Not So Meaningful Anymore: Why a Law Library Is Required to Make a Prisoner's Access to the Courts Meaningful

Joseph A. Schouten
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INTRODUCTION

All citizens of the United States enjoy a right to meaningful access to the judicial system. Courts must be especially vigilant in protecting this right to access for groups who, because of prejudice, societal indifference, or a lack of resources, have trouble gaining meaningful access to the courts for themselves.1 In an effort to protect this right, the Supreme Court has struck down laws and policies that have denied citizens access to the courts based on such factors as race, sex, and wealth. The Supreme Court has also recognized and protected the right of prisoners to have meaningful access to the judicial system.2 For prisoners, the Court has characterized meaningful access as including the provision of an adequate law library or the assistance of trained legal personnel.3

While the right to meaningful access ensures that no citizen is unjustly denied the right to get into court, standing is the constitutional gatekeeping mechanism courts use to keep potential litigants out of court.4 Courts have continually recognized the three constitutional requirements plaintiffs must satisfy to demonstrate standing: (1) "injury in fact" or actual injury must exist; (2) the

2. See Bounds v. Smith, 430 U.S. 817, 828 (1977) (holding that a prisoner's right to meaningful access placed an affirmative duty on prison officials to provide adequate legal resources).
3. Id.
injury must be "fairly traceable" to the alleged violation; and (3) the court must be capable of redressing the injury.5

The Supreme Court's decision in *Lewis v. Casey*6 shows a convergence of the two opposing forces mentioned above: prisoners asserting their right to meaningful access to the judicial system, and the Court using the gatekeeping mechanism of standing to keep those prisoners, and future prisoners, from arguing the merits of their case in court. *Lewis* involved a class of prisoners in Arizona claiming that inadequacies in the state prison libraries caused a deprivation of their rights to meaningful access to the courts.7 The district court, in granting the prisoners' requested relief, recognized inadequacies involving "the training of library staff,... the updating of legal materials, ... [and] the availability of photocopying services."8

Resting its decision on the actual injury requirement of standing, the Supreme Court held that to show actual injury an "inmate ... must go one step further [beyond claiming an inadequate library or inadequate legal assistance] and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim."9 Writing for the majority, Justice Scalia suggested that a prisoner would have to allege something equivalent to having prepared a complaint that "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."10

Although a number of publications have looked to *Lewis* when criticizing the Court's standing jurisprudence,11 there is a dearth of material providing a detailed examination of the Court's interpretation of the right to meaningful access. Examining the right to meaningful access, and how a law library is essential to a prisoner's

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7. Id. at 346.
8. Id. at 346-47 (citing the district court's opinion).
9. Id. at 351.
10. Id.
exercise of that right, provides strong evidence supporting those who have criticized the Court's standing analysis in Lewis.

This Note argues that the Supreme Court's decision in Lewis is flawed in its characterization of the right to meaningful access and actual injury for the purpose of standing, as well as suggests the standards that are necessary to protect the constitutional rights of prisoners. Part I of this Note begins by examining the right to meaningful access to the courts. The initial focus will be on the right's development and general meaning. This Note concentrates on Supreme Court precedent invalidating laws or policies that amount to the State placing a direct or indirect bar on the access of certain indigent groups. Especially important will be the Court's assertions that, when the government provides a certain type of access to the courts, a policy that, in effect, makes this access unattainable for the indigent, there is a violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

After looking at the right generally, this Note focuses on the right as it relates to prisoners specifically, with emphasis on the right to a law library or its equivalent. This Note argues that the Court's meaningful access precedent in the area of prisoners' rights is consistent with its decisions concerning the right generally. This consistency derives from holdings finding impermissible those policies barring indigent prisoners from access that is attainable by wealthier prisoners. Part I concludes by looking at how the Court's decision in Lewis limited this right to access.

Part II analyzes the application of the standing doctrine, focusing on the actual injury requirement. This Part analyzes which injuries are personal and sufficient to confer standing, and discusses the requirement of imminent future harm.

Part III argues that the Lewis decision was wrongly decided both in its characterization of the right to meaningful access to the judicial system, and in its finding that the plaintiffs did not meet the actual injury requirement of standing. Focusing on this necessity of a law library in allowing a prisoner to discover legal claims, the Note argues that without an adequate law library or adequate alternative an indigent prisoner is essentially barred from accessing the courts. In essence, failing to provide an adequate law library violates the Equal Protection and Due Process Clauses by
placing a bar on the access of certain prisoners because of their indigency.

Admittedly, prisoners must have an interest in reaching the courts that justifies constitutional protection against a complete bar from access. For that reason, Part III also examines the interests at play in prisoner litigation, and attempts to demonstrate that those interests are of comparable importance to those that the Court has recognized in its meaningful access jurisprudence. The focus will be on habeas claims and § 1983 claims regarding prison conditions.

In discussing the Court's standing decision, the Note argues that the Lewis Court's elevated standard is inappropriate under both characterizations of the right to meaningful access—the standard for which this Note argues (one which includes a law library or adequate alternative), as well as the characterization of meaningful access the Court used in Lewis. Following discussion of how the Court erred in its decision, Part IV of this Note discusses the consequences of these errors and suggests a proper remedy in cases where the government has denied prisoners their right to meaningful access.

I. RIGHT TO MEANINGFUL ACCESS TO THE COURTS

A. Background

To understand how the Court misconstrued the right to meaningful access in Lewis, one must understand the purpose and scope of the right in general. Boddie v. Connecticut12 and Griffin v. Illinois13 provide helpful illustrations of the Supreme Court’s right to access precedent.

In Boddie, an indigent couple challenged a filing fee of approximately sixty dollars that the State required to obtain a divorce.14 In invalidating the law as it applied to indigent couples who could not obtain a divorce for the sole reason that they could not pay the filing fee, the Court held “that the Due Process Clause of the Fourteenth Amendment requires that these appellants be afforded an opportu-

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nity to go into court to obtain a divorce." The Court considered the fact that Connecticut had "blocked access to the judicial process" to be a violation of the Constitution.

Much of the Court's logic in Boddie rested on its decision in Griffin v. Illinois. Justice Black framed the issue in Griffin as "whether Illinois may, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, administer this statute so as to deny adequate appellate review to the poor while granting such review to all others." In striking down the state statute, Justice Black noted that although the right to an appeal is not a constitutional guarantee, a state cannot provide access to some citizens, but then, through the imposition of fees, place a bar on the same access, effectively preventing the indigent from enjoying it.

B. Prison Context

1. A Prisoner's Right to Access Pre-Bounds

Long before Lewis, courts recognized that prisoners had a right to meaningful access to the judicial system. The Supreme Court in particular had consistently recognized the right to access for prisoners. Ex parte Hull is one of the first examples in which the Supreme Court affirmed a prisoner's right to access. In Hull, the Court invalidated a prison regulation that impeded a prisoner's

15. Id. at 382.
16. Id.
17. Griffin, 351 U.S. at 13. The statute to which the Court referred required a transcript for filing an appeal in criminal cases. Id. at 13-14. Payment of a fee, by the defendant, was necessary in order to obtain the transcripts. Id. at 14.
18. See id. at 18.
20. See Hull, 312 U.S. at 549 ("[T]he state and its officers may not abridge or impair [a prisoner's] right to apply to a federal court for a writ of habeas corpus.").
ability to file for a writ of habeas corpus. This holding ensures a right for prisoners to access the federal courts for the purpose of filing habeas corpus petitions. Although Hull established that prisoners had a right to access the judicial system, the Court stopped short of requiring an affirmative duty on prison officials to help inmates secure that access.

In another case that illustrated the right to meaningful access in the prison context, the Supreme Court indicated that in some situations, prison officials may have an affirmative duty to help inmates access the courts. In Johnson v. Avery, the Court invalidated a prison regulation prohibiting prisoners from helping other prisoners prepare court papers. The petitioner had helped other prisoners file petitions for writs of habeas corpus. Referring to the importance of providing assistance to help illiterate prisoners draft petitions for habeas corpus, the Court observed, “it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed.” Critical to the Court’s holding was that the State had failed to provide adequate alternatives to the assistance of fellow prisoners for those inmates who needed help in filing their claims. In invalidating the prison regulation forbidding prisoner assistance, the Johnson Court

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21. See id. In invalidating the prison regulation, Hull necessarily established the right to file a habeas corpus petition as essential to the right to access the courts.

22. For the purposes of this Note, it is important to recognize that the Court in Hull declared the regulation invalid despite the fact that only one prisoner had challenged the policy, claiming that it had hindered his efforts to file a habeas petition. See id. at 547. This means that the Hull decision established a precedent that when a right that is an essential component of meaningful access is violated, the policy causing the violation of that right must be invalidated without regard to how many inmates can demonstrate how the policy hindered them.

23. See id. at 549.

24. See Johnson, 393 U.S. at 483.

25. Id. at 490.

26. See id. at 484.

27. Id. at 485.

28. See id. at 488-90. In this particular case, the Court found that the prison’s provision of free notarization service, prisoner access to attorney lists and the warden’s occasional telephone call to the public defender on behalf of an inmate were not adequate means to assist prisoners in filing their claims. Because no adequate alternative to prisoner assistance existed, the regulation forbidding such assistance could not stand. The Court’s opinion noted that the prison policy would not have offended the Constitution had the prison taken affirmative steps to help ensure access for inmates. See id. at 490.
recognized adequate legal assistance as an indispensable element of meaningful access to the system.

2. Bounds: Adequate Library or Adequate Assistance

Following the precedent of Johnson and similar cases, the Supreme Court established that a state has an affirmative duty to assist prisoners in their access to the judicial system. In Bounds v. Smith, the Court affirmed a state's obligation to provide an adequate law library or acceptable alternative to guarantee an inmate's right to meaningful access to the judicial system. The Court found that the necessary components to exercise a right to access recognized in pre-Bounds cases depended on an adequate prison law library or, in the alternative, adequate legal assistance. The Court used the example of a practicing attorney drafting a civil rights complaint without the use of a law library to show the importance of the law library or alternative assistance in providing meaningful access.

It is helpful to use the right to file a habeas corpus petition, which Hull established as being a necessary component of the right

29. Several cases require an affirmative duty on the State to provide access to the court for prisoners. See Arrearsinger v. Ha Jin, 407 U.S. 25 (1972) (holding that the right to counsel extends to any offense for which one may be imprisoned); Younger v. Gilmore, 404 U.S. 15 (1971) (per curiam) (affirming a district court decision enjoining the implementation of a California policy that provided inadequate legal materials for the prisoners); Gideon v. Wainwright, 372 U.S. 335 (1963) (incorporating the right to counsel for criminally accused as a fundamental right obligatory upon the states by the Fourteenth Amendment); Smith v. Bennett, 365 U.S. 708 (1961) (finding that a state requirement that an indigent prisoner pay a filing fee for writ of habeas corpus denied him equal protection of the laws); Burns v. Ohio, 360 U.S. 252 (1959) (holding that a state could not constitutionally require a convicted indigent to pay a filing fee before filing a motion for appeal).


31. Id. The State's duty to provide adequate law libraries or assistance is the same component of the right to access that the prisoners in Lewis v. Casey, 518 U.S. 343 (1996), challenged.

32. See Bounds, 430 U.S. at 825-26. In answering the state's claim that filing a petition for habeas corpus only requires the prisoner to state the basic facts that support his or her cause of action, the Court stated, "it hardly follows [from the simplicity of the habeas corpus petition or civil rights complaint] that a law library or other legal assistance is not essential to frame such documents." Id. at 825.

33. See id. at 825 (declaring such a lawyer incompetent).
to access,\textsuperscript{34} to demonstrate how the Court elaborated on the necessity of law libraries or legal assistance in making access to the courts \textit{meaningful}. One benefit of law libraries or legal assistance is that they are "[a] source of current legal information ... [that would help prisoners] learn whether they have claims at all, as where new court decisions might apply retroactively to invalidate convictions."\textsuperscript{35} If the right to file a habeas corpus petition is essential to access to the courts, and libraries or an alternative source of legal knowledge are the only means for a prisoner to discover whether he has a claim, how can that right to access be meaningful if the State does not provide an adequate law library or suitable alternative? The answer, based on \textit{Bounds}, is that access cannot be meaningful without a law library or suitable alternative.\textsuperscript{36} Therefore, \textit{Bounds} must be understood as establishing an adequate law library or suitable alternative as a \textit{necessary} component of the right to meaningful access.

3. Lewis: \textit{The Right to Not So Meaningful Access}

In \textit{Lewis v. Casey},\textsuperscript{37} the Supreme Court again addressed the question of what states must provide prisoners to ensure meaningful access to the courts. \textit{Lewis} involved a class of prisoners claiming that, due to a lack of resources and staff, the libraries in Arizona state prisons were inadequate to provide meaningful access to the judicial system, as guaranteed in \textit{Bounds}.\textsuperscript{38} The Court rejected the prisoners' claim on the basis that they did not have standing to assert their claim.\textsuperscript{39}

The Court's decision to deny the prisoners relief based on failure to show standing depended on the Court's framing of the right to

\textsuperscript{34} See \textit{supra} notes 20-22 and accompanying text.
\textsuperscript{35} \textit{Bounds}, 430 U.S. at 826 n.14. For an example of a decision that applied retroactively to invalidate convictions, see \textit{McConnell v. Rhay}, 393 U.S. 2, 2-4 (1968) (holding that a decision subsequent to a prisoner's sentencing that asserted the right to counsel in sentencing hearings applied retroactively). Most certainly any adequate alternative to a law library would keep a prisoner apprised of new developments in the law. Therefore, one-time legal counseling would not suffice.
\textsuperscript{36} See \textit{Bounds}, 430 U.S. at 828.
\textsuperscript{37} 518 U.S. 343 (1996).
\textsuperscript{38} See \textit{supra} notes 6-7 and accompanying text.
\textsuperscript{39} See \textit{supra} notes 9-10 and accompanying text.
meaningful access. In ruling against the prisoners, the Court chose to construe narrowly the right to access the courts.\(^{40}\) In limiting the scope of *Bounds*, the Court held that the State had really only negative duties, and virtually no affirmative duties, in ensuring the right to access to the courts.\(^{41}\) Despite its narrow construction of the right to meaningful access to the courts, the *Lewis* majority admitted "that several statements in *Bounds* went beyond the right of access recognized in the earlier cases on which it relied .... These statements appear to suggest that the State must enable the prisoner to discover grievances, and to litigate effectively once in court."\(^{42}\) Finding that these "statements," which require affirmative action by the State, were not a part of the right to meaningful access, the majority disclaimed them.\(^{43}\)

The right to meaningful access to the courts that emerged after *Lewis* does not place any discernable affirmative obligation on the states to ensure access for prisoners. The components of access viewed as necessary under *Bounds* are no longer considered to be so.\(^{44}\) The *Lewis* characterization of right to access is essentially a mandate for keeping prisoners out of court, as they are unable to argue that the State has infringed upon their access by not providing them with an adequate law library or legal assistance.\(^{45}\)

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40. See *Lewis*, 518 U.S. at 350-51 (explaining a narrow construction of the right to access the courts, and noting that an independent right to a law library or legal assistance does not exist).

41. See id. at 350:
   In the cases to which *Bounds* traced its roots, we had protected that right [of access to the courts] by prohibiting state prison officials from actively interfering with inmates' attempts to prepare legal documents, or file them, and by requiring state courts to waive filing fees, or transcript fees for indigent inmates.

42. Id. at 354 (citations omitted).

43. Id.

44. See id. at 351 ("[P]rison law libraries and legal assistance programs are not ends in themselves, but only the means for ensuring 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.'") (quoting *Bounds* v. Smith, 430 U.S. 817, 825 (1977)).

The State is now prohibited only from erecting barriers that actually interfere with a prisoner’s right to access.

II. STANDING

A. The Basics of the Standing Doctrine

Standing derives from the constitutional mandate that courts may hear only cases and controversies. A major goal of standing is “to identify those disputes which are appropriately resolved through the judicial process.” To ensure that standing accomplishes this goal, courts have identified three constitutional requirements necessary for bringing a case to court. Standing requires the plaintiff to have suffered an “injury in fact,” to demonstrate some “causal connection between the injury and the conduct complained of,” and finally, to show the likelihood that the court will be able to resolve the conflict in a favorable manner.

As the actual injury requirement was the factor that led to the Court's rejection of the plaintiff's claim in Lewis, it warrants further examination. Demanding that plaintiffs show an injury is intended to ensure “that there is an actual dispute between adverse litigants and that the court is not being asked for an advisory opinion.” The Supreme Court has often started its analysis of the injury component of standing by looking at the plaintiff's personal interest or stake in the issue being litigated. The goal of this interest analysis

48. Id. at 560-61 (citations omitted).
49. CHEMERINSKY, supra note 4, § 2.5.2, at 63.
50. Compare Linda R.S. v. Richard D., 410 U.S. 614, 616 (1973) (“The threshold question which must be answered is whether the appellant has ‘alleged such a personal stake in the outcome of the controversy ....’”) (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)), and Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150, 153 (1970) (holding that, in deciding standing, courts must ask “the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question”), with Sierra Club v. Morton, 405 U.S. 727, 739-40 (1972) (holding that even a person demonstrating a "special interest" in a claim must show how they have been adversely affected or injured as a result of the action about which they are complaining). Sierra Club’s requirement for a "special interest" demonstrates that the Court may be more exacting in examination of some interests as compared to others.
is to determine whether the party before the court is legitimately affected by the decision of the case, and not just in court attempting to obtain a judgment favorable to their values.51

Identifying a plaintiff's interest in litigation plays an important role in determining whether a plaintiff has shown that he or she has suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not conjectural or hypothetical."52 Erwin Chemerinsky identifies the two major inquiries of the standing injury requirement that the Supreme Court used in deciding the Lewis case: "What does it mean to say that a plaintiff must personally suffer an injury; and what types of injuries are sufficient for standing?"53 The question of injury is an easy one for the court to answer if the plaintiff is able to state that he can "allege facts showing that he is himself adversely affected."54 The question, however, is a more difficult one when a plaintiff comes to court seeking an injunction to prevent imminent harm.55

B. Which Injuries Are Personal?

A plaintiff seeking an injunction to prevent imminent harm must convince the court that if the challenged action is not rectified, there is a good chance he or she will experience an actual injury. The Supreme Court provided its definition of a "good chance" in City of Los Angeles v. Lyons.56 The Lyons case involved the complaint of an African American male, who was seeking an injunction to prevent police officers from using a particular type of

51. See Sierra Club, 405 U.S. at 740.
52. Lujan, 504 U.S. at 560 (citations omitted).
53. See CHEMERINSK, supra note 4, § 2.5.2, at 64.
54. Sierra Club, 405 U.S. at 740.
55. While this Note argues against characterizing the injury claim in Lewis this way, and will argue that the plaintiffs rightfully alleged actual injury, this is the way the Court analyzed the injury claim (by characterizing the injury necessary for standing as being the loss of the opportunity to file a nonfrivolous claim). Lewis v. Casey, 518 U.S. 343, 352-53 (1996). Because this Note argues that the Court's decision on injury is wrong even if one characterizes the injury as imminent future harm, it is important to address the requirements for this type of injury.
chokehold. The plaintiff had experienced this type of chokehold and the complaint showed that fifteen people had died in Los Angeles as a result of this chokehold. In rejecting Lyons' complaint on the basis of standing, the Court held that in order to allege imminent injury of the type to warrant injunctive relief, a plaintiff must show "a sufficient likelihood that he will ... be wronged," or in Lyons' particular case, "he was likely to suffer future injury from the use of the chokeholds by police officers." Because the odds were so low that Lyons would ever be subjected to the chokehold again, Lyons could not convince the Court that any real threat of additional injury existed.

C. Which Injuries Are Sufficient?

The other important question surfacing in standing decisions in which injury is an issue is, "what injuries are sufficient?" As discussed previously, the plaintiffs in Lewis alleged violations of constitutional rights, and infringements on constitutional rights are often sufficient for a court to confer standing. Also, the general rule is that a plaintiff's assertion of "a violation of an individual liberty, such as freedom of speech or due process of law, will be accorded standing." Therefore, any plaintiff alleging actual infringement of a constitutional right should have standing in court, provided all of the other standing requirements are met. Courts consistently abide by this principle, finding that a plaintiff has satisfied the actual injury requirements of standing if they allege direct interference with a constitutional right.

57. See id. at 97-98.
58. See id. at 100.
59. Id. at 105, 111; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992) (holding that plaintiffs challenging a change in the Endangered Species Act did not demonstrate standing because they failed to show that they had actual plans to visit the areas and see the animals affected by the change in the Act).
60. See CHEMERINSKY, supra note 4, § 2.5.3, at 69.
61. See id. at 70.
62. See id.
63. A claim of constitutional infringement may fail to satisfy standing requirements if the court finds the claim to be too generalized. See id. § 2.5.5, at 82-89.
64. See, e.g., Braswell v. United States, 487 U.S. 99 (1988) (finding that standing was implied in cases where a plaintiff alleged government infringement on the Fifth Amendment
The only instance in which courts have not recognized infringement of a constitutional right as sufficient to meet the injury requirement is where the alleged infringement does not affect the plaintiff in a concrete manner. The line between which types of injuries are concrete enough to confer standing is not easily discerned. This blurred line is exemplified in the Supreme Court's decisions determining who has standing to bring suit in alleged violations of First Amendment rights. The Court has held consistently that "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." As one would imagine, a standard as vague as this one has produced different findings in cases where the factual situations appear to be quite similar.

III. RIGHT TO MEANINGFUL ACCESS AND STANDING: HOW THE COURT MISCONSTRUED THE RIGHT AND THE DOCTRINE IN LEWIS

A. The Right to Meaningful Access

1. Libraries or an Adequate Alternative Form of Legal Assistance Are the Only Means by Which Certain Prisoners Can Access the Courts

The Court in Lewis stated that a prisoner's right to access only requires a very limited degree of assistance from prison officials. Prisoners, according to the Court, do not have the right to research or legal advice of any kind, but only the right to be able to present their claims to the Court. With this statement, the Court showed that it was characterizing the right to meaningful access as

right against self-incrimination.

66. Compare Laird, 408 U.S. at 13-14 (holding that plaintiffs' claim that the Army's intelligence activities had a "chilling" effect on their First Amendment rights did not satisfy the concrete injury requirement of standing), with Meese v. Keene, 481 U.S. 465, 473 (1987) (holding that plaintiff's claim that he was "deterred from exhibiting the films by a statutory characterization of the films as 'political propaganda'" was sufficient to satisfy the actual injury requirement for an infringement on plaintiff's First Amendment rights).
68. Id.
prohibiting only state action that deprives prisoners of the opportunity to present their claim. For a prisoner without the ability to contact a lawyer, state inaction (in the form of failure to provide adequate sources of legal knowledge) creates a situation in which the State has effectively barred the prisoner from reaching the courts. A prisoner without knowledge of a § 1983 claim, or retroactive law invalidating his conviction, is unable to access the courts in the same way an indigent couple trying to file for divorce or a criminal defendant without a transcript for appeal cannot gain adequate access to the courts. The waiver of a fee or provision of a transcript are both forms of affirmative action, which the Court requires states to take. These actions are motivated by the same logic as requiring the states to provide prisoners with adequate law libraries or alternative assistance; specifically, removing barriers from a person's right to access the courts. Not providing a prisoner, who has no other means of obtaining knowledge, with information necessary for him to become aware of claims, is essentially barring him from having access to the courts.

For a prisoner without the ability to attain counsel the Bounds Court recognized that anything less than a law library or an alternative form of legal assistance (beyond making sure the prisoner's complaints get out the door) meant that prisoners were barred from having meaningful access to the courts. Consequently, the Court went far beyond telling prison officials that they could not interfere with the prisoner's filing of complaints. Bounds should not be read as the Court in Lewis did as establishing a new affirmative duty, but as continuing to protect the right to meaningful access to the courts by striking down policies and conditions that place barriers between the prisoner and the courts.

One reason the Lewis Court found dismissing Bounds' requirement of law libraries or a meaningful alternative as nonproblematic was that it believed "[t]hese elaborations upon the right of access to

69. See, e.g., Boddie v. Connecticut, 401 U.S. 371, 374 (1971) (holding that a filing fee needed to obtain a divorce was unconstitutional as it denied the couple their access to the courts); Griffin v. Illinois, 351 U.S. 12, 19 (1956) (stating that a state must provide an indigent criminal defendant with a trial transcript for appeal).
70. See supra notes 29-33 and accompanying text.
the courts have no antecedent in our pre-*Bounds* cases.\footnote{71. Lewis, 518 U.S. at 354.} Despite what the Court said, decisions prior to *Bounds* suggested the importance of requiring the State to provide the necessary tools for prisoners to discover potential claims.\footnote{72. See Michael Millemann, *Capital Post-Conviction Petitioners’ Right to Counsel: Integrating Access to Court Doctrine and Due Process Principles*, 48 MD. L. REV. 455, 460 (1989) (explaining cases prior to *Bounds* that held that states may not even place an indirect burden on meaningful access, and may have to “provide affirmative help to indigent prisoners”).} *Johnson v. Avery*\footnote{73. 393 U.S. 483 (1969).} served as the starting point for the Court’s recognition of the states’ affirmative duty to help prisoners access the courts. Not only did *Johnson* recognize the importance of assistance to indigent prisoners,\footnote{74. See supra notes 24-28 and accompanying text.} but it suggested that certain circumstances may exist in which a state would have some type of affirmative duty to ensure adequate access for prisoners.\footnote{75. See *Johnson*, 393 U.S. at 488 (holding that because “Tennessee does not provide an available alternative to the assistance provided by other inmates” the state’s prisons cannot forbid jailhouse lawyers from helping their fellow inmates).} Although the *Johnson* decision certainly cannot be read as mandating a state’s affirmative role in ensuring access, it does stand for the principle that courts will consider the actions of a state as they relate to assistance of the state’s prisoners.

In *Younger v. Gilmore*,\footnote{76. 404 U.S. 15 (1971) (per curiam). In this case the Supreme Court offered a per curiam opinion affirming a California district court’s decision. The California district court held that prison law libraries or an adequate alternative were an essential component of meaningful access to the courts. See *Gilmore v. Lynch*, 319 F. Supp. 105, 109-10 (N.D. Cal. 1970).} the Court built on *Johnson’s* foundation, establishing an affirmative duty on the states to ensure that their prisoners have access. Of special concern were the rights of indigent prisoners, who, without the provision of legal materials or assistance from the State, would have no access to the courts.\footnote{77. *Gilmore*, 319 F. Supp. at 109 (“[T]he right under the equal protection clause of the indigent and uneducated prisoner to the tools necessary to receive adequate hearing in the courts has received special re-enforcement by the federal courts in recent decades.”) (citations omitted), aff’d sub nom. *Younger v. Gilmore*, 404 U.S. 15 (1971) (per curiam).} This focus in *Gilmore*, on the state’s duty to provide assistance in the form of a law library or an adequate alternative, contradicts the *Lewis* majority’s contention that *Bounds* was the first case to recognize a state’s affirmative duty to provide prisoners with
certain assistance (in the form of a law library or alternative) to guarantee the right to access the courts.

Another reason the Court refused to recognize law libraries or an adequate alternative as a necessary component of meaningful access was, “[t]o demand the conferral of such sophisticated legal capabilities upon a mostly uneducated and indeed largely illiterate prison population is effectively to demand permanent provision of counsel, which we do not believe the Constitution requires.” This idea is inconsistent with the right to meaningful access in the context of prisoners. The reliance of many prisoners on the assistance of a “jailhouse lawyer” shows that the majority’s concerns about a slippery slope leading to mandating the appointment of counsel to guarantee meaningful access were exaggerated. By combining the holdings of Johnson and Younger one can understand how the Court saw the concept of the “jailhouse lawyer” as complementing the right to an adequate law library or assistance. The right to the assistance of fellow prisoners, provided for in Johnson, would allow prisoners to make use of the legal information the State was required to provide under Younger. The interaction of these two components of meaningful access, which the Court deemed essential, shows that the fears the Lewis majority expressed were exaggerated and unnecessary, as indigent and

79. See Note, Constitutional Law: Prison "No-Assistance" Regulations and the Jailhouse Lawyer, 1968 DUKE L.J. 343, 343 [hereinafter Jailhouse Lawyer] (characterizing jailhouse lawyers as "a group of knowledgeable inmate practitioners willing to assist their fellow inmates in the preparation of habeas petitions and other legal papers"). According to the note, the number of jailhouse lawyers increased to serve an increasing number of inmates who were unable to draft their own documents. Id.
80. Complement is the key word here as access to a jailhouse lawyer by itself does not satisfy the adequate alternative option. Access to updated materials is still essential. See supra notes 35-36 and accompanying text.
82. See Younger, 404 U.S. at 15; Jailhouse Lawyer, supra note 79, at 354-56. Jailhouse Lawyer was written before the Supreme Court’s ruling in Johnson v. Avery. In questioning the Sixth Circuit’s ruling allowing the prohibition of jailhouse lawyers, the author posits that jailhouse lawyers are an essential avenue in guaranteeing indigent, illiterate prisoners proper access to the courts. Id. The author argues that, although jailhouse lawyers may contribute to increased disciplinary problems, the State cannot prohibit them if it does not provide other assistance to prisoners seeking access. Id. at 358-60. Significantly, the Court cited Jailhouse Lawyer when issuing its opinion. Johnson, 393 U.S. at 487 n.4.
uneducated prisoners could use sources of legal knowledge effectively without the State having to provide counsel.

2. A State Cannot Fail To Provide a Necessary Component of Meaningful Access

Based on the preceding discussion, the Lewis Court contradicted significant right to access precedent when it stated: "But Bounds established no such right [to a law library or legal assistance] .... The right that Bounds acknowledged was the (already well-established) right of access to the courts." The second part of the Court's statement is correct; Bounds was based on that Court's acknowledgment of right to access. The first part of the statement is wrong, however, as the Bounds Court, while not establishing the right to a law library or legal assistance, reaffirmed the library or alternative assistance as necessary components of the right to access for prisoners. Therefore, when a prisoner alleges inadequate library facilities or alternative sources of legal knowledge, those inadequacies, if proven to be true, amount to violations of the right to meaningful access.

Inadequate law libraries (coupled with the lack of an alternative) must be viewed in the same light as a filing fee in divorce cases and the failure to provide a transcript in criminal appeals. As has been discussed previously, the Court has held that state policies placing a bar to access to the courts are violations of due process, and in some cases equal protection. For all practical

84. See Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970), aff'd sub nom. Younger v. Gilmore, 404 U.S. 15 (1971) (per curiam). In Gilmore, the district court explained that a prisoner's inability to become aware of what facts may be legally relevant to a claim destroys his right to meaningful access. Id. at 110.
87. See Boddie, 401 U.S. at 380-81; Griffin, 351 U.S. at 19. The Younger decision shows that the same equal protection issue evident in Boddie and Griffin could be present in a prisoner's claim for access to the courts. The district court stated:

Reasonable access to the courts is a constitutional imperative which has been held to prevail against a variety of state interests. Similarly, the right under the equal protection clause of the indigent and uneducated prisoner to the tools necessary to receive adequate hearing in the courts has received special re-
purposes, an indigent prisoner without a library is the equivalent of an indigent married person without sixty dollars to pay a filing fee for a divorce—neither individual is able to access the court effectively.\textsuperscript{88}

In the prison context, specifically, failure to provide a law library is the same thing as the prison not allowing inmates stamps to mail their petitions. Knowledge of a potential claim is just as necessary as a stamp for the prisoner’s claim to get to court.\textsuperscript{89} When the Court has recognized the right to access in a particular context, as they have for prisoners, the State \textit{must} operate from the baseline that neither its action nor inaction can create an absolute bar on access to the courts.\textsuperscript{90} This means that it is possible for a state, through inaction, to violate the Constitution by failing to provide a necessary component of meaningful access, such as a trial transcript or, as this Note argues, a source of legal knowledge.\textsuperscript{91} The subsequent argument will suggest that this characterization of the right to meaningful access, with a law library or alternative as a necessary component, alters drastically the Court’s decision in \textit{Lewis v. Casey}.\textsuperscript{92}

\footnotesize
\textsuperscript{88} Of course, this Note must show not only that a complete bar has been placed on access, but also that prisoners, like married couples and criminal appellants, assert important interests. The Court is obviously not concerned if citizens are not able to access the courts for inconsequential matters such as being forced to eat unappetizing food. For a discussion of the interests at play in prisoner litigation, see infra Part III.A.3.

\textsuperscript{89} See William H. Brooks, Recent Development, \textit{Meaningful Access for Indigents on Death Row: Giarratano v. Murray and the Right to Counsel in Postconviction Proceedings}, 43 VAND. L. REV. 569, 573 (1990) (“Some courts and commentators have stated that a prisoner’s most important right is meaningful access to the courts. None of the prisoner’s other constitutional rights has any real meaning without the protection of access to court.”).

\textsuperscript{90} See Gerald E. Frug, \textit{The Judicial Power of the Purse}, 126 U. PA. L. REV. 715, 757-62 (1978) (stating that “[t]he crux of the constitutional violation [in \textit{Griffin v. Illinois}] was not illegitimate state action but state inaction”). This inaction effectively placed a bar on an indigent defendant’s access to the courts. \textit{Id.}

\textsuperscript{91} See \textit{id}. at 758 (referring to the violation in \textit{Griffin} as “the absence of an adequate government subsidy for transcripts”). It is also noteworthy that Professor Frug, shortly after the \textit{ Bounds} decision, considered that decision to “extend[] the transcript and counsel cases by affirming a district court order requiring North Carolina to provide a law library to state prisoners in order to ensure protection of the prisoners’ ‘constitutional right of access to the courts.’” \textit{Id.} at 761.

\textsuperscript{92} See discussion \textit{infra} Part III.A.4.
3. Interest Analysis: A Prisoner’s Interest in Reaching the Courts Compared to Those Interests the Court Has Protected

This Note will now analyze a prisoner’s interest in accessing the courts as compared to the interests of other groups whose access the Court has protected. The Note will focus on two of a prisoner’s most important claims: habeas corpus and § 1983.

Critics of this Note’s argument likely will attempt to distinguish the right asserted in Lewis from the right asserted in Griffin by arguing that the interest in access to the courts is greater for a criminal case. In making this argument, critics will assert that in almost all cases a prisoner’s lawsuit is not criminal and therefore should not receive the same level of protection that an indigent criminal appellant receives.93

Although determining the protection of a potential litigant’s access solely on the basis of whether the matter is criminal or civil may sound appealing, the Supreme Court has explained why it is not the proper analysis. In M.L.B. v. S.L.J., the Supreme Court focused on the interest involved in the litigation rather than whether the litigation was criminal or civil in nature.94

The Court in M.L.B. found that a state could not bar access to the courts for “appellate review of the sufficiency of the evidence on which the trial court found [petitioner] unfit to remain a parent.”95 M.L.B had challenged Mississippi’s requirement that she pay a preparation fee of over $2000 to appeal the trial court’s termination of her parental rights.96 While focusing on the interests involved, the M.L.B. Court found that not only was the Griffin decision still viable, but that it extended beyond criminal cases where the defendant/appellant was not facing incarceration.97 The Court cited

95. Id. at 107.
96. Id. at 106-07.
97. See id. at 110-12.
to *Mayer v. City of Chicago*, which held that a state could not block a petty offender's access to the courts.\(^8\)

The *M.L.B.* Court then analyzed "a narrow category of civil cases in which the State must provide access to its judicial processes without regard to a party's ability to pay court fees."\(^9\) After discussing the aforementioned *Boddie*, the Court focused on the decision in *United States v. Kras*\(^10\) in attempting to explain which interests were worthy of the Court's protection from an absolute bar to the courts.

*Kras* involved a fee that was necessary to obtain a discharge in a bankruptcy proceeding.\(^11\) The Court refused to require waiver of the fee because the bankruptcy discharge did not involve a "fundamental interest."\(^12\) The factors critical to the Court's determination that bankruptcy discharge was not a "fundamental interest," for which access to the courts should be guaranteed, were: (1) the interest a debtor has in being able to have a "new start in life" is not equivalent to the interest a couple has in starting or ending a marriage, and (2) unlike marriage and divorce, a debtor has alternative avenues of achieving his interests without access to the courts.\(^13\) The Court emphasized that "[g]aining or not gaining a discharge will effect no change with respect to basic necessities."\(^14\)

Applying the Supreme Court precedent discussed in this section of the Note demonstrates that the Court should protect prisoners from a complete bar to court access. This should become apparent when comparing a prisoner's interest in habeas corpus and § 1983 claims to those interests at play in *Griffin, Boddie, M.L.B.*, and *Kras*.

Examining a prisoner's interest in habeas corpus shows similarities between the interest of a prisoner and the interest of a criminal

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\(^8\) See 404 U.S. 189, 195-96 (1971).
\(^9\) *M.L.B.*, 519 U.S. at 113-16.
\(^11\) See id. at 435-36.
\(^12\) See id. at 445.
\(^13\) See id. at 445-46 (noting that even if "Kras is not discharged in bankruptcy, his position will not be materially altered in any constitutional sense" as well as the other options available to a debtor).
\(^14\) Id. at 445.
appellant in *Griffin*. In both situations the litigant has been deprived of liberty, which is unquestionably a fundamental interest. Also, both the criminal appeal and writ of habeas corpus serve a similar function in providing a check to ensure that the litigant has not been improperly deprived of liberty.

Although a habeas petition may be different than a direct appeal in that it comes after the prisoner already has had several bites at the apple, the interest underlying the petition is still correcting a false deprivation of liberty. This interest makes the prisoner's litigation more like *Griffin* and *M.L.B.* than *Kras*. Whereas failure to achieve a discharge in a bankruptcy proceeding would not "materially alter[] [Kras' interests] in any constitutional sense," the same cannot be said for the prisoner seeking relief from unconstitutional confinement. Unlike a discharge in a bankruptcy proceeding, freedom from unconstitutional confinement addresses one of a person's "basic necessities."

Also, the resolution of a prisoner's habeas petition can be obtained only through access to the courts. Because the courts are the sole means of redress, a prisoner's interest in a habeas petition more resembles *Boddie*, *Griffin*, and *M.L.B.* than it does *Kras*.

Even though § 1983 claims do not involve the issue of deprivation of liberty, one could argue that these claims could involve a fundamental interest, placing the right to access in that "narrow category of civil cases in which the State must provide access to its judicial process[]." For instance, a prisoner could assert that the conditions of confinement, such as overcrowding, create grounds for a claim that the State is subjecting him to "cruel and unusual punishment." One would think that interests having a close relationship to the express protections of the Constitution would

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105. *See Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (asserting "the importance of appellate review to a correct adjudication of guilt or innocence").
106. *See Barry Friedman, Failed Enterprise: The Supreme Court's Habeas Reform*, 83 CAL. L. REV. 485, 488 (1995) (averring that habeas corpus serves the purposes of "vindicating constitutional rights, deterring violation of those rights in future cases, and perhaps ensuring that punishment is only afforded to those deserving of it").
108. *See id*.
109. *See supra* notes 101-02 and accompanying text.
111. U.S. CONST. amend. VIII.
have satisfied the *M.L.B.* Court's interest analysis. Unlike *Kras*, a petitioner alleging prison overcrowding is not merely looking for a "new start in life." Rather, he is asserting his constitutional right against cruel and unusual punishment.

Because the interests at play in prisoner litigation are of fundamental importance, a state should not be able effectively to bar prisoners from reaching the courts to assert those interests. The position is strengthened by the fact that access to the courts is the sole avenue for redressing the claimed infringement of these interests.

4. Adequacy: A Discernable Standard

Aside from the two arguments of the *Lewis* Court and potential criticisms mentioned above, opponents of a right to access that necessarily includes an adequate law library or alternative would argue that determining what is adequate would be a difficult, if not impossible task, and certainly more trouble than it is worth. This is not a legitimate concern, since both courts in charge of remedying *Bounds* violations, and the people in charge of providing prisoners with the materials to ensure that *Bounds* violations did not occur, were able to perform their functions properly.

As more and more inmates began to invoke the right to an adequate law library (or alternative), the courts were able to flesh

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113. See supra notes 67-68, 71, 78 and accompanying text (discussing the *Lewis* Court’s beliefs that a law library had never been recognized as essential in and of itself, and that requiring a law library would be wasteful as prisoners would not be able to make use of it).
114. See, e.g., Petrick v. Maynard, 11 F.3d 991, 994-96 (10th Cir. 1993) (holding that the failure to provide an inmate with legal materials necessary to attack his conviction is a violation of meaningful access); Johnson v. Moore, 948 F.2d 517, 521 (9th Cir. 1991) (holding that free photocopying is not essential to meaningful access). For a discussion of prison law librarians following the *Bounds* standard, see Karen Westwood, "*Meaningful Access to the Courts" and Law Libraries: Where Are We Now?, 90 LAW LIBR. J. 193, 194-95 (1998) (noting that although prison law librarians had to wait to see what the courts deemed adequate in order to meet the *Bounds* standard, the librarians had become used to working with the standard in the time between *Bounds* and *Lewis*). The article goes on to suggest that the *Lewis* decision provides law librarians with a new standard to which they will have to adjust. *Id.* at 196.
out the meaning of the term “adequate.” Courts developed this aspect of right to access jurisprudence by approving or rejecting individual prison policies. The reason for defining such a general term piece by piece at a time was the broad discretion the Bounds Court gave to states to determine what was “adequate.” Although defining “adequate” by examining individual policies required a wait-and-see mentality for those in charge of providing adequate access, the courts were effective in developing a definition of the limits of the term.

The above discussion shows that courts, in the time between Bounds and Lewis, were able to contribute to the definition of the term “adequate” by either approving or rejecting a prison’s attempt to provide “adequate” access. This proved to be an effective process for ensuring that states were allowed maximum discretion in meeting the standards of adequacy, while providing officials and librarians with a workable standard.

B. Lewis and Standing: Access Denied

1. Standing Analysis: Viewing the Right to Access as Necessarily Including a Law Library or Adequate Alternative

If the right to meaningful access for prisoners necessarily includes a law library or adequate alternative, as this Note has

115. See, e.g., Blake v. Berman, 877 F.2d 145, 146, 148 (1st Cir. 1989) (holding that screening of a claim by a legal aid program is not essential to meet Bounds adequacy requirement); Morrow v. Harwell, 768 F.2d 619, 623 (5th Cir. 1985) (holding that a bookmobile service accompanied by minimal assistance from local law students was not adequate to ensure meaningful access); Spates v. Manson, 619 F.2d 204, 205-08 (2d Cir. 1980) (discussing certain volumes a prison library needs in order to be deemed adequate).

116. See Bounds v. Smith, 430 U.S. 817, 832-33 (1977) (explaining that “[p]rison administrators...exercised wide discretion within the bounds of constitutional requirements” for a prisoner’s meaningful access to the courts). The Court addressed the issue of local discretion in refuting prison administrators’ claims that “federal courts should not ‘sit as co-administrators of state prisons.’” Id. at 832. While admitting that judicial restraint is often appropriate in prisoner rights litigation, the Court stated that the judicial restraint “cannot encompass any failure to take cognizance of valid constitutional claims.” Id. (quoting Procunier v. Martinez, 416 U.S. 396, 405 (1974)).

117. See Westwood, supra note 114, at 194.

118. See supra notes 115-17 and accompanying text.
argued, then the Court's standing analysis is severely flawed and unnecessary. Characterizing the right in this way, as including a law library or adequate alternative, means the State directly violates a prisoner's right to access when one of these two options is not present. Using the injury analysis described earlier, it is apparent that when operating under the proper characterization of the right to access, the Lewis plaintiffs must have had standing.

The Lewis plaintiffs alleged that the government was "depriving respondents of their rights of access to the courts and counsel protected by First, Sixth, and Fourteenth Amendments." The basis of that argument was the presence of an inadequate library system, something to which, as this Note has argued, prisoners have a right in order to make their access to the system meaningful. This fits squarely into the infringement on individual liberty that Professor Chemerinsky discussed when describing injuries sufficient to warrant standing.

Arguments that this type of injury is too generalized should fail as well. When a court has denied plaintiffs standing because the harm they allege is too generalized, the question a court always asks is: Does the alleged infringement affect the plaintiff any differently than it does a large segment of the rest of the population? Examination of the claims brought by the prisoners shows that they are not too generalized, despite the fact that the class

119. See supra Part III.A.

120. The Court in Lewis admitted that its standing analysis would have been different if it had viewed a law library or adequate alternative as necessary. See Lewis v. Casey, 518 U.S. 343, 350 (1996) (stating that the "foregoing analysis would not be pertinent here if, as respondents seem to assume, the right at issue—the right to which the actual or threatened harm must pertain—were the right to a law library or legal assistance").

121. See supra Part II (discussing that courts consider a plaintiff "injured" for standing purposes if the government has infringed upon an "individual liberty" that is not too generalized).

122. Lewis, 518 U.S. at 346 (citation omitted).

123. See id.

124. See Chemerinsky, supra note 4, § 2.5.3, at 69.

125. See, e.g., Warth v. Seldin, 422 U.S. 490, 499 (1975) ("[W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction."). For an example of a court applying this analysis, see Shaffer v. Clinton, 54 F. Supp. 2d 1014, 1017 (D. Colo. 1999) (holding that a person does not have standing to sue when they allege generalized grievances experienced by all federal taxpayers).
action was brought "on behalf of all adult prisoners who are or will be incarcerated by the State of Arizona Department of Corrections."\textsuperscript{126} Prisoners are by no means a large segment of the population, and certainly not on scale with a group like federal taxpayers. Rather, prisoners are a smaller group, who uniquely experience the government's infringement on liberty. In these situations, the courts have consistently conferred standing.\textsuperscript{127}

As this Note has already argued, to be meaningful a prisoner's access to the courts must include a law library or alternative.\textsuperscript{128} This means that the inadequacy of a library is a constitutional infringement on a prisoner's individual liberty—an infringement imperative for the courts to remedy.\textsuperscript{129} As this direct infringement on the right to meaningful access is uniquely experienced by prisoners, the court clearly has standing in cases in which prisoners allege an inadequate law library or alternative.

2. Standing Analysis: Even if a Law Library Is Not Viewed as a Necessary Component to the Right To Access

Even when working from the Court's improper baseline, which construed the right to access narrowly, the standing decision in\textit{Lewis v. Casey} is still incorrect.

\textit{a. Background: The Real Reasoning Behind the Standing Decision in Lewis v. Casey}

The Court has often been criticized for manipulating standing doctrine to achieve goals consistent with its members' political or

\begin{footnotesize}
\begin{enumerate}
\item 126. \textit{Lewis}, 518 U.S. at 346 (citation omitted).
\item 127. See, e.g., Credit Union Nat'l Ass'n v. Nat'l Credit Union Admin. Bd., 573 F. Supp. 586, 590 (D.D.C. 1983) (holding that a taxpayers' claim is not too generalized where they allege "a particular harm not shared by the population in general").
\item 128. See discussion supra Part III.A (arguing that a proper construction of meaningful access includes a law library).
\item 129. See supra note 69 and accompanying text (asserting that prisoners without adequate legal resources are effectively barred from accessing the courts, as there is no way for them to be aware of certain civil rights claims or laws that would allow them to challenge their convictions).
\end{enumerate}
\end{footnotesize}
societal values. One scholar asserts that the Justices' political preferences often allow for a political scientist to predict the outcome of cases, in which the decision rests on standing, without any detailed knowledge of standing law. Another scholar has focused on the Court's use of standing to keep the "little guy" out of court. Because standing doctrine is manipulated so commonly to achieve a desired result, it is appropriate to scrutinize the Court's standing decisions.

b. Standing in Lewis Reexamined: Plaintiffs Suffered Actual Injury

A comparison of the Lewis Court's injury analysis with injury analysis in other cases shows that the Lewis decision was or may have been based on something other than sound constitutional precedent. Based on the Court's decisions in other areas of standing, particularly antidiscrimination, one must conclude that the Lewis prisoners were actually injured for the purposes of standing. The Court's injury analysis in Lewis appears particularly obnoxious when compared with how the Court has construed injury for white contractors challenging set-aside programs for minorities. As Gene Nichol states, "[t]he Supreme Court's racial set-aside cases

130. See generally Nichol, supra note 11; Richard J. Pierce, Jr., Is Standing Law or Politics?, 77 N.C. L. Rev. 1741 (1999).
131. Pierce, supra note 129, at 1754-55. The author states that
[a] political scientist with no knowledge of the law of standing would have had no difficulty predicting the outcome of each case and predicting thirty-one of the thirty-three votes cast by Justices with clear ideological preferences, based solely on his knowledge of the ideological preferences of the Justices.

132. See Nichol, supra note 11, at 304 (arguing that "the injury standard is not only unstable and inconsistent, but that it also systematically favors the powerful over the powerless").

133. This is especially important when, as in Lewis, the Court mixes the discussion of standing and the merits of the case together. In Lewis, the mixing of standing decisions with the merits of a claim led to questionable decisions on both grounds. See supra Part III.A. (discussing the merits of the Lewis decision); infra Part III.B.2.b-c (discussing standing).

134. See Nichol, supra note 11, at 311 ("The Supreme Court, in Regents of the University of California v. Bakke and other racial affirmative action cases, has permitted challenges to admissions programs even when the particular plaintiff ... believes that a program has harmed him, even if, in fact, it has not.")
have ... based standing on purported 'barriers' to access faced by white contractors. This is so even if the roadblocks are merely theoretical—since the plaintiffs do not need to show that they would have obtained contracts but for the set-asides.\textsuperscript{135}

Federal courts have consistently applied the principle Nichol described. As such, they have held repeatedly that whites challenging set-aside programs do not have to show that they actually would have received the job or the promotion but for the set-aside.\textsuperscript{136} Because courts that have allowed standing in set-aside cases have based their injury analysis on the fact that the government has barred access to something (in this case, the opportunity to compete for a job), with no concern for whether the plaintiff would have been successful had he or she had access to what they were seeking,\textsuperscript{137} these cases are virtually identical to \textit{Lewis}.

In both \textit{Lewis} and the set-aside cases, the plaintiffs argued that the government had created a barrier, preventing the plaintiffs from having access to a constitutional right. It is unreasonable for the Court to say that the prisoners “must go one step further”\textsuperscript{138} by proving that they would have had a successful claim, while not requiring contractors to show that they would have made the winning bid on the job in question. In arguing that the Supreme Court’s application of injury analysis has been absurd, Nichol compares the injury analysis in \textit{Lewis} to an injury in an affirmative action case. Nichol observes:

\begin{quote}
If the Court had required Alan Bakke to meet this version of concrete injury he would have had to prove not only that he would have been admitted to the Cal-Davis medical school, but that he also had a high-paying job waiting for him and had been accepted into membership at the country club.\textsuperscript{139}
\end{quote}

\textsuperscript{135} Id. (emphasis added).
\textsuperscript{136} See, e.g., N.E. Fla. Chapter of the Associated Gen. Contractors v. Jacksonville, 508 U.S. 656 (1993) (holding that standing was satisfied by general contractors challenging a set-aside program); Price v. City of Charlotte, 93 F.3d 1241 (4th Cir. 1996) (holding that white police officers could challenge a promotion program without showing that they would have been promoted but for the program).
\textsuperscript{137} See N.E. Fla. Contractors, 508 U.S. at 666; Nichol, supra note 11, at 311.
\textsuperscript{139} Nichol, supra note 11, at 329.
Viewing Lewis and the set-aside/affirmative action cases together shows that even if one does not accept the argument that a right to a law library or alternative is essential to the right to meaningful access, a prisoner who has been deprived of such things has suffered an injury for the purposes of standing. The Lewis Court was wrong in requiring the prisoners to go “one step further” by alleging a successful claim when the prisoners had gone as far as the set-aside plaintiffs in alleging that the State had denied them the opportunity to compete. According to the set-aside cases, one need not show that they would win that competition in order to demonstrate standing. Making the Lewis injury analysis compatible with the injury analysis in the Court’s other decisions is essential to reforming what has produced what scholars have called absurd results.

c. Standing in Lewis Reexamined: Even if Plaintiffs Experienced No Actual Injury, Harm/Injury Was Imminent

The Court’s injury analysis in Lewis is wrong even if one denies the fact that plaintiffs had suffered an injury in fact. A plaintiff may satisfy the injury requirement of standing if he or she is able to allege that injury is imminent. The plaintiff in City of Los Angeles v. Lyons failed because, in the Court’s view, he did not “credibly allege that he faced a realistic threat from the future application of the City’s policy.” The Court

140. Lewis, 518 U.S. at 351.
141. Competing for a job must be viewed in the same light as competing for a favorable resolution to a court claim. In both cases not having the opportunity to compete for something causes the injury.
142. See Nichol, supra note 11, at 338-39 (arguing that “[t]he injury inquiry should embrace a significant presumption in favor of the plaintiff’s claim .... A generous predisposition towards finding injury would also go far to dismantle the artificial categories of injury that have rendered the Court’s standing jurisprudence one of the most manipulated, result-oriented arenas of constitutional law”). See generally Mark V. Tushnet, The New Law of Standing: A Plea For Abandonment, 62 CORNELL L. REV. 663 (1977) (describing the appropriate injury standard as plaintiff-friendly).
143. Of course, as this Note has argued, the plaintiffs in Lewis alleged an actual injury when they claimed that the state of Arizona infringed on their right to have an adequate law library or alternative to make their access to the courts meaningful.
144. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992); CHEMERINSKY, supra note 4, § 2.5.3, at 66-69.
145. 461 U.S. 95, 107 n.7 (1983).
determined that the probability that Lyons would be illegally injured by a police chokehold again was very low, and no greater than any other citizen of Los Angeles. Significantly, the Court’s statement links the imminency of injury to plaintiffs to whether the claim is too generalized. This is a significant distinction, as a population of prisoners—a distinct group from the general population—are all uniquely affected by the violation alleged in Lewis. Because Arizona’s prison law library policy uniquely affects prisoners, the Court must accept the argument that, unlike Lyons, injury was substantially more imminent for the Lewis plaintiffs than the general population.

The Lewis plaintiffs’ injury is also distinguishable from Lyons because there is a realistic threat of future harm in Lewis. One reason for the Court’s determination that Lyons had failed to allege imminent harm was that a future application of a chokehold would require first that the plaintiff have a direct encounter with the police—something that happens infrequently—and, second, that the plaintiff would resist the authority of the police. While incarcerated, a prisoner encounters prison guards and conditions that may violate his civil rights every hour of every day. Assault and sexual abuse within prisons are major problems that prisoners face on a continuous basis. Without access to legal materials or assistance providing prisoners with the tools to bring these claims in a timely fashion, it is inevitable that prisoners miss out on claims—though not necessarily successful claims—that should have been heard on the merits will not have the opportunity to present them.

146. See id. at 111 ("Absent a sufficient likelihood that he will again be wronged in a similar way, Lyons is no more entitled to an injunction than any other citizen in Los Angeles..."). It should be noted that the Court’s decision in Lyons has received substantial criticism for its strict standard. See Christopher v. Dept’ of Highway Safety, 209 F. Supp. 2d 1290, 1294 (S.D. Fla. 2001) (agreeing that Lyons “render[s] [the federal courts] impotent to order the cessation of a policy which may indeed be unconstitutional and harm many persons.”) (quoting Williams v. City of Chicago, 609 F. Supp. 1017, 1020 n.7 (N.D. Ill. 1985)); Nichol, supra note 11, at 328-29.

147. See supra notes 126-27 and accompanying text.

148. Lyons, 461 U.S. at 105-06.

149. See Gerald G. Gaes, The Effects of Overcrowding in Prison, in 6 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 95, 127-34 (Michael Tonry & Norval Morris eds., 1985) (explaining how overcrowding in prisons has led to an increase in the number of assault reports).
A. Equitable Tolling

As argued previously throughout this Note, there are a number of reasons why the *Lewis* Court erred in deciding that prisoners did not have standing. The consequences of the error are severe. One of the major problems for inmates without adequate access is the loss of a claim due to the passing of the statute of limitations. The solution to this problem is a system of equitable tolling, which allows prisoners to file a claim, allegedly frustrated by inadequate legal materials, after the statutory period has expired.

Equitable tolling has been used in other areas of prisoner litigation, and is similar to what would be allowed under the standard the *Lewis* majority posited. Although allowing equitable tolling addresses a major area of concern in a prisoner's access to the courts, it still assumes too much to provide adequate protection. Equitable tolling assumes that all those who have a claim will become aware of that claim, even if this awareness comes after the statute of limitations. The question remains as to what happens to those who never become aware of a claim due to inadequate libraries or legal assistance.

B. Injunctive Relief: Back to Bounds

Because of the concerns remaining even with a system of equitable tolling in place, some type of injunctive relief is necessary
to provide an appropriate remedy for the right to access.\textsuperscript{154} In order truly to remedy the violation of the right to access by failure to provide a law library or meaningful alternative, a continuing violation of the Constitution, the Court must strike down either policy or government action causing the violation.\textsuperscript{155}

Because the right (right to access), the type of infringement (a barrier to that access), and the interests at play are substantially similar in \textit{Lewis}, \textit{Bounds}, \textit{Griffin}, \textit{Boddie}, and \textit{M.L.B.}, the prisoners in \textit{Lewis} should have been granted injunctive relief if they were able to show that a policy of the State caused the barrier to access. Indigent prisoners in \textit{Lewis} are no different than indigent married couples or indigent criminal defendants.\textsuperscript{156}

It is important, however, that the injunctive relief is not overly broad, potentially taking away necessary deference from local officials.\textsuperscript{157} Although the injunctive relief overturned in \textit{Lewis} may have been too broad, that does not mean that a court cannot issue injunctive relief in a manner that gives the right to access the protection it deserves, while at the same time respecting local control over prisons.\textsuperscript{158}

\textsuperscript{154} Injunctive relief is also an appropriate remedy for a violation of the right which this Note has characterized above—a right to access, including a right to a law library or meaningful alternative. This was also the remedy chosen by the Supreme Court in \textit{Boddie} and \textit{Griffin} to address the denial of meaningful access in those cases.

\textsuperscript{155} See, \textit{e.g.}, \textit{Boddie v. Connecticut}, 401 U.S. 371 (1971); \textit{Griffin v. Illinois}, 351 U.S. 12 (1956). In these cases the Court struck down the policy presenting the barrier instead of just allowing tolling or addressing an individual case. For example, \textit{Griffin} went beyond hypothetically saying, "Okay Mr. Griffin, you may file and you may have a transcript for your appeal." Rather, the Court essentially enjoined the State from charging indigent prisoners for appellate transcripts. \textit{Griffin}, 351 U.S. at 19-20.

\textsuperscript{156} A policy that denies a prisoner proper access to file a petition for habeas corpus is particularly analogous to a policy that denies access to a criminal appeal because the result of each policy is to deprive the petitioner of their opportunity to avoid their criminal punishment.

\textsuperscript{157} This Note does not contest Justice Scalia's argument that in fashioning the injunctive relief, the Ninth Circuit overstepped its authority and took necessary deference away from state officials. \textit{See Lewis v. Casey}, 518 U.S. 343, 361-83 (1996).

\textsuperscript{158} \textit{Bounds} exemplifies this type of injunction. \textit{See Bounds v. Smith}, 430 U.S. 817, 832 (1977) (allowing local administrators to experiment in finding a system that suits their needs while achieving "compliance with constitutional standards"). Justice Scalia even admitted that the \textit{Bounds} Court properly considered traditional deference to local authorities when crafting the injunction. \textit{See Lewis}, 518 U.S. at 351-52 (explaining the \textit{Bounds} Court's mention of the possibility for "local experimentation" in ensuring a prisoner's right to access the courts is satisfied) (internal quotation marks omitted).
CONCLUSION

Until Lewis, the Supreme Court had established a right to access for prisoners that was meaningful and compatible with the way the right had been defined in other contexts. With a guaranteed right to a law library or adequate alternative of legal assistance, the Bounds Court ensured the equal protection of indigent prisoners. In making its provision, Bounds realized that without a law library or adequate alternative indigent prisoners were effectively barred from accessing the judicial system. Bounds was based not only on a long line of decisions in the prisoner rights context, but also was consistent with Supreme Court precedent applying to other indigent groups seeking a right to access.

Demonstrating this consistency are Boddie v. Connecticut and Griffin v. Illinois, important precedents for the Court's use of the Fourteenth Amendment to invalidate state policies that placed a bar on an indigent's right to have meaningful access to the courts. In these cases, the Court found that laws or policies that had the effect of preventing married couples seeking divorce or convicted criminals seeking appeals from gaining access to the courts because of their indigence were violative of both the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

As this Note has discussed, the interests involved in prisoner litigation are comparable to those that have been afforded protection in other contexts. Habeas claims involving deprivation of liberty and § 1983 claims invoking the Eighth Amendment are two examples of litigation in which precedent would seem to dictate protection of access to the courts.

The Lewis decision shattered both the meaningfulness and compatibility that existed in this area of the Court's jurisprudence. Without a law library or meaningful alternative, prisoners without the means to hire attorneys are essentially barred from accessing the courts. This result opposes the crux of meaningful access.

159. Bounds, 430 U.S. at 825 (explaining the importance of the right to access to indigent prisoners).
161. See supra Part I.A.
162. See supra Part III.A.3.
jurisprudence: that the government may not, directly or indirectly, place a bar on access to the courts.  

Furthermore, the Court developed a new actual injury requirement that is inappropriate even under the Lewis majority's belief that meaningful access does not include a prisoner's right to a law library.  

This enhanced injury requirement also took away the ability for courts to fashion appropriate relief for a right to access violation.  

This Note has demonstrated the unsound footing on which Lewis relies. Because Lewis was incorrectly decided, the Court must reconsider the question and bring the meaningfulness back to meaningful access.

Joseph A. Schouten

164. See supra Part III.B.2.b.
165. See supra Part IV.B (explaining the necessity of injunctive relief).