Jail Law Libraries, Part II

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In Part I of this post, I set out the rule from *Bounds v. Smith* that "the fundamental constitutional right of access to the courts requires prison authorities . . . to provid[e] prisoners with adequate law libraries or adequate assistance from persons trained in the law." 430 U.S. 817, 828 (1977). I then surveyed relevant law from the Fourth Circuit and concluded that *Bounds* applies to at least some sentenced inmates in the county jail. Today's post gets into the details of how a jail might meet its obligation to provide those inmates meaningful access to the courts.

If a jail chooses to meet that obligation through a law library, it needs to decide what materials to provide. The *Bounds* decision itself set out a lengthy list of prison library resources that had been approved by the lower court, including the North Carolina General Statutes, the North Carolina Reports, the North Carolina Rules of Court and Rules of Appellate Procedure, *Strong's North Carolina Index*, *Black's Law Dictionary*, the United States Code, the United States Reports, and *LaFave's Criminal Law Hornbook*. Some North Carolina jails have, of course, been sued over the years for alleged failures to provide meaningful access to the courts, and some of those suits resulted in consent judgments in which the jail agreed to provide an approved list of materials. Resources common to those court-approved libraries include many of the same titles listed in *Bounds*, plus a handful of secondary sources like the Prisoners' Self-Help Litigation Manual, Cohen's Legal Research, and Palmer's Constitutional Rights of Prisoners.

Perhaps recognizing that maintaining a collection of all of those resources would be cost-prohibitive for most jails (and probably some *actual law libraries*), the Fourth Circuit has since approved jail libraries with much more limited collections. In the *Strickler* case mentioned in Part I, for example, the court described a jail library consisting of the Virginia Code, the United States Code, and *Corpus Juris Secundum*, as "more than adequate" when inmates could also get additional resources from the local court library upon request. Strickler v. Waters, 989 F.2d 1375, 1385–86 (4th Cir. 1993). *Cf.* Harris v. Young, 718 F.2d 620, 621 (4th Cir. 1983) (an older case suggesting that any law library without court reporters was of "minimal utility"). So something less than a full "*Bounds* library" will probably do the trick for a jail, at least when other resources can be retrieved as needed. I see no reason why a jail could not charge inmates for the cost of printing, copying, or mailing those resources, though it should also have a fee-waiver process for indigent inmates.

One thing the jail does *not* need to do is provide materials related to anything other than (1) a direct or collateral attack on a conviction, (2) a habeas corpus proceeding, or (3) a challenge to conditions of confinement. Lewis v. Casey, 518 U.S. 343 (1996) ("*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."). For instance, a jail is not obligated to provide materials related to family law, even if issues like child custody arise with some frequency.

Once a jail has sorted out what sort of materials it should provide to inmates, it must then decide how and how often to let inmates access them. The jail should not simply have law books on a shelf and provide them if requested; absent security concerns, an inmate should, if he desires, be given at least some opportunity to "explore the legal remedies he might have." Williams v. Leeke, 584 F.2d 1336, 1339 (4th Cir. 1978). How much browsing time is enough is not entirely clear. In *Williams*, the Fourth Circuit said that allowing inmates three 45-minute visits to the jail law library each week was insufficient access for a misdemeanant serving a lengthy sentence. *Id.* at 1343. In a later case, though, the court suggested that giving a city jail inmate access to the law library for one hour each week would satisfy constitutional

requirements. *Magee v. Waters*, 810 F.2d 451 (4th Cir. 1987). A good approach may be one that involves some library time coupled with a check-out process to allow for a longer in-cell review.

Even a fully stocked and openly accessible library may not provide meaningful access to the courts for inmates who cannot read or who don't speak English. The Supreme Court explicitly mentioned this issue in *Lewis*, but "le[ft] it to prison officials to determine how best to ensure that inmates with language problems have a reasonably adequate opportunity to file nonfrivolous legal claims." 518 U.S. at 356. The challenge of accommodating these inmates may steer jails toward the other method of providing access to the courts that the Supreme Court approved in *Bounds*: assistance from persons trained in the law. Those persons could presumably be lawyers, paralegals, or law students—or a sheriff might even consider contracting with NCPLS to provide the service. Note that a jail may not institute an outright ban on inmates helping one another unless it has provided some alternative means of assistance. Johnson v. Avery, 393 U.S. 483 (1969).

A final but important note: everything I've mentioned so far is tempered by the jail's need to provide adequate security. *Williams*, 584 F.2d at 1339 ("Reasonable steps to preserve prison security during "library time" may certainly be justified.").

I am very interested to hear from jail administrators about their policies on "access to legal assistance or legal materials" under 10A NCAC 14J .0203. Do you have a law library, or do you make arrangements for inmates to seek assistance from persons trained in the law? Do you use computerized research services like Lexis-Nexis or Westlaw? Thanks in advance for any feedback you can provide.