See Martin v. Catalanotto, 895 F.2d 1040, 1042 (5th Cir. 1990).

https://scholar.google.com/scholar_case?case=2531215351511793814&q=Martin+v.+Catalanotto,+895+F.2d+1040,+1042+(5th+Cir.+1990).+&hl=en&as_sdt=40006

In Bounds v. Smith, 430 U.S. 817, 825, 97 S.Ct. 1491, 1496, 52 L.Ed.2d 72 (1977)

https://scholar.google.com/scholar_case?case=13244530668768670135&q=Bounds+v.+Smith,+430+U.S.+817,+825,+97+S.Ct.+1491,+1496,+52+L.Ed.2d+72+(1977)&hl=en&as_sdt=40006

Chandler v. Baird, 926 F.2d 1057, 1062 (11th Cir. 1991).

https://scholar.google.com/scholar_case?case=5600195091756863080&q=Chandler+v.+Baird,+926+F.2d+1057,+1062+(11th+Cir.+1991)&hl=en&as_sdt=40006

Lewis v. Casey, 518 U.S. 343,351, 116 S.Ct. 2174, 2180, 135 L.Ed.2d 606 (1996).

https://scholar.google.com/scholar_case?case=16817604609202569554&q=Lewis+v.+Casey,+518+U.S.+343,351,+116+S.Ct.+2174,+2180&hl=en&as_sdt=40006

In another inmate case, the court stated, "[w]hile it is clearly impermissible to obstruct a prisoner's physical access to the courts, or to take actions that effectively deny court access, it is not constitutionally repugnant to require an indigent civil litigant to comply with rules necessary to facilitate the functioning of the justice system." Hodge v. Prince, 730 F. Supp. 747, 751 (N.D. Tex. 1990), affirmed, 923 F.2d 853 (5th Cir. 1991), aff'd, 923 F.2d 853 (5th Cir. 1991).

https://scholar.google.com/scholar_case?case=4218493624667700181&q=Hodge+v.+Prince,+730+F.+Supp.+747,+751+(N.D.+Tex.+1990),+affirmed,+923+F.2d+853+(5th+Cir.+1991),+aff%E2%80%99d,+923+F.2d+853+(5th+Cir.+1991&hl=en&as_sdt=40006

http://legaliq.com/Case/Hodge_V_Prince

895 F.2d 1040 (1990)

Herbert Glenn MARTIN, Plaintiff-Appellant,
v.
Michael CATALANOTTO, et al., Defendants-Appellees.
Eric Leon WILLIAMS, Plaintiff-Appellant,
v.
Daryl HORTON, et al., Defendants-Appellees.

Nos. 88-3300, 88-3387.

United States Court of Appeals, Fifth Circuit.

March 7, 1990.

1041 *1041 Herbert Glenn **Martin**, Angola, La., pro se.

Joseph Erwin Kopsa, Asst. Atty. Gen., Baton Rouge, La., for defendants-appellees.

Eric Leon Williams, St. Gabriel, La., pro se.

Before HIGGINBOTHAM, SMITH, and DUHE, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

Herbert Glenn **Martin** and Eric Leon Williams appeal the district court's dismissal of their 42 U.S.C. § 1983 suits because they did not exhaust the prison grievance procedure set up by the Louisiana Department of Public Safety and Corrections. Concluding that the Louisiana prison grievance procedure is an "effective" remedy within the meaning of 42 U.S.C. § 1997e, we affirm.

I

Martin filed suit against three correctional officers at the Louisiana State Penitentiary at Angola, Michael **Catalanotto**, S. Poret, and Lieutenant Turner. **Martin** asserts that after he requested protection from an enemy, **Catalanotto** and Poret beat him while he was handcuffed and shackled. He alleges that the two then called Lieutenant Turner and all three men then assaulted him. He asserts that after the beating, the three guards refused to provide him with medical attention. **Martin** seeks monetary damages to compensate him for the injuries he received as a result of the beating.

Williams filed suit against Sergeant Daryl Horton, Lieutenant Darryl Johnson, and John Whitley, the warden of Louisiana's Elaine Hunt Correctional Center. Williams alleges that he slipped and suffered back and neck injuries because of a leaking faucet in his cell. He asserts that despite his complaints about the faucet Sergeant Horton and Lieutenant Johnson did nothing to fix it. He asserts that the guards delayed in obtaining medical treatment for him. Williams seeks money damages for his injuries.

The district court ordered **Martin** and Williams to exhaust the Louisiana prison grievance procedure. When they did not exhaust the court dismissed their suits.

II

Section 1997e of the Civil Rights of Institutionalized Persons Act, or CRIPA, 42 U.S.C. § 1997e, authorizes states to set up prison grievance procedures which district courts can order prisoners to exhaust before proceeding with their civil rights suits. Section 1997e requires these procedures to be approved by the Attorney General or a federal district court as meeting certain minimum standards[1] before a court can order exhaustion of the procedure. Section 1997e is an exception to § 1983's normal non-exhaustion rule and is not intended to apply when a § 1983 action "raises issues which cannot, in all probability, *1042 be resolved by the grievance resolution system, including cases where imminent danger to life is alleged. Allegations unrelated to conditions of confinement, such as those which center on events outside of the institution, would not appropriately be continued for resolution by the grievance resolution system." *Patsy v. Board of Regents,* 457 U.S. 496, 102 S.Ct. 2557, 2565 n. 12, 73 L.Ed.2d 172 (1982) (quoting legislative history). Under § 1997e district courts can only order the exhaustion of "such plain, speedy, and effective administrative remedies as are available." 42 U.S.C. § 1997e(a)(1).

1042

Pursuant to enabling legislation, La.Rev.Stat.Ann. §§ 15:1171-1177 (West Supp.1989), the Louisiana Department of Public Safety and Corrections set up such a procedure for Louisiana prisoners. The United States District Court for the Middle District of Louisiana approved the procedure as meeting § 1997e's minimum standards.

Although we have held that the dismissal of a Louisiana prisoner's § 1983 suit for failure to exhaust the Louisiana prison grievance procedure is within the discretion of the district court, *Lay v. Anderson,* 837 F.2d 231, 233 (5th Cir.1988); *Rocky v. Vittorie,* 813 F.2d 734, 736 (5th Cir.1987), we have not addressed the propriety of dismissal for failure to exhaust in a case in which the prisoner seeks damages for personal injury. **Martin** and Williams admit that the Louisiana procedure does not exempt their claims from exhaustion, but argue that since the Louisiana procedure does not authorize officials to grant the remedy they seek, a money judgment, *Mack v. State,* 529 So.2d 446, 448 (La.App. 1st Cir.), *cert. denied,* 533 So.2d 359 (1988), it is not an "effective" remedy within the meaning of § 1997e which they can be ordered to exhaust.

It is true, of course, that money damages cannot be granted by the Louisiana procedure. It does not follow, however, because a prisoner prays for money damages that the claim is without issues that in all probability cannot be resolved by the grievance system.

Federal courts have been inundated with claims by state prisoners. Between 1966 and 1988 the number of such suits increased from 218 to 24,421. Indeed, in the past year 10.2% of the civil docket of the federal district courts and 12.5% of the docket of federal courts of appeals were prisoner civil rights suits. Prisoner petitions represented 29.6% of all filings in the Fifth Circuit in fiscal year 1989. Many of these claims include money damages in their prayers for relief.

Yet, the reality is that underlying many prisoner suits for money damages is a complaint about prison conditions, conditions which can be remedied through the grievance procedure. After adoption of the administrative remedy South Carolina experienced a 33% decrease in 1983 suits by prisoners. California prisoners received complete or partial relief in over half of 40,000 grievances considered.[2]

In this case Williams alleges that he was injured because officials did not fix a leaking faucet in his cell and that officials delayed giving him medical care. **Martin's** difficulties arose from his complaints that he was not being adequately protected from dangerous prisoners. He also alleges that officials delayed in obtaining medical treatment for him. These issues of prison conditions and safety are prime candidates for the grievance process.

The statutory procedure strikes for non-judicial resolution of disputes within the prison system. It does not deny prisoners access to federal court, but rather delays access by insisting on an exhaustion of the prison grievance system. We would emasculate the statute if we were to conclude in a mechanical fashion that asserting a claim for money damages means a fortiori that the complaint raises no issues that can in probability be resolved by the grievance procedure. We know from much experience that many of these claims for "damages," often for millions of dollars, prove to be little more than
1043 expressions of anger *1043 and frustration with prison conditions. This being the case, the grievance process can be effective in resolving a prisoner's claim even though his allegations suggest that the grievance procedure is not an effective remedy.[3] When a claim is truly for money damages, it will be filed in federal court after exhaustion.

AFFIRMED.

[1] Section 1997e requires prison grievance procedures to provide:

(A) for an advisory role for employees and inmates of any jail, prison, or other correctional institution (at the most decentralized level as is reasonably possible), in the formulation, implementation, and operation of the system;

(B) specific maximum time limits for written replies to grievances with reasons thereto at each decision level within the system;

(C) for priority processing of grievances which are of an emergency nature, including matters in which delay would subject the grievant to substantial risk of personal injury or other damages;

(D) for safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and

(E) for independent review of the disposition of grievances, including alleged reprisals, by a person or other entity not under the direct supervision or direct control of the institution.

42 U.S.C. § 1997e(b)(2)(A)-(E).

[2] Donald P. Lay, *Exhaustion of Grievance Procedures for State Prisoners Under Section 1997e of the Civil Rights Act,* 71 Iowa L.Rev. 935 (1986).

[3] A study for the Committee on Federal-State Jurisdiction of the Judicial Conference noted that prisoner civil rights suits in the Middle District of Louisiana have decreased 33% since judicial approval of that state's procedure. Other factors may have contributed to this decrease, but some part was plainly attributable to the grievance procedure.

430 U.S. 817 (1977)

BOUNDS, CORRECTION COMMISSIONER, ET AL.
v.
SMITH ET AL.

No. 75-915.

Supreme Court of United States.

Argued November 1, 1976.
Decided April 27, 1977.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Jacob L. Safron, Special Deputy Attorney General of North Carolina, argued the cause for petitioners. With him on the brief was *Rufus L. Edmisten,* Attorney General.

Barry Nakell, by appointment of the Court, 425 **U. S.** 968, argued the cause and filed a brief for respondents.[*]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is whether States must protect the right of prisoners to access to the courts by providing them with law libraries or alternative sources of legal knowledge. In *Younger* v. *Gilmore,* 404 **U. S.** 15 (1971), we held *per curiam* that such services are constitutionally mandated. Petitioners, officials of the State of North Carolina, ask **us**
818 *818 to overrule that recent case, but for reasons explained below, we decline the invitation and reaffirm our previous decision.

I

Respondents are inmates incarcerated in correctional facilities of the Division of Prisons of the North Carolina Department of Correction. They filed three separate actions under 42 U. S. C. § 1983, all eventually consolidated in the District Court for the Eastern District of North Carolina. Respondents alleged, in pertinent part, that they were denied access to the courts in violation of their Fourteenth Amendment rights by the State's failure to provide legal research facilities.[1]

The District Court granted respondents' motion for summary judgment on this claim,[2]

finding that the sole prison library in the State was "severely inadequate" and that there was no other legal assistance available to inmates. It held on the basis of *Younger* v. *Gilmore* that respondents' rights to access to the courts and equal protection of the laws had been violated because there was "no indication of any assistance at the initial stage of preparation of writs and petitions." The court recognized, however, that determining the "appropriate relief to be ordered . . . presents a difficult problem," in view of North Carolina's decentralized prison system.[3] Rather than attempting "to dictate precisely
819 what course the State should follow," the court "charge[d] the Department *819 of Correction with the task of devising a Constitutionally sound program" to assure inmate access to the courts. It left to the State the choice of what alternative would "most easily and economically" fulfill this duty, suggesting that a program to make available lawyers, law students, or public defenders might serve the purpose at least as well as the provision of law libraries. Supp. App. 12-13.

The State responded by proposing the establishment of seven libraries in institutions located across the State chosen so as to serve best all prison units. In addition, the State planned to set up smaller libraries in the Central Prison segregation unit and the Women's Prison. Under the plan, inmates desiring to use a library would request appointments. They would be given transportation and housing, if necessary, for a full day's library work. In addition to its collection of lawbooks,[4] each library would stock legal forms and writing paper and have typewriters and use of copying machines. The State proposed to train inmates as research assistants and typists to aid fellow prisoners. It was estimated that ultimately some 350 inmates per week could use the libraries, although inmates not facing court deadlines might have to wait three or four
820 weeks for their turn at a library. Respondents *820 protested that the plan was totally inadequate and sought establishment of a library at every prison.[5]

The District Court rejected respondents' objections, finding the State's plan "both economically feasible and practicable," and one that, fairly and efficiently run, would "insure each inmate the time to prepare his petitions."[6] *Id.,* at 19. Further briefing was ordered on whether the State was required to provide independent legal advisors for inmates in addition to the library facilities.

In its final decision, the District Court held that petitioners were not constitutionally required to provide legal assistance as well as libraries. It found that the library plan was
821 sufficient *821 to give inmates reasonable access to the courts and that our decision in *Ross* v. *Moffitt,* 417 **U. S.** 600 (1974), while not directly in point, supported the State's claim that it need not furnish attorneys to bring habeas corpus and civil rights actions for prisoners.

After the District Court approved the library plan, the State submitted an application to the Federal Law Enforcement Assistance Administration (LEAA) for a grant to cover 90% of the cost of setting up the libraries and training a librarian and inmate clerks. The State represented to LEAA that the library project would benefit all inmates in the State by giving them "meaningful and effective access to the court[s] . . . . [T]he ultimate result . . . should be a diminution in the number of groundless petitions and complaints filed . . . . The inmate himself will be able to determine to a greater extent whether or not his

rights have been violated" and judicial evaluation of the petitions will be facilitated. Brief for Respondents 3a.

Both sides appealed from those portions of the District Court orders adverse to them. The Court of Appeals for the Fourth Circuit affirmed in all respects save one. It found that the library plan denied women prisoners the same access rights as men to research facilities. Since there was no justification for this discrimination, the Court of Appeals ordered it eliminated. The State petitioned for review and we granted certiorari. 425 **U. S.** 910 (1976).[7] We affirm.

II

A. It is now established beyond doubt that prisoners have a constitutional right of access to the courts. This Court recognized that right more than 35 years ago when it struck down a regulation prohibiting state prisoners from filing petitions for habeas corpus
822 unless they were found " `properly *822 drawn' " by the " `legal investigator' " for the parole board. *Ex parte Hull,* 312 **U. S.** 546 (1941). We held this violated the principle that "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." *Id.,* at 549. See also *Cochran* v. *Kansas,* 316 **U. S.** 255 (1942).

More recent decisions have struck down restrictions and required remedial measures to insure that inmate access to the courts is adequate, effective, and meaningful. Thus, in order to prevent "effectively foreclosed access," indigent prisoners must be allowed to file appeals and habeas corpus petitions without payment of docket fees. *Burns* v. *Ohio,* 360 **U. S.** 252, 257 (1959); ***Smith*** v. *Bennett,* 365 **U. S.** 708 (1961). Because we recognized that "adequate and effective appellate review" is impossible without a trial transcript or adequate substitute, we held that States must provide trial records to inmates unable to buy them. *Griffin* v. *Illinois,* 351 **U. S.** 12, 20 (1956).[8] Similarly,
823 counsel must be appointed *823 to give indigent inmates "a meaningful appeal" from their convictions. *Douglas* v. *California,* 372 **U. S.** 353, 358 (1963).

Essentially the same standards of access were applied in *Johnson* v. *Avery,* 393 **U. S.** 483 (1969), which struck down a regulation prohibiting prisoners from assisting each other with habeas corpus applications and other legal matters. Since inmates had no alternative form of legal assistance available to them, we reasoned that this ban on jailhouse lawyers effectively prevented prisoners who were "unable themselves, with reasonable adequacy, to prepare their petitions," from challenging the legality of their confinements. *Id.,* at 489. *Johnson* was unanimously extended to cover assistance in civil rights actions in *Wolff* v. *McDonnell,* 418 **U. S.** 539, 577-580 (1974). And even as it rejected a claim that indigent defendants have a constitutional right to appointed counsel for discretionary appeals, the Court reaffirmed that State must "assure the indigent defendant an adequate opportunity to present his claims fairly." *Ross* v. *Moffitt,* 417 **U. S.**, at 616. "[M]eaningful access" to the courts is the touchstone. See *id.,* at 611, 612, 615.[9]

Petitioners contend, however, that this constitutional duty merely obliges States to allow

inmate "writ writers" to function. They argue that under *Johnson* v. *Avery, supra,* as long as inmate communications on legal problems are not restricted, there is no further obligation to expend state funds to implement affirmatively the right of access. This argument misreads the cases.

In *Johnson* and *Wolff* v. *McDonnell, supra,* the issue was whether the access rights of ignorant and illiterate inmates were violated without adequate justification. Since these inmates were unable to present their own claims in writing to the courts, we held that
824 their "constitutional right to help," *824 *Johnson* v. *Avery, supra,* at 502 (WHITE, J., dissenting), required at least allowing assistance from their literate fellows. But in so holding, we did not attempt to set forth the full breadth of the right of access. In *McDonnel,* for example, there was already an adequate law library in the prison.[10] The case was thus decided against a backdrop of availability of legal information to those inmates capable of using it. And in *Johnson,* although the petitioner originally requested lawbooks, see 393 **U. S.**, at 484, the Court did not reach the question, as it invalidated the regulation because of its effect on illiterate inmates. Neither case considered the question we face today and neither is inconsistent with requiring additional measures to assure meaningful access to inmates able to present their own cases.[11]

Moreover, our decisions have consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts. It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal
825 documents, with notarial services to *825 authenticate them, and with stamps to mail them. States must forgo collection of docket fees otherwise payable to the treasury and expend funds for transcripts. State expenditures are necessary to pay lawyers for indigent defendants at trial, *Gideon* v. *Wainwright,* 372 **U. S.** 335 (1963); *Argersinger* v. *Hamlin,* 407 **U. S.** 25 (1972), and in appeals as of right, *Douglas* v. *California, supra*.[12] This is not to say that economic factors may not be considered, for example, in choosing the methods used to provide meaningful access. But the cost of protecting a constitutional right cannot justify its total denial. Thus, neither the availability of jailhouse lawyers nor the necessity for affirmative state action is dispositive of respondents' claims. The inquiry is rather whether law libraries or other forms of legal assistance are needed to give prisoners a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.

B. Although it is essentially true, as petitioners argue,[13] that a habeas corpus petition or civil rights complaint need only set forth facts giving rise to the cause of action, but see, Fed. Rules Civ. Proc. 8 (a) (1), (3), it hardly follows that a law library or other legal assistance is not essential to frame such documents. It would verge on incompetence for a lawyer to file an initial pleading without researching such issues as jurisdiction, venue, standing, exhaustion of remedies, proper parties plaintiff and defendant, and types of relief available. Most importantly, of course, a lawyer must know what the law is in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action.

826 If a lawyer must perform such preliminary research, it is *826 no less vital for a *pro se*
[14]

prisoner. Indeed, despite the "less stringent standards" by which a *pro se* pleading is judged, *Haines* v. *Kerner,* 404 **U. S.** 519, 520 (1972), it is often more important that a prisoner complaint set forth a nonfrivolous claim meeting all procedural prerequisites, since the court may pass on the complaint's sufficiency before allowing filing *in forma pauperis* and may dismiss the case if it is deemed frivolous. See 28 U. S. C. § 1915.[15] Moreover, if the State files a response to a *pro se* pleading, it will undoubtedly contain seemingly authoritative citations. Without a library, an inmate will be unable to rebut the State's argument. It is not enough to answer that the court will evaluate the facts pleaded in light of the relevant law. Even the most dedicated trial judges are bound to overlook meritorious cases without the benefit of an adversary presentation. Cf. *Gardner* v. *California,* 393 **U. S.** 367, 369-370 (1969). In fact, one of the consolidated cases here was initially dismissed by the same judge who later ruled for respondents, possibly because *Younger* v. *Gilmore* was not cited.

We reject the State's claim that inmates are "ill-equipped to use" "the tools of the trade of the legal profession," making libraries useless in assuring meaningful access. Brief for Petitioners 17. In the first place, the claim is inconsistent with the State's representations on its LEAA grant application, *supra,* at 821, and with its argument that access is adequately protected by allowing inmates to help each other with legal problems. More importantly, this Court's experience indicates that *pro se* petitioners are capable of using
827 lawbooks to file cases raising claims that are serious and legitimate even *827 if ultimately unsuccessful. Finally, we note that if petitioners had any doubts about the efficacy of libraries, the District Court's initial decision left them free to choose another means of assuring access.

It is also argued that libraries or other forms of legal assistance are unnecessary to assure meaningful access in light of the Court's decision in *Ross* v. *Moffitt.* That case held that the right of prisoners to "an adequate opportunity to present [their] claims fairly," 417 **U. S.**, at 616, did not require appointment of counsel to file petitions for discretionary review in state courts or in this Court. *Moffitt's* rationale, however, supports the result we reach here. The decision in *Moffitt* noted that a court addressing a discretionary review petition is not primarily concerned with the correctness of the judgment below. Rather, review is generally granted only if a case raises an issue of significant public interest or jurisprudential importance or conflicts with controlling precedent. *Id.,* at 615-617. *Moffitt* held that *pro se* applicants can present their claims adequately for appellate courts to decide whether these criteria are met because they have already had counsel for their initial appeals as of right. They are thus likely to have appellate briefs previously written on their behalf, trial transcripts, and often intermediate appellate court opinions to use in preparing petitions for further review. *Id.,* at 615.

By contrast in this case, we are concerned in large part with original actions seeking new trials, release from confinement, or vindication of fundamental civil rights. Rather than presenting claims that have been passed on by two courts, they frequently raise heretofore unlitigated issues. As this Court has "constantly emphasized," habeas corpus and civil rights actions are of "fundamental importance . . . in our constitutional scheme" because they directly protect our most valued rights. *Johnson* v. *Avery,* 393 **U. S.**, at
828 485; *Wolff* v. *McDonnell,* 418 **U. S.**, at 579. While applications for *828 discretionary

review need only apprise an appellate court of a case's possible relevance to the development of the law, the prisoner petitions here are the first line of defense against constitutional violations. The need for new legal research or advice to make a meaningful initial presentation to a trial court in such a case is far greater than is required to file an adequate petition for discretionary review.[16]

We hold, therefore, that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.[17]

C. Our holding today is, of course, a reaffirmation of the result reached in *Younger* v. *Gilmore*. While *Gilmore* is not 829 *829 a necessary element in the preceding analysis, its precedential weight strongly reinforces our decision. The substantive question presented in *Gilmore* was: "Does a state have an affirmative federal constitutional duty to furnish prison inmates with extensive law libraries or, alternatively, to provide inmates with professional or quasi-professional legal assistance?" Jurisdictional Statement 5, Brief for Appellants 4, in No. 70-9, O. T. 1971. This Court explicitly decided that question when it affirmed the judgment of the District Court in reliance on *Johnson* v. *Avery*. Cf. this Court's Rule 15 (c). The affirmative answer was given unanimously after full briefing and oral argument. *Gilmore* has been relied upon without question in our subsequent decisions. *Cruz* v. *Hauck*, 404 **U. S.** 59 (1971) (vacating and remanding for reconsideration in light of *Gilmore* a decision that legal materials need not be furnished to county jail inmates); *Cruz* v. *Beto*, 405 **U. S.** 319, 321 (1972) (*Gilmore* cited approvingly in support of inmates' right of access to the courts); *Chaffin* v. *Stynchcombe*, 412 **U. S.** 17, 34 n. 22 (1973) (*Gilmore* cited approvingly as a decision "removing roadblocks and disincentives to appeal"). Most recently, in *Wolff* v. *McDonnell*, despite differences over other issues in the case, the Court unanimously reaffirmed that *Gilmore* requires prison officials "to provide indigent inmates with access to a reasonably adequate law library for preparation of legal actions." 418 **U. S.**, at 578-579.

Experience under the *Gilmore* decision suggests no reason to depart from it. Most States and the Federal Government have made impressive efforts to fulfill *Gilmore's* mandate by establishing law libraries, prison legal-assistance programs, or combinations of both. See Brief for Respondents, Ex. B. Correctional administrators have supported the programs and acknowledged their value.[18] Resources and support including 830 *830 substantial funding from LEAA have come from many national organizations.[19]

It should be noted that while adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts, our decision here, as in *Gilmore*, does not foreclose alternative means to achieve that goal. Nearly 831 *831 half the States and the District of Columbia provide some degree of professional or quasi-professional legal assistance to prisoners. Brief for Respondents, Ex. B. Such programs take many imaginative forms and may have a number of advantages over libraries alone. Among the alternatives are the training of inmates as paralegal assistants to work under lawyers' supervision, the use of paraprofessionals and law students, either as volunteers or in formal clinical programs, the organization of volunteer attorneys through bar

associations or other groups, the hiring of lawyers on a part-time consultant basis, and the use of full-time staff attorneys, working either in new prison legal assistance organizations or as part of public defender or legal services offices.[20] Legal services plans not only result in more efficient and skillful handling of prisoner cases, but also avoid the disciplinary problems associated with writ writers, see *Johnson* v. *Avery,* 393 **U. S.**, at 488; *Procunier* v. *Martinez,* 416 **U. S.** 396, 421-422 (1974). Independent 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 or the legal system are ill-founded, thereby facilitating rehabilitation by assuring
832 the inmate that he has not been treated unfairly.[21] It has *832 been estimated that as few as 500 full-time lawyers would be needed to serve the legal needs of the entire national prison population.[22] Nevertheless, a legal access program need not include any particular element we have discussed, and we encourage local experimentation. Any plan, however, must be evaluated as a whole to ascertain its compliance with constitutional standards.[23]

III

Finally, petitioners urge **us** to reverse the decision below because federal courts should not "sit as co-administrators of state prisons," Brief for Petitioners 13, and because the District Court "exceeded its powers when it puts [*sic*] itself in the place of the [prison] administrators," *id.,* at 14. While we have recognized that judicial restraint is often appropriate in prisoners' rights cases, we have also repeatedly held that this policy "cannot encompass any failure to take cognizance of valid constitutional claims." *Procunier* v. *Martinez, supra,* at 405.

Petitioners' hyperbolic claim is particularly inappropriate in this case, for the courts below scrupulously respected the limits on their role. The District Court initially held only that petitioners had violated the "fundamental constitutional guarantee," *ibid.,* of access to the courts. It did not thereupon thrust itself into prison administration. Rather, it ordered petitioners themselves to devise a remedy for the violation, strongly suggesting that it
833 would prefer a plan *833 providing trained legal advisors. Petitioners chose to establish law libraries, however, and their plan was approved with only minimal changes over the strong objections of respondents. Prison administrators thus exercised wide discretion within the **bounds** of constitutional requirements in this case.

The judgment is

Affirmed.

MR. JUSTICE POWELL, concurring.

The decision today recognizes that a prison inmate has a constitutional right of access to the courts to assert such procedural and substantive rights as may be available to him under state and federal law. It does not purport to pass on the kinds of claims that the Constitution requires state or federal courts to hear. In *Wolff* v. *McDonnell,* 418 **U. S.** 539, 577-580 (1974), where we extended the right of access recognized in *Johnson* v.

Avery, 393 **U. S.** 483 (1969), to civil rights actions arising under the Civil Rights Act of 1871, we did not suggest that the Constitution required such actions to be heard in federal court. And in *Griffin* v. *Illinois,* 351 **U. S.** 12 (1956), where the Court required the States to provide trial records for indigents on appeal, the plurality and concurring opinions explicitly recognized that the Constitution does not require any appellate review of state convictions. Similarly, the holding here implies nothing as to the constitutionally required scope of review of prisoners' claims in state or federal court.

With this understanding, I join the opinion of the Court.

MR. CHIEF JUSTICE BURGER, dissenting.

I am in general agreement with MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST, and join in their opinions. I write only to emphasize the theoretical and practical difficulties raised by the Court's holding. The Court leaves **us** unenlightened as
834 to the source of the "right of access to the courts" *834 which it perceives or of the requirement that States "foot the bill" for assuring such access for prisoners who want to act as legal researchers and brief writers. The holding, in my view, has far-reaching implications which I doubt have been fully analyzed or their consequences adequately assessed.

It should be noted, first, that the access to the courts which these respondents are seeking is not for the purpose of direct appellate review of their criminal convictions. Abundant access for such purposes has been guaranteed by our prior decisions, *e. g.,* *Douglas* v. *California,* 372 **U. S.** 353 (1963), and *Griffin* v. *Illinois,* 351 **U. S.** 12 (1956), and by the States independently. Rather, the underlying substantive right here is that of prisoners to mount collateral attacks on their state convictions. The Court is ordering the State to expend resources in support of the federally created right of collateral review.

This would be understandable if the federal right in question were constitutional in nature. For example, the State may be required by the Eighth Amendment to provide its inmates with food, shelter, and medical care, see *Estelle* v. *Gamble,* 429 **U. S.** 97, 103-104 (1976); similarly, an indigent defendant's right under the Sixth Amendment places upon the State the affirmative duty to provide him with counsel for trials which may result in deprivation of his liberty, *Argersinger* v. *Hamlin,* 407 **U. S.** 25 (1972); finally, constitutional principles of due process and equal protection form the basis for the requirement that States expend resources in support of a convicted defendant's right to appeal. See *Douglas* v. *California, supra; Griffin* v. *Illinois, supra.*

However, where the federal right in question is of a statutory rather than a constitutional nature, the duty of the State is merely negative; it may not act in such a manner as to interfere with the individual exercise of such federal rights. *E. g., Ex parte Hull,* 312 **U. S.** 546 (1941) (State may not interfere with prisoner's access to the federal court by
835 screening *835 petitions directed to the court); *Johnson* v. *Avery,* 393 **U. S.** 483 (1969) (State may not prohibit prisoners from providing to each other assistance in preparing petitions directed to the federal courts). Prohibiting the State from interfering with federal statutory rights is, however, materially different from requiring it to provide affirmative assistance for their exercise.

It is a novel and doubtful proposition, in my view, that the Federal Government can, by statute, give individuals certain rights and then require the State, as a *constitutional* matter, to fund the means for exercise of those rights. Cf. *National League of Cities* v. *Usery,* 426 **U. S.** 833 (1976).

As to the substantive right of state prisoners to collaterally attack in federal court their convictions entered by a state court of competent jurisdiction, it is now clear that there is no broad federal *constitutional* right to such collateral attack, see *Stone* v. *Powell,* 428 **U. S.** 465 (1976); whatever right exists is solely a creation of federal statute, see *Swain* v. *Pressley, ante,* p. 384 (opinion of BURGER, C. J.); *Schneckloth* v. *Bustamonte,* 412 **U. S.** 218, 250, 252-256 (1973) (POWELL, J., concurring). But absent a federal constitutional right to attack convictions collaterally—and I discern no such right—I can find no basis on which a federal court may require States to fund costly law libraries for prison inmates.[*] Proper federal-state relations preclude such intervention in the "complex and intractable" problems of prison administration. *Procunier* v. *Martinez,* 416 **U. S.** 396 (1974).

I can draw only one of two conclusions from the Court's holding: it may be read as implying that the right of prisoners to collaterally attack their convictions is constitutional,
836 rather than statutory, in nature; alternatively, it may be read as *836 holding that States can be compelled by federal courts to subsidize the exercise of federally created statutory rights. Neither of these novel propositions is sustainable and for the reasons stated I cannot adhere to either view and therefore dissent.

MR. JUSTICE STEWART, with whom THE CHIEF JUSTICE joins, dissenting.

In view of the importance of the writ of habeas corpus in our constitutional scheme, "it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed.' " *Wolff* v. *McDonnell,* 418 **U. S.** 539, 578, quoting *Johnson* v. *Avery,* 393 **U. S.** 483, 485. From this basic principle the Court over five years ago made a quantum jump to the conclusion that a State has a constitutional obligation to provide law libraries for prisoners in its custody. *Younger* v. *Gilmore,* 404 **U. S.** 15.

Today the Court seeks to bridge the gap in analysis that made *Gilmore's* authority questionable. Despite the Court's valiant efforts, I find its reasoning unpersuasive.

If, as the Court says, there is a constitutional duty upon a State to provide its prisoners with "meaningful access" to the federal courts, that duty is not effectuated by adhering to the unexplained judgment in the *Gilmore* case. More than 20 years of experience with *pro se* habeas corpus petitions as a Member of this Court and as a Circuit Judge have convinced me that "meaningful access" to the federal courts can seldom be realistically advanced by the device of making law libraries available to prison inmates untutored in their use. In the vast majority of cases, access to a law library will, I am convinced, simply result in the filing of pleadings heavily larded with irrelevant legalisms—possessing the veneer but lacking the substance of professional competence.

If, on the other hand, MR. JUSTICE REHNQUIST is correct in his belief that a convict in

837 a state prison pursuant to a *837 final judgment of a court of competent jurisdiction has no constitutional right of "meaningful access" to the federal courts in order to attack his sentence, then a State can be under no constitutional duty to make that access "meaningful." If the extent of the constitutional duty of a State is simply not to deny or obstruct a prisoner's access to the courts, *Johnson* v. *Avery, supra,* then it cannot have, even arguably, any affirmative constitutional obligation to provide law libraries for its prison inmates.

I respectfully dissent.

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting.

The Court's opinion in this case serves the unusual purpose of supplying as good a line of reasoning as is available to support a two-paragraph *per curiam* opinion almost six years ago in *Younger* v. *Gilmore,* 404 **U. S.** 15 (1971), which made no pretense of containing any reasoning at all. The Court's reasoning today appears to be that we have long held that prisoners have a "right of access" to the courts in order to file petitions for habeas corpus, and that subsequent decisions have expanded this concept into what the Court today describes as a "meaningful right of access." So, we are told, the right of a convicted prisoner to "meaningful access" extends to requiring the State to furnish such prisoners law libraries to aid them in piecing together complaints to be filed in the courts. This analysis places questions of prisoner access on a "slippery slope," and I would reject it because I believe that the early cases upon which the Court relies have a totally different rationale from that which underlies the present holding.

There is nothing in the United States Constitution which requires that a convict serving a term of imprisonment in a state penal institution pursuant to a final judgment of a court of competent jurisdiction have a "right of access" to the federal courts in order to attack his
838 sentence. In the first *838 case upon which the Court's opinion relies, *Ex parte Hull,* 312 **U. S.** 546 (1941), the Court held invalid a regulation of the Michigan State prison which provided that " `[a]ll legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals' " which prisoners wish to file in court had to be first submitted to the legal investigator of the state parole board. If the documents were, in the opinion of this official, " `properly drawn,' " they would be directed to the court designated. Hull was advised that his petition addressed to this Court had been "intercepted" and referred to the legal investigator for the reason that it was "deemed to be inadequate." This Court held that such a regulation was invalid, and said very clearly why:

> "Whether a petition for writ of habeas corpus addressed to a federal court is properly drawn and what allegations it must contain are questions for that court alone to determine." *Id.,* at 549.

A number of succeeding cases have expanded on this barebones holding that an incarcerated prisoner has a right of physical access to a federal court in order to petition that court for relief which Congress has authorized it to grant. These cases, most of which are mentioned in the Court's opinion, begin with *Griffin* v. *Illinois,* 351 **U. S.** 12 (1956), and culminate in *United States* v. *MacCollom,* 426 **U. S.** 317 (1976), decided last Term. Some, such as *Griffin, supra,* and *Douglas* v. *California,* 372 **U. S.** 353 (1963),

appear to depend upon the principle that indigent convicts must be given a meaningful opportunity to pursue a state-created right to appeal, even though the pursuit of such a remedy requires that the State must provide a transcript or furnish counsel. Others, such as *Johnson* v. *Avery,* 393 **U. S.** 483 (1969), *Procunier* v. *Martinez,* 416 **U. S.** 396 (1974), and *Wolff* v. *McDonnell,* 418 **U. S.** 539 (1974), depend on the principle that the State, having already incarcerated the convict and thereby virtually eliminated his contact with
839 people outside the prison walls, *839 may not further limit contacts which would otherwise be permitted simply because such contacts would aid the incarcerated prisoner in preparation of a petition seeking judicial relief from the conditions or terms of his confinement. Clearly neither of these principles supports the Court's present holding: The prisoners here in question have all pursued all avenues of direct appeal available to them from their judgments of conviction, and North Carolina imposes no invidious regulations which allow visits from all persons except those knowledgeable in the law. All North Carolina has done in this case is to decline to expend public funds to make available law libraries to those who are incarcerated within its penitentiaries.

If respondents' constitutional arguments were grounded on the Equal Protection Clause, and were in effect that rich prisoners could employ attorneys who could in turn consult law libraries and prepare petitions for habeas corpus, whereas indigent prisoners could not, they would have superficial appeal. See *Griffin, supra; Douglas, supra.* I believe that they would nonetheless fail under *Ross* v. *Moffitt,* 417 **U. S.** 600 (1974). There we held that although our earlier cases had required the State to provide meaningful access to state-created judicial remedies for indigents, the only right on direct appeal was that "indigents have an adequate opportunity to present their claims fairly within the adversary system." *Id.,* at 612.

In any event, the Court's opinion today does not appear to proceed upon the guarantee of equal protection of the laws, a guarantee which at least has the merit of being found in the Fourteenth Amendment to the Constitution. It proceeds instead to enunciate a "fundamental constitutional right of access to the courts," *ante,* at 828, which is found nowhere in the Constitution. But if a prisoner incarcerated pursuant to a final judgment of conviction is not prevented from physical access to the federal courts in order that he
840 may file therein petitions for relief which Congress has authorized those courts *840 to grant, he has been accorded the only constitutional right of access to the courts that our cases have articulated in a reasoned way. *Ex parte Hull, supra.* Respondents here make no additional claims that prison regulations invidiously deny them access to those with knowledge of the law so that such regulations would be inconsistent with *Johnson, supra, Procunier, supra,* and *Wolff, supra.* Since none of these reasons is present here, the "fundamental constitutional right of access to the courts" which the Court announces today is created virtually out of whole cloth with little or no reference to the Constitution from which it is supposed to be derived.

Our decisions have recognized on more than one occasion that lawful imprisonment properly results in a "retraction [of rights] justified by the considerations underlying our penal system." *Price* v. *Johnston,* 334 **U. S.** 266, 285 (1948); *Pell* v. *Procunier,* 417 **U. S.** 817, 822 (1974). A convicted prisoner who has exhausted his avenues of direct appeal is no longer to be accorded every presumption of innocence, and his former

constitutional liberties may be substantially restricted by the exigencies of the incarceration in which he has been placed. See *Meachum* v. *Fano,* 427 **U. S.** 215 (1976). Where we come to the point where the prisoner is seeking to collaterally attack a final judgment of conviction, the right of physical access to the federal courts is essential because of the congressional provisions for federal habeas review of state convictions. *Ex parte Hull, supra.* And the furnishing of a transcript to an indigent who makes a showing of probable cause, in order that he may have any realistic chance of asserting his right to such review, was upheld in *United States* v. *MacCollom, supra.* We held in *Ross* v. *Moffitt, supra,* that the *Douglas* holding of a right to counsel on a first direct appeal as of right would not be extended to a discretionary second appeal from an intermediate state appellate court to the state court of last resort, or from the state court
841 of last resort to this Court. It would seem, *a fortiori,* to follow from that case that an *841 incarcerated prisoner who has pursued all his avenues of direct review would have no constitutional right whatever to state appointed counsel to represent him in a collateral attack on his conviction, and none of our cases has ever suggested that a prisoner would have such a right. See *Johnson* v. *Avery,* 393 **U. S.**, at 488. Yet this is the logical destination of the Court's reasoning today. If "meaningful access" to the courts is to include law libraries, there is no convincing reason why it should not also include lawyers appointed at the expense of the State. Just as a library may assist some inmates in filing papers which contain more than the bare factual allegations of injustice, appointment of counsel would assure that the legal arguments advanced are made with some degree of sophistication.

I do not believe anything in the Constitution requires this result, although state and federal penal institutions might as a matter of policy think it wise to implement such a program. I conclude by indicating the same respect for *Younger* v. *Gilmore,* 404 **U. S.** 15 (1971), as has the Court, in relegating it to a final section set apart from the body of the Court's reasoning. *Younger* supports the result reached by the Court of Appeals in this case, but it is a two-paragraph opinion which is most notable for the unbridged distance between its premise and its conclusion. The Court's opinion today at least makes a reasoned defense of the result which it reaches, but I am not persuaded by those reasons. Because of that fact I would not have the slightest reluctance to overrule *Younger* and reverse the judgment of the Court of Appeals in this case.

[*] *Andrew P. Miller,* Attorney General, and *Alan Katz,* Assistant Attorney General, filed a brief for the Commonwealth of Virginia as *amicus curiae* urging reversal.

[1] The complaints also alleged a number of other constitutional violations not relevant to the issue now before **us**.

[2] The District Court had originally granted summary judgment for the state officials in one of the three consolidated actions. On appeal, the Court of Appeals for the Fourth Circuit appointed counsel and remanded that case with the suggestion that it be consolidated with the other two cases, then still pending in the District Court.

[3] North Carolina's 13,000 inmates are housed in 77 prison units located in 67 counties. Sixty-five of these units hold fewer than 200 inmates. Brief for Petitioners 7 n. 3.

[4] The State proposed inclusion of the following lawbooks: North Carolina General Statutes North Carolina Reports (1960-present) North Carolina Court of Appeals Reports Strong's North Carolina Index North Carolina

Rules of Court United States Code Annotated: Title 18 Title 28 §§ 2241-2254 Title 28 Rules of Appellate Procedure Title 28 Rules of Civil Procedure Title 42 §§ 1891-2010 Supreme Court Reporter (1960-present) Federal 2d Reporter (1960-present) Federal Supplement (1960-present) Black's Law Dictionary Sokol: Federal Habeas Corpus LaFave and Scott: Criminal Law Hornbook (2 copies) Cohen: Legal Research Criminal Law Reporter Palmer: Constitutional Rights of Prisoners

This proposal adheres to a list approved as the minimum collection for prison law libraries by the American Correctional Association (ACA), American Bar Association (ABA), and the American Association of Law Libraries, except for the questionable omission of several treatises, Shepard's Citations, and local rules of court. See ACA, Guidelines for Legal Reference Service in Correctional Institutions: A Tool for Correctional Administrators 5-9 (2d ed. 1975) (hereafter ACA Guidelines); ABA Commission on Correctional Facilities and Services, Bar Association Support to Improve Correctional Services (BASICS), Offender Legal Services 29-30, 70-78 (rev. ed. 1976).

[5] Respondents also contended that the libraries should contain additional legal materials, and they urged creation of a large central circulating library.

[6] The District Court did order two changes in the plan: that extra copies of the U. S. C. A. Habeas Corpus and Civil Rights Act volumes be provided, and that no reporter advance sheets be discarded, so that the libraries would slowly build up duplicate sets. But the court found that most of the prison units were too small to require their own libraries, and that the cost of the additional books proposed by respondents would surpass their usefulness.

[7] Respondents filed no cross-appeal and do not now question the library plan, nor do petitioners challenge the sex discrimination ruling.

[8] See also *Eskridge* v. *Washington Prison Bd.*, 357 **U. S.** 214 (1958) (provision of trial transcript may not be conditioned on approval of judge); *Draper* v. *Washington*, 372 **U. S.** 487 (1963) (same); *Lane* v. *Brown*, 372 **U. S.** 477 (1963) (public defender's approval may not be required to obtain *coram nobis* transcript); *Rinaldi* v. *Yeager*, 384 **U. S.** 305 (1966) (unconstitutional to require reimbursement for cost of trial transcript only from unsuccessful imprisoned defendants); *Long* v. *District Court of Iowa*, 385 **U. S.** 192 (1966) (State must provide transcript of post-conviction proceeding); *Roberts* v. *LaVallee*, 389 **U. S.** 40 (1967) (State must provide preliminary hearing transcript); *Gardner* v. *California*, 393 **U. S.** 367 (1969) (State must provide habeas corpus transcript); *Williams* v. *Oklahoma City*, 395 **U. S.** 458 (1969) (State must provide transcript of petty-offense trial); *Mayer* v. *Chicago*, 404 **U. S.** 189 (1971) (State must provide transcript of nonfelony trial).

The only cases that have rejected indigent defendants' claims to transcripts have done so either because an adequate alternative was available but not used, *Britt* v. *North Carolina*, 404 **U. S.** 226 (1971), or because the request was plainly frivolous and a prior opportunity to obtain a transcript was waived, *United States* v. *MacCollom*, 426 **U. S.** 317 (1976).

[9] The same standards were applied in *United States* v. *MacCollom*, *supra*.

[10] The plaintiffs stipulated in the District Court to the general adequacy of the library, see *McDonnell* v. *Wolff*, 342 F. Supp. 616, 618, 629-630 (Neb. 1972), although they contested certain limitations on its use. Those claims were resolved by the lower courts. See *id.*, at 619-622; 483 F. 2d 1059, 1066 (CA8 1973); 418 **U. S.**, at 543 n. 2.

[11] Indeed, our decision is supported by the holding in *Procunier* v. *Martinez*, 416 **U. S.** 396 (1974), in a related right-of-access context. There the Court invalidated a California regulation barring law students and paraprofessionals employed by lawyers representing prisoners from seeing inmate clients. *Id.*, at 419-422. We did so even though California has prison law libraries and permits inmate legal assistance, *Gilmore* v. *Lynch*, 319 F. Supp. 105, 107 n. 1 (ND Cal. 1970), aff'd *sub nom.* *Younger* v. *Gilmore*, 404 **U. S.** 15 (1971). Even more significantly, the prisoners in question were actually represented by lawyers. Thus, despite the challenged regulation, the inmates were receiving more legal assistance than prisoners aided only by writ writers. Nevertheless, we found that the regulation "impermissibly burdened the right of access." 416 **U. S.**, at 421.

[12] Cf. *Estelle* v. *Gamble*, 429 **U. S.** 97 (1976), holding that States must treat prisoners' serious medical needs, a constitutional duty obviously requiring outlays for personnel and facilities.

[13] Brief for Petitioners 16-17; Tr. of Oral Arg. 3-9, 11-12.

[14] A source of current legal information would be particularly important so that prisoners could learn whether they have claims at all, as where new court decisions might apply retroactively to invalidate convictions.

[15] The propriety of these practices is not before **us**. Courts may also impose additional burdens before

appointing counsel for indigents in civil suits. See *Johnson* v. *Avery,* 393 **U. S.** 483, 487-488 (1969).

[16] Nor is *United States* v. *MacCollom,* 426 **U. S.** 317 (1976), inconsistent with our decision. That case held that in a post-conviction proceeding under 28 U. S. C. § 2255, an applicant was not unconstitutionally deprived of access to the courts by denial of a transcript of his original trial pursuant to 28 U. S. C. § 753 (f), where he had failed to take a direct appeal and thereby secure the transcript, where his newly asserted claim of error was frivolous, and where he demonstrated no need for the transcript. Without a library or legal assistance, however, inmates will not have "a *current* opportunity to present [their] claims fairly," 426 **U. S.**, at 329 (BLACKMUN, J., concurring in judgment), and valid claims will undoubtedly be lost.

[17] Since our main concern here is "protecting the ability of an inmate to prepare a petition or complaint," *Wolff* v. *McDonnell,* 418 **U. S.**, at 576, it is irrelevant that North Carolina authorizes the expenditure of funds for appointment of counsel in some state post-conviction proceedings for prisoners whose claims survive initial review by the courts. See N. C. Gen. Stat. § 7A-451 (Supp. 1975); Brief for Petitioners 3 n. 1, 12 n. 8, 14 n. 9, and accompanying text; but cf. *Ross* v. *Moffitt,* 417 **U. S.** 600, 614 (1974). Moreover, this statute does not cover appointment of counsel in federal habeas corpus or state or federal civil rights actions, all of which are encompassed by the right of access.

Similarly, the State's creation of an advisory Inmate Grievance Commission, see N. C. Gen. Stat. § 148-101 *et seq.* (Supp. 1975); Brief for Petitioners 14, while certainly a noteworthy innovation, does not answer the constitutional requirement for legal assistance to prisoners.

[18] Nearly 95% of the state corrections commissioners, prison wardens, and treatment directors responding to a national survey supported creation and expansion of prison legal services. Cardarelli & Finkelstein, Correctional Administrators Assess the Adequacy and Impact of Prison Legal Services Programs in the United States, 65 J. Crim. L., C. & P. S. 91, 99 (1974). Almost 85% believed that the programs would not adversely affect discipline or security or increase hostility toward the institution. Rather, over 80% felt legal services provide a safety valve for inmate grievances, reduce inmate power structures and tensions from unresolved legal problems, and contribute to rehabilitation by providing a positive experience with the legal system. *Id.,* at 95-98. See also ACA Guidelines, *supra,* n. 4; National Sheriffs' Assn., Inmates' Legal Rights, Standard 14, pp. 33-34 (1974); Bluth, Legal Services for Inmates: Coopting the Jailhouse Lawyer, 1 Capital U. L. Rev. 59, 61, 67 (1972); Sigler, A New Partnership in Corrections, 52 Neb. L. Rev. 35, 38 (1972).

[19] See, *e. g.,* **U. S.** Dept. of Justice, LEAA, A Compendium of Selected Criminal Justice Projects, III-201, IV-361-366 (1975); **U. S.** Dept. of Justice, LEAA, Grant 75 DF-99-0013, Consortium of States to Furnish Legal Counsel to Prisoners, Final Report, and Program Narrative (1975). The ABA BASICS program, see n. 4, *supra,* makes grants to state and local bar associations for prison legal services and libraries and publishes a complete technical assistance manual, Offender Legal Services (rev. ed. 1976). See also ABA Resource Center on Correctional Law and Legal Services, Providing Legal Services to Prisoners, 8 Ga. L. Rev. 363 (1974). The American Correctional Association publishes Guidelines for Legal Reference Service in Correctional Institutions (2d ed. 1975). The American Association of Law Libraries publishes O. Werner, Manual for Prison Law Libraries (1976), and its members offer assistance to prison law library personnel.

See also ABA Joint Committee on the Legal Status of Prisoners, Standards Relating to the Legal Status of Prisoners, Standards 2.1, 2.2, 2.3 and Commentary, 14 Am. Crim. L. Rev. 377, 420-443 (tent. draft 1977); National Conference of Commissioners on Uniform State Laws, Uniform Corrections Code, § 2-601 (tent. draft 1976); National Advisory Commission on Criminal Justice Standards and Goals, Corrections 26-30, Standards 2.2, 2.3 (1973).

[20] For example, full-time staff attorneys assisted by law students and a national back-up center were used by the Consortium of States to Furnish Legal Counsel to Prisoners, see n. 19, *supra.* State and local bar associations have established a number of legal services and library programs with support from the ABA BASICS program, see nn. 4 and 19, *supra.* Prisoners' Legal Services of New York plans to use 45 lawyers and legal assistants in seven offices to give comprehensive legal services to all state inmates. Offender Legal Services, *supra,* n. 19, at iv. Other programs are described in Providing Legal Services to Prisoners, *supra,* n. 19, at 399-416.

[21] See Cardarelli & Finkelstein, *supra,* n. 18, at 96-99; LEAA Consortium Reports, *supra,* n. 19; Champagne & Haas, The Impact of Johnson v. Avery on Prison Administration, 43 Tenn. L. Rev. 275, 295-299 (1976). Cf. 42 U. S. C. § 2996 (4) (1970 ed., Supp. V), in which Congress, establishing the Legal Services Corp., declared that "for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws."

[22] ABA Joint Committee, *supra,* n. 19, at 428-429.

[23] See, *e. g.*, *Stevenson* v. *Reed*, 530 F. 2d 1207 (CA5 1976), aff'g 391 F. Supp. 1375 (ND Miss. 1975); *Bryan* v. *Werner*, 516 F. 2d 233 (CA3 1975); *Gaglie* v. *Ulibarri*, 507 F. 2d 721 (CA9 1974); *Corpus* v. *Estelle*, 409 F. Supp. 1090 (SD Tex. 1975).

[*] The record reflects that prison officials in no way interfered with inmates' use of their own resources in filing collateral attacks. Prison regulations permit access to inmate "writ writers" and each prisoner is entitled to store reasonable numbers of lawbooks in his cell.

926 F.2d 1057 (1991)

Jim Eric CHANDLER, Plaintiff-Appellant,

v.

Captain William BAIRD, et al., Defendants-Appellees.

No. 90-5322.

United States Court of Appeals, Eleventh Circuit.

March 15, 1991.

1058 *1058 James K. Green, Green, Eisenberg & Cohen, West Palm Beach, Fla., Charlann Jackson, Florida Rural Legal Services, Bartow, Fla., Randall C. Berg, Jr., Florida Justice Institution, Miami, Fla., for plaintiff-appellant.

Keith C. Tischler, Parker, Skelding, Labasky & Corry, Tallahassee, Fla., for defendants-appellees.

Before CLARK and BIRCH, Circuit Judges, and COFFIN[*], Senior Circuit Judge.

1059 *1059 COFFIN, Senior Circuit Judge:

This appeal presents several challenges arising out of the sixteen-day restricted confinement of a prisoner, Jim Eric **Chandler**. In his *pro se* complaint **Chandler** asserted the following illegal actions: a violation of procedural due process in his being confined without advance notice of charges against him and opportunity to rebut them; violation of unspecified rules and regulations; violation of the Eighth Amendment in the conditions of his confinement; and deprivation of his constitutional right to legal materials and access to courts. The district court granted summary judgment on all counts for defendants, officials of a Florida county jail, the Indian River Detention Facility. We affirm its action in all respects save plaintiff's challenge to the conditions of his confinement. As to this, we cannot say, on this record and at this stage of the proceedings, that defendants should prevail as a matter of law. We therefore remand for further proceedings.

For a combination of reasons, plaintiff was lodged in the Indian River county jail for some two-and-one-half years awaiting resentencing for a capital offense. Until the time of the events relevant to this appeal, he resided in cell block "B" with eleven other inmates. On August 17, 1986, however, an inmate informed an officer that eight other inmates, with plaintiff as their ringleader, were planning an escape that might involve many others. The

plan was to assault an officer, obtain his keys, and then remove cell bars by twisting a sheet, using a book as a lever. Later that day an officer was indeed attacked by an inmate wielding a sack stuffed with dominoes.

Although the escape attempt aborted, Captain **Baird**, administrator of the jail, feared further attempts. In light of the identification of plaintiff as ringleader, and knowing that **Chandler** had recently drawn down his commissary account from an average level of $50 to ten cents and sent his years' accumulation of legal materials to his father, **Baird** ordered plaintiff committed to administrative confinement pending a criminal investigation. Plaintiff was taken on August 20 to a strip cell in "F" Block. On August 21, he was moved to "S" Block and placed in a solitary confinement cell, where he remained until September 5, 1986, when he was transferred to another facility closer to his resentencing hearing.

The complaint set forth six causes of action. On appeal, plaintiff asserts that the district court erred in resolving issues of fact in granting summary judgment on four of these causes. Specifically, he argues that summary judgment was inappropriate on his claims that he was denied procedural due process in the imposition of his confinement (count three), that he was deprived of meaningful access to the courts (counts four and five), and that he was subjected to unconstitutional conditions in his confinement (count one).[1] As to each issue, defendants both defend on the merits and invoke qualified immunity.

Procedural Due Process

Plaintiff alleged that he was deprived of procedural due process when he was not notified of the charges that were the basis for his placement in administrative confinement, and was given no opportunity to defend and no hearing, contrary to the rules and regulations of the Florida Department of Corrections. The district court held that *Parker v. Cook,* 642 F.2d 865, 875 (5th Cir.1981), established the principle that placing an inmate in administrative confinement in a Florida prison implicated a liberty interest triggering the requirement of procedural due process. The court then ruled, however, that defendant jail officials enjoyed qualified immunity because the evidence
1060 *1060 indicated that neither official "understood" that he was violating any of plaintiff's constitutional rights.

Leaving aside the arguable reading that the court was making findings of fact as to defendants' understanding — which would be inconsistent with a ruling on a motion for summary judgment — we observe that the court somehow found itself basing qualified immunity upon the subjective state of mind of defendants. This, of course, is contrary to the teaching of *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982), which sets forth an objective test under which "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *See also* *Rich v. Dollar,* 841 F.2d 1558, 1563 (11th Cir.1988).

We, however, choose not to decide the issue on the basis of defendants' entitlement to qualified immunity because we find that **Chandler** was not deprived of a liberty interest. The Supreme Court has made it clear that the Due Process Clause does not directly protect an inmate from changes in the conditions of his confinement, *see* *Meachum v. Fano,* 427 U.S. 215, 224, 96 S.Ct. 2532, 2538, 49 L.Ed.2d 451 (1976), as long as the condition to which the prisoner is subjected is not otherwise violative of the Constitution or outside the sentence imposed upon him, *Montanye v. Haymes,* 427 U.S. 236, 242, 96 S.Ct. 2543, 2547, 49 L.Ed.2d 466 (1976). Nor does the Due Process Clause itself create "an interest in being confined to a general population cell, rather than the more austere and restrictive administrative segregation quarters." *Hewitt v. Helms,* 459 U.S. 460, 466, 103 S.Ct. 864, 869, 74 L.Ed.2d 675 (1983). *See also* *Sheley v. Dugger,* 833 F.2d 1420, 1424 (11th Cir.1987). A state may, however, create a liberty interest which is protected by the Due Process Clause, *see* *Meachum,* 427 U.S. at 226, 96 S.Ct. at 2539, and does so "by placing substantive limitations on official discretion," *Olim v. Wakinekona,* 461 U.S. 238, 249, 103 S.Ct. 1741, 1747, 75 L.Ed.2d 813 (1983).

The Court has articulated two components of such substantive limitations: "specific substantive predicates" to guide state decisionmakers and "repeated use of mandatory language." *Hewitt,* 459 U.S. at 472, 103 S.Ct. at 871. *See also* *Kentucky Dept. of Corrections v. Thompson,* 490 U.S. 454, 109 S.Ct. 1904, 1909-10, 104 L.Ed.2d 506 (1989). At issue in this case is solely whether the language invoked by **Chandler** is sufficiently mandatory to create a liberty interest.

We are dealing with that section of the Florida Administrative Code governing county and municipal detention facilities, Rule 33-8.013. After prescribing *disciplinary* procedures to be followed when an infraction of rules occurs, including a report, an investigation, a 24-hour advance notice of charges to inmates accused of infractions, and a hearing with the possibility of witnesses and assistance for the inmate, subparagraph (13) states in relevant part:

> Inmates may be placed in administrative confinement for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility. Each such action shall be followed by an incident or disciplinary report and formal disciplinary proceedings, *if applicable,* as outlined in the above section.

(Emphasis supplied.) We note that the *Parker* case, 642 F.2d 865, on which the district court relied, does not control this case. *Parker* was decided before both *Hewitt* and *Kentucky Dept. of Corrections* and dealt with other provisions of the Florida Administrative Code relating to state prisons. *See* Fla.Admin.Code Ann. R. 33-3.08.[2]
1061 We therefore must assay the specific *1061 language involved here to see if it is mandatory within the meaning of *Hewitt* and *Kentucky Dept. of Corrections.*

Under the procedural language at issue in *Hewitt,* once the basic determination is made to place an inmate in administrative custody,

> The inmate shall be notified in writing as soon as possible that he is under

> investigation and that he will receive a hearing if any disciplinary action is being considered after the investigation is completed. An investigation shall begin immediately.... If no behavior violation has occurred, the inmate must be released as soon as the reason for the security concern has abated but in all cases within ten days.

Id. 459 U.S. at 471 n. 6, 103 S.Ct. at 871 n. 6. As the Court noted, this is "language of an unmistakably mandatory character, requiring that certain procedures `shall,' `will,' or `must' be employed." *Id.* at 471, 103 S.Ct. at 871. In the case at bar, all that the code tells us is that after an inmate is placed in administrative confinement, such action shall be followed by a report "and formal disciplinary proceedings, if applicable, as outlined in the above section." What this seems to indicate is that if, following the imposition of administrative confinement, an investigation leads to the levying of charges, the procedures applicable to disciplinary infractions shall be invoked. But if an inmate's administrative confinement is unconnected with the disciplinary process, e.g., if he were confined for his own protection, there would be no requirement for further proceedings. As in *Kentucky Dept. of Corrections,* 109 S.Ct. 1904, these provisions lack "the requisite relevant mandatory language," *id.* at 1910, to create a liberty interest. "[T]he regulations are not worded in such a way that an inmate could reasonably expect to enforce them against the prison officials." *Id.* at 1911. *Cf. Barfield v. Brierton,* 883 F.2d 923, 936-37 (11th Cir.1989) (Florida regulations governing youthful offenders sufficiently explicit and mandatory to create a liberty interest).

We therefore conclude that there was no liberty interest created by the rule at issue in this case. We affirm, although on a different analysis, the grant of summary judgment for defendants.

Access to Courts

Plaintiff next claims that he was denied access to his lawyer, library and other materials, and the courts during his time in administrative confinement. Specifically, he alleges the following deprivations: on August 20, 1986, he was refused permission to call his attorney (Complaint, Para. 11); on the following day he was again denied permission to call his attorney and was denied his request for pens, paper, cases, stamps, envelopes, correspondence with his attorney, and civil rights forms (Para. 13); on August 25 he was refused his unidentified "legal materials" (Para. 17); on August 30 he was refused paper, pen, envelope, and stamp "to write a letter to the courts" (Para. 19); and during the entire period he was denied access to a law library and correspondence from his attorney (Para. 24).

As background for consideration of these claims, we note that during the nearly two-and-one-half years of incarceration in the Indian River jail, plaintiff at all times had the services of at least one of two attorneys who was working on his capital case and its resentencing. Plaintiff also had brought two civil actions against the county and jail officials. Neither was a live issue at the time of the events which concern us, one and possibly both having been dismissed. Moreover, nowhere in plaintiff's extensive deposition is there any suggestion that he wished to do research for or draft or file a

complaint concerning the conditions of his confinement. In fact, the complaint in this case was not filed until *1062 over a year after plaintiff was released from administrative confinement. Finally, immediately after plaintiff's sixteen-day administrative confinement, he was transferred to another facility for some three weeks before resentencing, during which time he was given free access to his lawyer and materials.

1062

The district court deemed some of plaintiff's allegations conclusory, raising no factual issues, and the remaining allegations adequately countered by the fact that plaintiff has had the assistance of a lawyer in the instant case. As our summary of the pleadings and evidence indicates, at least some of the claims appear factual, and plaintiff was not represented by counsel in this case until three years after his confinement. We therefore proceed with our own analysis.

In *Bounds v. Smith*, 430 U.S. 817, 825, 97 S.Ct. 1491, 1496, 52 L.Ed.2d 72 (1977), the Supreme Court held that prisoners were entitled to "a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." Many circuits have understood *Bounds* to require some showing of prejudice or injury, that is, some showing of actual denial of access, to support such a claim. In *Hossman v. Spradlin*, 812 F.2d 1019, 1022 (7th Cir.1987), for example, where a state prisoner complained of losing library time by reason of being locked in his cell on six mornings, the court ruled:

> [W]e do feel it appropriate to require appellant to articulate, to some degree, the basis for his claim that his access to the courts was significantly (i.e. — in a constitutional sense) impaired. Such facts are presumably best known to appellant and, consequently, asking him to include them in his complaint, so as to survive a motion for summary judgment, is not too onerous a burden to require him to bear.[3]

Other circuits also have required a showing of injury or prejudice in cases involving minor or indirect restrictions on access to materials and assistance. *Magee v. Waters*, 810 F.2d 451 (4th Cir.1987) (actual injury required of city jail inmate who received books after delay and was allowed one hour of library time a week); *Mann v. Smith*, 796 F.2d 79 (5th Cir.1986) (no denial of access to county jail inmate with access to legal assistance but not library who nevertheless was able to file legally sufficient claim); *Cookish v. Cunningham*, 787 F.2d 1 (1st Cir.1986) (denial of access to law library, except for emergency matters, during two-week quarantine period does not state violation); *Hudson v. Robinson*, 678 F.2d 462 (3d Cir.1982) (actual injury must be shown; that library is noisy, open at inconvenient times, with no free supplies, and with notary not always available does not state claim); *Twyman v. Crisp*, 584 F.2d 352 (10th Cir.1978) (use of library restricted to 2 hours a week did not lead to any prejudice, so no denial of access). *Cf.* *Peterkin v. Jeffes*, 855 F.2d 1021 (3d Cir.1988) (summary judgment not appropriate in systemic challenge of death row prisoners to denial of access to libraries and inmate law clinic workers).

Consistent with this body of caselaw, we see no denial on this record. We have been able to discern no relation between the alleged refusals of materials, depositions,

telephone calls, mail, and even pen and paper for a proposed "letter to the courts" and any legal proceeding which could have been affected by the refusals. Plaintiff's two civil actions were moribund, if not extinct, and he has made no argument that he was hampered in these actions. Although plaintiff could not read depositions relevant to his resentencing hearing during the confinement period, he had access to them for a week earlier, had full access during the trial, was able to suggest questions to his attorney at
1063 trial, and could pinpoint no prejudice in the proceedings, asserting only *1063 that he did not always know in advance "what a witness was going to testify to."[4] Finally, there was no allegation in the complaint or in plaintiff's deposition that he was contemplating a challenge at that time to the conditions of his confinement. Indeed, the delay of little more than two weeks in initiating a proceeding that he delayed pursuing for a further year and that ultimately would take two-and-a-half years to reach final judgment in the district court is inconsequential.

We resist making any sweeping declaration concerning the need for a prison inmate to establish prejudice arising out of alleged restrictions of his access to courts. In some cases, the prejudice inheres in the specific facts. *See* *Wright v. Newsome*, 795 F.2d 964 (11th Cir.1986) (complaint improperly dismissed when it alleged the seizure of legal pleadings and destruction of other legal papers relevant to plaintiff's challenge to his conviction). In many class actions the challenge is systemic, embracing the basic adequacy of materials and legal assistance made available to all or subgroups of the prison population. In still other cases the conditions challenged obviously go to the heart of any meaningful access to libraries, counsel, or courts. But the instant case is of the genre at the minimal end of the deprivation spectrum. That is to say that the alleged deprivations are of a minor and short-lived nature and do not implicate general policies. In such a case, we think both policy and the prevailing state of the law require an inmate to articulate facts indicating some prejudice such as being unable to do timely research on a legal problem or being procedurally or substantively disadvantaged in the prosecution of a cause of action. *See* *DeMallory v. Cullen*, 855 F.2d 442, 448-49 (7th Cir.1988) (reviewing cases distinguishing minor and indirect deprivations that require a showing of prejudice from direct and continuous deprivations that require no such showing).

We conclude that the allegations and evidence before the court pointed to such minor and short-lived impediments to access that the absence of any indications of ultimate prejudice or disadvantage dictates our affirmance of summary judgment for defendants on this claim.

Eighth Amendment

In his complaint and deposition, plaintiff averred that the following conditions violated the Eighth Amendment proscription of cruel and unusual punishment: confinement in a cold cell with no clothes except undershorts and with a plastic-covered mattress without bedding; filth on the cell's floor and walls; deprivation of toilet paper for three days; deprivation of running water for two days; lack of soap, toothbrush, toothpaste, and linen; and the earlier occupancy of the cell by an inmate afflicted with an HIV virus. The

averments of a cold cell were supplemented by specifics: that the temperature was as low as 60 degrees, that it was "ice cold", that plaintiff slept on the floor and on occasion huddled with a roommate, sleeping between two mattresses.

There was, of course, evidence to the contrary. Captain **Baird** deposed that the temperature in plaintiff's cell was governed by the same thermostat that controlled areas occupied by nurses and dispatchers and that no one had complained of the temperature. He admitted, however, that people in these areas were clothed, except for inmates having physical examinations who would temporarily be unclad. **Baird** also deposed that plaintiff had soap, toothpaste, and toothbrush, and that a water cut-off, caused by another inmate, lasted only several hours. He justified keeping plaintiff without clothes and bedding by the fact that **Chandler** had once observed an escape where prisoners had used sheets, twisting and jumping on them. **Baird** also explained that the inmate with HIV virus had occupied the cell five months earlier and that it had been cleaned since then.

The district court, citing *Sheley v. Dugger,* 833 F.2d 1420, 1429 (11th Cir.1987) and
1064 *1064 *Newman v. Alabama,* 559 F.2d 283, 291 (5th Cir.1977), *rev'd in part on other grounds sub nom. Alabama v. Pugh,* 438 U.S. 781, 98 S.Ct. 3057, 57 L.Ed.2d 1114 (1977), stated that "where a plaintiff is provided with adequate food, clothing and sanitation, the conditions of solitary confinement do not on their face violate the Eighth Amendment." From this the court concluded that plaintiff's allegations did not support a finding that there had been a violation. This conclusion, of course, compelled a finding that defendants enjoyed qualified immunity.

We suspect that the district court was beguiled by a simplistic trilogy of conditions that, while convenient as illustrative shorthand, cannot preclude a fact-intensive inquiry under constitutional standards. Those standards are set forth in *Rhodes v. Chapman,* 452 U.S. 337, 346, 101 S.Ct. 2392, 2399, 69 L.Ed.2d 59 (1981), in which the Court began its analysis by recognizing that there is "[n]o static `test.'" Prohibited punishments include those which "involve the wanton and unnecessary infliction of pain," including "pain without any penological purpose", or which are "grossly disproportionate to the crime warranting imprisonment," *id.* at 347, 101 S.Ct. at 2399. Further, conditions that "deprive inmates of the minimal civilized measure of life's necessities," *id.,* are violative of the "contemporary standard of decency that [the Court] recognized in [*Estelle v. Gamble,* 429 U.S. 97, 103-104, 97 S.Ct. 285, 290-91, 50 L.Ed.2d 251 (1976)]," *id.* We observe that it was not without significance to the Court in *Rhodes,* in assessing the effect of double celling in the Southern Ohio Correctional Facility, that "though small, the cells in SOCF are exceptionally modern and functional; they are heated and ventilated and have hot and cold running water and a sanitary toilet." *Id.* at 349 n. 13, 101 S.Ct. at 2400 n. 13.

The two cases cited by the district court, *Sheley* and *Newman,* lend no support to the summary judgment below, for each specified the basic requirement to supply clothing to a prisoner. And undershorts is a flimsy surrogate for clothing. Moreover, as the district court noted, both required the provision of basic sanitation.

Nor can we find other cases in this or our antecedent circuit that support the judgment.

In *McMahon v. Beard,* 583 F.2d 172, 175 (5th Cir.1978), the court found no constitutional violation in holding a pretrial detainee in solitary confinement without any clothes and without mattress, sheets, or blankets for three months. It noted, however, the compelling consideration of dealing with an inmate with continuing suicidal tendencies, the fact that medical personnel saw the inmate during the period, and the fact that eventually the inmate was provided with paper clothing. Moreover, the case does not indicate that there was any issue of inadequate heat in the cell. The court specifically reserved the question of whether such conditions under other circumstances might violate constitutional standards.

Two decades ago, in *Novak v. Beto,* 453 F.2d 661, 666 (5th Cir.1971), a case involving a class action attack on the conditions of solitary confinement in Texas, the court upheld the system as applied, and took note that the Texas Department of Corrections complied with "virtually all" of its guidelines, *id.* at 669. Insofar as the issue of cell temperature and clothing was concerned, the relevant guidelines required that inmates be "given coveralls, a gown or some other form of clothing, i.e., tee shirt and undershorts, tee shirt and regulation trousers", and be "furnished with the necessary number of blankets to keep them warm." *Id.* at 668. In addition, the court distinguished that line of cases in which inmates were subjected to conditions lacking "basic elements of hygiene." *Id.* at 665 (citing cases). The court observed that the cells were sanitary and the inmate had been provided with toilet paper and other basic hygiene articles.

Other circuits have for some time recognized the temperature factor in assessing conditions of confinement. As far back as 1967, the Second Circuit reversed dismissal of a prisoner's complaint of exposure to extreme cold. *Wright v. McMann,* 387 F.2d 519 (2d Cir.1967). Subsequently, it 1065 *1065 affirmed on the merits a finding of cruel and unusual punishment in confining an inmate for eleven days, naked, without soap, towels, or toilet paper, and without bedding of any kind, forcing the inmate to sleep on the floor, the temperature being "sufficiently cold to cause extreme discomfort". *Wright v. McMann,* 460 F.2d 126, 129 (2d Cir.1972).

Similarly, the Fourth Circuit, sitting in banc, found two sets of conditions of confinement involving the same prison inmate to violate the Eighth Amendment. *McCray v. Burrell,* 516 F.2d 357 (4th Cir.1975). In the first, the inmate was confined for two days in a cell where a concrete slab was initially the inmate's bed. A mattress was furnished later during the first night, but no blankets were supplied. Although the record did not disclose the temperature in the cell, it was so cold that the inmate tore open the mattress and nestled inside. The inmate also was denied articles of personal hygiene. *Id.* at 365-66. The court held that in the case of an ordinary prisoner, these conditions were violative of the Eighth Amendment; the only justification would be such mental derangement on the part of the inmate that self-harm was a real danger, in which case immediate contact with a psychologist/psychiatrist was required. *Id.* at 368-69. The second set of conditions included another two-day confinement in a cell without clothing, blanket, or mattress, where the inmate claimed sleep was impossible and that he had to stand up most of the first night. He was also denied articles of personal hygiene. *Id.* at 367, 369. The court held that these conditions, too, violated the inmate's Eighth Amendment rights in the absence of mental derangement.

The Eighth Circuit has faced a situation similar to that now before us. *See* *Maxwell v. Mason,* 668 F.2d 361 (8th Cir.1981). The court affirmed a finding of cruel and unusual punishment in the confinement of an inmate to fourteen days in a solitary cell with no clothing except undershorts and no bedding except a mattress. Corrections officers had testified that the temperature would have been at least 70 degrees, but the inmate had "testified that he huddled in the corner of his cell to stay warm." *Id.* at 363. The court referred to its earlier decision in *Finney v. Arkansas Bd. of Corrections,* 505 F.2d 194, 207-08 (8th Cir.1974), in which the court stated that prisoners in punitive solitary confinement should not be "deprived of basic necessities including light, heat, ventilation, sanitation, clothing and a proper diet," and affirmed a denial of qualified immunity for two penitentiary officials. 668 F.2d at 365.

Finally, the Seventh Circuit has addressed two similar situations. In the first case, it reversed dismissal of a prisoner's complaint which alleged being placed in solitary confinement for three days without mattress, bedding, or blankets and without articles of personal hygiene. *Kimbrough v. O'Neil,* 523 F.2d 1057 (7th Cir.1975). In a more recent case, the court set aside summary judgment in *Lewis v. Lane,* 816 F.2d 1165 (7th Cir.1987), where two state prisoners alleged that the heat in their cells was maintained at an unreasonably low temperature during December 1983 and January 1984, *id.* at 1166, and that the lack of heat was "severe enough to produce physical discomfort," *id.,* at 1171 n. 10. Although an affidavit of officials averred that the temperature was always checked when complaint was made and always found to be between 68 and 72 degrees, the court said:

> An allegation of inadequate heating may state an eighth amendment violation. *See, e.g., Ramos v. Lamm,* 639 F.2d 559, 568 (10th Cir.1980) ("a state must provide ... reasonably adequate ventilation, sanitation, bedding, hygienic materials, and utilities (*i.e.,* hot and cold water, light, heat, plumbing)")....

Id. at 1171 (footnote omitted).

We conclude from this body of caselaw that plaintiff is entitled to have the trier of fact determine whether the conditions of his administrative confinement, principally with regard to the cell temperature and the provision of hygiene items, violated the minimal standards required by the Eighth Amendment. We also conclude, although the district court did not reach the issue, that the right of a prisoner not to be confined 1066 *1066 in a cell at so low a temperature as to cause severe discomfort and in conditions lacking basic sanitation was well established in 1986. The defendants therefore were not entitled to summary judgment on the basis of qualified immunity.

A final issue, which was briefly alluded to, was whether plaintiff suffered any harm from his allegedly chill incarceration. Defendants attempt to exploit plaintiff's deposition answers in cross examination that he did not suffer injury to his back or head or pneumonia or a cold and that he had not sought counselling to argue that in effect this was a case of *damnum absque injuria.* But plaintiff's description of sleeping on the floor with only underclothes and a mattress with a plastic cover in 60-degree "real cold"

temperature was graphic, and his question, "What kind of effect would that have on you?" were sufficient to preserve the issue of harm. Moreover, he later unambiguously stated: "As far as being in solitary confinement or administrative confinement ... I'm sure I was depressed from it." This clearly poses the factual question whether plaintiff "suffered any pain, misery, anguish or similar harm, whether capable of estimation or not." *Cowans v. Wyrick,* 862 F.2d 697, 700 (8th Cir.1988).

We therefore conclude that summary judgment was inappropriate on the issue of whether the conditions of **Chandler's** confinement violated the Eighth Amendment.

AFFIRMED in part, REVERSED in part and REMANDED to the district court for further proceedings consistent with this opinion.

[*] Honorable Frank M. Coffin, Senior U.S. Circuit Judge, for the First Circuit, sitting by designation.

[1] We observe that **Chandler** has not disputed on appeal the district court's grant of summary judgment on count two, alleging violation of unspecified rules and regulations. In addition, **Chandler** has made no argument concerning the allegations contained in count six, which alleged both Eighth Amendment and due process violations arising out of the specific conduct of defendant Altic. We therefore do not address these claims on appeal.

[2] Subparagraph (19) of that section provided in part:

The following procedures must be performed prior to placing an inmate in administrative confinement:

(a) The Correctional Shift Supervisor must cause a Report of Administrative Confinement to be completed and the inmate must be informed of the reasons for his placement in administrative confinement. If the inmate wishes to make a statement, such statement shall be recorded on the form. Written, complete details and reason(s) as to why the inmate was placed in this status must also be given.

[3] *See also* *Bruscino v. Carlson,* 854 F.2d 162 (7th Cir.1988); *Howland v. Kilquist,* 833 F.2d 639 (7th Cir.1987). *Compare* *Martin v. Davies,* 917 F.2d 336 (7th Cir.1990) *with* *DeMallory v. Cullen,* 855 F.2d 442 (7th Cir.1988). *Bonner v. Coughlin,* 517 F.2d 1311, 1320 (7th Cir.1975) (Stevens, J.) had earlier foreshadowed this line of cases ("We may assume ... that an intentional taking of a prisoner's legal materials that results in an interference with his access to the courts violates this duty [not to abridge access].")

[4] In addition, plaintiff was represented by counsel at his resentencing trial, meeting the requirement set by *Bounds* for meaningful access. *Bounds,* 430 U.S. at 828, 97 S.Ct. at 1498 (meaningful access may be met by providing assistance from persons trained in the law).

518 U.S. 343 (1996)

LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, et al.
v.
CASEY et al.

No. 94-1511.

United States Supreme Court.

Argued November 29, 1995.
Decided June 24, 1996.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

344 *344 Scalia, J., delivered the opinion of the Court, in which Rehnquist, C. J., and O'Connor, Kennedy, and Thomas, JJ., joined, and in Parts I and III of which Souter, Ginsburg, and Breyer, JJ., joined. Thomas, J., filed a concurring opinion, *post,* p. 364. Souter, J.,filed an opinion concurring in part, dissenting in part, and concurring in the judgment, in which Ginsburg and Breyer, JJ., joined, *post,* p. 393. Stevens, J., filed a dissenting opinion, *post,* p. 404.

345 *345 *Grant Woods,* Attorney General of Arizona, argued the cause for petitioners. With him on the briefs were *Daniel P. Struck, David C. **Lewis**, Eileen J. Dennis, Rex E. Lee, Carter G. Phillips, Mark D. Hopson, C. Tim Delaney, Rebecca White Berch,* and *Thomas J. Dennis.*

Elizabeth Alexander argued the cause for respondents. With her on the brief were *Ayesha Khan, Margaret Winter, Alvin J. Bronstein, Alice L. Bendheim,* and *Steven R. Shapiro.*[*]

346 *346 Justice Scalia, delivered the opinion of the Court.

In *Bounds* v. *Smith,* 430 **U. S.** 817 (1977), we held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Id.,* at 828. Petitioners, who are officials of the Arizona Department of Corrections (ADOC), contend that the United States District Court for the District of Arizona erred in finding them in violation of *Bounds,* and that the court's remedial order exceeded lawful authority.

I

Respondents are 22 inmates of various prisons operated by ADOC. In January 1990, they filed this class action "on behalf of all adult prisoners who are or will be incarcerated by the State of Arizona Department of Corrections," App. 22, alleging that petitioners were "depriving [respondents] of their rights of access to the courts and counsel protected by the First, Sixth, and Fourteenth Amendments," *id.,* at 34. Following a 3-month bench trial, the District Court ruled in favor of respondents, finding that "[p]risoners have a constitutional right of access to the courts that is adequate, effective and meaningful," 834 F. Supp. 1553, 1566 (1992), citing *Bounds, supra,* at 822, and that "[ADOC's] system fails to comply with constitutional standards," 834 F. Supp., at 1569. The court identified a variety of shortcomings of the ADOC system, in matters ranging from the training of library staff, to the updating of legal materials, to the availability of
347 photocopying services. In addition to these general *347 findings, the court found that two groups of inmates were particularly affected by the system's inadequacies: "[l]ockdown prisoners" (inmates segregated from the general prison population for disciplinary or security reasons), who "are routinely denied physical access to the law library" and "experience severe interference with their access to the courts," *id.,* at 1556; and illiterate or non-English-speaking inmates, who do not receive adequate legal assistance, *id.,* at 1558.

Having thus found liability, the court appointed a Special Master "to investigate and report about" the appropriate relief—that is (in the court's view), "how best to accomplish the goal of constitutionally adequate inmate access to the courts." App. to Pet. for Cert. 87a. Following eight months of investigation, and some degree of consultation with both parties, the Special Master lodged with the court a proposed permanent injunction, which the court proceeded to adopt, substantially unchanged. The 25-page injunctive order, see *id.,* at 61a-85a, mandated sweeping changes designed to ensure that ADOC would "provide meaningful access to the Courts for all present and future prisoners," *id.,* at 61a. It specified in minute detail the times that libraries were to be kept open, the number of hours of library use to which each inmate was entitled (10 per week), the minimal educational requirements for prison librarians (a library science degree, law degree, or paralegal degree), the content of a videotaped legal-research course for inmates (to be prepared by persons appointed by the Special Master but funded by ADOC), and similar matters. *Id.,* at 61a, 67a, 71a. The injunction addressed the court's concern for lockdown prisoners by ordering that "ADOC prisoners in all housing areas and custody levels shall be provided regular and comparable visits to the law library," except that such visits "may be postponed on an individual basis because of the
348 prisoner's documented inability to use the law library without creating *348 a threat to safety or security, or a physical condition if determined by medical personnel to prevent library use." *Id.,* at 61a. With respect to illiterate and non-English-speaking inmates, the injunction declared that they were entitled to "direct assistance" from lawyers, paralegals, or "a sufficient number of at least minimally trained prisoner Legal Assistants"; it enjoined ADOC that "[p]articular steps must be taken to locate and train bilingual prisoners to be Legal Assistants." *Id.,* at 69a-70a.

Petitioners sought review in the Court of Appeals for the Ninth Circuit, which refused to grant a stay prior to argument. We then stayed the injunction pending filing and disposition of a petition for a writ of certiorari. 511 **U. S.** 1066 (1994). Several months later, the Ninth Circuit affirmed both the finding of a *Bounds* violation and, with minor exceptions not important here, the terms of the injunction. 43 F. 3d 1261 (1994). We granted certiorari, 514 **U. S.** 1126 (1995).

II

Although petitioners present only one question for review, namely, whether the District Court's order "exceeds the constitutional requirements set forth in *Bounds,* " Brief for Petitioners (i), they raise several distinct challenges, including renewed attacks on the court's findings of *Bounds* violations with respect to illiterate, non-English-speaking, and lockdown prisoners, and on the breadth of the injunction. But their most fundamental contention is that the District Court's findings of injury were inadequate to justify the finding of *systemwide* injury and hence the granting of systemwide relief. This argument has two related components. First, petitioners claim that in order to establish a violation of *Bounds,* an inmate must show that the alleged inadequacies of a prison's library facilities or legal assistance program caused him "actual injury"—that is, "actual prejudice with respect to contemplated or existing litigation, such as the inability to meet
349 a filing deadline or to present a claim." *349 Brief for Petitioners 30.[1] Second, they claim that the District Court did not find enough instances of actual injury to warrant systemwide relief. We agree that the success of respondents' systemic challenge was dependent on their ability to show widespread actual injury, and that the court's failure to identify anything more than isolated instances of actual injury renders its finding of a systemic *Bounds* violation invalid.

A

The requirement that an inmate alleging a violation of *Bounds* must show actual injury derives ultimately from the doctrine of standing, a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches. See *Allen* v. *Wright,* 468 **U. S.** 737, 750-752 (1984); *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.,* 454 **U. S.** 464, 471— 476 (1982). It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution. In the context of the present case: It is for the courts to remedy past or imminent official interference with individual inmates' presentation of claims to the courts; it is for the political branches of the State and Federal Governments to manage prisons in such fashion that official interference with the presentation of
350 claims will not occur. *350 Of course, the two roles briefly and partially coincide when a court, in granting relief against actual harm that has been suffered, or that will imminently be suffered, by a particular individual or class of individuals, orders the alteration of an institutional organization or procedure that causes the harm. But the distinction between

the two roles would be obliterated if, to invoke intervention of the courts, no actual or imminent harm were needed, but merely the status of being subject to a governmental institution that was not organized or managed properly. If—to take another example from prison life—a healthy inmate who had suffered no deprivation of needed medical treatment were able to claim violation of his constitutional right to medical care, see *Estelle* v. *Gamble,* 429 **U. S.** 97, 103 (1976), simply on the ground that the prison medical facilities were inadequate, the essential distinction between judge and executive would have disappeared: it would have become the function of the courts to assure adequate medical care in prisons.

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 to legal assistance. But *Bounds* established no such right, any more than *Estelle* established a right to a prison hospital. The right that *Bounds* acknowledged was the (already well-established) right of *access to the courts. E. g., Bounds,* 430 **U. S.**, at 817, 821, 828. In the cases to which *Bounds* traced its roots, we had protected that right by prohibiting state prison officials from actively interfering with inmates' attempts to prepare legal documents, *e. g., Johnson* v. *Avery,* 393 **U. S.** 483, 484, 489490 (1969), or file them, *e. g., Ex parte Hull,* 312 **U. S.** 546, 547-549 (1941), and by requiring state courts to waive filing fees, *e. g., Burns* v. *Ohio,* 360 **U. S.** 252, 258 (1959), or transcript fees, *e. g., Griffin* v. *Illinois,* 351 **U. S.** 12, 19 (1956), for indigent inmates. *Bounds* focused on the same entitlement of access to the courts. Although it affirmed a court order *351 requiring North Carolina to make law library facilities available to inmates, it stressed that that was merely "one constitutionally acceptable method to assure meaningful access to the courts," and that "our decision here . . . does not foreclose alternative means to achieve that goal." 430 **U. S.**, at 830. In other words, prison 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." *Id.,* at 825.

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Because *Bounds* did not create an abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense. That would be the precise analog of the healthy inmate claiming constitutional violation because of the inadequacy of the prison infirmary. Insofar as the right vindicated by *Bounds* is concerned, "meaningful access to the courts is the touchstone," *id.,* at 823 (internal quotation marks omitted), and the inmate therefore must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim. He might show, for example, that a complaint he prepared 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 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.

Although *Bounds* itself made no mention of an actualinjury requirement, it can hardly be thought to have eliminated that constitutional prerequisite. And actual injury is apparent

on the face of almost all the opinions in the 35-year line of access-to-courts cases on
352 which *Bounds* relied, see *id.,* *352 at 821-825.[2] Moreover, the assumption of an actual-injury requirement seems to **us** implicit in the opinion's statement that "we encourage local experimentation" in various methods of assuring access to the courts. *Id.,* at 832. One such experiment, for example, might replace libraries with some minimal access to legal advice and a system of courtprovided forms such as those that contained the original complaints in two of the more significant inmate-initiated cases in recent years, *Sandin* v. *Conner,* 515 **U. S.** 472 (1995), and *Hudson* v. *McMillian,* 503 **U. S.** 1 (1992)—forms that asked the inmates to provide only the facts and not to attempt any legal analysis. We hardly think that what we meant by "experimenting" with such an alternative was simply announcing it, whereupon suit would immediately lie to declare it theoretically inadequate and bring the experiment to a close. We think we envisioned,
353 instead, that the new *353 program would remain in place at least until some inmate could demonstrate that a nonfrivolous[3] legal claim had been frustrated or was being impeded.[4]

354 *354 It must be acknowledged that several statements in *Bounds* went beyond the right of access recognized in the earlier cases on which it relied, which was a right to bring to court a grievance that the inmate wished to present, see, *e. g., Ex parte Hull,* 312 **U. S.**, at 547-548; *Griffin* v. *Illinois,* 351 **U. S.**, at 13-16; *Johnson* v. *Avery,* 393 **U. S.**, at 489. These statements appear to suggest that the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court. See *Bounds,* 430 **U. S.**, at 825-826, and n. 14. These elaborations upon the right of access to the courts have no antecedent in our pre-*Bounds* cases, and we now disclaim them. To 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.

Finally, we must observe that the injury requirement is not satisfied by just any type of frustrated legal claim. Nearly all of the access-to-courts cases in the *Bounds* line involved attempts by inmates to pursue direct appeals from the convictions for which they were incarcerated, see *Douglas* v. *California,* 372 **U. S.** 353, 354 (1963); *Burns* v. *Ohio,* 360 **U. S.**, at 253, 258; *Griffin* v. *Illinois, supra,* at 13, 18; *Cochran* v. *Kansas,* 316 **U. S.** 255, 256 (1942), or habeas petitions, see *Johnson* v. *Avery, supra,* at 489; *Smith* v. *Bennett,* 365 **U. S.** 708, 709-710 (1961); *Ex parte Hull, supra,* at 547548. In *Wolff* v. *McDonnell,* 418 **U. S.** 539 (1974), we extended this universe of relevant claims only slightly, to "civil rights actions"—*i. e.,* actions under 42 U. S. C. § 1983 to vindicate "basic constitutional rights." 418 **U. S.**, at 579. Significantly, we felt compelled to justify even this slight extension of the right of access to the courts, stressing that "the demarcation
355 line between civil rights actions and habeas *355 petitions is not always clear," and that "[i]t is futile to contend that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ." *Ibid.* The prison law library imposed in *Bounds* itself was far from an all-subject facility. In rejecting the contention that the State's proposed collection was inadequate, the District Court there said:

> "This Court does not feel inmates need the entire **U. S.** Code Annotated. Most of that code deals with federal laws and regulations that would never

involve a state prisoner. . . .

"It is also the opinion of this Court that the cost of N. C. Digest and Modern Federal Practice Digest will surpass the usefulness of these research aids. They cover mostly areas not of concern to inmates."[5] Supplemental App. to Pet. for Cert. in *Bounds* v. *Smith*, O. T. 1976, No. 75-915, p. 18.

In other words, *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. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

356 *356 **B**

Here the District Court identified only two instances of actual injury. In describing ADOC's failures with respect to illiterate and non-English-speaking prisoners, it found that "[a]s a result of the inability to receive adequate legal assistance, prisoners who are slow readers have had their cases dismissed with prejudice," and that "[o]ther prisoners have been unable to file legal actions." 834 F. Supp., at 1558. Although the use of the plural suggests that several prisoners sustained these actual harms, the court identified only one prisoner in each instance. *Id.,* at 1558, nn. 37 (lawsuit of inmate Bartholic dismissed with prejudice), 38 (inmate Harris unable to file a legal action).

Petitioners contend that "any lack of access experienced by these two inmates is not attributable to unconstitutional State policies," because ADOC "has met its constitutional obligations." Brief for Petitioners 32, n. 22. The claim appears to be that all inmates, including the illiterate and non-English speaking, have a right to nothing more than "physical access to excellent libraries, *plus* help from legal assistants and law clerks." *Id.,* at 35. This misreads *Bounds,* which as we have said guarantees no particular methodology but rather the conferral of a capability—the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts. When any inmate, even an illiterate or non-English-speaking inmate, shows that an actionable claim of this nature which he desired to bring has been lost or rejected, or that the presentation of such a claim is currently being prevented, because this capability of filing suit has not been provided, he demonstrates that the State has failed to furnish "*adequate* law libraries or *adequate* assistance from persons trained in the law," *Bounds,* 430 **U. S.**, at 828 (emphasis added). Of course, we leave 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 challenging their convictions or
357 conditions of confinement. But it is *357 that capability, rather than the capability of turning pages in a law library, that is the touchstone.

C

Having rejected petitioners' argument that the injuries suffered by Bartholic and Harris do not count, we turn to the question whether those injuries, and the other findings of the District Court, support the injunction ordered in this case. The actual-injury requirement would hardly serve the purpose we have described above—of preventing courts from undertaking tasks assigned to the political branches— if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy *all* inadequacies in that administration. The remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established. See *Missouri* v. *Jenkins*, 515 **U. S.** 70, 88, 89 (1995) ("[T]he nature of the . . . remedy is to be determined by the nature and scope of the constitutional violation" (citation and internal quotation marks omitted)).

This is no less true with respect to class actions than with respect to other suits. "That a suit may be a class action. . . adds nothing to the question of standing, for even named plaintiffs who represent a class `must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.' " *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 **U. S.** 26, 40, n. 20 (1976), quoting *Warth* v. *Seldin*, 422 **U. S.** 490, 502 (1975). The general allegations of the complaint in the present case may well have sufficed to claim injury by named plaintiffs, and hence standing to demand remediation, with respect to various alleged inadequacies in the prison system, including failure to provide adequate legal assistance to nonEnglish-speaking inmates and lockdown prisoners. That point is irrelevant now, however, for we are beyond the pleading stage.

358 *358 "Since they are not mere pleading requirements, but rather an indispensable part of the plaintiff's case, each element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i. e.,* with the manner and degree of evidence required at the successive stages of the litigation. At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim. In response to a summary judgment motion, however, the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true. And at the final stage, those facts (if controverted) must be supported adequately by the evidence adduced at trial." *Lujan* v. *Defenders of Wildlife*, 504 **U. S.** 555, 561 (1992) (citations and internal quotation marks omitted).

After the trial in this case, the court found actual injury on the part of only one named plaintiff, Bartholic; and the cause of that injury—the inadequacy which the suit empowered the court to remedy—was failure of the prison to provide the special services that Bartholic would have needed, in light of his illiteracy, to avoid dismissal of his case. At the outset, therefore, we can eliminate from the proper scope of this

injunction provisions directed at special services or special facilities required by non-English speakers, by prisoners in lockdown, and by the inmate population at large. If inadequacies of this character exist, they have not been found to have harmed any plaintiff in this lawsuit, and hence were not the proper object of this District Court's remediation.[6]

359 *359 As to remediation of the inadequacy that caused Bartholic's injury, a further question remains: Was that inadequacy widespread enough to justify systemwide relief? The only findings supporting the proposition that, in all of ADOC's facilities, an illiterate inmate wishing to file a claim would be unable to receive the assistance necessary to do so were (1) the finding with respect to Bartholic, at the Florence facility, and (2) the finding that Harris, while incarcerated at Perryville, had once been "unable to file [a] legal actio[n]." 834 F. Supp., at 1558. These two instances were a patently inadequate basis for a conclusion of systemwide violation and imposition of systemwide relief. See *Dayton Bd. of Ed.* v. *Brinkman,* 433 **U. S.** 406, 417 (1977) ("[I]nstead of tailoring a remedy commensurate with the three specific violations, the Court of Appeals imposed a systemwide remedy going beyond their scope"); *id.,* at 420 ("[O]nly if there has been a
360 systemwide impact may there be a systemwide remedy"); *360 *Califano* v. *Yamasaki,* 442 **U. S.** 682, 702 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class").

To be sure, the District Court also noted that "the trial testimony . . . indicated that there are prisoners who are unable to research the law because of their functional illiteracy," 834 F. Supp., at 1558. As we have discussed, however, the Constitution does not require that prisoners (literate or illiterate) be able to conduct generalized research, but only that they be able to present their grievances to the courts— a more limited capability that can be produced by a much more limited degree of legal assistance. Apart from the dismissal of Bartholic's claim with prejudice, and Harris's inability to file his claim, there is no finding, and as far as we can discern from the record no evidence, that in Arizona prisons illiterate prisoners cannot obtain the minimal help necessary to file particular claims that they wish to bring before the courts. The constitutional violation has not been shown to be systemwide, and granting a remedy beyond what was necessary to provide relief to Harris and Bartholic was therefore improper.[7]

361 *361 ## III

There are further reasons why the order here cannot stand. We held in *Turner* v. *Safley,* 482 **U. S.** 78 (1987), that a prison regulation impinging on inmates' constitutional rights "is valid if it is reasonably related to legitimate penological interests." *Id.,* at 89. Such a deferential standard is necessary, we explained,

> "if `prison administrators . . . , and not the courts, [are] to make the difficult judgments concerning institutional operations.' Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration."

Ibid. (citation omitted), quoting *Jones* v. *North Carolina Pris- oners' Labor Union, Inc.*, 433 **U. S.** 119, 128 (1977).

These are the same concerns that led **us** to encourage "local experimentation" in *Bounds,* see *supra,* at 352, and we think it quite obvious that *Bounds* and *Turner* must be read *in pari materia.*

The District Court here failed to accord adequate deference to the judgment of the prison authorities in at least three significant respects. First, the court concluded that ADOC's restrictions on lockdown prisoners' access to law libraries were unjustified. *Turner* `s principle of deference has special force with regard to that issue, since the inmates in lockdown include "the most dangerous and violent prisoners in the Arizona prison system," and other inmates presenting special disciplinary and security concerns. Brief
362 for Petitioners 5. The District Court made much of the fact *362 that lockdown prisoners routinely experience delays in receiving legal materials or legal assistance, some as long as 16 days, 834 F. Supp., at 1557, and n. 23, but so long as they are the product of prison regulations reasonably related to legitimate penological interests, such delays are not of constitutional significance, even where they result in actual injury (which, of course, the District Court did not find here).

Second, the injunction imposed by the District Court was inordinately—indeed, wildly—intrusive. There is no need to belabor this point. One need only read the order, see App. to Pet. for Cert. 61a-85a, to appreciate that it is the *ne plus ultra* of what our opinions have lamented as a court's "in the name of the Constitution, becom[ing] . . . enmeshed in the minutiae of prison operations." *Bell* v. *Wolfish,* 441 **U. S.** 520, 562 (1979).

Finally, the order was developed through a process that failed to give adequate consideration to the views of state prison authorities. We have said that "[t]he strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct its own errors . . . also require giving the States the first opportunity to correct the errors made in the internal administration of their prisons." *Preiser* v. *Rodriguez,* 411 **U. S.** 475, 492 (1973). For an illustration of the proper procedure in a case such as this, we need look no further than *Bounds* itself. There, after granting summary judgment for the inmates, the District Court refrained from "`dictat[ing] precisely what course the State should follow.' " *Bounds,* 430 **U. S.**, at 818. Rather, recognizing that "determining the `appropriate relief to be ordered . . . presents a difficult problem,' " the court "`charge[d] the Department of Correction with the task of devising a Constitutionally sound program' to assure inmate access to the courts." *Id.,* at 818-819. The State responded with a proposal, which the District Court ultimately
363 approved with minor changes, after considering objections *363 raised by the inmates. *Id.,* at 819-820. We praised this procedure, observing that the court had "scrupulously respected the limits on [its] role," by "not . . . thrust[ing] itself into prison administration" and instead permitting "[p]rison administrators [to] exercis[e] wide discretion within the bounds of constitutional requirements." *Id.,* at 832-833.

As *Bounds* was an exemplar of what should be done, this case is a model of what should not. The District Court totally failed to heed the admonition of *Preiser.* Having found a violation of the right of access to the courts, it conferred upon its special master,

a law professor from Flushing, New York, rather than upon ADOC officials, the responsibility for devising a remedial plan. To make matters worse, it severely limited the remedies that the master could choose. Because, in the court's view, its order in an earlier access-tocourts case (an order that adopted the recommendations of the same special master) had "resolved successfully" most of the issues involved in this litigation, the court instructed that as to those issues it would implement the earlier order statewide, "with any modifications that the parties and Special Master determine are necessary due to the particular circumstances of the prison facility." App. to Pet. for Cert. 88a (footnote omitted). This will not do. The State was entitled to far more than an opportunity for rebuttal, and on that ground alone this order would have to be set aside.[8]

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For the foregoing reasons, we reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Justice Thomas, concurring.

The Constitution charges federal judges with deciding cases and controversies, not with running state prisons. Yet, too frequently, federal district courts in the name of the Constitution effect wholesale takeovers of state correctional facilities and run them by judicial decree. This case is a textbook example. Dissatisfied with the quality of the law libraries and the legal assistance at Arizona's correctional institutions, the District Court imposed a statewide decree on the Arizona Department of Corrections (ADOC), dictating in excruciatingly minute detail a program to assist inmates in the filing of lawsuits—right down to permissible noise levels in library reading rooms. Such gross overreaching by a federal district court simply cannot be tolerated in our federal system. Principles of federalism and separation of powers dictate that exclusive responsibility for administering state prisons resides with the State and its officials.

365 *365 Of course, prison officials must maintain their facilities consistent with the restrictions and obligations imposed by the Constitution. In *Bounds* v. *Smith,* 430 **U. S.** 817 (1977), we recognized as part of the State's constitutional obligations a duty to provide prison inmates with law libraries or other legal assistance at state expense, an obligation we described as part of a loosely defined "right of access to the courts" enjoyed by prisoners. While the Constitution may guarantee state inmates an opportunity to bring suit to vindicate their federal constitutional rights, I find no basis in the Constitution—and *Bounds* cited none—for the right to have the government finance the endeavor.

I join the majority opinion because it places sensible and much-needed limitations on the seemingly limitless right to assistance created in *Bounds* and because it clarifies the scope of the federal courts' authority to subject state prisons to remedial decrees. I write separately to make clear my doubts about the validity of *Bounds* and to reiterate my

observation in *Missouri* v. *Jenkins,* 515 **U. S.** 70 (1995), that the federal judiciary has for the last half century been exercising "equitable" powers and issuing structural decrees entirely out of line with its constitutional mandate.

I

A

This case is not about a right of "access to the courts." There is no proof that Arizona has prevented even a single inmate from filing a civil rights lawsuit or submitting a petition for a writ of habeas corpus. Instead, this case is about the extent to which the Constitution requires a State to finance or otherwise assist a prisoner's efforts to bring suit against the State and its officials.

In *Bounds* v. *Smith, supra,* we recognized for the first time a "fundamental constitutional right" of all inmates to have the State "assist [them] in the preparation and filing of
366 meaningful legal papers." *Id.,* at 828. We were not explicit *366 as to the forms the State's assistance must take, but we did hold that, at a minimum, States must furnish prisoners "with adequate law libraries or adequate assistance from persons trained in the law." *Ibid.* Although our cases prior to *Bounds* occasionally referenced a constitutional right of access to the courts, we had never before recognized a freestanding constitutional right that requires the States to "shoulder affirmative obligations," *id.,* at 824, in order to "insure that inmate access to the courts is adequate, effective, and meaningful," *id.,* at 822.

Recognition of such broad and novel principles of constitutional law are rare enough under our system of law that I would have expected the *Bounds* Court to explain at length the constitutional basis for the right to state-provided legal materials and legal assistance. But the majority opinion in *Bounds* failed to identify a single provision of the Constitution to support the right created in that case, a fact that did not go unnoticed in strong dissents by Chief Justice Burger and then-Justice Rehnquist. See *id.,* at 833-834 (opinion of Burger, C. J.) ("The Court leaves **us** unenlightened as to the source of the `right of access to the courts' which it perceives or of the requirement that States `foot the bill' for assuring such access for prisoners who want to act as legal researchers and brief writers"); *id.,* at 840 (opinion of Rehnquist, J.) ("[T]he `fundamental constitutional right of access to the courts' which the Court announces today is created virtually out of whole cloth with little or no reference to the Constitution from which it is supposed to be derived"). The dissents' calls for an explanation as to which provision of the Constitution guarantees prisoners a right to consult a law library or a legal assistant, however, went unanswered. This is perhaps not surprising: Just three years before *Bounds* was decided we admitted that the "[t]he precise rationale" for many of the "access to the courts" cases on which *Bounds* relied had "never been explicitly stated," and that no
367 Clause that had thus far been advanced "by itself provides *367 an entirely satisfactory basis for the result reached." *Ross* v. *Moffitt,* 417 **U. S.** 600, 608-609 (1974).

The weakness in the Court's constitutional analysis in *Bounds* is punctuated by our

inability, in the 20 years since, to agree upon the constitutional source of the supposed right. We have described the right articulated in *Bounds* as a "consequence" of due process, *Murray* v. *Giarratano,* 492 **U. S.** 1, 11, n. 6 (1989) (plurality opinion) (citing *Procunier* v. *Martinez,* 416 **U. S.** 396, 419 (1974)), as an "aspect" of equal protection, 492 **U. S.**, at 11, n. 6 (citation omitted), or as an "equal protection guarantee," *Pennsylvania* v. *Finley,* 481 **U. S.** 551, 557 (1987). In no instance, however, have we engaged in rigorous constitutional analysis of the basis for the asserted right. Thus, even as we endeavor to address the question presented in this case—whether the District Court's order "exceeds the constitutional requirements set forth in *Bounds,* " Pet. for Cert. i—we do so without knowing which Amendment to the Constitution governs our inquiry.

It goes without saying that we ordinarily require more exactitude when evaluating asserted constitutional rights. "As a general matter, the Court has always been reluctant" to extend constitutional protection to "unchartered area[s]," where the "guideposts for responsible decisionmaking . . . are scarce and open-ended." *Collins* v. *Harker Heights,* 503 **U. S.** 115, 125 (1992). It is a bedrock principle of judicial restraint that a right be lodged firmly in the text or tradition of a specific constitutional provision before we will recognize it as fundamental. Strict adherence to this approach is essential if we are to fulfill our constitutionally assigned role of giving full effect to the mandate of the Framers without infusing the constitutional fabric with our own political views.

B

In lieu of constitutional text, history, or tradition, *Bounds* turned primarily to precedent in
368 recognizing the right to state assistance in the researching and filing of prisoner *368 claims. Our cases, however, had never recognized a right of the kind articulated in *Bounds,* and, in my opinion, could not reasonably have been read to support such a right. Prior to *Bounds,* two lines of cases dominated our so-called "access to the courts" jurisprudence. One of these lines, rooted largely in principles of equal protection, invalidated state filing and transcript fees and imposed limited affirmative obligations on the States to ensure that their criminal procedures did not discriminate on the basis of poverty. These cases recognized a right to *equal* access, and any affirmative obligations imposed (*e. g.,* a free transcript or counsel on a first appeal as of right) were strictly limited to ensuring equality of access, not access in its own right. In a second line of cases, we invalidated state prison regulations that restricted or effectively prohibited inmates from filing habeas corpus petitions or civil rights lawsuits in federal court to vindicate federally protected rights. While the cases in this line did guarantee a certain amount of access to the federal courts, they imposed no affirmative obligations on the States to facilitate access, and held only that States may not "abridge or impair" prisoners' efforts to petition a federal court for vindication of federal rights. *Ex parte Hull,* 312 **U. S.** 546, 549 (1941). Without pausing to consider either the reasoning behind, or the constitutional basis for, each of these independent lines of case law, the Court in *Bounds* engaged in a loose and selective reading of our precedents as it created a freestanding and novel right to statesupported legal assistance. Despite the Court's purported reliance on prior cases, *Bounds* in fact represented a major departure both

from precedent and historical practice.

1

In a series of cases beginning with *Griffin* v. *Illinois,* 351 **U. S.** 12 (1956), the Court invalidated state rules that required indigent criminal defendants to pay for trial
369 transcripts or to pay other fees necessary to have their appeals *369 or habeas corpus petitions heard. According to the *Bounds* Court, these decisions "struck down restrictions and required remedial measures to insure that inmate access to the courts is adequate, effective, and meaningful." 430 **U. S.**, at 822. This is inaccurate. Notwithstanding the suggestion in *Bounds,* our transcript and fee cases did *not* establish a freestanding right of access to the courts, meaningful or otherwise.

In *Griffin,* for instance, we invalidated an Illinois rule that charged criminal defendants a fee for a trial transcript necessary to secure full direct appellate review of a criminal conviction. See 351 **U. S.**, at 13-14; *id.,* at 22 (Frankfurter, J., concurring in judgment). See also *Ross* v. *Moffitt, supra,* at 605-606. Though we held the fee to be unconstitutional, our decision did not turn on the effectiveness or adequacy of the access afforded to criminal defendants generally. We were quite explicit in reaffirming the century-old principle that "a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review *at all.* " *Griffin, supra,* at 18 (emphasis added) (citing *McKane* v. *Durston,* 153 **U. S.** 684, 687-688 (1894)). Indeed, the Court in *Griffin* was unanimous on this point. See 351 **U. S.**, at 21 (Frankfurter, J., concurring in judgment) ("[I]t is now settled that due process of law does not require a State to afford review of criminal judgments"); *id.,* at 27 (Burton, J., dissenting) ("Illinois, as the majority admit, could thus deny an appeal altogether in a criminal case without denying due process of law"); *id.,* at 36 (Harlan, J., dissenting) ("The majority of the Court concedes that the Fourteenth Amendment does not require the States to provide
370 for any kind of appellate review").[1] In light of the *Griffin* Court's unanimous *370 pronouncement that a State is not constitutionally required to provide *any* court access to criminals who wish to challenge their convictions, the *Bounds* Court's description of *Griffin* as ensuring "`adequate and effective appellate review,' " 430 **U. S.**, at 822 (quoting *Griffin, supra,* at 20), is unsustainable.

Instead, *Griffin* rested on the quite different principle that, while a State is not obliged to provide appeals in criminal cases, the review a State chooses to afford must not be administered in a way that excludes indigents from the appellate process solely on account of their poverty. There is no mistaking the principle that motivated *Griffin:*

> "It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. . . . [A]t all stages of the proceedings the Due Process and Equal Protection Clauses protect [indigent persons] from invidious discriminations. . . .

> ". . . There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." 351 **U. S.**, at 18-19 (plurality opinion) (citation omitted).

Justice Frankfurter, who provided the fifth vote for the majority, confirmed in a separate writing that it was invidious discrimination, and not the denial of adequate, effective, or meaningful access to the courts, that rendered the Illinois regulation unconstitutional: "
371 [W]hen a State deems it wise *371 and just that convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons . . . from securing such a review . . . ." *Id.,* at 23 (opinion concurring in judgment). Thus, contrary to the characterization in *Bounds, Griffin* stands not for the proposition that all inmates are entitled to adequate appellate review of their criminal convictions, but for the more modest rule that, if the State chooses to afford appellate review, it "can no more discriminate on account of poverty than on account of religion, race, or color." *Griffin, supra,* at 17 (plurality opinion).[2]

If we left any doubt as to the basis of our decision in *Griffin,* we eliminated it two decades later in *Douglas* v. *California,* 372 **U. S.** 353 (1963), where we held for the first time that States must provide assistance of counsel on a first appeal as of right for all indigent defendants. Like *Griffin, Douglas* turned not on a right of access *per se,* but rather on the right not to be denied, on the basis of poverty, access afforded to others. We did not say in *Douglas* that indigents have a right to a "meaningful appeal" that could not be realized
372 absent appointed counsel. Cf. *Bounds,* 430 **U. S.**, at 823. *372 What we did say is that, in the absence of state-provided counsel, "[t]here is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counse[l] . . . while the indigent. . . is forced to shift for himself." *Douglas, supra,* at 357358. Just as in *Griffin,* where "we held that a State may not grant appellate review in such a way as to discriminate against some convicted defendants on account of their poverty," *Douglas,* 372 **U. S.**, at 355, the evil motivating our decision in *Douglas* was "discrimination against the indigent," *ibid.*[3]

373 *373 Our transcript and fee cases were, therefore, limited holdings rooted in principles of equal protection. In *Bounds,* these cases were recharacterized almost beyond recognition, as the Court created a new and different right on behalf of prisoners—a right to have the State pay for law libraries or other forms of legal assistance without regard to the equality of access. Only by divorcing our prior holdings from their reasoning, and by elevating dicta over constitutional principle, was the Court able to reach such a result.

The unjustified transformation of the right to nondiscriminatory access to the courts into the broader, untethered right to legal assistance generally would be reason enough for me to conclude that *Bounds* was wrongly decided. However, even assuming that *Bounds* properly relied upon the *Griffin* line of cases for the proposition for which those cases actually stood, the *Bounds* Court failed to address a significant intervening development in our jurisprudence: the fact that the equal protection theory underlying *Griffin* and its progeny had largely been abandoned prior to *Bounds.* The provisions

invalidated in our transcript and fee cases were all facially neutral administrative regulations that had a disparate impact on the poor; there is no indication in any of those cases that the State imposed the challenged fee with the purpose of deliberately discriminating against indigent defendants. See, *e. g., Douglas, supra,* at 361 (Harlan, J., dissenting) (criticizing the Court for invalidating a state law "of general applicability" solely because it "may affect the poor more harshly than it does the rich"). In the years between *Douglas* and *Bounds,* however, we rejected a disparateimpact theory of the Equal Protection Clause. That the doctrinal basis for *Griffin* and its progeny has largely been undermined—and in fact had been before *Bounds* was decided—confirms the invalidity of the right to law libraries and legal assistance created in *Bounds.*

374 We first cast doubt on the proposition that a facially neutral law violates the Equal Protection Clause solely because *374 it has a disparate impact on the poor in *San Antonio Independent School Dist.* v. *Rodriguez,* 411 **U. S.** 1 (1973). In *Rodriguez,* the respondents challenged Texas' traditional system of financing public education under the Equal Protection Clause on the ground that, under that system, "some poorer people receive less expensive educations than other more affluent people." *Id.,* at 19. In rejecting the claim that this sort of disparate impact amounted to unconstitutional discrimination, we declined the respondents' invitation to extend the rationale of *Griffin, Douglas,* and similar cases. We explained that, under those cases, unless a group claiming discrimination on the basis of poverty can show that it is "*completely unable* to pay for some desired benefit, and as a consequence, . . . sustained an *absolute deprivation* of a meaningful opportunity to enjoy that benefit," 411 **U. S.**, at 20 (emphasis added), strict scrutiny of a classification based on wealth does not apply. Because the respondents in *Rodriguez* had not shown that "the children in districts having relatively low assessable property values are receiving *no* public education," but rather claimed only that "they are receiving a poorer quality education than that available to children in districts having more assessable wealth," *id.,* at 23 (emphasis added), we held that the "Texas system does not operate to the peculiar disadvantage of any suspect class," *id.,* at 28. After *Rodriguez,* it was clear that "wealth discrimination alone [does not] provid[e] an adequate basis for invoking strict scrutiny," *id.,* at 29, and that, "at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages," *id.,* at 24. See also *Kadrmas* v. *Dickinson Public Schools,* 487 **U. S.** 450, 458 (1988); *Harris* v. *McRae,* 448 **U. S.** 297, 322-323 (1980); *Maher* v. *Roe,* 432 **U. S.** 464, 470-471 (1977).[4]

375 *375 We rejected a disparate-impact theory of the Equal Protection Clause altogether in *Washington* v. *Davis,* 426 **U. S.** 229, 239 (1976), decided just one Term before *Bounds.* There we flatly rejected the idea that "a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another." 426 **U. S.**, at 242. We held that, absent proof of discriminatory purpose, a law or official act does not violate the Constitution "*solely* because it has a .. . disproportionate impact." *Id.,* at 239 (emphasis in original). See also *id.,* at 240 (acknowledging "the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose"). At bottom, *Davis* was a recognition of "the settled rule that the Fourteenth

Amendment guarantees equal laws, not equal results." *Personnel Administrator of Mass. v. Feeney,* 442 **U. S.** 256, 273 (1979).[5]

376 *376 The *Davis* Court was motivated in no small part by the potentially radical implications of the *Griffin/Douglas* rationale. As Justice Harlan recognized in *Douglas:* "Every financial exaction which the State imposes on a uniform basis is more easily satisfied by the well-to-do than by the indigent." 372 **U. S.**, at 361 (dissenting opinion). Under a disparate-impact theory, Justice Harlan argued, regulatory measures always considered to be constitutionally valid, such as sales taxes, state university tuition, and criminal penalties, would have to be struck down. See *id.,* at 361-362.[6] Echoing Justice Harlan, we rejected in *Davis* the disparateimpact approach in part because of the recognition that "[a] rule that a statute designed to serve neutral ends is nevertheless
377 *377 invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white." 426 **U. S.**, at 248. See also *id.,* at 248, n. 14.

Given the unsettling ramifications of a disparate-impact theory, it is not surprising that we eventually reached the point where we could no longer extend the reasoning of *Griffin* and *Douglas.* For instance, in *Ross* v. *Moffitt,* 417 **U. S.** 600 (1974), decided just three years before *Bounds,* we declined to extend *Douglas* to require States to provide indigents with counsel in discretionary state appeals or in seeking discretionary review in this Court. We explained in *Ross* that "[t]he Fourteenth Amendment `does not require absolute equality or precisely equal advantages,' " 417 **U. S.**, at 612 (quoting *Rodriguez,* 411 **U. S.**, at 24), and that it "does [not] require the State to `equalize economic conditions,' " 417 **U. S.**, at 612 (quoting *Griffin,* 351 **U. S.**, at 23 (Frankfurter, J., concurring in judgment)). We again declined to extend *Douglas* in *Pennsylvania* v. *Finley,* 481 **U. S.**, at 555, where we rejected a claim that the Constitution requires the States to provide counsel in state postconviction proceedings. And we found *Ross* and *Finley* controlling in *Murray* v. *Giarratano,* 492 **U. S.** 1 (1989), where we held that defendants sentenced to death, like all other defendants, have no right to state-appointed counsel in state collateral proceedings. See also *United States* v. *MacCollom,* 426 **U. S.** 317 (1976) (federal habeas statute permitting district judge to deny free transcript to indigent petitioner raising frivolous claim does not violate the Constitution).

In sum, the *Bounds* Court's reliance on our transcript and fee cases was misplaced in
378 two significant respects. First, *378 those cases did not stand for the proposition for which *Bounds* cited them: They were about *equal* access, not access *per se.* Second, the constitutional basis for *Griffin* and its progeny had been seriously undermined in the years preceding *Bounds.* Thus, even to the extent that *Bounds* intended to rely on those cases for the propositions for which they actually stood, their underlying rationale had been largely discredited. These cases, rooted in largely obsolete theories of equal protection, do not support the right to law libraries and legal assistance recognized in *Bounds.* Our repeated holdings declining to extend these decisions only confirm this conclusion.

2

The *Bounds* Court relied on a second line of cases in announcing the right to state-financed law libraries or legal assistance for prisoners. These cases, beginning with our decision in *Ex parte Hull,* prevent the States from imposing arbitrary obstacles to attempts by prisoners to file claims asserting federal constitutional rights. Although this line deals with access in its own right, and not equal access as in *Griffin* and *Douglas,* these cases do not impose any affirmative obligations on the States to improve the prisoners' chances of success.

Bounds identified *Ex parte Hull* as the first case to "recogniz[e]" a "constitutional right of access to the courts." 430 **U. S.**, at 821-822. In *Ex parte Hull,* we considered a prison regulation that required prisoners to submit their habeas corpus petitions to a prison administrator before filing them with the court. Only if the administrator determined that a petition was "`properly drawn' " could the prisoner submit it in a federal court. 312 **U. S.**, at 548-549 (quoting regulation). We invalidated the regulation, but the right we acknowledged in doing so bears no resemblance to the right generated in *Bounds.*

Our reasoning in *Ex parte Hull* consists of a straightforward, and rather limited, principle:

379 *379 "[T]he state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus. Whether a petition for writ of habeas corpus addressed to a federal court is properly drawn and what allegations it must contain are questions for that court alone to determine." 312 **U. S.**, at 549.

The "right of access" to the courts articulated in *Ex parte Hull* thus imposed no affirmative obligations on the States; we stated only that a State may not "abridge or impair" a prisoner's ability to file a habeas petition in federal court.[7] *Ex parte Hull* thus provides an extraordinarily weak starting point for concluding that the Constitution requires States to fund and otherwise assist prisoner legal research by providing law libraries or legal assistance.

Two subsequent decisions of this Court worked a moderate expansion of *Ex parte Hull.* The first, *Johnson* v. *Avery,* 393 **U. S.** 483 (1969), invalidated a Tennessee prison regulation that prohibited inmates from advising or assisting one another in the preparation of habeas corpus petitions. In striking down the regulation, the Court twice
380 quoted *Ex* *380 *parte Hull* `s holding that a State may not "abridge or impair" a petitioner's efforts to file a petition for a writ of habeas corpus. See 393 **U. S.**, at 486-487, 488. In contrast to *Ex parte Hull,* however, *Johnson* focused not on the respective institutional roles of state prisons and the federal courts but on "the fundamental importance of the writ of habeas corpus in our constitutional scheme." 393 **U. S.**, at 485. Still, the Court did not hold that the Constitution places an affirmative obligation on the States to facilitate the filing of habeas petitions. The Court held only that a State may not "den[y] or obstruc[t]" a prisoner's ability to file a habeas petition. *Ibid.* We extended the holding of *Johnson* in *Wolff* v. *McDonnell,* 418 **U. S.** 539 (1974), where we struck down a similar regulation that prevented inmates from assisting one another in the preparation of

civil rights complaints. We held that the "right of access to the courts, upon which *Avery* was premised, is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights." *Id.,* at 579. Again, the right was framed exclusively in the negative. See *ibid.* (opportunity to file a civil rights action may not be "denied"). Thus, prior to *Bounds,* "if a prisoner incarcerated pursuant to a final judgment of conviction [was] not prevented from physical access to the federal courts in order that he may file therein petitions for relief which Congress has authorized those courts to grant, he ha[d] been accorded the only constitutional right of access to the courts that our cases ha[d] articulated in a reasoned way." *Bounds,* 430 **U. S.**, at 839-840 (Rehnquist, J., dissenting) (citing *Ex parte Hull*).

C

That *Ex parte Hull, Johnson,* and *Wolff* were decided on different constitutional grounds from *Griffin* and *Douglas* is clear enough. According to *Bounds,* however, "[e]ssentially
381 the same standards of access were applied" in all of these *381 cases. 430 **U. S.**, at 823. This observation was wrong, but the equation of these two lines of cases allowed the *Bounds* Court to preserve the "affirmative obligations" element of the equal access cases, the rationale of which had largely been undermined prior to *Bounds,* by linking it with *Ex parte Hull,* which had not been undermined by later cases but which imposed no affirmative obligations. In the process, *Bounds* forged a right with no basis in precedent or constitutional text: a right to have the State "shoulder affirmative obligations" in the form of law libraries or legal assistance to ensure that prisoners can file meaningful lawsuits. By detaching *Griffin* `s right to equal access and *Ex parte Hull* `s right to physical access from the reasoning on which each of these rights was based, the *Bounds* Court created a virtually limitless right. And though the right was framed in terms of law libraries and legal assistance in that case, the reasoning is much broader, and this Court should have been prepared under the *Bounds* rationale to require the appointment of capable state-financed counsel for any inmate who wishes to file a lawsuit. See *Bounds, supra,* at 841 (Rehnquist, J., dissenting) (observing that "the logical destination of the Court's reasoning" in *Bounds* is "lawyers appointed at the expense of the State"). See also *ante,* at 354. We have not, however, extended *Bounds* to its logical conclusion. And though we have not overruled *Bounds,* we have undoubtedly repudiated its reasoning in our consistent rejection of the proposition that the States must provide counsel beyond the trial and first appeal as of right. See *Ross,* 417 **U. S.**, at 612; *Finley,* 481 **U. S.**, at 555; *Giarratano,* 492 **U. S.**, at 3-4 (plurality opinion).

In the end, I agree that the Constitution affords prisoners what can be termed a right of access to the courts. That right, rooted in the Due Process Clause and the principle articulated in *Ex parte Hull,* is a right not to be arbitrarily prevented from lodging a claimed violation of a federal right in a federal court. The State, however, is not
382 constitutionally *382 required to finance or otherwise assist the prisoner's efforts, either through law libraries or other legal assistance. Whether to expend state resources to facilitate prisoner lawsuits is a question of policy and one that the Constitution leaves to the discretion of the States.

There is no basis in history or tradition for the proposition that the State's constitutional obligation is any broader. Although the historical record is relatively thin, those who have explored the development of state-sponsored legal assistance for prisoners agree that, until very recently, law libraries in prisons were "nearly nonexistent." A. Flores, Werner's Manual for Prison Law Libraries 1 (2d ed. 1990). Prior to *Bounds,* prison library collections (to the extent prisons had libraries) commonly reflected the correctional goals that a State wished to advance, whether religious, educational, or rehabilitative. Although some institutions may have begun to acquire a minimal collection of legal materials in the early part of this century, lawbooks generally were not included in prison libraries prior to the 1950's. See W. Coyle, Libraries in Prisons 54-55 (1987). The exclusion of lawbooks was consistent with the recommendation of the American Prison Association, which advised prison administrators nationwide to omit federal and state lawbooks from prison library collections. See American Prison Association, Objectives and Standards for Libraries in Adult Prisons and Reformatories, in Library Manual for Correctional Institutions 101, 106-107 (1950). The rise of the prison law library and other legal assistance programs is a recent phenomenon, and one generated largely by the federal courts. See Coyle, *supra,* at 54-55; B. Vogel, Down for the Count: A Prison Library Handbook 87-89 (1995). See also Ihrig, Providing Legal Access, in Libraries Inside: A Practical Guide for Prison Librarians 195 (R. Rubin & D. Suvak eds. 1995) (establishment of law libraries and legal service programs due to "inmate victories in the courts within the last two decades"). Thus, far from recognizing a long tradition *383 of state-sponsored legal assistance for prisoners, *Bounds* was in fact a major "disruption to traditional prison operation." Vogel, *supra,* at 87.

383

The idea that prisoners have a legal right to the assistance that they were traditionally denied is also of recent vintage. The traditional, pre-*Bounds* view of the law with regard to the State's obligation to facilitate prisoner lawsuits by providing law libraries and legal assistance was articulated in *Hatfield* v. *Bailleaux,* 290 F. 2d 632 (CA9), cert. denied, 368 **U. S.** 862 (1961):

> "State authorities have no obligation under the federal Constitution to provide library facilities and an opportunity for their use to enable an inmate to search for legal loopholes in the judgment and sentence under which he is held, or to perform services which only a lawyer is trained to perform. All inmates are presumed to be confined under valid judgments and sentences. If an inmate believes he has a meritorious reason for attacking his, he must be given an opportunity to do so. But he has no due process right to spend his prison time or utilize prison facilities in an effort to discover a ground for overturning a presumptively valid judgment.
>
> "Inmates have the constitutional right to waive counsel and act as their own lawyers, but this does not mean that a non-lawyer must be given the opportunity to acquire a legal education. One question which an inmate must decide in determining if he should represent himself is whether in view of his own competency and general prison regulations he can do so adequately. He must make the decision in the light of the circumstances existing. The state has no duty to alter the circumstances to conform with

his decision." 290 F. 2d, at 640-641.

384 Consistent with the traditional view, the lower courts understood the Constitution only to guarantee prisoners a right *384 to be free from state interference in filing papers with the courts:

> "[A]ccess to the courts means the opportunity to prepare, serve and file whatever pleadings or other documents are necessary or appropriate in order to commence or prosecute court proceedings affecting one's personal liberty, or to assert and sustain a defense therein, and to send and receive communications to and from judges, courts and lawyers concerning such matters." *Id.,* at 637.

See also *Oaks* v. *Wainwright,* 430 F. 2d 241, 242 (CA5 1970) (affirming dismissal of prisoner's complaint alleging denial of access to library and legal materials on ground that prisoner had not alleged that "he has in any way been denied access to the courts . . . , that he has ever lost the right to commence, prosecute or appeal in any court, or that he has been substantially delayed in obtaining a judicial determination in any proceeding"). Thus, while courts held that a prisoner is entitled to attack his sentence without state interference, they also consistently held that "[p]rison regulations are not required to provide prisoners with the time, the correspondence privileges, the materials or other facilities they desire for the special purpose of trying to find some way of making attack upon the presumptively valid judgments against them." *Lee* v. *Tahash,* 352 F. 2d 970, 973 (CA8 1965). "If the purpose was not to hamper inmates in gaining reasonable access to the courts with regard to their respective criminal matters, and if the regulations and practices do not interfere with such reasonable access," the inquiry was at an end. *Hatfield,* 290 F. 2d, at 640. That access could have been facilitated without impairing effective prison administration was considered "immaterial." *Ibid.*

385 Quite simply, there is no basis in constitutional text, pre*Bounds* precedent, history, or tradition for the conclusion that the constitutional right of access imposes affirmative *385 obligations on the States to finance and support prisoner litigation.

II

A

Even when compared to the federal judicial overreaching to which we have now become accustomed, this is truly a remarkable case. The District Court's order vividly demonstrates the danger of continuing to afford federal judges the virtually unbridled equitable power that we have for too long sanctioned. We have here yet another example of a federal judge attempting to "direc[t] or manag[e] the reconstruction of entire institutions and bureaucracies, with little regard for the inherent limitations on [his] authority." *Missouri* v. *Jenkins,* 515 **U. S.**, at 126 (Thomas, J., concurring). And we will continue to see cases like this unless we take more serious steps to curtail the use of equitable power by the federal courts.

Principles of federalism and separation of powers impose stringent limitations on the equitable power of federal courts. When these principles are accorded their proper respect, Article III cannot be understood to authorize the Federal Judiciary to take control of core state institutions like prisons, schools, and hospitals, and assume responsibility for making the difficult policy judgments that state officials are both constitutionally entitled and uniquely qualified to make. See *id.,* at 131-133. Broad remedial decrees strip state administrators of their authority to set long-term goals for the institutions they manage and of the flexibility necessary to make reasonable judgments on short notice under difficult circumstances. See *Sandin* v. *Conner,* 515 **U. S.** 472, 482— 483 (1995). At the state level, such decrees override the "State's discretionary authority over its own program and budgets and forc[e] state officials to reallocate state resources and funds to the [district court's] plan at the expense of other
386 citizens, other government programs, and other institutions *386 not represented in court." *Jenkins,* 515 **U. S.**, at 131 (Thomas, J., concurring). The federal judiciary is ill equipped to make these types of judgments, and the Framers never imagined that federal judges would displace state executive officials and state legislatures in charting state policy.

Though we have sometimes closed our eyes to federal judicial overreaching, as in the context of school desegregation, see *id.,* at 124-125, we have been vigilant in opposing sweeping remedial decrees in the context of prison administration. "It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser* v. *Rodriguez,* 411 **U. S.** 475, 491-492 (1973). In this area, perhaps more than any other, we have been faithful to the principles of federalism and separation of powers that limit the Federal Judiciary's exercise of its equitable powers in all instances.

Procunier v. *Martinez,* 416 **U. S.** 396 (1974), articulated the governing principles:

> "Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration. In part this policy is the product of various limitations on the scope of federal review of conditions in state penal institutions. More fundamentally, this attitude springs from complementary perceptions about the nature of the problems and the efficacy of judicial intervention. Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the
> 387 problems of prisons in America *387 are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison

> administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities." *Id.,* at 404-405 (footnotes omitted).[8]

State prisons should be run by the state officials with the expertise and the primary authority for running such institutions. Absent the most "extraordinary circumstances," *Jones* v. *North Carolina Prisoners' Labor Union, Inc.,* 433 **U. S.** 119, 137 (1977) (Burger, C. J., concurring), federal courts should refrain from meddling in such affairs. Prison administrators have a difficult enough job without federal-court intervention. An overbroad remedial decree can make an already daunting task virtually impossible.[9]

388 *388 I realize that judges, "no less than others in our society, have a natural tendency to believe that their individual solutions to often intractable problems are better and more workable than those of the persons who are actually charged with and trained in the running of the particular institution under examination." *Bell* v. *Wolfish,* 441 **U. S.** 520, 562 (1979). But judges occupy a unique and limited role, one that does not allow them to substitute their views for those in the executive and legislative branches of the various States, who have the constitutional authority and institutional expertise to make these uniquely nonjudicial decisions and who are ultimately accountable for these decisions. Though the temptation may be great, we must not succumb. The Constitution is not a license for federal judges to further social policy goals that prison administrators, in their discretion, have declined to advance.

B

The District Court's opinion and order demonstrate little respect for the principles of federalism, separation of powers, and judicial restraint that have traditionally governed federal judicial power in this area. In a striking arrogation of power, the District Court sought to micromanage every aspect of Arizona's "court access program" in all institutions statewide, dictating standard operating procedures and subjecting the state
389 system to ongoing federal supervision. A *389 sweeping remedial order of this nature would be inappropriate in any case. That the violation sought to be remedied was so minimal, to the extent there was any violation at all, makes this case all the more alarming.

The District Court cited only one instance of a prison inmate having a case dismissed due to the State's alleged failure to provide sufficient assistance, and one instance of another inmate who was unable to file an action. See 834 F. Supp. 1553, 1558, and nn. 37-38 (Ariz. 1992). All of the other alleged "violations" found by the District Court related not to court access, but to library facilities and legal assistance. Many of the found violations were trivial, such as a missing pocket part to a small number of volumes in just a few institutions. *Id.,* at 1562. And though every facility in the Arizona system already contained law libraries that greatly exceeded prisoner needs,[10] the District Court found the State to be in violation because some of its prison libraries lacked Pacific Second Reporters. *Ibid.* The District Court also struck down regulations that clearly pass muster

under *Turner* v. *Safley,* 482 **U. S.** 78 (1987), such as restrictions at some facilities on "brows[ing] the shelves," 834 F. Supp., at 1555, the physical exclusion from the library of
390 "lockdown" inmates, who are the most dangerous and disobedient *390 prisoners in the prison population, *id.,* at 1556, and the allowance of phone calls only for "legitimate pressing legal issues," *id.,* at 1564.

To remedy these and similar "violations," the District Court imposed a sweeping, indiscriminate, and systemwide decree. The microscopically detailed order leaves no stone unturned. It covers everything from training in legal research to the ratio of typewriters to prisoners in each facility. It dictates the hours of operation for all prison libraries statewide, without regard to inmate use, staffing, or cost. It guarantees each prisoner a minimum two-hour visit to the library per trip, and allows the prisoner, not prison officials, to determine which reading room he will use. The order tells ADOC the types of forms it must use to take and respond to prisoner requests for materials. It requires all librarians to have an advanced degree in library science, law, or paralegal studies. If the State wishes to remove a prisoner from the law library for disciplinary reasons, the order requires that the prisoner be provided written notice of the reasons and factual basis for the decision within 48 hours of removal. The order goes so far as to dictate permissible noise levels in law library reading rooms and requires the State to "take all necessary steps, and correct any structural or acoustical problems." App. to Pet. for Cert. 68a.

The order also creates a "legal assistance program," imposing rules for the selection and retention of prisoner legal assistants. *Id.,* at 69a. It requires the State to provide all inmates with a 30-40 hour videotaped legal research course, covering everything from habeas corpus and claims under 42 U. S. C. § 1983 to torts, immigration, and family law. Prisoner legal assistants are required to have an additional 20 hours of live instruction. Prisoners are also entitled to a minimum of three 20-minute phone calls each week to an attorney or legal organization, without regard to the purpose for the call; the order expressly requires Arizona to install extra phones to accommodate the increased use. Of
391 course, *391 legal supplies are covered under the order, which even provides for "ko-rec-type" to correct typographical errors. A Special Master retains ongoing supervisory power to ensure that the order is followed.

The District Court even usurped authority over the prison administrator's core responsibility: institutional security and discipline. See *Bell* v. *Wolfish,* 441 **U. S.**, at 546 ("[M]aintaining institutional security and preserving internal order and discipline" are the central goals of prison administration). Apparently undeterred by this Court's repeated admonitions that security concerns are to be handled by prison administrators, see, *e. g., ibid.,* the District Court decreed that "ADOC prisoners in *all* . . . custody levels shall be provided regular and comparable visits to the law library." App. to Pet. for Cert. 61a (emphasis added). Only if prison administrators can "documen[t]" an individual prisoner's "inability to use the law library without creating a threat to safety or security" may a potentially dangerous prisoner be kept out of the library, *ibid.,* and even then the decision must be reported to the Special Master. And since, in the District Court's view, "[a] prisoner cannot adequately use the law library under restraint, including handcuffs and shackles," *id.,* at 67a, the State is apparently powerless to take steps to ensure that

inmates known to be violent do not injure other inmates or prison guards while in the law library "researching" their claims. This "one free bite" approach conflicts both with our case law, see *Hewitt* v. *Helms,* 459 **U. S.** 460, 474 (1983), and with basic common sense. The District Court apparently misunderstood that a prison is neither a law firm nor a legal aid bureau. Prisons are inherently dangerous institutions, and decisions concerning safety, order, and discipline must be, and always have been, left to the sound discretion of prison administrators.

Like the remedial decree in *Jenkins,* the District Court's order suffers from flaws characteristic of overly broad remedial decrees. First, "the District Court retained
392 jurisdiction *392 over the implementation and modification of the remedial decree, instead of terminating its involvement after issuing its remedy." 515 **U. S.**, at 134 (Thomas, J., concurring). Arizona correctional officials must continually report to a Special Master on matters of internal prison administration, and the District Court retained discretion to change the rules of the game if, at some unspecified point in the future, it feels that Arizona has not done enough to facilitate court access. Thus, the District Court has "inject[ed] the judiciary into the day-to-day management of institutions and local policies—a function that lies outside of our Article III competence." *Id.,* at 135. The District Court also "failed to target its equitable remedies in this case specifically to cure the harm suffered by the victims" of unconstitutional conduct. *Id.* , at 136. We reaffirmed in *Jenkins* that "the nature of the [equitable] remedy is to be determined by the nature and scope of the constitutional violation." *Id.,* at 88 (majority opinion) (citation and internal quotation marks omitted). Yet, in this case, when the District Court found the law library at a handful of institutions to be deficient, it subjected the entire system to the requirements of the decree and to ongoing federal supervision. And once it found that lockdown inmates experienced delays in receiving law books in some institutions, the District Court required all facilities statewide to provide physical access to all inmates, regardless of custody level. And again, when it found that some prisoners in some facilities were untrained in legal research, the District Court required the State to provide all inmates in all institutions with a 30-40 hour videotaped course in legal research. The remedy far exceeded the scope of any violation, and the District Court far exceeded the scope of its authority.

The District Court's order cannot stand under any circumstances. It is a stark example of what a district court should *not* do when it finds that a state institution has violated the
393 Constitution. Systemwide relief is never appropriate *393 in the absence of a systemwide violation, and even then should be no broader and last no longer than necessary to remedy the discrete constitutional violation.

Justice Souter, with whom Justice Ginsburg and Justice Breyer join, concurring in part, dissenting in part, and concurring in the judgment.

I agree with the Court on certain, fundamental points: the case before **us** involves an injunction whose scope has not yet been justified by the factual findings of the District Court, *ante,* at 359-360, one that was imposed through a "process that failed to give adequate consideration to the views of state prison authorities," *ante,* at 362, and that does not reflect the deference we accord to state prison officials under *Turner* v. *Safley,*

482 **U. S.** 78 (1987), *ante,* at 361. Although I therefore concur in the judgment and in portions of the Court's opinion, reservations about the Court's treatment of standing doctrine and about certain points unnecessary to the decision lead me to write separately.

I

The question accepted for review was a broadside challenge to the scope of the District Court's order of systemic or classwide relief, issued in reliance on *Bounds* v. *Smith,* 430 **U. S.** 817 (1977), not whether proof of actual injury is necessary to establish standing to litigate a *Bounds* claim. The parties' discussions of actual injury, in their petition for certiorari, in their briefs, and during oral argument, focused upon the ultimate finding of liability and the scope of the injunction. Indeed, petitioners specifically stated that "[a]lthough the lack of a showing of injury means that Respondents are not entitled to any relief, the State does not contend that the Respondents lacked standing to raise these claims in the first instance. Respondents clearly met the threshold of an actual case or controversy pursuant to Article III of the United States Constitution. They simply failed to
394 prove *394 the existence of a constitutional violation, including causation of injury, that would entitle them to relief." Brief for Petitioners 33, n. 23.[1]

While we are certainly free ourselves to raise an issue of standing as going to Article III jurisdiction, and must do so when we would lack jurisdiction to deal with the merits, see *Mount Healthy City Bd. of Ed.* v. *Doyle,* 429 **U. S.** 274, 278 (1977), there is no apparent question that the standing of at least one of the class-action plaintiffs suffices for our jurisdiction and no dispute that standing doctrine does not address the principal issue in the case. We may thus adequately dispose of the basic issue simply by referring to the evidentiary record. That is what I would do, for my review of the cases from the Courts of Appeals either treating or bearing on the subject of *Bounds* standing convinces me that there is enough reason for debate about its appropriate elements that we should reach no final conclusions about it. That is especially true since we have not had the "benefit of briefing and argument informed by an appreciation of the potential breadth of the ruling." *Missouri* v. *Jenkins,* 515 **U. S.** 70, 139 (1995) (Souter, J., dissenting). Addressing issues of standing may not amount to the significant breakdown in our process of orderly adjudication represented by *Missouri* v. *Jenkins,* but the Court does reach out to address a difficult conceptual question that is unnecessary to resolution of this case, was never addressed by the District Court or Court of Appeals, and divides what would otherwise presumably have been a unanimous Court.

395 *395 That said, I cannot say that I am convinced that the Court has fallen into any error by invoking standing to deal with the District Court's orders addressing claims by and on behalf of non-English speakers and prisoners in lockdown. While it is true that the demise of these prisoners' *Bounds* claims could be expressed as a failure of proof on the merits (and I would so express it), it would be equally correct to see these plaintiffs as losing on standing. "A determination even at the end of trial that the court is not prepared to award any remedy that would benefit the plaintiff[s] may be expressed as a conclusion that the plaintiff[s] lac[k] standing." 13 C. Wright, A. Miller, & E. Cooper, Federal Practice

and Procedure § 3531.6, p. 478 (2d ed. 1984) (Wright & Miller).

Although application of standing doctrine may for our purposes dispose of the challenge to remedial orders insofar as they touch non-English speakers and lockdown prisoners, standing principles cannot do the same job in reviewing challenges to the orders aimed at providing court access for the illiterate prisoners. One class representative has standing, as the Court concedes, and with the right to sue thus established, standing doctrine has no further part to play in considering the illiterate prisoners' claims. More specifically, the propriety of awarding classwide relief (in this case, affecting the entire prison system) does not require a demonstration that some or all of the unnamed class could themselves satisfy the standing requirements for named plaintiffs.

> "[Unnamed plaintiffs] need not make any individual showing of standing [in order to obtain relief], because the standing issue focuses on whether the plaintiff is properly before the court, not whether represented parties or absent class members are properly before the court. Whether or not the named plaintiff who meets individual standing requirements may assert the rights of absent class members is neither a standing issue nor an Article III
396 case or controversy issue but depends *396 rather on meeting the prerequisites of Rule 23 governing class actions." 1 H. Newberg & A. Conte, Newberg on Class Actions § 2.07, pp. 2-40 to 2-41 (3d ed. 1992).

See also 7B Wright & Miller § 1785.1, at 141 ("As long as the representative parties have a direct and substantial interest, they have standing; the question whether they may be allowed to present claims on behalf of others . . . depends not on standing, but on an assessment of typicality and adequacy of representation"). This analysis is confirmed by our treatment of standing when the case of a named class-action plaintiff protesting a durational residence requirement becomes moot during litigation because the requirement becomes satisfied; even then the question is not whether suit can proceed on the standing of some unnamed members of the class, but whether "the named representative [can continue] to `fairly and adequately protect the interests of the class.' " *Sosna* v. *Iowa,* 419 **U. S.** 393, 403 (1975) (quoting Fed. Rule Civ. Proc. 23(a)).

Justice Scalia says that he is not applying a standing rule when he concludes (as I also do) that systemic relief is inappropriate here. *Ante,* at 360-361, n. 7. I accept his assurance. But he also makes it clear, by the same footnote, that he does not rest his conclusion (as I rest mine) solely on the failure to prove that in every Arizona prison, or even in many of them, the State denied court access to illiterate prisoners, a point on which I take it every Member of the Court agrees. Instead, he explains that a failure to prove that more than two illiterate prisoners suffered prejudice to nonfrivolous claims is (at least in part) the reason for reversal. Since he does not intend to be applying his standing rule in so saying, I assume he is applying a class-action rule (requiring a denial of classwide relief when trial evidence does not show the existence of a class of injured claimants). But that route is just as unnecessary and complicating as the route through standing. (Indeed, the distinction between standing and class-action rules might be
397 practically irrelevant *397 in this case, however important as precedent for other cases.)

While the propriety of the order of systemic relief for illiterate prisoners does not turn on

the standing of class members, and certainly need not turn on class-action rules, it clearly does turn on the respondents' failure to prove that denials of access to illiterate prisoners pervaded the State's prison system. Leaving aside the question whether that failure of proof might have been dealt with by reconsidering the class certification, see Fed. Rule Civ. Proc. 23(c)(1); *General Telephone Co. of Southwest* v. *Falcon*, 457 **U. S.** 147, 160 (1982); 7B Wright & Miller § 1785, at 128-136, the state of the evidence simply left the District Court without an adequate basis for the exercise of its equitable discretion in issuing an order covering the entire system.

The injunction, for example, imposed detailed rules and requirements upon each of the State's prison libraries, including rules about library hours, supervision of prisoners within the facilities, request forms, educational and training requirements for librarians and their staff members, prisoners' access to the stacks, and inventory. Had the findings shown libraries in shambles throughout the prison system, this degree of intrusion might have been reasonable. But the findings included the specific acknowledgment that "[g]enerally, the facilities appear to have complete libraries." 834 F. Supp. 1553, 1568 (Ariz. 1992). The District Court found only that certain of the prison libraries did not allow inmates to browse the shelves, only that some of the volumes in some of the libraries lacked pocket parts, only that certain librarians at some of the libraries lacked law or library science degrees, and only that some prison staff members have no training in legal research. Given that adequately stocked libraries go far in satisfying the *Bounds* requirements, it was an abuse of discretion for the District Court to aggregate discrete, small-bore problems in individual prisons and to treat them as if each prevailed throughout the prison system, *398 for the purpose of justifying a broad remedial order covering virtually every aspect of each prison library.

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Other elements of the injunction were simply unsupported by any factual finding. The District Court, for example, made no factual findings about problems prisoners may have encountered with noise in any library, let alone any findings that noise violations interfered with prisoners' access to the courts. Yet it imposed a requirement across the board that the State correct all "structural or acoustical problems." App. to Pet. for Cert. 68a. It is this overreaching of the evidentiary record, not the application of standing or even class-action rules, that calls for the judgment to be reversed.

Finally, even with regard to the portions of the injunction based upon much stronger evidence of a *Bounds* violation, I would remand simply because the District Court failed to provide the State with an ample opportunity to participate in the process of fashioning a remedy and because it seems not to have considered the implications that *Turner* holds for this case. For example, while the District Court was correct to conclude that prisoners who experience delays in receiving books and receive only a limited number of books at the end of that delay have been denied access to the courts, it is unlikely that a proper application of *Turner* would have justified its decision to order the State to grant lockdown prisoners physical access to the stacks, given the significance of the State's safety interest in maintaining the lockdown system and the existence of an alternative, an improved paging system, acceptable to the respondents. Brief for Respondents 39.

II

Even if I were to reach the standing question, however, I would not adopt the standard the Court has established. In describing the injury requirement for standing, we have spoken of it as essential to an Article III case or controversy that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically
399 viewed as *399 capable of judicial resolution." *Flast* v. *Cohen,* 392 **U. S.** 83, 101 (1968). We ask a plaintiff to prove "actual or threatened injury" to ensure that "the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.,* 454 **U. S.** 464, 472 (1982).

I do not disagree with the Court that in order to meet these standards (in a case that does not involve substantial systemic deprivation of access), a prisoner suing under *Bounds* must assert something more than an abstract desire to have an adequate library or some other access mechanism. Nevertheless, while I believe that a prisoner must generally have some underlying claim or grievance for which he seeks judicial relief, I cannot endorse the standing requirement the Court now imposes.

On the Court's view, a district court may be required to examine the merits of each plaintiff's underlying claim in order to determine whether he has standing to litigate a *Bounds* claim. *Ante,* at 353, n. 3. The Court would require a determination that the claim is "nonfrivolous," *ante,* at 353, in the legal sense that it states a claim for relief that is at least arguable in law and in fact. I, in contrast, would go no further than to require that a prisoner have some concrete grievance or gripe about the conditions of his confinement, the validity of his conviction, or perhaps some other problem for which he would seek legal redress, see Part III-B, *infra* (even though a claim based on that grievance might well fail sooner or later in the judicial process).

There are three reasons supporting this as a sufficient standard. First, it is the existence of an underlying grievance, not its ultimate legal merit, that gives a prisoner a concrete interest in the litigation and will thus assure the serious and adversarial treatment of the
400 *Bounds* claim. *400 Second, *Bounds* recognized a right of access for those who seek adjudication, not just for sure winners or likely winners or possible winners. See *Bounds,* 430 **U. S.**, at 824, 825, 828 (describing the constitutional right of access without limiting the right to prisoners with meritorious claims); see also *ante,* at 354 (describing the right of access even before *Bounds* as covering "a grievance that the inmate wished to present . . ." (citations omitted)). Finally, insistence on a "nonfrivolous claim" rather than a "concrete grievance" as a standing requirement will do no more than guarantee a lot of preliminary litigation over nothing. There is no prison system so blessed as to lack prisoners with nonfrivolous complaints. They will always turn up, or be turned up, and one way or the other the *Bounds* litigation will occur.

That last point may be, as the Court says, the answer to any suggestion that there need be no underlying claim requirement for a *Bounds* claim of complete and systemic denial of all means of court access. But in view of the Courts of Appeals that have seen the
401 issue otherwise,[2] I would certainly *401 reserve that issue for the day it might actually

be addressed by the parties in a case before **us**.

In sum, I would go no further than to hold (in a case not involving substantial, systemic deprivation of access to court) that Article III requirements will normally be satisfied if a prisoner demonstrates that (1) he has a complaint or grievance, meritorious or not,[3] about the prison system or the validity of his conviction[4] that he would raise if his library research (or advice, or judicial review of a form complaint, or other means of "access" chosen by the State) were to indicate that he had an actionable claim; and (2) the access scheme provided by the prison is so inadequate that he cannot research, consult about, file, or litigate the claim, as the case may be.

402 *402 While a more stringent standing requirement would, of course, serve to curb courts from interference with prison administration, that legitimate object is adequately served by two rules of existing law. *Bounds* itself makes it clear that the means of providing access is subject to the State's own choice. If, for example, a State wishes to avoid judicial review of its library standards and the adequacy of library services, it can choose a means of access involving use of the complaint-form procedure mentioned by the Court today. *Ante,* at 352. And any judicial remedy, whatever the chosen means of court access, must be consistent with the rule in *Turner* v. *Safley,* 482 **U. S.** 78 (1987), that prison restrictions are valid if reasonably related to valid penological interests. *Turner* `s level of scrutiny surely serves to limit undue intrusions and thus obviates the need for further protection. In the absence of evidence that the *Turner* framework does not adequately channel the discretion of federal courts, there would be no reason to toughen standing doctrine to provide an additional, and perhaps unnecessary, protection against this danger.

But instead of relying on these reasonable and existing safeguards against interference, the Court's resolution of this case forces a district court to engage in extensive and, I believe, needless enquiries into the underlying merit of prisoners' claims during the initial and final stages of a trial, and renders properly certified classes vulnerable to constant challenges throughout the course of litigation. The risk is that district courts will simply conclude that prisoner class actions are unmanageable. What, at the least, the Court overlooks is that a class action lending itself to a systemwide order of relief consistent with *Turner* avoids the multiplicity of separate suits and remedial orders that undermine the efficiency of a United States district court just as surely as it can exhaust the legal resources of a much-sued state prison system.

403 *403 **III**

A

There are, finally, two additional points on which I disagree with the Court. First, I cannot concur in the suggestion that *Bounds* should be overruled to the extent that it requires States choosing to provide law libraries for court access to make them available for a prisoner's use in the period between filing a complaint and its final disposition. *Ante,* at 354. *Bounds* stated the obvious reasons for making libraries available for these

purposes, 430 U. S., at 825-826, and developments since *Bounds* have confirmed its reasoning. With respect to habeas claims, for example, the need for some form of legal assistance is even more obvious now than it was then, because the restrictions developed since *Bounds* have created a "substantial risk" that prisoners proceeding without legal assistance will never be able to obtain review of the merits of their claims. See *McFarland* v. *Scott,* 512 U. S. 849 (1994) (discussing these developments). Nor should discouragement from the number of frivolous prison suits lead us to doubt the practical justifiability of providing assistance to a *pro se* prisoner during trial. In the past few years alone, we have considered the petitions of several prisoners who represented themselves at trial and on appeal, and who ultimately prevailed. See, *e. g., Farmer* v. *Brennan,* 511 U. S. 825 (1994); *Helling* v. *McKinney,* 509 U. S. 25 (1993); *Hudson* v. *McMillian,* 503 U. S. 1 (1992).

B

Second, I see no reason at this point to accept the Court's view that the *Bounds* right of access is necessarily restricted to attacks on sentences or challenges to conditions of confinement. See *ante,* at 354-355. It is not clear to me that a State may force a prisoner to abandon all opportunities to vindicate rights outside these two categories no matter
404 how significant. We have already held that prisoners do not entirely *404 forfeit certain fundamental rights, including the right to marry, *Turner* v. *Safley, supra,* at 95; the right to free speech, *Thornburgh* v. *Abbott,* 490 U. S. 401, 407 (1989); and the right to free exercise of religion, see *O'Lone* v. *Estate of Shabazz,* 482 U. S. 342 (1987). One can imagine others that would arguably entitle a prisoner to some limited right of access to court. See, *e. g., Lassiter* v. *Department of Social Servs. of Durham Cty.,* 452 U. S. 18 (1981) (parental rights); *Boddie* v. *Connecticut,* 401 U. S. 371 (1971) (divorce); cf. *Wong Yang Sung* v. *McGrath,* 339 U. S. 33, 49-50 (1950) (deportation). This case does not require us to consider whether, as a matter of constitutional principle, a prisoner's opportunities to vindicate rights in these spheres may be foreclosed, and I would not address such issues here.

IV

I therefore concur in Parts I and III of the Court's opinion, dissent from Part II, and concur in the judgment.

Justice Stevens, dissenting.

The Fourteenth Amendment prohibits the States from depriving any person of life, liberty, or property without due process of law. While at least one 19th-century court characterized the prison inmate as a mere "slave of the State," *Ruffin* v. *Commonwealth,* 62 Va. 790, 796 (1871), in recent decades this Court has repeatedly held that the convicted felon's loss of liberty is not total. See *Turner* v. *Safley,* 482 U. S. 78, 84 (1987); *e. g., Cruz* v. *Beto,* 405 U. S. 319, 321 (1972). "Prison walls do not . . .separat[e] . . . inmatesfrom the protections of the Constitution," *Turner,* 482 U. S., at 84, and even convicted criminals retain some of the liberties enjoyed by all who live outside those

walls in communities to which most prisoners will someday return.

Within the residuum of liberty retained by prisoners are freedoms identified in the First
405 Amendment to the Constitution: *405 freedom to worship according to the dictates of their own conscience, *e. g., O'Lone* v. *Estate of Shabazz,* 482 **U. S.** 342, 348 (1987); *Cruz,* 405 **U. S.**, at 321, freedom to communicate with the outside world, *e. g., Thornburgh* v. *Abbott,* 490 **U. S.** 401, 411-412 (1989), and the freedom to petition their government for a redress of grievances, *e. g., Johnson* v. *Avery,* 393 **U. S.** 483, 485 (1969). While the exercise of these freedoms may of course be regulated and constrained by their custodians, they may not be obliterated either actively or passively. Indeed, our cases make it clear that the States must take certain affirmative steps to protect some of the essential aspects of liberty that might not otherwise survive in the controlled prison environment.

The "well-established" right of access to the courts, *ante,* at 350, is one of these aspects of liberty that States must affirmatively protect. Where States provide for appellate review of criminal convictions, for example, they have an affirmative duty to make transcripts available to indigent prisoners free of charge. *Griffin* v. *Illinois,* 351 **U. S.** 12, 19-20 (1956) (requiring States to waive transcript fees for indigent inmates); see also *Burns* v. *Ohio,* 360 **U. S.** 252, 257258 (1959) (requiring States to waive filing fees for indigent prisoners). It also protects an inmate's right to file complaints, whether meritorious or not, see *Ex parte Hull,* 312 **U. S.** 546 (1941) (affirming right to file habeas petitions even if prison officials deem them meritless, in case in which petition at issue was meritless), and an inmate's right to have access to fellow inmates who are able to assist an inmate in preparing, "with reasonable adequacy," such complaints. *Johnson,* 393 **U. S.**, at 489; *Wolff* v. *McDonnell,* 418 **U. S.** 539, 580 (1974).[1] And for almost two
406 decades, it has explicitly *406 included the right of prisoners to have access to "adequate law libraries or adequate assistance from persons trained in the law." *Bounds* v. *Smith,* 430 **U. S.** 817, 828 (1977). As the Court points out, States are free to "experiment" with the types of legal assistance that they provide to inmates, *ante,* at 352-as long as the experiment provides adequate access.

The constitutional violations alleged in this case are similar to those that the District Court previously found in one of Arizona's nine prisons. See *Gluth* v. *Kangas,* 773 F. Supp. 1309 (Ariz. 1988), aff'd, 951 F. 2d 1504 (CA9 1991). The complaint in this case was filed in 1990 by 22 prisoners on behalf of a class including all inmates in the Arizona prison system. The prisoners alleged that the State's institutions provided inadequate access to legal materials or other assistance, App. 31-33, and that as a result, " [p]risoners are harmed by the denial of meaningful access to the courts." *Id.,* at 32. The District Court agreed, concluding that the State had failed, throughout its prison system, to provide adequate access to legal materials, particularly for those in administrative
407 segregation, *407 or "lockdown," and that the State had failed to provide adequate legal assistance to illiterate and non-English speaking inmates. After giving all the parties an opportunity to participate in the process of drafting the remedy, the court entered a detailed (and I agree excessively so, see *infra,* at 409) order to correct the State's violations.

As I understand the record, the State has not argued that the right of effective access to the courts, as articulated in *Bounds,* should be limited in any way. It has not challenged the standing of the named plaintiffs to represent the class, nor has it questioned the propriety of the District Court's order allowing the case to proceed as a class action. I am also unaware of any objection having been made in the District Court to the plaintiffs' constitutional standing in this case, and the State appears to have conceded standing with respect to most claims in the Court of Appeals.[2] Yet the majority chooses to address these issues unnecessarily and, in some instances, incorrectly.

For example, although injury in fact certainly is a jurisdictional issue into which we inquire absent objection from the parties, even the majority finds on the record that at least two of the plaintiffs had standing in this case, *ante,* at 356,[3] *408 which should be sufficient to satisfy any constitutional concerns.[4] Yet the Court spends 10 pages disagreeing.

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Even if we had reason to delve into standing requirements in this case, the Court's view of those requirements is excessively strict. I think it perfectly clear that the prisoners had standing, even absent the specific examples of failed complaints. There is a constitutional right to effective access, and if a prisoner alleges that he personally has been denied that right, he has standing to sue.[5] One of our first cases to address directly the right of access to the courts illustrates this principle particularly well. In *Ex parte Hull,* we reviewed the constitutionality of a state prison's rule that impeded an inmate's access to the courts. The rule authorized corrections officers to intercept mail addressed to a court and refer it to the legal investigator for the parole board to determine whether there was sufficient merit in the claim to justify its submission to a court. Meritless claims were simply not delivered. Petitioner Hull succeeded in smuggling papers to his father, who in turn delivered them to this Court. Although we held that the smuggled petition had insufficient merit even to require an answer from the *409 State, 312 **U. S.**, at 551, we nevertheless held that the regulation was invalid for the simple and sufficient reason that "the state and its officers may not abridge or impair petitioner's right to apply to a federal court for writ of habeas corpus." *Id.,* at 549.

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At first glance, the novel approach adopted by the Court today suggests that only those prisoners who have been refused the opportunity to file claims later found to have arguable merit should be able to challenge a rule as clearly unconstitutional as the one addressed in *Hull.* Perhaps the standard is somewhat lower than it appears in the first instance; using *Hull* as an example, the Court suggests that even facially meritless petitions can provide a sufficient basis for standing. See *ante,* at 352, n. 2. Nonetheless, because prisoners are uniquely subject to the control of the State, and because unconstitutional restrictions on the right of access to the courts—whether through nearly absolute bars like that in *Hull* or through inadequate legal resources—frustrate the ability of prisoners to identify, articulate, and present to courts injuries flowing from that control, I believe that any prisoner who claims to be impeded by such barriers has alleged constitutionally sufficient injury in fact.

My disagreement with the Court is not complete: I am persuaded—as respondents' counsel essentially has conceded—that the relief ordered by the District Court was

broader than necessary to redress the constitutional violations identified in the District Court's findings. I therefore agree that the case should be remanded. I cannot agree, however, with the Court's decision to use the case as an opportunity to meander through the laws of standing and access to the courts, expanding standing requirements here
410 and limiting rights there,[6] when the most obvious concern in *410 the case is with the simple disjunct between the limited scope of the injuries articulated in the District Court's findings and the remedy it ordered as a result. Because most or all of petitioners' concerns regarding the order could be addressed with a simple remand, I see no need to resolve the other constitutional issues that the Court reaches out to address.

The Court is well aware that much of its discussion preceding Part III is unnecessary to the decision. Reflecting on its view that the District Court railroaded the State into accepting its order lock, stock, and barrel, the Court concludes on the last page of its decision that "[t]he State was entitled to far more than an opportunity for rebuttal, and on that ground alone this order would have to be set aside." *Ante,* at 363. To the extent that the majority suggests that the order in this case is flawed because of a breakdown in the process of court-supervised negotiation that should generally precede systemic relief, I agree with it. I also agree that the failure in that process "*alone* " would justify a remand
411 *411 in this case. I emphatically disagree, however, with the Court's characterization of who is most to blame for the objectionable character of the final order. Much of the blame for its breadth, I propose, can be placed squarely in the lap of the State.

A fair evaluation of the procedures followed in this case must begin with a reference to *Gluth,* the earlier case in which the same District Judge found petitioners guilty of a systemic constitutional violation in one facility. In that case the District Court expressly found that the state officials had demonstrated "a callous unwillingness to face the issues" and had pursued "diversion[ary] tactics" that "forced [the court] to take extraordinary measures." 773 F. Supp., at 1312, 1314. Despite the Court's request that they propose an appropriate remedy, the officials refused to do so. It is apparent that these defense tactics played an important role in the court's decision to appoint a Special Master to assistin the fashioning of the remedy that was ordered in *Gluth.* Only after that order had been affirmed by the Court of Appeals did respondents commence this action seeking to obtain similar relief for the entire inmate population.

After a trial that lasted for 11 days over the course of two months, the District Court found that several of petitioners' policies denied illiterate and non-English-speaking prisoners meaningful access to the courts. Given the precedent established in *Gluth,* the express approval of that plan by the Court of Appeals, and the District Court's evaluation of the State's conclusions regarding the likelihood of voluntary remedial schemes, particularly in view of the State's unwillingness to play a constructive role in the remedy stage of that case, the District Court not unreasonably entered an order appointing the same Special Master and directing him to propose a similar remedy in this case. Although the District Court instructed the parties to submit specific objections to the remedial template derived from *Gluth,* see App. to Pet. for Cert. 89a, nothing in the
412 court's order prevented the *412 State from submitting its own proposals without waiving its right to challenge the findings on the liability issues or its right to object to any remedial proposals by either the Master or the respondents. The District Court also told

the parties that it would consider settlement offers, and instructed the Master to provide "such guidance and counsel as either of the parties may request to effect such a settlement." *Id.,* at 95a.

In response to these invitations to participate in the remedial process, the State filed only four half-hearted sets of written objections over the course of the six months during which the Special Master was evaluating the court's proposed order. See App. 218-221, 225-228, 231-238, and 239240. Although the Master rejected about half of these narrow objections, he accepted about an equal number, noting that the State's limited formal participation had been "important" and "very helpful." Proposed Order (Permanent Injunction) in No. CIV 90-0054 (D. Ariz.), p. iii. After the Master released his proposed order, the State offered another round of objections. See App. 243-250. Although the District Court informed the Master that the objections could be considered, they did not have to be; the court reasonably noted that the State had been aware for six months about the potential scope of the order, and that it could have mounted the same objections prior to the deadline that the court had set at the beginning of the process. *Id.,* at 251-253.

One might have imagined that the State, faced with the potential of this "inordinately—indeed, wildly—intrusive" remedial scheme, *ante,* at 362, would have taken more care to protect its interests before the District Court and the Special Master, particularly given the express willingness of both to consider the State's objections. Having failed to zealously represent its interests in the District Court, the State's present complaints seem rather belated; the Court has generally been less than solicitous to claims that
413 have *413 not been adequately pressed below. Cf., *e. g., McCleskey* v. *Zant,* 499 **U. S.** 467, 488-489 (1991); compare *ante,* at 363364, n. 8 (State made boilerplate reservation of rights in each set of objections), with *Gray* v. *Netherland, ante,* at 163 ("[I]t is not enough to make a general appeal to a constitutional guarantee as broad as due process to present the `substance' of such a claim to a state court").

The State's lack of interest in representing its interests is clear not only from the sparse objections in the District Court, but from proceedings both here and in the Court of Appeals. In argument before both courts, counsel for the prisoners have conceded that certain aspects of the consent decree exceeded the necessary relief. See, *e. g.,* 43 F. 3d 1261, 1271 (CA9 1994) (prisoners agree that typewriters are not required); Tr. of Oral Arg. 31 (provisions regarding noise in library are unnecessary). This flexibility further suggests that the State could have sought relief from aspects of the plan through negotiation. Indeed, at oral argument in the Ninth Circuit, the parties for both sides suggested that they were willing to settle the case, and the court deferred submission of the case for 30 days to enable a settlement. "However, before the settlement process had even begun, [the State] declined to mediate." 43 F. 3d, at 1265, n. 1. Notably, this is the only comment made by the appellate court regarding the process that led to the fashioning of the remedy in this case.

A fair reading of the record, therefore, reveals that the State had more than six months within which it could have initiated settlement discussions, presented more ambitious objections to the proposed decree reflecting the concerns it has raised before this Court,

or offered up its own plan for the review of the plaintiffs and the Special Master. It took none of these steps. Instead, it settled for piecemeal and belated challenges to the scope of the proposed plan.

The Court implies that the District Court's decision to use the decree entered in *Gluth* as
414 the starting point for fashioning *414 the relief to be ordered was unfair to petitioners and should not be repeated in comparable circumstances. The browbeaten State, the Court suggests, was "entitled to far more than an opportunity for rebuttal." *Ante,* at 363. I strongly disagree with this characterization of the process. Whether this Court now approves or disapproves of the contents of the *Gluth* decree, the Court of Appeals had affirmed it in its entirety when this case was tried, and it was surely appropriate for the District Court to use it as a startingpoint for its remedial task in this case. Petitioners were represented by competent counsel who could have advanced their own proposals for relief if they had thought it expedient to do so. By going further than necessary to correct the excesses of the order, the Court's decision rewards the State for the uncooperative posture it has assumed throughout the long period of litigating both *Gluth* and this case. See *ante,* at 354-355; *Gluth,* 773 F. Supp., at 1312-1316. Although the State's approach has proven sound as a matter of tactics, allowing it to prevail in a forum that is not as inhibited by precedent as are other federal courts, the Court's decision undermines the authority and equitable powers of not only this District Court, but District Courts throughout the Nation. It is quite wrong, in my judgment, for this Court to suggest that the District Court denied the State a fair opportunity to be heard, and entirely unnecessary for it to dispose of the smorgasbord of constitutional issues that it consumes in Part II.

Accordingly, while I agree that a remand is appropriate, I cannot join the Court's opinion.

[*] Briefs of *amici curiae* urging reversal were filed for the State of California et al. by *Daniel Lungren,* Attorney General of California, *Peter J. Siggins,* Senior Assistant Attorney General, *Morris Lenk,* Senior Supervising Attorney General, and *Karl S. Mayer* and *Bruce M. Slavin,* Deputy Attorneys General, by *Garland Pinkston, Jr.,* Acting Corporation Counsel of the District of Columbia, and by the Attorneys General for their respective jurisdictions as follows: *Bruce M. Botelho* of Alaska, *Richard Blumenthal* of Connecticut, *M. Jane Brady* of Delaware, *Robert A. Butterworth* of Florida, *Michael J. Bowers* of Georgia, *Robert A. Marks* of Hawaii, *Alan G. Lance* of Idaho, *James E. Ryan* of Illinois, *Pamela Carter* of Indiana, *Carla J. Stovall* of Kansas, *J. Joseph Curran, Jr.,* of Maryland, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Jeremiah W. (Jay) Nixon* of Missouri, *Joe Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Jeffrey R. Howard* of New Hampshire, *Tom Udall* of New Mexico, *Dennis C. Vacco* of New York, *Betty Montgomery* of Ohio, *Theodore R. Kulongoski* of Oregon, *Walter W. Cohen* of Pennsylvania, *Jeffrey B. Pine* of Rhode Island, *Charles W. Burson* of Tennessee, *Jan Graham* of Utah, *James S. Gilmore III* of Virginia, *Christine O. Gregoire* of Washington, *James E. Doyle* of Wisconsin, and *William U. Hill* of Wyoming; for the National Conference of State Legislatures et al. by *Richard Ruda* and *Charles Rothfeld;* for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson;* and for the Washington Legal Foundation et al. by *Charles J. Cooper, Michael A. Carvin, Michael W. Kirk, Daniel J. Popeo,* and *Paul D. Kamenar.*

Briefs of *amici curiae* urging affirmance were filed for the United States by *Solicitor General Days, Assistant Attorney General Patrick, Deputy Solicitor General Bender, Alan Jenkins, Steven H. Rosenbaum, Louise A. Lerner,* and *Rebecca K. Troth;* for the Legal Aid Bureau, Inc., by *Stuart R. Cohen* and *Jeffery C. Taylor;* for the Mexican American Legal Defense and Educational Fund et al. by *David Fernandez* and *Michael R. Cole;* for North Carolina Prisoner Legal Services, Inc., by *Richard E. Giroux;* for Prison Legal Services of Michigan by *Sandra L. Girard;* and for Prisoners in Northern California by *Sanford Jay Rosen, Amitai Schwartz,* and *Donald Specter.*

[1] Respondents contend that petitioners failed properly to present their "actual injury" argument to the Court of Appeals. Brief for Respondents 25-26. Our review of petitioners' briefs before that court leads **us** to conclude otherwise, and in any event, as we shall discuss, the point relates to standing, which is jurisdictional and not subject to waiver. See *United States* v. *Hays,* 515 **U. S.** 737, 742 (1995); *FW/PBS, Inc.* v. *Dallas,* 493 **U. S.** 215, 230-231 (1990). Justice Souter recognizes the jurisdictional nature of this point, *post,* at 394, which is difficult to reconcile with his view that we should not "reach out to address" it, *ibid.*

[2] Justice Stevens suggests that *Ex parte Hull,* 312 **U. S.** 546 (1941), establishes that even a lost *frivolous* claim establishes standing to complain of a denial of access to courts, see *post,* at 408-409. As an initial matter, that is quite impossible, since standing was neither challenged nor discussed in that case, and we have repeatedly held that the existence of unaddressed jurisdictional defects has no precedential effect. See, *e. g., Federal Election Comm'n* v. *NRA Political Victory Fund,* 513 **U. S.** 88, 97 (1994); *United States* v. *More,* 3 Cranch 159, 172 (1805) (Marshall, C. J.) (statement at oral argument). On the merits, however, it is simply not true that the prisoner's claim in *Hull* was frivolous. We rejected it because it had been procedurally defaulted by, *inter alia,* failure to object at trial and failure to include a transcript with the petition, 312 **U. S.**, at 551. If all procedurally defaulted claims were frivolous, Rule 11 business would be brisk indeed. Justice Stevens's assertion that "we held that the smuggled petition had insufficient merit even to require an answer from the State," *post,* at 408-409, is misleading. The attorney general of Michigan appeared in the case, and our opinion discussed the merits of the claim at some length, see 312 **U. S.**, at 549-551. The posture of the case was such, however, that we treated the claim "as a motion for leave to file a petition for writ of habeas corpus," *id.,* at 550; after analyzing petitioner's case, we found it "insufficient to compel *an order requiring the warden to answer,* " *id.,* at 551 (emphasis added). That is not remotely equivalent to finding that the underlying claim was frivolous.

[3] Justice Souter believes that *Bounds* v. *Smith,* 430 **U. S.** 817 (1977), guarantees prison inmates the right to present frivolous claims—the determination of which suffices to confer standing, he says, because it assumes that the dispute "`will be presented in an adversary context and in a form historically viewed as capable of judicial resolution,' " *post,* at 398399, quoting *Flast* v. *Cohen,* 392 **U. S.** 83, 101 (1968). This would perhaps have seemed like good law at the time of *Flast,* but our later opinions have made it explicitly clear that *Flast* erred in assuming that assurance of "serious and adversarial treatment" was the only value protected by standing. See, *e. g., United States* v. *Richardson,* 418 **U. S.** 166, 176-180 (1974); *Schlesinger* v. *Reservists Comm. to Stop the War,* 418 **U. S.** 208, 220-223 (1974). *Flast* failed to recognize that this doctrine has a separation-of-powers component, which keeps courts within certain traditional bounds vis-à-vis the other branches, concrete adverseness or not. That is where the "actual injury" requirement comes from. Not everyone who can point to some "concrete" act and is "adverse" can call in the courts to examine the propriety of executive action, but only someone who has been *actually injured.* Depriving someone of an arguable (though not yet established) claim inflicts actual injury because it deprives him of something of value—arguable claims are settled, bought, and sold. Depriving someone of a frivolous claim, on the other hand, deprives him of nothing at all, except perhaps the punishment of Federal Rule of Civil Procedure 11 sanctions.

[4] Justice Souter suggests that he would waive this actual-injury requirement in cases "involving substantial, systemic deprivation of access to court"—that is, in cases involving "`a direct, substantial and continuous. . . limit on legal materials,' " "total denial of access to a library," or "`[a]n *absolute* deprivation of access to *all* legal materials,' " *post,* at 401, and 400, n. 2. That view rests upon the expansive understanding of *Bounds* that we have repudiated. Unless prisoners have a freestanding right to libraries, a showing of the sort Justice Souter describes would establish no *relevant* injury in fact, *i. e.,* injury-in-fact *caused by the violation of legal right.* See *Allen* v. *Wright,* 468 **U. S.** 737, 751 (1984). Denial of access to the courts could not possibly cause the harm of inadequate libraries, but only the harm of lost, rejected, or impeded legal claims.

Of course, Justice Souter's proposed exception is unlikely to be of much real-world significance in any event. Where the situation is so extreme as to constitute "an *absolute* deprivation of access to *all* legal materials," finding a prisoner with a claim affected by this extremity will probably be easier than proving the extremity.

[5] The District Court order in this case, by contrast, required ADOC to stock each library with, *inter alia,* the Arizona Digest, the Modern Federal Practice Digest, Corpus Juris Secundum, and a full set of the United States Code Annotated, and to provide a 30-40 hour videotaped legal research course covering "relevant tort and civil law, including immigration and family issues." App. to Pet. for Cert. 69a, 71a; 834 F. Supp. 1553, 1561-1562 (Ariz. 1992).

[6] Justice Stevens concludes, in gross, that Bartholic's and Harris's injuries are "sufficient to satisfy any constitutional [standing] concerns," *post,* at 408. But standing is not dispensed in gross. If the right to complain of *one* administrative deficiency automatically conferred the right to complain of *all* administrative deficiencies, any citizen aggrieved in one respect could bring the whole structure of state administration before the courts for

review. That is of course not the law. As we have said, "[n]or does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject." *Blum* v. *Yaretsky,* 457 **U. S.** 991, 999 (1982). As even Justice Souter concedes, the inability of respondents to produce *any* evidence of actual injury to other than *illiterate* inmates (Bartholic and Harris) "dispose[s] of the challenge to remedial orders insofar as they touch non-English speakers and lockdown prisoners." *Post,* at 395.

Contrary to Justice Stevens's suggestion, see *post,* at 408, n. 4, our holding that respondents lacked standing to complain of injuries to nonEnglish speakers and lockdown prisoners does *not* amount to "a conclusion that the class was improper." The standing determination is quite separate from certification of the class. Again, *Blum* proves the point: In that case, we held that a class of "`allresidents of skilled nursing and health related nursing facilities in New York State who are recipients of Medicaid benefits' " lacked standing to challenge transfers to higher levels of care, even though they had standing to challenge discharges and transfers to lower levels; but we did not disturb the class definition. See 457 **U. S.**, at 997, n. 11, 999-1002.

[7] Our holding regarding the inappropriateness of systemwide relief for illiterate inmates does not rest upon the application of standing rules, but rather, like Justice Souter's conclusion, upon "the respondents' failure to prove that denials of access to illiterate prisoners pervaded the State's prison system," *post,* at 397. In one respect, however, Justice Souter's view of this issue differs from ours. He believes that systemwide relief would have been appropriate "[h]ad the findings shown libraries in shambles throughout the prison system," *ibid* . That is consistent with his view, which we have rejected, that lack of access to adequate library facilities qualifies as relevant injury in fact, see n. 4, *supra.*

Contrary to Justice Souter's assertion, *post,* at 397, the issue of systemwide relief has nothing to do with the law governing class actions. *Whether or not* a class of plaintiffs with frustrated nonfrivolous claims *exists,* and no matter how *extensive* this class may be, unless it was established that violations with respect to that class occurred in all institutions of Arizona's system, there was no basis for a remedial decree imposed upon all those institutions. However inadequate the library facilities may be as a theoretical matter, various prisons may have other means (active assistance from "jailhouse lawyers," complaint forms, etc.) that suffice to prevent the legal harm of denial of access to the courts. Courts have no power to presume and remediate harm that has not been established.

[8] Justice Stevens believes that the State of Arizona "is most to blame for the objectionable character of the final [injunctive] order," *post,* at 411, for two reasons: First, because of its lack of cooperation in prison litigation three to five years earlier before the same judge, see *Gluth* v. *Kangas,* 773 F. Supp. 1309 (Ariz. 1988). But the rule that federal courts must "giv[e] the States the first opportunity to correct the errors made in the internal administration of their prisons," *Preiser* v. *Rodriguez,* 411 **U. S.** 475, 492 (1973), is not to be set aside when a judge decides that a State was insufficiently cooperative in *a different, earlier case.* There was no indication of obstructive tactics by the State in the present case, from which one ought to have concluded that the State had learned its lesson. Second, Justice Stevens contends that the State failed vigorously to oppose application of the *Gluth* methodology to the present litigation. But surely there was no reasonable doubt that the State objected to that methodology. Justice Stevens demands from the State, we think, an unattainable degree of courage and foolishness in insisting that, having been punished for its recalcitrance in the earlier case by the imposition of the *Gluth* methodology, it antagonize the District Court further by "zealously" insisting that that methodology, recently vindicated on appeal, must be abandoned. It sufficed, we think, for the State to submit for the record at every turn that "Defendants' objections and suggestions for modifications shall not be deemed a waiver of these Defendants' right to appeal prior rulings and orders of this Court or appeal from the subsequent final Order setting forth the injunctive relief regarding legal access issues," see, *e. g.,* App. 221, 225, 231, 239, 243.

[1] We reaffirmed this principle almost two decades later, and just three years before *Bounds* v. *Smith,* 430 **U. S.** 817 (1977), in *Ross* v. *Moffitt,* 417 **U. S.** 600 (1974), where we observed that *Griffin* v. *Illinois,* 351 **U. S.** 12 (1956), and "[s]ucceeding cases invalidated .. . financial barriers to the appellate process, at the same time reaffirming the traditional principle that a State is not obliged to provide any appeal at all for criminal defendants." 417 **U. S.**, at 606 (citing *McKane* v. *Durston,* 153 **U. S.** 684 (1894)). See also 417 **U. S.**, at 611.

[2] This is what Justice Brennan came to call the "*Griffin* equality principle," *United States* v. *MacCollom,* 426 **U. S.** 317, 331 (1976) (dissenting opinion), and it provided the rationale for a string of decisions that struck down a variety of state transcript and filing fees as applied to indigent prisoners. *Bounds* cited a number of these cases in support of the right to "adequate, effective and meaningful" access to the courts. See 430 **U. S.**, at 822, and n. 8. But none of the transcript and fee cases on which *Bounds* relied were premised on a substantive standard of court access. Rather, like *Griffin,* these cases were primarily concerned with invidious discrimination on the basis of wealth. See, *e. g., Smith* v. *Bennett,* 365 **U. S.** 708, 709 (1961) ("[T]o interpose any financial consideration

between an indigent prisoner of the State and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws"); *Gardner* v. *California,* 393 **U. S.** 367, 370-371 (1969) ("[I]n the context of California's habeas corpus procedure denial of a transcript to an indigent marks the same invidious discrimination which we held impermissible in. . . *Griffin* ").

[3] There is some discussion of due process by the plurality in *Griffin,* see 351 **U. S.**, at 17-18, and a passing reference to "fair procedure" in *Douglas,* 372 **U. S.**, at 357. These unexplained references to due process, made in the course of equal protection analyses, provide an insufficient basis for concluding that the regulations challenged in *Griffin* and *Douglas* independently violated the Due Process Clause. And attempts in subsequent cases to salvage a role for the Due Process Clause in this context and to explain the difference between the equal protection and due process analyses in *Griffin* have, in my opinion, been unpersuasive. See *Evitts* v. *Lucey,* 469 **U. S.** 387, 402-405 (1985); *Bearden* v. *Georgia,* 461 **U. S.** 660, 665-667 (1983). In any event, there do not appear to have been five votes in *Griffin* in support of a holding under the Due Process Clause; subsequent transcript and fee cases turned primarily, if not exclusively, on equal protection grounds, see, *e. g., Smith* v. *Bennett, supra,* at 714; and the *Douglas* Court, with its "obvious emphasis" on equal protection, 372 **U. S.**, at 361 (Harlan, J., dissenting), does not appear to have reached the due process question, notwithstanding Justice Harlan's supposition to the contrary, see *id.*, at 360-361.

It is difficult to see how due process could be implicated in these cases, given our consistent reaffirmation that the States can abolish criminal appeals altogether consistently with due process. See, *e. g., Ross* v. *Moffitt,* 417 **U. S.**, at 611. The fact that a State affords some access "does not automatically mean that a State then acts unfairly," and hence violates due process, by denying indigents assistance "at every stage of the way." *Ibid.* Under our cases, "[u]nfairness results only if indigents are singled out by the State and denied meaningful access to the appellate system because of their poverty," a question "more profitably considered under an equal protection analysis." *Ibid.*

[4] The absence of a prison law library or other state-provided legal assistance can hardly be said to deprive inmates absolutely of an opportunity to bring their claims to the attention of a federal court. Clarence Earl Gideon, perhaps the most celebrated *pro se* prisoner litigant of all time, was able to obtain review by this Court even though he had no legal training and was incarcerated in a prison that apparently did not provide prisoners with lawbooks. See Answer to Respondent's Response to Pet. for Cert. in *Gideon* v. *Wainwright,* O. T. 1962, No. 155, p. 1 ("[T]he petitioner is not a *[sic]* attorney or versed in law nor does not have the law books to copy down the decisions of this Court. . . . Nor would the petitioner be allowed to do so").

Like anyone else seeking to bring suit without the assistance of the State, prisoners can seek the advice of an attorney, whether *pro bono* or paid, and can turn to family, friends, other inmates, or public interest groups. Inmates can also take advantage of the liberal pleading rules for *pro se* litigants and the liberal rules governing appointment of counsel. Federal fee-shifting statutes and the promise of a contingency fee should also provide sufficient incentive for counsel to take meritorious cases.

[5] Our decisions in *San Antonio Independent School Dist.* v. *Rodriguez,* 411 **U. S.** 1 (1973), and *Washington* v. *Davis,* 426 **U. S.** 229 (1976), validated the position taken by Justice Harlan in his dissents in *Griffin* v. *Illinois,* 351 **U. S.** 12 (1956), and *Douglas* v. *California,* 372 **U. S.** 353 (1963). As Justice Harlan persuasively argued in *Douglas,* facially neutral laws that disproportionately impact the poor "do not deny equal protection to the less fortunate for one essential reason: the Equal Protection Clause does not impose on the States `an affirmative duty to lift the handicaps flowing from differences in economic circumstances.' To so construe it would be to read into the Constitution a philosophy of leveling that would be foreign to many of our basic concepts of the proper relations between government and society. The State may have a moral obligation to eliminate the evils of poverty, but it is not required by the Equal Protection Clause to give to some whatever others can afford." *Id.,* at 362 (dissenting opinion). See also *Griffin,* 351 **U. S.**, at 35-36 (Harlan, J., dissenting); *id.* , at 29 (Burton, J., dissenting) ("The Constitution requires the equal protection of the law, but it does not require the States to provide equal financial means for all defendants to avail themselves of such laws").

[6] Although he concurred in the judgment in *Griffin,* Justice Frankfurter expressed similar concerns. He emphasized that "the equal protection of the laws [does not] deny a State the right to make classifications in law when such classifications are rooted in reason," *id.,* at 21, and that "a State need not equalize economic conditions," *id.,* at 23. Justice Frankfurter acknowledged that differences in wealth are "contingencies of life which are hardly within the power, let alone the duty, of a State to correct or cushion." *Ibid.* He also expressed concern that if absolute equality were required, a State would no longer be able to "protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent." *Id.* , at 24. See also *United States* v. *MacCollom,* 426 **U. S.**, at 330 (Blackmun, J., concurring in judgment) (the Constitution does not "require that an indigent be furnished every possible legal tool, no matter how speculative its value, and no matter how devoid of

assistance it may be, merely because a person of unlimited means might choose to waste his resources in a quest of that kind").

[7] The Court's rationale appears to have been motivated more by notions of federalism and the power of the federal courts than with the rights of prisoners. Our citation of three nonhabeas cases which held that a state court's determination on a matter of federal law is not binding on the Supreme Court supports this conclusion. See *Ex parte Hull,* 312 **U. S.**, at 549, citing *First Nat. Bank of Guthrie Center* v. *Anderson,* 269 **U. S.** 341, 346 (1926) (the power of the Supreme Court to review independently state-court determinations of claims "grounded on the Constitution or a law of the United States" is "general, and is a necessary element of this Court's power to review judgments of state courts in cases involving the application and enforcement of federal laws"); *Erie R. Co.* v. *Purdy,* 185 **U. S.** 148, 152 (1902) ("`[T]he question whether a right or privilege, claimed under the Constitution or laws of the United States, was distinctly and sufficiently pleaded and brought to the notice of a state court, is itself a Federal question, in the decision of which this court, on writ of error, is not concluded by the view taken by the highest court of the State' " (citation omitted)); *Carter* v. *Texas,* 177 **U. S.** 442, 447 (1900) (same).

[8] *Martinez* was overruled on other grounds in *Thornburgh* v. *Abbott,* 490 **U. S.** 401, 413-414 (1989). We have consistently reaffirmed *Martinez,* however, in all respects relevant to this case, namely, that "the judiciary is `ill equipped' to deal with the difficult and delicate problems of prison management" and that prison administrators are entitled to "considerable deference." 490 **U. S.**, at 407-408. See also *Turner* v. *Safley,* 482 **U. S.** 78, 84-85 (1987) (relying on *Martinez* for the principle that "`courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform' " (citation omitted)).

[9] The constitutional and practical concerns identified in *Martinez* have also resulted in a more deferential standard of review for prisoner claims of constitutional violations. In *Turner* v. *Safley,* we held that a prison regulation is valid if it is "reasonably related to legitimate penological interests," even when it "impinges on inmates' constitutional rights." 482 **U. S.**, at 89. A deferential standard was deemed necessary to keep the courts out of the day-to-day business of prison administration, which "would seriously hamper [prison officials']abilityto anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration." *Ibid.* A more stringent standard of review "would also distort the decisionmaking process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts inevitably would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby `unnecessarily perpetuat[ing] the involvement of the federal courts in affairs of prison administration.' " *Ibid.* (quoting *Martinez,* 416 **U. S.**, at 407).

[10] The Arizona prison system had already adopted a policy of statewide compliance with an injunction that the same District Judge in this case imposed on a single institution in an earlier case.In compliance with that decree, which the District Court termed the "Muecke list," 834 F. Supp., at 1561, every facility in the Arizona correctional system had at least one library containing, at a minimum, the following volumes: United States Code Annotated; Supreme Court Reporter; Federal Reporter Second; Federal Supplement; Shepard's **U. S.** Citations; Shepard's Federal Citations; Local Rules for the Federal District Court; Modern Federal Practice Digests; Federal Practice Digest (Second); Arizona Code Annotated; Arizona Reports; Shepard's Arizona Citations; Arizona Appeals Reports; Arizona Law of Evidence (Udall); ADC Policy Manual; 108 Institutional Management Procedures; Federal Practice and Procedure (Wright); Corpus Juris Secundum; and Arizona Digest. *Id.* , at 1561-1562.

[1] Moreover, the issue of actual injury, even as framed by the parties, received relatively short shrift; only small portions of the parties' briefs addressed the issue, see Brief for Petitioners 30-33; Reply Brief for Petitioners 11-13; Brief for Respondents 25-30, and a significant portion of that discussion concentrated upon whether the issue should even be addressed by the Court, Reply Brief for Petitioners 12-13; Brief for Respondents 25-27.

[2] See, *e. g.,* *Jenkins* v. *Lane,* 977 F. 2d 266, 268-269 (CA7 1992) (waiving the requirement that a prisoner prove prejudice "where the prisoner alleges a direct, substantial and continuous, rather than a `minor and indirect,' limit on legal materials" on the ground that "a prisoner without any access to materials cannot determine the pleading requirements of his case, including the necessity of pleading prejudice"); cf. *Strickler* v. *Waters,* 989 F. 2d 1375, 1385, n. 16 (CA4 1993) (acknowledging the possibility that injury may be presumed in some situations, *e. g.,* total denial of access to a library), cert. denied, 510 **U. S.** 949 (1993); *Sowell* v. *Vose,* 941 F. 2d 32, 35 (CA1 1991) (acknowledging that a prisoner may not need to prove prejudice when he alleges "[a]n *absolute* deprivation of access to *all* legal materials" (emphases in original)). Dispensing with any underlying claim requirement in such instances would be consistent with the rule of equity dealing with threatened injury. See, *e. g.,* *Farmer* v. *Brennan,* 511 **U. S.** 825, 845 (1994) (holding that a prisoner need not suffer physical injury before obtaining relief because "`[o]ne does not have to await the consummation of threatened injury to obtain preventive relief' " (quoting *Pennsylvania* v. *West Virginia,* 262 **U. S.** 553, 593 (1923)); *Helling* v. *McKinney,* 509

U. S. 25, 33 (1993) (observing that prisoners may obtain relief "even though it was not alleged that the likely harm would occur immediately and even though the possible [harm] might not affect all of those [at risk]" (discussing *Hutto* v. *Finney*, 437 **U. S.** 678 (1978))). If the State denies prisoners all access to the courts, it is hardly implausible for a prisoner to claim a protected stake in opening some channel of access.

[3] See *Harris* v. *Young*, 718 F. 2d 620, 622 (CA4 1983) ("It is unfair to force an inmate to prove that he has a meritorious claim which will require access until after he has had an opportunity to see just what his rights are"); see also *Magee* v. *Waters*, 810 F. 2d 451, 452 (CA4 1987) (suggesting that a prisoner must identify the "specific problem he wishe[s] to research"); cf. *Vandelft* v. *Moses*, 31 F. 3d 794, 798 (CA9 1994) (dismissing a *Bounds* claim in part because the prisoner "simply failed to show that the restrictions on *library* access had any effect on his access to the *court* relative to his personal restraint petition" (emphases in original)), cert. denied, 516 **U. S.** 825 (1995); *Casteel* v. *Pieschek*, 3 F. 3d 1050, 1056 (CA7 1993) (it is enough if the prisoner merely "identif[ies] the constitutional right the defendant allegedly violated and the specific facts constituting the deprivation"); *Chandler* v. *Baird*, 926 F. 2d 1057, 1063 (CA11 1991) ("[T]here was no allegation in the complaint or in plaintiff's deposition that he was contemplating a challenge at that time [of the deprivation] to the conditions of his confinement"); *Martin* v. *Tyson*, 845 F. 2d 1451, 1456 (CA7) (dismissing a claim in part because the prisoner "does not point to any claim that he was unable to pursue"), cert. denied, 488 **U. S.** 863 (1988).

[4] I do not foreclose the possibility of certain other complaints, see text accompanying n. 2, *supra,* and Part III-B, *infra.*

[1] See also *California Motor Transport Co.* v. *Trucking Unlimited*, 404 **U. S.** 508, 510 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition. See *Johnson* v. *Avery*, 393 **U. S.** 483, 485; *Ex parte Hull*, 312 **U. S.** 546, 549"); *Bill Johnson's Restaurants, Inc.* v. *NLRB*, 461 **U. S.** 731, 741 (1983) ("[T]he right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances"); *id.,* at 743.

The right to claim a violation of a constitutional provision in a manner that will be recognized by the courts is also embedded in those rights recognized by the Constitution's text and our interpretations of it. Without the ability to access the courts and draw their attention to constitutionally improper behavior, all of **us**—prisoners and free citizens alike— would be deprived of the first—and often the only—"line of defense" against constitutional violations. *Bounds* v. *Smith*, 430 **U. S.** 817, 828 (1977); see *Wolff* v. *McDonnell*, 418 **U. S.**, at 579 (recognition of constitutional rights "would be diluted if inmates, often `totally or functionally illiterate,' were unable to articulate their complaints to the courts"); cf. *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 **U. S.** 388 (1971) (allowing plaintiff alleging violation of Fourth Amendment rights access to the courts through a cause of action directly under the Constitution).

[2] See Opening Brief for Appellant in No. 93-17169 (CA9), pp. 29-30; Reply Brief for Defendant/Appellants in No. 93-17169 (CA9), p. 14, n. 20. The State directly questioned constitutional standing only with respect to two narrow classes of claims: the standard for indigency (a claim on which the State was successful below) and, in its reply brief, photocopying.

[3] In all likelihood, the District Court's failure to articulate additional specific examples of missing claims was due more to the fact that the State did not challenge the constitutional standing of the prisoners in the District Court than to a lack of actual evidence relating to such lost claims. Now that the District Court and prisoners are on notice that standing is a matter of specific concern, it is free on remand to investigate the record or other evidence that the parties could make available regarding other claims that have been lost because of inadequate facilities.

[4] If named class plaintiffs have standing, the standing of the class members is satisfied by the requirements for class certification. 1 H. Newberg & A. Conte, Newberg on Class Actions § 2.01, p. 2-3 (3d ed. 1992); *ante,* at 395-396 (Souter, J., concurring in part, dissenting in part, and concurring in judgment). Because the State did not challenge that certification, it is rather late in the game to now give it the advantage of a conclusion that the class was improper (even if it is—although illiterate inmates, it seems to me, are not positioned much differently with respect to English language legal materials than are non-English speaking prisoners).

[5] Although a prisoner would lose on the merits if he alleged that the deprivation of that right occurred because the State, for example, did not provide him with access to on-line computer databases, he would also certainly have "standing" to make his claim. The Court's argument to the contrary with respect to most of the prisoners in this case, it seems to me, is not as much an explication of the principles of standing, but the creation of a new rule requiring prisoners making *Bounds* claims to demonstrate prejudice flowing from the lack of access.

[6] In addition to the Court's discussion of "standing," the opinion unnecessarily enters into discussion about at

least two other aspects of the scope of the *Bounds* right. First, the Court concludes that the *Bounds* right does not extend to any claims beyond attacks on sentences and conditions of confinement. *Ante,* at 355. But given its subsequent finding that only two plaintiffs have met its newly conjured rule of standing, see *ibid.,* its conclusion regarding the scope of the right is purely dicta. Second, the Court argues that the *Bounds* right does not extend to the right to "discover" grievances, or to "litigate effectively" once in court. *Ante,* at 354 (emphasis deleted). This statement is also largely unnecessary given the Court's emphasis in Part III on the need for the District Court both to tailor its remedy to the constitutional violations it has discovered and the requirement that it remain respectful of the difficult job faced by state prison administrators.

Moreover, I note that the State has not asked for these limitations on *Bounds.* While I doubt that Arizona will object to its unexpected windfall, its briefs in the District Court, Court of Appeals, and this Court have argued that the District Court order simply went further than was necessary given the injuries identified in its own opinion. See Brief for Petitioners 13-16. By agreeing with that proposition but nonetheless going on to extend unrequested relief, the Court oversteps the scope of the debate presented in this case. Whenever we take such a step, we venture unnecessarily onto dangerous ground.

730 F.Supp. 747 (1990)

Theotis Lee HODGE, Jr., Plaintiff,

v.

Billy PRINCE, et al., Defendants.

Civ. A No. CA3-87-2831-D.

United States District Court, N.D. Texas, Dallas Division.

February 16, 1990.

748 *748 Theotis Lee **Hodge**, Jr., Huntsville, Tex., pro se.

Thomas P. Brandt, Asst. City Atty., Dallas, Tex., for the City of Dallas, Tex.

FITZWATER, District Judge:

The court is asked to decide whether an indigent prisoner proceeding *in forma pauperis* in a civil action that does not seek federal habeas relief is entitled to obtain issuance of a subpoena without paying the witness fees required by 28 U.S.C. § 1821. Concluding that no such right arises by statute or pursuant to the constitutional right of access to the courts, the court affirms an order of the U.S. Magistrate declining to issue a subpoena without payment of the fees.

I

On September 15, 1986 Dallas police officers Teddy D. Weeks ("Weeks") and Kevin L. Ross ("Ross") responded to a report of an assault. The report was telephoned to the Dallas Police Department by a woman claiming to be the mother of plaintiff Theotis Lee **Hodge** ("**Hodge**"). Upon arriving on the scene, officers Weeks and Ross determined the woman was in fact **Hodge's** mother. They asked **Hodge** to step outside, which he did.

Once outside, the officers instructed **Hodge** to leave the premises or be taken to jail. **Hodge** refused to depart and was arrested on charges of criminal trespass and transported to jail. **Hodge** was later charged with criminal retaliation against Weeks. On January 6, 1987 a mistrial was declared in **Hodge's** trial on the retaliation charge. Following the trial court's refusal to dismiss the indictment, **Hodge** pleaded *nolo contendere* to the retaliation charge and was sentenced to two years in prison. **Hodge's** conviction was affirmed on appeal. ***Hodge** v. State*, 756 S.W.2d 353 (Tex.App. 1988, no

pet.).

749 *749 On December 2, 1987 **Hodge** instituted this *pro se* action against Weeks, Ross, and Billy **Prince** ("**Prince**"), the then City of Dallas Chief of Police. **Hodge** alleged a variety of constitutional claims, federal statutory violations, and state common law rights of recovery, seeking relief pursuant to 42 U.S.C. § 1983, as well. The U.S. Magistrate granted **Hodge** leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a).

On November 13, 1989 **Hodge** moved the court to issue a subpoena *duces tecum* to the District Clerk of Dallas County, Texas, ordering the District Clerk to appear at a deposition and to produce all trial records, including court reporter's notes, generated in **Hodge's** state case. **Hodge** contended the court had the power to do so "pursuant to the Federal Rules of Civil Procedure, including, but not limited to, Rule 40." **Hodge** alleged that he needs the trial court record "for impeachment purposes" when his lawsuit is tried or for any subsequently filed motion for summary judgment. The court referred **Hodge's** motion to the magistrate, who denied the relief requested. The magistrate determined that the court lacked authority under 28 U.S.C. § 1915 to waive the payment of the witness fees and that **Hodge** did not make a sufficient showing to justify the court's issuing the subpoena as a matter of discretion. **Hodge** now appeals, contending he is entitled to procure the attendance of necessary witnesses without advance payment of fees and travel expenses by virtue of Fed.R. Civ.P. 45(c), 28 U.S.C. § 1915, and the constitutional right of access to the courts recognized in *Bounds v. Smith,* 430 U.S. 817, 97 **S**.Ct. 1491, 52 L.Ed.2d 72 (1977), and other Supreme Court decisions.

II

A

The court begins by noting the standard of review that applies to orders of the magistrate entered in non-dispositive matters. Pursuant to 28 U.S.C. § 636(b)(1)(A), a judge may designate a magistrate to hear and determine, with certain exceptions not pertinent here, any pretrial matter pending before the court. Under our Miscellaneous Order No. 6, Rule 4(b)(2), *reprinted in* Texas Rules of Court: Federal at 131-32 (West Pamp.1989), no ruling of the magistrate in a matter that the magistrate is empowered to hear and determine shall be reversed, vacated, or modified on appeal unless the district judge shall determine, *inter alia,* that the magistrate's ruling is clearly erroneous, contrary to law, or constitutes an abuse of discretion.

B

Hodge contends the magistrate's order is contrary to law because Fed.R.Civ.P. 45(c), 28 U.S.C. § 1915(a), and an indigent prisoner's constitutional right of access to the courts entitle him to issue a subpoena to, and to procure the production of records from, a non-party witness without payment of fees. The court first addresses the question whether § 1915(a) confers upon **Hodge** the right he seeks,[1] since it is a fundamental

and long-standing principle of judicial restraint that a court will avoid reaching a constitutional question if it can decide the issue on a statutory ground. *Lyng v. Northwest Indian Cemetery Protective Ass'n,* 485 U.S. 439, 445, 108 S.Ct. 1319, 1323, 99 L.Ed.2d 534 (1988); *see Edward J. DeBartolo Corp. v. N.L.R.B.,* 463 U.S. 147, 158, 103 S.Ct. 2926, 2933, 77 L.Ed.2d 535 (1983) (until statutory question decided, review of constitutional issue is premature).

1

Section 1915(a) empowers the district court to authorize the commencement of a civil
750 action without prepayment of fees *750 or costs by a person unable to pay such costs. Section 1915(c)[2] provides in part that "[w]itnesses shall attend as in other cases, and the same remedies shall be available as are provided by law in other cases." Although the Fifth Circuit has not squarely addressed the question whether § 1915(c) provides a statutory waiver of witness fees,[3] the courts of appeals that have decided the issue have uniformly held that § 1915 does not provide the necessary authority for such a waiver. *See McNeil v. Lowney,* 831 F.2d 1368, 1373 (7th Cir.1987), *cert. denied,* 485 U.S. 965, 108 S.Ct. 1236, 99 L.Ed.2d 435 (1988); *United States Marshals Serv. v. Means,* 741 F.2d 1053, 1056-1057 (8th Cir.1984) (en banc); *Johnson v. Hubbard,* 698 F.2d 286, 289-290 (6th Cir.), *cert. denied,* 464 U.S. 917, 104 S.Ct. 282, 78 L.Ed.2d 260 (1983). In *Means* the *en banc* Eighth Circuit recognized that the plain language of § 1915 provides no basis for the waiver of witness fees and expenses. 741 F.2d at 1056. By examining the legislative history, the court became "convince[d] ... that [§ 1915] neither expressly nor implicitly authorizes the payment of the witness fees and expenses...." *Id.* at 1057. The Sixth Circuit in *Hubbard* followed a different path to the same result, reasoning that Congress' failure to amend § 1915 to allow for payment of witness fees in civil cases at the same time it passed 28 U.S.C. § 1825 to allow for payment of such fees in criminal cases precluded a finding that § 1915 authorizes the payment of witness fees in a civil case. 698 F.2d at 290. The Seventh Circuit relied on both cases in concluding a district court has no authority to waive payment of witness fees for an indigent litigant. *McNeil,* 831 F.2d at 1373.

This court gives § 1915(c) the same plain reading as did the Eighth Circuit in *Means,* and therefore concludes § 1915(c) does not provide the necessary statutory authority to waive the witness fees required by 28 U.S.C. § 1821(a)(1).[4] Section 1915(c) states only that witnesses shall attend as in other cases; it does not waive the requirement that witness fees be paid by the party who procures the subpoena.

Moreover, the specific government funding provisions delineated in § 1915(b)[5] compel
751 *751 the conclusion that Congress did not intend for § 1915(c) to constitute an additional draw on the public exchequer. *See Means,* 741 F.2d at 1056. A contrary construction of § 1915(c) would require the court to infer congressional intent that is not apparent from the text, structure, or legislative history of the statute. *See id.* at 1056; 1057; *Hubbard,* 698 F.2d at 290. This the court declines to do.

2

Having concluded § 1915(c) does not authorize the district court to waive the witness fees required by 28 U.S.C. § 1821, the court next considers whether an indigent prisoner's inability to obtain a subpoena without paying the required fees violates the Constitution.

It is beyond dispute that a prisoner has a constitutional right of access to the courts. *E.g.,* *Bounds v. Smith,* 430 U.S. 817, 821, 97 **S**.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977); *Ex parte Hull,* 312 U.S. 546, 549, 61 **S**.Ct. 640, 641, 85 L.Ed. 1034 (1941); *Chambers v. Baltimore & Ohio R.R.,* 207 U.S. 142, 148, 28 **S**.Ct. 34, 35, 52 L.Ed. 143 (1907); *Crowder v. Sinyard,* 884 **F**.2d 804, 811 (5th Cir.1989). The right springs in part from the Due Process Clauses of the Fifth and Fourteenth Amendments and the right of petition found in the First Amendment. *Crowder,* 884 **F**.2d at 811 n. 7; *see generally* *Ryland v. Shapiro,* 708 **F**.2d 967, 971-972 (5th Cir.1983). The right of access is fundamental. *Bounds,* 430 U.S. at 828, 97 **S**.Ct. at 1498.

In its most apparent form, the right of access protects one's physical access to the courts. *Crowder,* 884 **F**.2d at 811. Thus, prison officials cannot refuse to convey or otherwise block transmission of legal documents that prisoners wish to send to the courts. *Id.* (citing *Ex parte Hull,* 312 U.S. at 549, 61 **S**.Ct. at 641). Prison officials may not deliberately delay mailing legal papers when they know such delay will effectively deny a prisoner access to the courts. *Jackson v. Procunier,* 789 **F**.2d 307, 310-312 (5th Cir.1986). They may not deny prisoners access to "adequate law libraries or adequate assistance from persons trained in the law." *Bounds,* 430 U.S. at 828, 97 **S**.Ct. at 1498; *see* *Mann v. Smith,* 796 **F**.2d 79, 83 (5th Cir.1986). Nor may prison officials take other actions — such as confiscating legal papers — that have a similar effect. *Crowder,* 884 **F**.2d at 811; *Simmons v. Dickhaut,* 804 **F**.2d 182, 184-85 (1st Cir.1986); *Sigafus v. Brown,* 416 **F**.2d 105, 107 (7th Cir.1969).

Hodge contends the constitutional right of access "includes the right to present evidence through necessary witnesses to prove an inmate[']**s** case, especially case arising under Sec. 1983 ..." and, therefore, the Constitution requires waiver of the payment of witness fees for indigent prisoners involved in civil litigation. The court disagrees.

There is a recognized distinction between actual access to the courts and procedures essential to the trial process. *See* *Hubbard,* 698 **F**.2d at 288. While it is clearly impermissible to obstruct a prisoner's physical access to the courts, or to take actions that effectively deny court access, it is not constitutionally repugnant to require an indigent civil litigant to comply with rules necessary to facilitate the functioning of the justice system. Thus, requiring compliance with procedures that make the trial process possible — such as payment of transcript costs, expert witness fees, and fees to secure depositions — presents no constitutional infirmity. *See id.* at 289; *McNeil,* 831 **F**.2d at 1373.

The Constitution has been interpreted to mandate that an indigent prisoner have physical access to the courts and an opportunity to present his claims. **Hodge**

possesses that right in the present case, and is not barred from access solely because the court declines to waive the payment of witness fees. Moreover, to expand the right of access in the manner **Hodge** suggests would arguably confer a panoply of heretofore unrecognized rights upon all indigent civil litigants, not merely upon prisoners. Drawing upon the principle that "access" encompasses the right to the *752 same litigation tools enjoyed by pecunious litigants, indigent civil plaintiffs could claim entitlement even to appointed counsel. The court declines to discover a right that is not fairly discernible from the Constitution.

752

III

The court concludes neither 28 U.S.C. § 1915(c) nor the constitutional right of access to the courts entitles **Hodge** to procure issuance of the subpoena in question without paying the required fees. Thus, the magistrate's order denying **Hodge's** motion for a subpoena *duces tecum* neither amounted to an abuse of discretion nor was contrary to law and is, accordingly,

AFFIRMED.

APPENDIX

ORDER

Pursuant to the District Court's order of reference filed on November 14, 1989, came on to be considered Plaintiff's Motion for the Court to Issue Subpoena Duces Tecum filed on November 13, 1989, and the court finds and orders as follows:

Plaintiff seeks an order issuing a subpoena *duces tecum* on the District Clerk of Dallas County, Texas, requiring him to appear and produce the trial records from Plaintiff's criminal trial in *State of Texas v. Theotis Lee **Hodge**,* No. **F**-86-92387-H, i.e. the transcripts and statements of facts. **Hodge** was previously granted leave to proceed in this action in *forma pauperis* pursuant to 28 U.S.C. § 1915(a). An examination of the docket sheet reflects that no trial setting has been made.

In my opinion the same should be denied because the court is without authority to waive the payment of a witness fee under § 1915, and alternatively Plaintiff has not made the requisite showing to require the court, in its discretion, to issue the subpoena without Plaintiff's tendering of the witness fee.

Of the several circuits which have squarely addressed the issue of whether a civil plaintiff proceeding in *forma pauperis* is entitled to have subpoenas issued without prepayment of the witness fee, the courts have uniformly held that no statutory authority exists permitting a court to issue subpoenas, at government expense, on request by an indigent plaintiff. *Johnson v. Hubbard,* 698 **F**.2d 286, 289-90 (6th Cir.), cert. den. [464 U.S. 917] 104 **S**.Ct. 282[, 78 L.Ed.2d 260] (1983); *United States Marshals Service v. Means,* 741 **F**.2d 1053 *(en banc)* (8th Cir.1984); *McNeil v. Lowney,* 831 **F**.2d 1368 (7th

Cir.1987), cert. den. [485 U.S. 965] 108 S.Ct. 1236[, 99 L.Ed.2d 435] (1988).

The Fifth Circuit has never directly addressed a federal court's authority to issue subpoenas on behalf of an indigent plaintiff at government's expense, but has examined the decision of a district court under an abuse of discretion standard. E.g. *Gibbs v. King,* 779 F.2d 1040, 1046-47 (5th Cir.) cert. den. 476 U.S. 1117, 106 S.Ct. 1975 [90 L.Ed.2d 659] (1986), citing its earlier decision in *Estep v. United States,* 251 F.2d 579, 582 (5th Cir.1958); see also *Lloyd v. McKendree,* 749 F.2d 705, 706-707 (11th Cir.1985).

Hodge seeks copies of his trial records from the state criminal proceedings for his use in responding to any motion for summary judgment and for use at trial to impeach Defendants Weeks and Ross, based upon his representation that each was called as a witness in the first trial in No. F-86-92387-H.

Since Plaintiff is complaining of conduct toward him personally, it is clear that he is competent to respond to any motion for summary judgment which might be filed in this action, and he does not need to resort to his prior trial record to show that genuine issues of fact exist. While he argues that these Defendants prior testimony might be helpful for impeachment purposes, he has identified no aspect of their prior testimony which is inconsistent with their presently asserted positions. Moreover, there is no showing that these Defendants will not be present at trial at which he can fully explore in his examination any prior inconsistent statements which he claims they may have made.
753 In short, **Hodge** has failed to show any compelling *753 need for the entire trial proceedings, assuming a statement of facts was presented.[1]

IT IS, THEREFORE, ORDERED that Plaintiff's motion for issuance of subpoena is denied.

A copy of this order shall be transmitted to Plaintiff and counsel for Defendants.

ENTERED this 16th day of November, 1989.

/s/ Wm. F. Sanderson UNITED STATES MAGISTRATE

[1] The court need not address Fed.R.Civ.P. 45(c). The only portion of the Rule that concerns non-payment of fees and mileage pertains to subpoenas issued on behalf of the United States or an officer or agency thereof. Plaintiff does not qualify as an officer under this proviso and any subpoena obtained by him would not be issued on behalf of the United States or an agency thereof. Under Fed.R.Civ.P. 45(c), service of a subpoena in a civil case must include the tendering of witness fees unless the subpoena is issued on behalf of the United States. *Lloyd v. H.S. McKendree,* 749 F.2d 705, 706 (11th Cir. 1985).

[2] 28 U.S.C. § 1915(c):

The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

[3] The Fifth Circuit has suggested that district courts have the implied or inherent power to subpoena witnesses for an indigent civil litigant, *Estep v. United States,* 251 F.2d 579, 582 (5th Cir.1958), but has held that the district court's exercise of this power is discretionary. *Gibbs v. King,* 779 F.2d 1040, 1047 (5th Cir.), *cert. denied,* 476 U.S. 1117, 106 S.Ct. 1975, 90 L.Ed.2d 659 (1986); *Estep,* 251 F.2d at 582. To the extent **Hodge** contends the court should exercise its discretionary power to grant the relief he requests, the court finds no abuse of discretion in the decision of the magistrate. *See infra* **730 F**.Supp. at 752, where the magistrate's order is set forth as an appendix to this opinion. The magistrate declined to permit **Hodge** to obtain his state court records without paying the required fees, finding that **Hodge** was competent to respond to any summary judgment motion since

he is complaining of conduct toward him personally, *id.,* because he has failed to identify any aspect of the state court testimony which is inconsistent with a defendant's present position, *id.,* and since plaintiff has not shown he cannot fully explore any prior inconsistent statements by way of trial cross-examination, *id.* The magistrate acted well within his discretion in declining to grant relief for the reasons stated in his order.

[4] 28 U.S.C. § 1821(a)(1):

Except as otherwise provided by law, a witness in attendance at any court of the United States, or before a United States Magistrate, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

[5] 28 U.S.C. § 1915(b):

Upon the filing of an affidavit in accordance with subsection (9) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under Section 636(b) of this title or under Section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to Section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

[1] **Hodge's** first criminal trial concluded with a mistrial being granted. His appeal was predicated on his conviction which was entered pursuant to a plea bargain in which he entered a plea of nolo contendere. See ***Hodge*** *v. State of Texas,* 756 S.W.2d 353 (Tx.App. — Dallas, 1988).