system who have taught the course designed by Mr. Mongelli have opted to give inmates a more lengthy and in-depth “take-home” exam at the end of the class to assess the research skills learned, requiring the inmates to complete the exam over a period of days.108 Although the take-home format gives inmates better hands-on experience, the testing procedure offers better control of the evaluation process by the instructor.109 Instructor evaluations are distributed after the final exam. According to Mr. Mongelli, “[i]nmate feedback regarding class length, perceived effectiveness of quizzes, cellwork, and in-class exercises, as well as suggestions regarding additional topics for discussion, are vital to keeping the course information appropriate, current, and interesting.”110 Given the demands of the course, it is designed for those inmates “with a certain level of literacy . . . [i]n other words, this course is not for the learning disabled.”111

5. Lessons learned from the programs

Although the programs described above constitute different models of research service to prisoners, and some vary significantly in their administrative aspects, focus, and the details of their organization and implementation, there are a number of commonalities that are apparent from conversations with the individuals involved as well as written accounts of these efforts.

First, inmates are generally very receptive to receiving instruction to help them better understand and use the law libraries’ resources. All of the participants reported enthusiasm from the inmates for the services offered, and a sense of reward and accomplishment in working with inmates and helping them to better understand the legal system and the process of legal research. Marc Lampson noted that inmates were very appreciative of the opportunity to learn the skills he taught in his research class (often

104 Mongelli interview, supra n.95.
106 Mongelli interview, supra n.95.
108 Mongelli interview, supra n.95.
109 Mongelli interview, supra n.95.
111 Mongelli interview, supra n.95.
more so than his law students), and told him that they felt they were learning. Like the
prison law librarian at the Massachusetts correctional facility in Norfolk, Mr. Lampson
described the role his instruction played as a way of “de-mystifying” the legal system for
inmates.\footnote{Mongelli interview, \textit{supra} n.95.} Thao Tiedt, who as discussed above was instrumentally involved in the
University of Washington’s Prisoner Counseling Project, similarly observed that
providing inmates with knowledge about the legal system and the way courts process
cases helped to give them a sense of control over what was happening to them that was
otherwise lacking.\footnote{Mongelli interview, \textit{supra} n.95.} This effect has been observed in other settings. For instance, one
commentator has noted of the New York State Department of Correctional Services’ Law
Library Program for Inmates, which incorporated legal research training programs by
West, that “frustration and anger is significantly reduced as the inmates obtain a clearer
picture of their legal situation and why they can or cannot obtain relief.”\footnote{Prison Law Library Service: \textit{Questions and Models}, 72 L. LIBR. J. 598, 609-10 (1979).}

Similarly, librarians in the LLSP program often receive letters from inmates expressing
gratitude for their research assistance. In an article, one former LLSP librarian discussed
a letter from an inmate to whom she had sent information regarding the different degrees
of theft under Minnesota law. The inmate stated, “[m]y charge was dropped to attempted
theft thanks to your efforts. You are truly a holy of holies . . . .”\footnote{Karen Westwood, \textit{Prison Law Librarianship: A Lesson in Service for All Librarians}, AM.
LIBRS., Feb. 1994, at 154.} Similar testimonials are included the LLSP annual reports.\footnote{For example, one inmate wrote, “With all the things I request, I decided to just go straight to
the source. Thank you for your help. It is greatly appreciated. You don’t know how important the
Law Library is to all of us. If it wasn’t for you I wouldn’t have a way to get a thing. . . . I gotta
reach out to whoever I can.” LAW LIBRARY SERVICE TO PRISONERS 2004 ANNUAL REPORT at 2,\newline
available at http://www.lawlibrary.state.mn.us/lbsp.html.} Susan Trombley of the Minnesota LLSP
program recalls the reward of being visited at the State Law Library by a former inmate
to whom the program had given a substantial amount of research assistance. The
individual had completed his sentence and subsequently found a job working for an
attorney; on the day he stopped by he was at the courthouse filing legal papers for his
new employer.\footnote{Trombley interview, \textit{supra} n.79.} Ms. Trombley noted that for inmates who are locked down 23 hours per
day, the librarian is often the only person they see, and inmates appreciate moments of
being treated with respect and having their questions and requests taken seriously.\footnote{Trombley interview, \textit{supra} n.79.}

\begin{itemize}
\item \textbf{112} Mongelli interview, \textit{supra} n.95.
\item \textbf{113} Mongelli interview, \textit{supra} n.95.
\item \textbf{115} Karen Westwood, \textit{Prison Law Librarianship: A Lesson in Service for All Librarians}, AM.
\item \textbf{116} For example, one inmate wrote, “With all the things I request, I decided to just go straight to
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Law Library is to all of us. If it wasn’t for you I wouldn’t have a way to get a thing. . . . I gotta
reach out to whoever I can.” LAW LIBRARY SERVICE TO PRISONERS 2004 ANNUAL REPORT at 2,\newline
\item \textbf{117} Trombley interview, \textit{supra} n.79.
\item \textbf{118} Trombley interview, \textit{supra} n.79.
\end{itemize}
these individuals on the street after they had been successful in securing their release, and being thanked for his research assistance. 119

Second, these programs provide evidence of improving the quality of inmates’ filings and making inmates more successful in gaining the particular relief sought from the courts. This suggests that inmates’ submissions and ability to communicate regarding legal issues may be significantly improved by basic research instruction and assistance. The prison law librarian at the Massachusetts Correctional Facility in Norfolk reports hearing from inmates that his research course “helped them communicate with the courts and helped them get what they need.” 120 Legal research instruction also had the observed result of improving inmates’ communication their attorneys. Marc Lampson recalled an inmate who repeated his course and through it learned how to communicate her legal issues effectively. Ultimately this inmate was able to convince an attorney to represent her, and she subsequently secured her release from prison. 121 Mr. Lampson also recalled that a number of inmates during the time he taught in prison were individuals who had been convicted in a large crime-ring case in Eastern Washington. Many of these inmates were ultimately exonerated (a large number with the help of the University of Washington’s Innocence Project Northwest). Mr. Lampson believes that the legal research instruction the inmates received helped them to communicate more effectively with their attorneys while efforts to secure their release were under way. 122 One of the former students involved in the University of Washington program similarly recalled that prison administrators observed to her that inmates’ relationships with their attorneys had improved after the program began. 123

Of the LLSP program, the Manager of Litigation and Offender Property Claims for the Minnesota Department of Corrections has also observed that the research assistance by LLSP has improved the quality of inmate filings. She has stated, “I see every inmate suit filed against the Department of Corrections . . . and I am so happy to be able to tell inmates to visit their law libraries to help construct more coherent pleadings.” 124 This correctional employee also stated that “inmates who can research their claims are better able to determine whether or not to proceed, and if they do proceed, can write a more reasoned complaint, making handling the complaint that much easier.” 125 Minnesota State Supreme Court Justice Rosalie Wahl also told LLSP librarians that she had observed an

119 Davis interview, supra n.74; see also Michael W. Tillman-Davis, First Person . . . My Time on Rikers Island, 99 L. LIBR. J. 151, 153 (2007).
120 Mongelli interview, supra n.95.
121 Lampson interview, supra n.77.
122 Lampson interview, supra n.77.
123 Tiedt interview, supra n.87.
124 LAW LIBRARY SERVICE TO PRISONERS 2004 ANNUAL REPORT at 2, available at http://www.lawlibrary.state.mn.us/llsp.html
125 Law LIBRARY SERVICE TO PRISONERS 2004 ANNUAL REPORT at 2, available at http://www.lawlibrary.state.mn.us/llsp.html
improvement in the quality of inmate filings after the LLSP program began. Similarly, the law librarian at the Massachusetts Correctional Institution asserts that instruction on how to “write and submit an administrative grievance accurately and completely . . . reduce[s] the number of improperly filed grievances . . . [and] directly aids the beleaguered grievance coordinator, who must sift through hundreds of written grievances annually.” The New York State Department of Correctional Services’ Law Library Program for Inmates, which is noted briefly above and which has incorporated legal research training programs by West, is reported to have had similar effects: “Prisoners have been pleased with the help, claims have been reduced and the quality of the petitions and writs filed from the prisoners have improved.”

That this improvement has been observed is not surprising: if inmates better understand the legal system, how to research a claim and construct a brief, and how to identify relevant cases to include in their submissions, they are better-equipped to put together a coherent and well-supported filing. As one of the former student instructors in the University of Washington program observed, a legal research instruction program can help prisoners “be more effective in presenting legitimate legal issues. This will allow the federal courts to pay more attention to the clearly stated, valid legal claims from prisoners.” Librarians in prisons that do not provide research instruction agreed that a legal research class would be very helpful for inmates. One librarian stated that such an effort would be of “tremendous value.”

Finally, the anecdotal evidence supports the conclusion that these programs can help reduce the number of frivolous complaints or petitions that are filed in federal court. The administrators of the Minnesota LLSP firmly believe that the program benefits the court system in addition to inmates by reducing the number of non-meritorious claims that are filed in court. In 2004, Daniel Lunde, the Head of Outreach Services for the State Law Library, stated, “We believe that by educating inmates about the resources available to them and providing access to the legal information they request, the work of the LLSP diminishes the number of lawsuits filed by Minnesota prisoners – and there is some

126 Trombley interview, supra n.79; April 6, 2010 email from Susan Trombley, on file with author.


130 Heimann interview, supra n. 64; telephone interview with Melisa Gilbert, Librarian, Coyote Ridge Correctional Facility, Washington State (April 3, 2010). Ms. Gilbert noted that she would like to provide legal research training for inmates including basic instruction on using the LexisNexis database as well as more advanced search techniques, but does not have the time given the other demands of her job. Email from Melisa Gilbert, April 9, 2010, on file with author.

131 Gilbert interview, supra n.130.

statistical evidence that Minnesota prisoners file fewer lawsuits than inmates in other
states. This assertion is supported by the experience of one of the law librarians who
is part of the program. She stated that she has seen the provision of legal information
regarding various claims help inmates understand when they do not have a valid legal
claim and accordingly decide not to proceed with a lawsuit. For instance, this librarian
recalled assisting a prisoner whose facility’s food service had taken milk off its menu; she
was able to provide him with the prison regulations that establish a minimum calorie
count but do not entitle the inmates to specific items of food. After seeing these
regulations the inmate changed his mind about wanting to file a lawsuit against the
prison’s administrators. Similarly, this librarian has been able to help prisoners
understand that privileges established by state law have either been repealed or are from a
jurisdiction outside of Minnesota, thereby eliminating the inmates’ desire to file suit
based on these provisions. She noted that she had seen a number of instances in which
inmates have backed down from a desire to file litigation after receiving legal
information relevant to their grievances.

The instructors involved in the University of Washington program saw similar results:
prison officials in the Monroe prison told students that the number of petitions filed had
been reduced after the program began. One of the legal research instructors in the
program stated that the single most common question he received from prisoners was
how to identify a legally cognizable claim that can be brought in court. The legal research
classes were accordingly an opportunity to help the prisoners understand that not
everything they feel is unjust constitutes a legal claim. The instructor recalled prisoners
changing their mind about filing suit after being exposed to basic legal principles, such as
the concept of prosecutorial immunity. “[I]mproved legal research and education can
help prisoners determine whether they have valid legal claims before they try to file suits
that will be dismissed instantly.”

133 LAW LIBRARY SERVICE TO PRISONERS 2004 ANNUAL REPORT at 1, available at
http://www.lawlibrary.state.mn.us/llsp.html. The statement is not attributed, and more specific
information on its source was not available through the LLSP. However, some statistics do
indicate that at least in past years, the number of suits filed by Minnesota prisoners has been quite
small compared to other states. See Anne Morrison Piehl and Margo Schlanger, Determinants of
Civil Rights Filings in Federal District Court by Jail and Prison Inmates, 1 J. OF EMPIRICAL
LEGAL STUD. 79, 101 (2004) (Minnesota prisoners filed 44 suits in 1999 as compared to hundreds
or thousands in other states).
134 Trombley interview, supra n.79.
135 Trombley interview, supra n.79.
136 Trombley interview, supra n.79.
137 Tiedt interview, supra n.87; Smith interview, supra n. 87.
138 Smith interview, supra n.87.
139 Smith interview, supra n.87.
140 Christopher E. Smith, Improving the Use of Prison Law Libraries: A Modest Proposal, 79 L.
The observation that legal research instruction in prisons helps to reduce the filing of non-meritorious claims is supported by similar results in other contexts. For instance, a Harvard study of prisoner litigation concluded that “prison legal assistance programs can ‘discourage the filing of frivolous claims and promote the administrative resolution of prisoner grievances, thereby reducing the volume of prisoner litigation.’”\footnote{Christopher E. Smith, \textit{Examining the Boundaries of Bounds: Prison Law Libraries and Access to the Courts}, 30 HOWARD L.J. 27, 41-2 (1987).} In \textit{Bounds} The Supreme Court itself noted the advantages of providing assistance beyond the provision of a law library, observing that “[i]ndependent legal advisors can mediate or resolve administratively many prisoner complaints that would otherwise burden the courts, and can convince inmates that other grievances against the prison system are ill-founded, thereby facilitating rehabilitation by assuring the inmate that he has been treated fairly.”\footnote{Bounds, 430 U.S. at 831.} The same results have been observed where prisoner litigants receive assistance from jailhouse lawyers.\footnote{“When . . . [they] are competent, they serve as ‘gatekeepers between prisoners and the federal courts by weeding out suits that do not possess legal merit from those that do.’ They can substantially reduce the amount of information presented to the court simply by ‘assisting prisoners in writing their complaints in terms that are understandable by the clerk and the judges.’” Evan R. Seamone, \textit{Fahrenheit 451 on Cell Block D: A Bar Examination to Safeguard America’s Jailhouse Lawyers from the Post-Lewis Blaze Consuming Their Law Libraries} (2006), reprinted in \textit{THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY}, at 90 (2009) (citing Dragan Milovanovic & Jim Thomas, \textit{Overcoming the Absurd: Prisoner Litigation as Primitive Rebellion}, 36 SOC. PROBS. 48, 50 (1989) and DEP’T OF JUSTICE & NAT’L INST. OF CORRS., \textit{ALTERNATIVE DISPUTE RESOLUTION MECHANISMS FOR PRISONER GRIEVANCES: A REFERENCE MANUAL FOR AVERTING LITIGATION} (1984)). “‘Jailhouse lawyer’ is a term used to describe an inmate who holds himself or herself out to be an expert in the law, and is willing to provide legal assistance to other prisoners in their own legal actions.” \textit{THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY}, at 90 (2009) (citing Marie McCain, \textit{More Defendants Face Judges and Juries Alone}, CINCINNATI ENQUIRER, Aug. 26, 2002, at A1). In its study of pro se inmate litigation, the ABA similarly concluded that litigation costs “incurred because of the lack of knowledge and illiteracy of many of the prisoners bringing pro se civil rights complaints” could potentially be avoided “though a carefully crafted legal assistance program. Through such a program, nonmeritorious claims that would otherwise be filed by prisoners who do not understand the requirements of the law could be weeded out, and meritorious claims could be litigated more efficiently and effectively.” Lynn S. Branham, \textit{LIMITING THE BURDENS OF PRO SE INMATE LITIGATION: A TECHNICAL-ASSISTANCE MANUAL FOR COURTS, CORRECTIONAL OFFICIALS, AND ATTORNEYS GENERAL}, at 39 (1997).} The same results have been observed where prisoner litigants receive assistance from jailhouse lawyers.\footnote{The same results have been observed where prisoner litigants receive assistance from jailhouse lawyers.\footnote{“When . . . [they] are competent, they serve as ‘gatekeepers between prisoners and the federal courts by weeding out suits that do not possess legal merit from those that do.’ They can substantially reduce the amount of information presented to the court simply by ‘assisting prisoners in writing their complaints in terms that are understandable by the clerk and the judges.’” Evan R. Seamone, \textit{Fahrenheit 451 on Cell Block D: A Bar Examination to Safeguard America’s Jailhouse Lawyers from the Post-Lewis Blaze Consuming Their Law Libraries} (2006), reprinted in \textit{THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY}, at 90 (2009) (citing Dragan Milovanovic & Jim Thomas, \textit{Overcoming the Absurd: Prisoner Litigation as Primitive Rebellion}, 36 SOC. PROBS. 48, 50 (1989) and DEP’T OF JUSTICE & NAT’L INST. OF CORRS., \textit{ALTERNATIVE DISPUTE RESOLUTION MECHANISMS FOR PRISONER GRIEVANCES: A REFERENCE MANUAL FOR AVERTING LITIGATION} (1984)). “‘Jailhouse lawyer’ is a term used to describe an inmate who holds himself or herself out to be an expert in the law, and is willing to provide legal assistance to other prisoners in their own legal actions.” \textit{THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY}, at 90 (2009) (citing Marie McCain, \textit{More Defendants Face Judges and Juries Alone}, CINCINNATI ENQUIRER, Aug. 26, 2002, at A1). In its study of pro se inmate litigation, the ABA similarly concluded that litigation costs “incurred because of the lack of knowledge and illiteracy of many of the prisoners bringing pro se civil rights complaints” could potentially be avoided “though a carefully crafted legal assistance program. Through such a program, nonmeritorious claims that would otherwise be filed by prisoners who do not understand the requirements of the law could be weeded out, and meritorious claims could be litigated more efficiently and effectively.” Lynn S. Branham, \textit{LIMITING THE BURDENS OF PRO SE INMATE LITIGATION: A TECHNICAL-ASSISTANCE MANUAL FOR COURTS, CORRECTIONAL OFFICIALS, AND ATTORNEYS GENERAL}, at 39 (1997).} One commentator notes that this benefit “is no different from the one motivating many states to invest heavily in measures that will assist unincarcerated pro se litigants [providing assistance through forms, websites, do-it-yourself books and support personnel]. . . . Part of this movement obviously stems from a desire to make litigation more efficient.”\footnote{Evan R. Seamone, \textit{Fahrenheit 451 on Cell Block D: A Bar Examination to Safeguard America’s Jailhouse Lawyers from the Post-Lewis Blaze Consuming Their Law Libraries} (2006), reprinted in \textit{THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY}, at 90 (2009) (citing Marie McCain, \textit{More Defendants Face Judges and Juries Alone}, CINCINNATI ENQUIRER, Aug. 26, 2002, at A1). In its study of pro se inmate litigation, the ABA similarly concluded that litigation costs “incurred because of the lack of knowledge and illiteracy of many of the prisoners bringing pro se civil rights complaints” could potentially be avoided “though a carefully crafted legal assistance program. Through such a program, nonmeritorious claims that would otherwise be filed by prisoners who do not understand the requirements of the law could be weeded out, and meritorious claims could be litigated more efficiently and effectively.” Lynn S. Branham, \textit{LIMITING THE BURDENS OF PRO SE INMATE LITIGATION: A TECHNICAL-ASSISTANCE MANUAL FOR COURTS, CORRECTIONAL OFFICIALS, AND ATTORNEYS GENERAL}, at 39 (1997).}
6. Common issues and challenges

In addition to facilitating certain results, the programs described above also raise a number of issues to be aware of in developing a legal research instruction program for prisoners. First, the demands of a legal research course, which will necessarily require the reading of legal texts, will to some extent self-select for inmates who are literate or educated.\footnote{This was the experience of students in the UW Prisoner Counseling Project, who noted that the class did not attract prisoners with literacy problems, as well as that of the law librarian as the Massachusetts Correctional Facility in Norfolk, Mass. Smith interview, supra n.87. Mongelli interview, supra n.95.} However, participants in the programs described above and other prison law librarians emphasized that the intellectual ability and education level of inmates nonetheless varies widely even among literate inmates.\footnote{See Davis interview, supra n.74 (noting that there was a wide range of skills and abilities among inmates; although some grasped the basic research process quickly once they had been instructed, others needed to be walked through it multiple times).} One of the librarians involved in the Minnesota LLSP program noted that while some inmates are very effective at using the prison law library for legal research, some are not, and that the prison population represents a wide range of abilities.\footnote{Trombley interview, supra n.79.} Similarly, one of the instructors in the University of Washington program noted that while there were some very bright students in her class, many inmates functioned at no more than a 6th grade level. This observation was echoed by other prison librarians interviewed for this paper.\footnote{Lampson interview, supra n.77 (noting that the level of ability and motivation among students varied greatly); Heimann interview, supra n.64 (noting that some inmates are very good at legal research, but others are not at all capable).} Marc Lampson, the attorney who taught at the women’s correctional facility in Purdy, Washington, described students’ differing levels of ability and motivation as one of the biggest challenges of teaching in the correctional setting. Accordingly, any program will need to consider how to effectively instruct a group that may be operating at very different levels of competency.

Second, experiences with some of the programs indicate that their ability to help reduce the number of non-meritorious suits that are filed can be greatly aided not merely by instruction in the structure of the legal system, legal sources, and research techniques, but also by some level of substantive instruction regarding particular legal claims and issues that arise often in the prison setting. For instance, in the University of Washington program, both former student instructors interviewed for this paper stated that prisoners’ desire to file litigation was alleviated once being instructed on the basic elements of particular claims, such as ineffective assistance of counsel, or introduced to certain legal concepts that might render their claims invalid, such as prosecutorial immunity. Marc Lampson also noted that he found it useful for prisoners to receive some basic instruction on the parameters of certain constitutional rights or laws potentially implicated by common prisoner complaints.\footnote{Lampson interview, supra n.77.} A former coordinator for the law libraries at Riker’s...
Island in New York City similarly noted that because most of the individuals using the libraries there were being detained prior to trial, certain issues, such as the legality of stop and frisk procedures, came up repeatedly. Mr. Davis said he found it helpful to train his inmate clerks to recognize when those issues might be implicated so that they could better assist the research process.150 This observation was echoed by some of the prison librarians interviewed for this paper. A Washington State prison law librarian noted that inmates’ research efficiency would be greatly aided by some basic legal instruction, which she is not equipped to provide, about what laws may be implicated by various complaints or factual scenarios.151

Third, both non-librarian participants in the programs described above and other prison law librarians interviewed for this paper stressed a challenge familiar to law librarians whose patron base includes pro se litigants: the need for vigilance against crossing the line from research instruction and assistance into legal advice.152 Law students involved in any research instruction program instructors should be made aware that inmates may test this line. Students should also recognize that they will be functioning as instructors, not as lawyers whose communications with inmates are protected by the attorney-client privilege.153

Finally, nearly all individuals – both librarians and lawyers – interviewed for this paper stressed that working in a prison environment and with inmates involves special challenges. The prison environment itself can be depressing and sometimes tense.154 Prison librarians described coping with the feeling that they were also “locked up” during the hours that they staffed the prison library.155 None of the individuals involved in the programs described above (or any of the permanent librarians) reported any negative experiences directly related to the prison setting in which they worked. However, it was noted that there were a number of students involved in the University of Washington’s Prisoner Counseling Project who ended their involvement because they found the environment too challenging.156

150 Davis interview, supra n.74.
151 Gilbert interview, supra n.130.
152 Lampson interview, supra n.77 (noting that if prisoners were working on specific documents for a case, he would refuse requests to look over legal briefs because that came too close to providing legal advice); Trombley interview, supra n.79 (noting that librarians are often asked to review and give feedback on briefs; those requests are refused because that crosses the line into legal advice).
153 Thao Tiedt noted that she often received requests to provide feedback on prisoners’ briefs, which she refused because she was not the prisoners’ attorney and did not want to learn about matters that were not protected by attorney-client privilege. Tiedt interview, supra n.87.
154 Lampson interview, supra n.77; Smith interview, supra n.87.
156 Smith interview, supra n.87.
Like the environment itself, dealing with prisoners – even in the role of educator who is there to help – also has its challenges. Prisoners may have mental problems or illnesses.\textsuperscript{157} One of the former students involved in the University of Washington program noted that inmates can be emotionally, mentally, and socially immature, and that they are often impatient regarding results – a fact that sometimes requires an ability to temper inmates’ expectations about outcomes.\textsuperscript{158} A second former student discussed at length the challenges of teaching prisoners in a classroom setting, noting that prisoners step into the classroom with baggage from relationships that exist outside the classroom, in the broader institutional setting. Student instructors accordingly need to be able to steer conversations away from topics that may lead to conflict.\textsuperscript{159} Teaching inmates also requires a certain amount of patience: the Massachusetts Correctional Facility law librarian states that the most challenging aspect of working with inmates is “holding my tongue” and “keeping my temper.”\textsuperscript{160} Although all of the librarians interviewed expressed enthusiasm for their jobs, the challenges involved in working in a prison setting and dealing with inmates are factors that both program advisors and law students must be prepared to encounter.

\textbf{B. Proposal}

Taking into account features of the programs described above and lessons learned from those efforts, discussed in this section are the general outlines of a proposal for a research instruction program that would involve law students in teaching legal research in prison libraries. The proposal could be tailored based on the particular prison setting, and its goal would be two-fold: (1) teaching inmates how to more effectively use the resources in the prison law library in order to improve the library’s ability to provide meaningful access to the courts, and (2) helping to improve the quality of filings with the courts and enhance inmates’ ability to distinguish valid from invalid legal claims, thereby lessening the burden of processing prisoner petitions. Such a program is uniquely suited to law student involvement because, as discussed above, the basic legal research knowledge possessed by law students can vastly improve inmates’ abilities to effectively use law library resources.\textsuperscript{161} In addition, the program could be implemented at much lower cost than a program involving legal assistance by trained attorneys and would provide practical experience and cultivate improved research skills for law students. Law librarians, who oversee the law library’s resources and are responsible for legal research instruction at most law schools, are perfectly situated to facilitate and oversee such a program, if time and staffing permits.

\begin{footnotesize}
\begin{enumerate}
  \item Trombley interview, supra n.79; Smith interview, supra n.87.
  \item Tiedt interview, supra n.87.
  \item Smith interview, supra n.87.
  \item Mongelli interview, supra n.95.
\end{enumerate}
\end{footnotesize}
1. Program Organization

The initial steps in organization will involve receiving approval from the law school administration and securing the cooperation of the department of corrections in the state that runs the prison where the program will operate. The receptivity of the law school administration to a program of this type may of course vary depending upon the school, its mission, and its current clinical offerings. However, law schools have generally become much more receptive to new clinics following the 2007 release of the “Carnegie Report,” as it is popularly known,162 which was critical of law schools’ failure to provide students with sufficient practical skills training.163 In presenting a formal proposal to the administration for approval, then, the potential practical benefits for law students (which are discussed in more detail below) should be heavily stressed.

Finding a receptive ear in the state’s department of corrections will also be key. States administer their prisons (and prison libraries) differently,164 so identifying the appropriate officials to approach may require some familiarization with the individual state’s prison administration. One approach would be to reach out to one of the state’s prison law librarians for suggestions about individuals within the department of corrections who might be approached with the proposal.165 Contact information for all state prison libraries can be found on the Maryland Correctional Education Libraries’ website.166 In general, and in the absence of a specific contact name, an individual involved in educational programming for the state prisons would be a sensible place to start.167

Conversations with those involved in past and present programs indicate that in approaching the department of corrections, it will be important to stress how this type of program is intended to – and can – benefit not only prisoners, but also the department and those in charge of the prison law libraries.168 For instance, any proposal should emphasize the anecdotal evidence suggesting that this type of program can reduce the

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163 Interview with Professor Jackie McMurtrie, Director, Innocence Project Northwest (April 2, 2010).
164 For instance, in Washington State most law librarians are employed by the Department of Corrections, while other librarians report to the state library. However, Washington has also recently launched a pilot program under which the law library in one correctional facility is being run by a librarian employed by the state library. Gilbert interview, supra n.130.
165 For instance, during my interview with the prison law librarian at the Washington State Penitentiary in Walla Walla, Washington, I received the name of an individual within the Department of Corrections who is currently responsible for overseeing all correctional facility law libraries in the state. Based on this librarian’s 18 years of experience in the law library, she advised that this individual would be a good person to approach with a proposal for law student research instruction in the state’s prison law libraries. Heimann interview, supra n.64.
166 www.dllr.state.md.us/ce/lib/celibdirstate.shtml
167 McMurtrie interview, supra n.163.
168 Tiedt interview, supra n.87; Smith interview, supra n.87.
number of suits filed against prison officials and help channel complaints into the prison’s administrative process for handling grievances. It should also emphasize that the program may help prisoners draft more coherent grievances or petitions that can be processed or responded to more easily. One of the former student instructors involved with the University of Washington program advises that she was successful in obtaining cooperation from the department of corrections for an overhaul of the library and institution of the teaching program because she couched her proposal in terms of what it could do to make prison officials’ lives easier and ease the workload of department of corrections employees. For instance, she noted that the Washington State DOC had some concerns at the time about whether their prison libraries were constitutionally sufficient to provide the requisite court access. Accordingly, her offer to evaluate the library’s holdings and suggest improvements was viewed as beneficial by the prison administration. Similarly, the proposal to supply legal research and writing instruction was explained as a means of helping to train inmate clerks who worked in the library so that this removed the burden of doing so from the facility’s employees. Above all, this former student stressed, approach the prison administration as a facilitator, not a crusader, and ask what can be done to make their lives easier, too.

William Mongelli, prison law librarian in Massachusetts, also noted that law libraries are often looked upon with suspicion by facility staff (as they are often seen as the source of legal complaints against the administration and individual staff members), and stressed the need to foster good public relations between the library and correctional staff both before and after the instruction program is implemented. This includes sharing information about why prisoners are being educated and why such education is important and beneficial for all concerned. One Washington State prison law librarian offered advice along similar lines:

> Whatever you propose, expect the DOC to reply with lots of questions and scrutiny. Have all your details worked out ahead of time and use a direct and professional communication style to tell them exactly what you intend to do. And expect them to raise issues, because that’s part of their job. Often the first answer is “no,” or sounds very much like a no, but if you listen closely it is often coupled with specific reasons why they are concerned. If you can address their concerns adequately, the “no” often turns into a “yes.” And keep in mind that structured activities are beneficial because these activities keep offenders busy (instead of using their time to be destructive). You might also keep in the back of your mind that it is very unpleasant to be sued by an offender, and you may be talking with people who have been targeted and sued in the past. Make sure you don’t come across as someone who is simply going to come in . . . and help offenders sue DOC staff.

169 Tiedt interview, supra n.87.
170 Tiedt interview, supra n. 87.
172 Email from Melisa Gilbert, April 9, 2010, on file with author.
Professor Jackie McMurtrie, director of the Innocence Project Northwest, which resides at the University of Washington Law School, notes that one of the more challenging aspects of creating a clinical program is to determine what type of initial training is necessary for the students, so that they feel comfortable handling the work of the clinic. Prof. McMurtrie notes that most clinics provide intensive substantive training at their outset, and then move on to involve the students more heavily in the cases being handled by the clinics, with regular informal meetings to keep tabs on progress and discuss issues with students. Taking this into consideration, one means of organizing a formal prison research instruction program would be to offer it as the second quarter or semester of a basic legal research class that included a teaching presentation as a final project. This would ensure that before the students move into the prison classroom setting they will have received basic, comprehensive legal research training, and also have experienced the process of putting together and teaching a research topic. Organizing the program in this manner could also allow overlap between the classroom portion of the program and the actual teaching component. This would give students in the initial classroom portion the opportunity to shadow those who had moved on to the teaching component, before they also graduated to a teaching role in the following academic period.

An additional practical consideration is whether the location of the state’s correctional facilities will permit regular instruction. As discussed below, any research course would ideally be held at least once per week, so this program would work best for law schools that are situated within fairly close proximity to a correctional facility, to reduce the travel burden on students and ensure that classes can be held regularly. Because instruction will work best in the prison law library, where the resources the prisoners will be learning to use are located, the organizer should ensure that there is a time that the library can be closed to general inmate access to permit a formal class to be held. Prior to beginning the instruction, sufficient time will need to be allocated to receive pre-clearance from the prison (which includes a background check) for all students who will be teaching. Because the class will need to be organized around the resources available to the inmates, it will also be necessary for the organizer, with or without the help of the students, to visit the library before the syllabus is created to review the resources available there. Viewing the library space and facilities will also provide a better idea of how many students can be comfortably accommodated by the class. Finally, as discussed above, prison will present a challenging environment for most students, and instructing inmates may come with a special set of concerns. Students should therefore be well-prepared for what they may encounter before they commit to the teaching program. Once the course of instruction is underway, regular meetings with students should be planned to allow students to discuss with one another and with the faculty overseer the issues and challenges that will inevitably come up. If possible, the program should seek to secure some space in the school that is dedicated to the program, and where students can work

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173 McMurtrie interview, supra n.163.
174 McMurtrie interview, supra n.163.
on material for their upcoming classes. Having a physical space that the program can call home will help to create a valuable sense of community for the students. \(^{175}\)

2. Course Structure and Content

An initial consideration in creating the course syllabus – or advising its creation by the students involved in the program – will be whether the course should be organized so that each class builds on those preceding it, and thus discouraging irregular attendance. Although the University of Washington program employed quite informal research instruction that permitted inmates to drop by on an irregular basis, the two other long-standing legal research programs examined by this paper were designed to require regular attendance throughout the course. \(^{176}\) It is likely that the course will be more effective in training inmates to conduct skillful legal research if regular attendance is required, and if students must build upon and use skills learned in earlier classes as the course progresses. Although this might mean a smaller overall rate of attendance, the educational benefits probably outweigh this concern. Accordingly, the organizer of this type of program should think seriously about designing the course as a sequence of classes that must be taken in order.

Based on the experience of those involved in the programs discussed above, a sizeable enrollment in the class should be permitted, with the expectation that a number of inmates will not see the course through from beginning to end. \(^{177}\) Especially when initially beginning the course and determining to manage it, however, limiting enrollment may help make course administration somewhat easier. The experience of the legal research instructors discussed above suggests that an ideal class length is two hours, to permit time for formal instruction as well as questions from the inmates. Class should be held at least weekly as recommended by one librarian to ensure continuity. \(^{178}\) It will be important to emphasize to the inmates at the outset of the course that the class will not provide legal advice, and that the student instructors cannot review individual briefs or give advice about the legal arguments they contain.

William Mongelli’s 1994 article, *De-Mystifying Legal Research for Prisoners*, provides a detailed syllabus that has been demonstrably successful in the prison setting and continues to be followed today. \(^{179}\) The syllabus, discussed in more detail in section IV.A.4 above, could serve as a useful basis for developing the course content and schedule, with alterations made as necessary to align the class with the resources available in the particular facility’s law library. Because as discussed above many inmates lack even a very basic understanding of the legal system and research process, lessons can be kept fairly simple. Where electronic research tools are provided, a class

\(^{175}\) McMurtrie interview, *supra* n.163.

\(^{176}\) See discussion *supra* pp. 22, 28.

\(^{177}\) See discussion *supra* pp. 22, 28.

\(^{178}\) Mongelli interview, *supra* n.95.

introducing the inmates to the content available through the tool and basic searching techniques should be included. Based on comments from certain of the individuals interviewed for this paper, it may also be a very useful idea to incorporate a class, or part of a class, on basic brief-writing format and skills.\textsuperscript{180} Given Mr. Mongelli’s long experience in legal instruction in the institutional setting, it would also be wise to note his assertion that the in-class exercises, regular quizzes, and cell-work are among the most important aspects of a research course. In attempting to structure the course to deal with potentially divergent ability and education levels, Marc Lampson’s advice to set aside class time for individual work and one-on-one questions and instruction should also be considered.

In developing the syllabus, the organizer should also give serious thought to including at least one lesson on the prison grievance procedure. As noted above,\textsuperscript{181} the PLRA now requires inmates to exhaust all administrative remedies before filing suit in federal court. In addition, familiarizing inmates with this procedure and how to effectively research and present a complaint may be one of the key means by which the need to file federal litigation can be avoided.\textsuperscript{182}

Perhaps the most crucial decision to be made with respect to course content, however, will be whether and to what extent to incorporate any substantive instruction on laws or legal principles that are likely to be highly relevant to prisoner grievances (for example the 4th, 5th, and 6th Amendments, or the concept of immunity). As discussed above, it appears that a small amount of substantive instruction can go a long way in improving prisoners’ ability to objectively evaluate the strength or viability of their nascent claims,

\textsuperscript{180} The law librarian at the Washington State Penitentiary noted that she had asked contract attorneys who visit the prison on a periodic basis to provide prisoners with some basic instruction on brief-writing. She stated that it would be helpful to have law students show inmates how to put together a better document, and explain basic court procedures so that inmates understand what they need to do when they file a document with the court). Heimann interview, supra n.64. See also Tiedt interview, supra n.87 (noting that inmates found instruction on the basic structure of a brief very useful).

\textsuperscript{181} See discussion supra n.32.

\textsuperscript{182} See William D. Mongelli, De-Mystifying Legal Research for Prisoners, 86 LAW LIBR. J. 277, 280 (1994) (noting that instruction on prison grievance procedure facilitates resolution of conflicts “at the institution level, avoiding litigation altogether”). See also William Bennett Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 HARV. L. REV. 610, 621 (1979) (noting that in the District of Vermont, “relatively few cases are dismissed sua sponte [under the in forma pauperis screening process], probably because of the assistance of the Vermont Defendant General’s Office. The Defender General provides in-prison counseling and sometimes advises prisoners to use the institutional grievance system prior to filing suit. This kind of screening results in ‘tighter’ and doubtless fewer cases being filed”); Robert C. Hauhart, The First Year of Operating A Prisoners’ Legal Services Program: Part I, 24 CLEARINGHOUSE REV. 106 (June 1990) (“as a review of PRP’s delivery of legal services over its first year of operation shows, the great majority of applications for assistance warrant nothing more than internal administrative relief”).

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and thus discourage the filing of non-meritorious suits. Such topics could be addressed in a general way that avoids the specifics of any individual inmate’s claims. However, once substantive instruction becomes a part of the course, the line between legal research instruction and advice may become hazy. Further, if law students will be advising inmates on the substantive components of laws or legal principles that may affect them, the program organizer may need to involve other law school faculty who are expert in the particular areas being discussed to ensure that only accurate information is being disseminated. Alternatively, assistance could be sought from local attorneys willing to provide their expertise on a pro bono basis, and perhaps gain some teaching experience in the bargain.

Because inclusion of a substantive component may significantly complicate the program, any decision on this issue should be made carefully. One potential compromise might be to include lessons or exercises regarding how to research particular substantive claims (similar to a detailed research guide), without getting into hard and fast discussions of the content of the law or topic. Particular substantive areas to be emphasized could be determined by allowing the inmates to vote based on their particular interests and needs. As the program progresses, the organizer could consider involving students in drafting legal research guides on particular topics that could remain in the library for consultation by inmates in between classes.

In preparing the students to teach and in overseeing the classes, it will be useful to consider pedagogical advice from those individuals who have had experience teaching in the prison setting. This includes recognizing the usefulness of humor, keeping things upbeat, providing plenty of positive reinforcement, and being open to some level of informality during class. Students should also be reminded to keep “lawyer jargon” to a minimum and explain concepts in the simplest terms possible, and to resist assumptions about inmates’ level of knowledge about the legal system, which can be

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183 See discussion supra p. 35.
184 The law librarian at the Washington State Penitentiary law library noted that she formerly compiled a guide on how to navigate the resources in the library that was useful for the inmates, but she no longer has time to keep the guide up to date. Heimann interview, supra n.64. This type of research assistance has been used in the Maryland correctional facility system, one of the states not to opt to establish law libraries following Bounds, to supplement a law school clinic established by the University of Maryland and the placement of public defenders in major facilities to provide legal assistance. Based on a survey of legal information needs, law school library student clerks at the University of Maryland created a series of “criminal law and post-conviction pathfinders, or Legal Information Packets,” that were later digitized and were placed in the prison libraries and lockdown units. See Brenda Vogel, A Prisoner’s Locus Sanctum: the Law Library, in THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY, 62 (2009).
185 Trombley interview, supra n.79; Smith interview, supra n.87; William D. Mongelli, De-Mystifying Legal Research for Prisoners, 86 L. LIBR. J. 277, 286-87 (1994)
186 Tiedt interview, supra n.87.
rudimentary even though their lives have been directly impacted by it. Finally, students should be made aware that they may need to make adjustments and adapt their teaching style or class format as needed, and as the class progresses.

3. Benefits and Limitations

As discussed above, legal research instruction in prison law libraries has been observed to impart a number of benefits, including improving the quality of prisoners’ filings, facilitating better communication between inmates and their attorneys, and helping inmates to more objectively evaluate their claims, thus reducing non-meritorious filings. An improved ability for prisoners to research and support their claims with relevant case law should also reduce the cost to the court system of processing the petitions.

Formal legal research instruction by law students may also have the additional benefit – at least for those libraries that are not staffed by an individual familiar with legal resources or the legal research process – of providing training both for that individual and the inmate clerks who may assist him or her. For instance, in his article about the University of Washington program, Dr. Smith observed that “[t]he classes conducted by law students had the additional benefit of providing instruction for the law librarian, a part-time employee with a bachelor’s degree in education, who had been attempting unsuccessfully to learn the basics of legal research through ‘trial and error self-education. Thus, the prison law librarian was able to use the information from the classes to better assist the prisoners in effectively using the library’s resources.”

The lack of training for prison librarians appears to continue to be an issue today. A legal research instruction program could accordingly have the added benefit of improving the staffing of prison law

187 Lampson interview, supra n.77.
188 “Judge James Murphy, a Washington State jurist, has explained the risk of complaints premised solely upon forms without extensive legal analysis: ‘If it’s a case that can be handled by summary judgment and a person has an opportunity to research the issue, state their opinion in their own brief, and argue it perhaps over a phone conference, we can dispose of the matter in a timely and effective manner, if it’s a well-taken motion. If they don’t have access to law libraries, it’s probably going to cost a lot more. Judges wouldn’t have much choice, really than to set the matter for trial and let the person come in and defendant themselves at trial. You’re going to have to transport the prisoners and have security during the entire trial and probably make available the local library for a person to research, anyway.’” Evan R. Seamone, Fahrenheit 451 on Cell Block D: A Bar Examination to Safeguard America’s Jailhouse Lawyers from the Post-Lewis Blaze Consuming Their Law Libraries (2006), reprinted in THE PRISON LIBRARY PRIMER: A PROGRAM FOR THE TWENTY-FIRST CENTURY, at 100-01 (2009).
190 Another prison law librarian in Washington state noted that additional training in legal research would be useful in better assisting the inmates. Gilbert Interview, supra n.130. Ms. Gilbert noted that she has asked for additional training but that the resources to provide it are not available.
libraries, which has been recognized as imperative in helping the libraries to function effectively for inmates.

Unlike legal assistance programs that provide representation, legal research instruction programs also carry with them the benefit of education, teaching inmates new skills that may enable them to function more effectively outside prison walls, and keeping them occupied while inside.\textsuperscript{191} Equally important, a research instruction program involving law students brings with it a host of benefits and practical skills training for young lawyers in the making. Both student research instructors from the University of Washington program who were interviewed for this paper stressed these benefits. Notes one: “Working in prisons can enhance law students’ legal education. Students are placed in close and regular contact with a segment of society intimately affected by the legal system. Students in the Washington program gained practical knowledge and useful insights concerning litigation from discussions with experienced jailhouse lawyers who participated in class.” He adds, “[i]n addition . . . students can solidify and refine their own understanding of legal research. . . . Students who teach legal research are forced to prepare presentations, develop legal research exercises, and seek advice from law librarians, and thus can strengthen their grasp of research techniques.”\textsuperscript{192} Similarly, another student recalled that her experience with the program was her most fond memory from law school. She stated that the experience helped her develop public speaking skills, taught her to recognize the fine line between counseling and legal advice, helped her learn how to break down complicated concepts into elements that could be easily understood by people not trained in the law. This in turn improved her legal writing skills by improving her ability to analyze concepts at very basic levels and work creatively with those elements.\textsuperscript{193} Because prison law libraries contain much more basic core collections of legal materials, working with these collections in instructing inmates would also give students experience in working with a more limited universe of legal resources. This is a real-world challenge that most students do not consider while in law school, where they have access to the virtually unlimited legal universe of their school law library. Students might also be encouraged to make suggestions for improving the law libraries’ holdings,

\textsuperscript{191} See email from Melisa Gilbert, April 9, 2010, on file with the author (noting that “structured activities for offenders are beneficial because those activities keep offenders busy (instead of using their time to be destructive”). See also JOHN J. GIBBONS ET AL., CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA’S PRISONS 29 (2006) (“The commission heard from expert criminologists, psychologists, corrections professionals, and community advocates about the dangers associated with ‘warehousing’ prisoners. . . . Increasingly, programs tested through research demonstrate that the old pessimism of the 1970s about rehabilitation was misguided. . . . Education – particularly at the college level . . . reduces rule-breaking and disorder in prison. Studies show that post-secondary education can cut recidivism rates by nearly half. . . . We need a strong investment in education, vocational training, and cognitive behavioral programs that have been demonstrated to promote safety in the short and long term.”).


\textsuperscript{193} Tiedt interview, supra n.87.
giving them an important opportunity to evaluate and think critically about the value of particular resources and research tools.

Finally, law libraries themselves are often not looked upon kindly by correctional officials, and following Lewis prison law libraries hold a more tenuous and uncertain role within correctional facilities and as a means of providing inmates with access to the courts. A program that encourages prison officials to view libraries not merely as a source of lawsuits but as a means to educate prisoners, improve filings, and reduce frivolous complaints may also help to increase support for these institutions.

It should be noted that the program being proposed would not necessarily improve libraries’ usefulness for illiterate inmates, or those who do not speak English. For these inmates even a better understanding of the research process and legal system would not assist them in using materials they cannot read to find relevant laws and cases, nor would it permit them to construct better pleadings. This proposal is accordingly not a panacea for all of the challenges plaguing law libraries as the sole means of facilitating prisoners’ constitutional right of access to the courts. However, it has the potential to improve that access for a significant portion of the prison population, and to provide educational benefits that would be lacking with a program involving legal representation. Legal representation ensures better submissions to the courts for those prisoners who are fortunate enough to secure it. By contrast, a program of legal research instruction has the potential to provide benefits for a greater number of inmates, and enable them to better help themselves in the absence of access to the services of an attorney.

V. Conclusion

Prisoner litigation often raises fundamental issues of the utmost constitutional importance, including the rights to be free from wrongful conviction and life-threatening treatment at the hands of government authorities. However, most prisoners do not enjoy the assistance of a trained attorney who can competently evaluate the merits of their claims, and formulate coherent and well-supported legal briefs. Federal courts today are therefore faced not only with a significant volume of prisoner suits, but with submissions written by pro se litigants with no knowledge of how to determine the legitimacy of their claims, conduct legal research, and construct appropriate legal papers. The resulting litigation poses unique burdens for the courts that must process large numbers of poorly-constructed petitions and complaints.

Although legislative restrictions on access to the federal courts have somewhat curtailed the numbers of prisoner suits that are filed each year, they largely failed to relieve the

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burdens imposed by this litigation. A formal clinic to provide research instruction in
prison law libraries, overseen by law librarians, the schools’ legal research experts, could
help to both address the shortcomings of poorly staffed libraries and lessen the burden
that prisoner litigation continues to place on the federal courts. While there are no current
law school programs to guide the design of such a clinic, other efforts involving research
instruction and assistance in prison law libraries provide a workable blueprint and suggest
the many benefits – for courts, law students, and prisoners – of such a program. Given the
recent interest in both prison reform196 and the increased emphasis on developing law
students’ legal research skills, the time may be particularly ripe for such a collaboration
today.

196 JOHN G. GIBBONS ET AL., CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON
SAFETY AND ABUSE IN AMERICA’S PRISONS (2006). (“According to Michael Jacobson, the
director of the Vera Institute of Justice, ‘there is now a greater willingness on the part of many
states to pursue correctional and prison reform. Budget pressures, growing public support for
alternatives to prison for non-violent offenders, and yawning needs in education and health all
have created the most receptive political environment for reform in decades.’”).