

## The Intersection of Access to Justice and Legal Education: Legal Education for America's Prisoners.

As American prison populations continue to grow, so too does the need for comprehensive access to legal education materials. Prisoners often do not have the skills to adequately draft petitions, access the courts, or pursue their claims effectively. Aiding their efforts, prison law libraries play a key role in providing legal materials to prisoners. For decades, access to prison law libraries was a constitutional right – until the Supreme Court in *Lewis* held it was not. A steady erasure of legal materials in prisons and prison law libraries began soon after.

This paper begins by covering the history, evolution and dissolution of prison law libraries in the U.S. It then explores community and student run initiatives to provide legal materials to prisoners, acting as a substitute for prison law libraries. Finally, it presents in-depth coverage of the first legal education to be given to incarcerated people. The research presented includes how prison law libraries aid the prison scholars in their education, the structure of the program, and obstacles presented. Notably, this research was obtained by a direct interview with the program director, and is not publicly available anywhere else. As a result, this paper provides a comprehensive, post-*Lewis* view of the intersections between prison law libraries and legal education of American prisoners.

# The Intersection of Access to Justice and Legal Education: Legal Education for America's Prisoners.

## I. Introduction

This paper begins by advocating for the rights of America's most vulnerable, and least legally protected, population: uneducated, indigent prisoners.<sup>1</sup> This precarious identity forces the incarcerated into a troublesome paradox: they are at the mercy of a legal system that they likely don't understand, and simultaneously must be a part of.<sup>2</sup> This places poor, uneducated prisoners in an unequal position regarding accessibility to the courts and thus, inaccessibility to justice.<sup>3</sup>

Some prisoners may attempt to self-educate themselves on the system, and thus become a *pro se* litigant. For the majority, self-education while incarcerated proves fruitless; approximately 7.69% percent of felony prisoners appearing *pro se* are acquitted.<sup>4</sup> But what about the prisoners who are triumphant? What is there for prisoners who toll months – perhaps years – conducting thorough legal research, yet are released into society without formal recognition for it?

This paper argues for a legal education credit that would be awarded to incarcerated people upon release, as a tool to help them re-enter society. First, the background section will provide a brief history of prisoner legal education in the United States, including relevant case law and legislation. In tandem, twentieth century prison legal education models will be explored,

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<sup>1</sup> E. Harrick, *Prison Literacy Connection*, 16 CORR. COMPENDIUM 1, 5-9 (Dec. 1991) (“According to the Correctional Education Association and other statistical data, the illiteracy for adult inmates is estimated at 75%.”).

<sup>2</sup> *Id* at 2. (Arguing that “although learning to read by itself will not prevent participation in crime, illiteracy may preclude knowledge of the legal system.”)

<sup>3</sup> Jack B. Weinstein, *The Poor's Right to Equal Access to the Courts*, 13 CONN. L. REV. 655 (1981).

<sup>4</sup> See Erica J. Hashimoto, *Defending the Right to Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, 85 N.C. L. REV. 2 (2007).

including both attorney-run and student-run programs. Additionally, an overview will shed light on the present state of prison law libraries. This section includes the switch to digital research materials, non-profit organizing of law libraries, and modern-day initiatives to provide legal education to incarcerated people.

Finally, the Analysis section will address pressing problems and counterarguments to educating prisoners. The post-release legal education credit will then be explored, including the ways it circumvents correctional education's difficulties.

Throughout the paper, existential questions regarding race, class, income, and other sociological factors may come to mind. Frequently, these are outside the scope of this paper. When possible, gaps in research coverage are acknowledged as important, but unrelated issues.

## **II. Background**

### **a. American Prison Law Libraries in the Late 20<sup>th</sup> Century.**

To understand how prisoners self-educate themselves on the law, it's imperative to know what enables them to self-educate in the first place.<sup>5</sup> The 1960's and 1970's saw a torrential wave of prisoner litigation, no doubt assisted by roughly 30 years of pro-prisoner Supreme Court decisions.<sup>6</sup> In 1977, the Supreme Court in *Bounds v. Smith* held that prisoner's access to law libraries was a fundamental right, and that states had an affirmative duty to provide them.<sup>7</sup>

*Bounds* led to a massive wave of state prisons scrambling to institute a law library, as well as

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<sup>5</sup> See generally Evan R. Seamone, *Fahrenheit 451 on Cell Block D: A Bar Examination to Safeguard America's Jailhouse Lawyers from the Post-Lewis Blaze Consuming Their Law Libraries*, 24 YALE L.J. (2006); Christopher E. Smith, *Examining the Boundaries of Bounds: Prison Law Libraries and Access to the Courts*, 30 HOW. L.J. 27 (1987).

<sup>6</sup> See generally Robert C. Hauhart, *Organizing a Prisoners' Legal Aid Office*, 22 CLEARINGHOUSE REV. 335, 336 (1988).

<sup>7</sup> *Bounds v. Smith*, 430 U.S. 817 (1977) (holding that the constitutional right of access to the courts required prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries).

federal prisons making sure their law libraries were well stocked.<sup>8</sup> But the discrepancies were already manifesting, and prisoners found themselves struggling to grapple with the inconsistency of legal reference resources offered at different penal facilities.<sup>9</sup>

The unanswered question of what constituted an adequate prison law library would eventually lead to *Bound*'s demise. In 1996, after an inmate challenged the adequacy of their prison law library, the court overruled *Bounds*, holding that “while the Constitution requires meaningful access to the courts, it does not provide a freestanding right to a law library.”<sup>10</sup> Though every federal prison today still maintains a law library, *Lewis* gave states the power to extinguish prisoner's only form of legal education.”<sup>11</sup> And extinguish they did. Idaho prisons sold its law library collection on e-bay; Arizona prisons shut down 99% of their law libraries; and in Iowa, prisons “took the books and dumped them outside to rot.”<sup>12</sup> Nonetheless, informal legal education in prisons persisted, and law librarians, practicing attorneys, and even law students participated in providing legal research help to inmates.

#### **b. Late 20<sup>th</sup> Century Efforts at Providing Legal Education in Prisons**

In addition to the rapid response by prison law libraries from the holding in *Bounds*, lawyers began addressing prisoner legal education within correctional facilities. As a response to the rising concerns of prisoner litigation, several institutions began “legal research” programs for

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<sup>8</sup> Emily Shepard Smith, *May it Please the Court: Law Students and Legal Research Instruction in Prison Law Libraries*, LEGAL REF. SERVICES Q. 29, 276-317 (2010).

<sup>9</sup> *Id.* at 279.

<sup>10</sup> *Lewis v. Casey*, 518 U.S. 343 (1996) (holding that a state prison's denial of law libraries and legal assistance programs to inmates does not violate those inmates' constitutional right of access to courts.).

<sup>11</sup> Johnathan Abel, *Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries*, 101 GEO. L.J. 1171 (June 2013).

<sup>12</sup> *Id.*

inmates.<sup>13</sup> Two courses of note were those held at the Washington State Prison Library from 1991 until 2002, and the Massachusetts Correctional Institution, which, as of 2010, was still running.

### **1. Attorney-Run Legal Research Class at Washington State Prison Library in Purdy, WA.**

Similar to a law school class, the course was organized as an evening session that met once a week, for ten to twelve weeks.<sup>14</sup> The course was cumulative and designed as such to discourage inmates from attending the lecture sporadically.<sup>15</sup> Though there were no formal assignments, inmates were assigned individual research projects at the beginning of the course, usually related to issues affecting their own case.<sup>16</sup> Marc Lampson, the attorney who taught the course from 1991 until 2002, structured the classes by sectioning a portion of time for one-on-one instruction and legal research practice.<sup>17</sup> Lampson described one of the biggest challenges as the discrepancy between inmates' abilities.<sup>18</sup> Likewise, instructors at the Massachusetts Correctional Institution faced similar issues when educating prisoners on the law.

### **2. Prison Librarian-Run Legal Research Course at the Massachusetts Correctional Institution (MCI) in Norfolk, MA.**

The legal research course offered at MCI was so structured, it included a syllabus distributed to inmates.<sup>19</sup> Run by William Mongelli, a prison law librarian, the topics progressed from "Course rules/library terminology" in week one, to "Case briefing" (week six through

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<sup>13</sup> *Id* at 284.

<sup>14</sup> *Id* at 286.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Smith, *supra* note 8, at 286.

<sup>18</sup> *Id.*

<sup>19</sup> *Id* at 291.

nine).<sup>20</sup> An approach not seen elsewhere in the research, Mongelli also built in time for informal discussions between inmates, and a feedback form for inmates to complete at the end of the semester.<sup>21</sup>

One concern with the intersection of education and incarceration is the ramifications for the learning disabled. These concerns are pressing and timely; as of 2022, reports indicate that between 30% to 60% of incarcerated adults have low literacy.<sup>22</sup> Unfortunately, this question is outside the scope of this research, but should be considered when analyzing access to justice initiatives relevant to inmates' abilities.

### **3. Legal Research Education Efforts via Law Students and Law Libraries**

Though the American Association of Law Libraries maintains a list of libraries in each state that offer services to prisoners,<sup>23</sup> a unique program was offered through the Minnesota State Law Library (MSLL).<sup>24</sup> Described as "Guerilla Referencing" the MSLL not only provided photocopies of reference materials to prisoners, but they also had librarians rotate shifts visiting state prisons.<sup>25</sup> If research questions were too extensive to be answered during a librarian's visit to a prison, the librarians would continue the research at the Minnesota State Law Library, usually accompanied by volunteers from College of St. Catherine's Library School.<sup>26</sup>

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<sup>20</sup> *Id* at 292.

<sup>21</sup> *Id* at 291.

<sup>22</sup> Alyssa Clark & Chloe Haderlie, *Illiteracy Among US Adults*, BYU (last visited Dec. 2, 2022).

<sup>23</sup> *Law Libraries Serving Prisoners*, AM. ASS'N L. LIBRARIES, <https://www.aallnet.org/srsis/resources-publications/assistance-for-prisoners/list-law-libraries-serving-prisoners/> (last visited Dec. 2, 2022).

<sup>24</sup> Smith, *supra* note 8, at 287.

<sup>25</sup> *Id*.

<sup>26</sup> *Id*.

Less common during the twentieth century was the role of law students as educators in prisons.<sup>27</sup> During the 1980's, there was only one student-run legal research class. The University of Washington School of Law had a student-run group that went to a maximum-security prison and aided prisoners in their legal research.<sup>28</sup> Unlike previous models, the legal research course was non-cumulative.<sup>29</sup> As technology began entering the legal referencing arena, these law students incorporated curriculum on Shepardizing documents and using the Westlaw key system into their weekly lectures.<sup>30</sup>

### **c. The Current State of Prison Law Libraries**

The “dotcom” bubble and technology boom at the turn of the century brought vast technological changes in the United States.<sup>31</sup> These innovations quickly infiltrated the prison system, as costs of maintaining law libraries (through storage, collection, and printed works) went up, while digital materials remained relatively inexpensive.<sup>32</sup> As of 2020, forty-five state correctional systems and the entire federal prison system have made the switch to electronic law libraries, typically either using Westlaw or Lexis as their primary research database.<sup>33</sup> Though some correctional institutions use a mix of print and electronic library resources, the cost differential is astronomical.<sup>34</sup> The Wisconsin Department of Corrections was paying \$70,000 per year to maintain its print collection; by switching to Westlaw, costs decreased by approximately

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<sup>27</sup> *Id* at 288.

<sup>28</sup> Smith, *supra* note 8, at 288.

<sup>29</sup> *Id* at 289.

<sup>30</sup> *Id.*

<sup>31</sup> Kelsey Brown, *How Twenty-First Century Technology Affects Inmates' Access to Prison Law Libraries in the United States Prison System*, 21 MARQ. L. REV. 83, at 104 (2020).

<sup>32</sup> *Id.*

<sup>33</sup> *Id* at 104.

<sup>34</sup> *Id.*

\$50,000.<sup>35</sup> The dotcom bubble also empowered communities to communicate and provide materials to prisoners on a national level.

### **III. Present Day Initiatives to Provide Legal Education to Prisoners**

#### **a. Community Organizing of Law Libraries and Legal Materials**

The erasure of prison law libraries as a result of *Casey* empowered communities to organize on a local, non-governmental level. One example is an organization called “Prison Book Program.”<sup>36</sup> They provide a “legal essentials” guide to prisoners, including dress-code for court appearances, key legal terms, and post-conviction remedies.<sup>37</sup> Yet another resource is the “Jailhouse Lawyer’s Handbook” authored by the Center for Constitutional Rights and the National Lawyers Guild.<sup>38</sup> A hallmark of these legal guides is that they are free, comprehensive, and simplified into layman language.<sup>39</sup> Similarly, law schools have re-emerged into the prison sphere. Columbia Law School publishes a “Jailhouse Lawyers Manual” which prisons may purchase for thirty dollars.<sup>40</sup> And some law schools seek to provide partial, or full legal education to prisoners.

#### **b. Prisoner Legal Education Initiatives in American Law Schools**

Several law schools have re-emerged into the prison sphere, providing legal research assistance to the incarcerated. At the University of Pennsylvania Law School, students and

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<sup>35</sup> *Id* at 103.

<sup>36</sup> “*We the People*” Legal Primer, PRISON BOOK PROGRAM, <https://prisonbookprogram.org/for-people-in-prison/legal-resources/> (last visited Nov. 30, 2022).

<sup>37</sup> *The Jailhouse Lawyer’s Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison*, CTR FOR CONST. RTS. & NAT’L LAWYERS GUILD (Aug. 15, 2021) <https://ccrjustice.org/home/get-involved/tools-resources/publications/jailhouse-lawyers-handbook>.

<sup>38</sup> *Id*.

<sup>39</sup> *Id*.

<sup>40</sup> *A Jailhouse Lawyer’s Manual*, COLUM. L. SCH. <https://jlm.law.columbia.edu/> (last visited Dec. 2, 2022).



volunteers work with inmates on legal research and writing.<sup>41</sup> The classes are student-led, and volunteers, under the guidance of student-partners, teach key aspects of legal research and writing and discuss relevant legal issues.<sup>42</sup> Sister programs exist at NYU law school,<sup>43</sup> Stanford Law School,<sup>44</sup> and the University of Pittsburgh Law School.<sup>45</sup> In addition to legal research and writing skills, some programs assist prisoners in filing sentencing appeals, or law suits based on prison conditions. Make no mistake, these initiatives are revolutionary. But an even more cutting-edge approach was pioneered in 2021 by Mitchell Hamline Law School. In the post-pandemic era, Mitchell Hamline utilized distance learning technology to provide a legal education to two incarcerated prisoners in Minnesota.

### **c. Incarcerated J.D. Scholars Program – Mitchell Hamline School of Law**

In 2021, Mitchell Hamline became the first law school in America to enroll two incarcerated prisoners into its Juris Doctorate (J.D.) program.<sup>46</sup> Like most aspiring law students, Maureen Onyelobi and Jeffery Young's journey to law school began with the LSAT.<sup>47</sup> Because they were incarcerated, they were not able to attend an on-site Law School Admissions Test (LSAT)

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<sup>41</sup> *Prison Legal Education Project*, UNIV. PA. SCH. L., <https://www.law.upenn.edu/ingredients/templates/details/profiles.php?id=1681> (last visited Nov. 19, 2022).

<sup>42</sup> *Id.*

<sup>43</sup> *Prison Teaching Project*, N.Y.U., <https://www.law.nyu.edu/studentorganizations/endingtheprisonindustrialcomplex> (last visited Dec. 2, 2022).

<sup>44</sup> *Prisoner Legal Services*, STAN. L. SCH., <https://law.stanford.edu/prisoner-legal-services/> (last visited Dec. 2, 2022).

<sup>45</sup> *Prisoner Legal Support Project*, UNIV. PITT. SCH. L., <https://www.law.pitt.edu/student-resources/student-organizations/prisoner-legal-support-project> (last visited Dec. 2, 2022).

<sup>46</sup> Cinnamon Janzer, *These Students Are The First to Attend Law School From Prison*, NEXTCITY (Sep. 2, 2022) <https://nextcity.org/urbanist-news/these-students-are-the-first-to-attend-law-school-from-prison>.

<sup>47</sup> *Dean Niedwiecki proctors LSAT at two Minnesota prisons*, MITCHELL HAMLINE SCH. L., (Apr. 19, 2021) <https://mitchellhamline.edu/news/2021/04/19/dean-niedwiecki-proctors-lsat-at-two-minnesota-prisons/>.

exam.<sup>48</sup> In April of 2021, Mitchell Hamline Dean Anthony Niedwiecki administered the LSAT inside two Minnesota correctional facilities to these students.<sup>49</sup> It's believed to be the first time the LSAT has ever been administered in a prison in the United States.<sup>50</sup>

## **1. Candidacy Evaluation**

Like all law school applicants, Onyelobi and Young were at the mercy of the Mitchell Hamline admission's committee.<sup>51</sup> According to Maya Johnson, director of The Legal Revolution, Onyelobi and Young were admitted based on a holistic review of their applications.<sup>52</sup> The Legal Revolution identified Onyelobi and Young as competitive law school candidates, and helped them craft their applications.<sup>53</sup> Both had pre-existing leadership roles within their circles and jails; additionally, both had compelling personal statements and resumes.<sup>54</sup>

## **2. Legal Education Structure**

The post-pandemic era of distance learning has enabled these two scholars to obtain their J.D. while incarcerated. Notably, the American Bar Association (ABA) granted Mitchell Hamline a variance to admit two incarcerated law students each year, for five years.<sup>55</sup> Maya Johnson, Director of The Legal Revolution, described the structure of their legal education as follows:

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* Dean Niedwiecki administered the exams at a women's correctional facility in Shakopee, Minnesota, and a men's maximum-security prison in Bayport, Minnesota.

<sup>51</sup> E-mail from Maya Johnson, Dir., Prison to Law Pipeline, to Jasmin Hernandez Du Bois, J.D. Candidate, Univ. Minn. L. Sch., (Nov. 9, 2022, 10:20 A.M. CST) (on file with author).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

“Their legal education is structured to be fully remote and synchronous. They attend class live everyday via Zoom from their respective correctional facilities. They are on a daytime...part-time pace, where they take 4 classes instead of 5... Depending on the class, there are both final exams and long form writing assignments - as well as other shorter weekly assignments. The exam schedule is not tailored to them, it is based on how the professor offers it to all other class members at the law school – [it] follows a very typical law school 1L semester structure and schedule.”

Additionally, the scholars submit assignments and exams on a tablet provided by The Legal Revolution.<sup>56</sup> After submission, staff at The Legal Revolution transfer their assignments to the professors; similarly, The Legal Revolution’s staff act as an intermediary for any assignment feedback, delivering it to the tablet for the scholars’ review.<sup>57</sup>

### **3. Logistical Issues**

Because the scholars are incarcerated, there can be logistical impediments that affect their learning.<sup>58</sup> In the facility, the scholars have a dedicated workspace with a desktop-monitor, which allows them to log onto the daily zoom links for class.<sup>59</sup> However, if the facility goes into lockdown,<sup>60</sup> their class sessions are recorded and uploaded to their tablet for later viewing.<sup>61</sup> This, as well as the financial support they receive, enables the scholars to pursue and continue their legal education.

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<sup>56</sup> Johnson, *supra* note 52.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> GLOBAL LOCKDOWN: RACE, GENDER, AND THE PRISON INDUSTRIAL COMPLEX, (Julia Sudbury ed, 1<sup>st</sup> ed. 2005) (“‘Lockdown’ is a term commonly used to describe prison movement during a period of restricted access.”).

<sup>61</sup> Johnson, *supra* note 52.

#### **4. Fees, Scholarships, and Textbooks**

One barrier prisoners face is a lack of financial freedom: in most states, prisoners cannot access outside bank accounts while incarcerated.<sup>62</sup> Prisoners are largely dependent on money earned while working in their respective facility, or money sent from friends and family.<sup>63</sup> Fortunately, Onyelobi and Young's legal education is entirely paid for.<sup>64</sup> The scholars were awarded individual scholarships based on their application materials.<sup>65</sup> Ancillary costs and fees, including for textbooks, is "covered by fundraising, grants, and philanthropy of The Legal Revolution."<sup>66</sup> The work of The Legal Revolution and Mitchell Hamline Law School undoubtedly models as the poster child of how law schools can become vessels of justice to underserved communities.

#### **IV. Analysis**

##### **a. Emphasizing the Correlation between Correctional Education and Reduced Recidivism**

Undoubtedly, there are rhetorical questions to be raised within this subject, especially regarding the intersection of race, class, gender, income, and incarceration rates. Though

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<sup>62</sup> See generally Wallin & Klarich, *What Happens to Your Funds after You Get Arrested?*, S. CA. DEF. BLOG (Apr. 15, 2015), <https://www.southerncaliforniadefenseblog.com/2015/04/what-happens-to-your-funds-after-you-get-arrested.html> (stating that any money you have in your accounts cannot be accessed while you are in prison); State Prisoner and bank account, AGO 75-229, (<http://www.myfloridalegal.com/ago.nsf/Opinions/1CC20C6A61C63A54852566B80051A631>); (affirming that an inmate of a penal and correctional institution may not establish a bank account in [their] own name and under [their] own personal control).

<sup>63</sup> Naomi F. Sugie, *Punishment and Welfare: Paternal Incarceration and Families' Receipt of Public Assistance*, NAT'L LIBR. OF MED., (2012) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3827915/>.

<sup>64</sup> Johnson, *supra* note 52.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

imperative, these questions are outside the scope of this paper. Nonetheless, the legal education of prisoners is necessary to answer a larger philosophical question: what is the goal of incarceration in the first place? Though opinions vary, a consensus among academics supports the argument that rehabilitation is frequently enhanced through education of prisoners.<sup>67</sup>

The undeniable link between increased correctional education resulting in decreased recidivism rates can hardly be understated.<sup>68</sup> And while the costs spent on recidivating inmates can be tens of millions of dollars, some studies show that for every \$962 spent on prisoner education, the criminal justice system saves \$5,306.<sup>69</sup> This is important because recidivism rates have seen little improvement: in 2021, the Department of Justice reported the national recidivism rate at 66%.<sup>70</sup> This is down just two percent from 1994, when the rate was 68%.<sup>71</sup> It should be emphasized that, along with saving money, correctional education programs have positive short-term and long-term effects on the incarcerated. Academics have cited positive short-term effects of education on prisoners' mental health, including increased motivation and diligence.<sup>72</sup> Additionally, correctional education can transform prisoners into long-term "functioning and productive members of society."<sup>73</sup> Most importantly, there are salient examples of educated "Jailhouse Lawyers" who thrive upon release.

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<sup>67</sup> Lori L. Hall, *Correctional Education and Recidivism: Toward a Tool for Reduction*, 66 J. OF CORR. EDUC. 4, 6 (2015).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> U.S. DEP'T OF JUST., RECIDIVISM OF PRISONERS RELEASED IN 24 STATES IN 2008: A 10-YEAR FOLLOW-UP PERIOD (2008-2018), (SEP. 2021) <https://bjs.ojp.gov/library/publications/recidivism-prisoners-released-24-states-2008-10-year-follow-period-2008-2018>.

<sup>71</sup> Hall, *supra* note 68.

<sup>72</sup> Christopher E. Smith, *Legal Education in Prisons: Special Problems and Opportunities for Correctional Education*, 38 J. CORR. EDUC. 132, 133 (1987) [https://www-jstor-org.ezp3.lib.umn.edu/stable/23291836?sid=primo&seq=3#metadata\\_info\\_tab\\_contents](https://www-jstor-org.ezp3.lib.umn.edu/stable/23291836?sid=primo&seq=3#metadata_info_tab_contents).

<sup>73</sup> Hall, *supra* note 68.

**b. A Sect of Self-Educated “Jailhouse Lawyers” Already Exist and should be Recognized for their Education**

The belief that prisoners can thrive in legal education rests on a solid foundation. A well-known example is Mumia Abu-Jamal, an incarcerated academic who has written extensively on the work Jailhouse Lawyers do.<sup>74</sup> To be clear, a “Jailhouse Lawyer” is an inmate who has a reputation for being skilled in the law, and counsels fellow inmates on their legal issues; typically, their self-education arises from a need for legal advice, and a lack of financial resources to hire a lawyer.<sup>75</sup> Yet another example of a successful Jailhouse Lawyer is Shon Hopwood. Hopwood grew up in rural Nebraska, and after flunking out of college and the Navy, turned to drug and alcohol abuse.<sup>76</sup> After a series of armed bank robberies, Hopwood was sentenced to prison.<sup>77</sup> At twenty-three years old, Hopwood was a convicted felon living behind bars.<sup>78</sup>

After deciding to work in the prison law library, Hopwood began working as a jailhouse lawyer. During his sentence, Hopwood aided fellow prisoners on approximately 50-100 appeals, motions, and other documents.<sup>79</sup> Hopwood also wrote more than twenty petitions for certiorari to

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<sup>74</sup>*Jailhouse Lawyer Members: What is a Jailhouse Lawyer?* NAT’L LAW. GUILD, <https://www.nlg.org/jailhouse-lawyer-members/> (last visited Dec. 2, 2022).

<sup>75</sup> J.B. Nobel, *Ensuring Meaningful Jailhouse Legal Assistance: The Need for a Jailhouse Lawyer-Inmate Privilege*, 18 CARDOZO L. REV. 1569 (1996).

<sup>76</sup> Susan Svrluga, *He robbed banks and went to prison. His time there put him on track for a new job: Georgetown law professor.*, WASH. POST, (Apr. 21, 2017) <https://www.washingtonpost.com/news/grade-point/wp/2017/04/21/bank-robber-turned-georgetown-law-professor-is-just-getting-started-on-his-goals/>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> See SHON HOPWOOD & DENNIS BURKE, *LAW MAN: MY STORY OF ROBBING BANKS, WINNING SUPREME COURT CASES, AND FINDING REDEMPTION*, (2012).

the U.S. Supreme Court.<sup>80</sup> After his release, Shon Hopwood went on to get his J.D. from The University of Washington.<sup>81</sup> A renowned and extensively published legal scholar, one colleague described Hopwood as “bringing a unique perspective” to legal scholarship.<sup>82</sup> Today, Hopwood is a Professor at Georgetown Law, writing heavily on the rule of lenity and legal perils that threaten the integrity of the criminal justice system.<sup>83</sup> Though examples like Hopwood and Abu-Jamal exist, some are still concerned with potential problems in correctional education.

### **1. Potential Problems with Correctional Education do not arrant a Total Ban on Prisoner Legal Education**

One concern that can arise during conversations about correctional education are questions of safety and the pressure for instructor diplomacy. Christopher Smith, an established academic in correctional education, describes legal education in prisons as a “tug-of-war” between instructors and prisoners in a classroom setting.<sup>84</sup> Smith’s “war” is comprised of three smaller battles: the first battle is that prisoners will divert classroom instruction for individual help with a legal issue.<sup>85</sup> In a similar fashion to the J.D. program offered by Mitchell-Hamline, a post-release legal education credit completely resolves potential tensions between instructors and prisoners, because the program is self-guided. Conversely, prisoners may be faced with similar legal issues, and so a question posed by a prisoner may ultimately help his peers who are present.

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<sup>80</sup> Adam Liptak, *A Mediocre Criminal, but an Unmatched Jailhouse Lawyer*, N.Y. TIMES (Feb. 8, 2010) <https://www.nytimes.com/2010/02/09/us/09bar.html>.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Christopher E. Smith, *Legal Education in Prisons: Special Problems and Opportunities for Correctional Education*, 38 J. CORR. EDUC. 132 (1987) [https://www-jstor-org.ezp3.lib.umn.edu/stable/23291836?sid=primo&seq=3#metadata\\_info\\_tab\\_contents](https://www-jstor-org.ezp3.lib.umn.edu/stable/23291836?sid=primo&seq=3#metadata_info_tab_contents).

<sup>85</sup> *Id.* at 134.

The second battle lies with, in Smith's opinion, prisoner's unrealistic expectations from law classes.<sup>86</sup> In Smith's mind, prisoners obtaining a legal education will form a "predominant hope" that legal research education will place them "in equal footing with prosecutors and judges."<sup>87</sup> To Smith, this burden is too high to accommodate providing a legal education. But Smith fails to mention the constitutional right to access to the courts, provided by the first amendment.<sup>88</sup> And his reasoning is particularly flawed because it cannot be applied to other constitutional rights. Take, for example, write-in nominations on an election ballot. A voter may write-in a name on a ballot, however delusional the nomination is. Some voters have even voted for "Mickey Mouse" during Presidential elections via write-in votes.<sup>89</sup> But this delusion does not prevent a voter from casting their vote in such a way, because it's their constitutional right to do so.<sup>90</sup> Likewise, a prisoner's delusional view of their competency should not preclude them from obtaining a legal education and engaging with the justice system: engaging with the criminal justice system is their constitutional right. Finally, even if there are "delusional" prisoners, why should realistic prisoners be precluded alongside them? This fear is disproportionate to the abysmal reality facing prisoners today.

The final battle lies with prisoner responses to law classes. Smith argues that because prisoners are incarcerated, the subject of law is "especially difficult" for them.<sup>91</sup> Yet this qualm does not exist in a vacuum. Though Smith's article was published in 1987, when law schools

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> See Carol Rice Andrews, *A Right of Access to Court Under the Petition Clause of the First Amendment: Defining the Right*, 60 OHIO ST. L.J 557 (1999); see also U.S. CONST. AMEND. I.

<sup>89</sup> Thomas A. Firey, *A Defense of Third-Party Voting*, CATO INST. (July 29, 2016).

<sup>90</sup> U.S. CONST. AMEND. XXVI.

<sup>91</sup> Smith, *supra* note 85, at 134.



were predominantly white, male, and affluent, law schools today are increasingly diverse.<sup>92</sup> Students today participate in classes that touch every area of their personal lives, whether it be courses on immigration, race and the law, or reproductive rights. Smith's argument fails today because though a subject matter may become personal, that does not mean it shouldn't be offered to willing pupils.

## **V. Proposed Post-Release Credit Program**

The research and arguments above ignore a large gray area in the realm of prison education: prisoners who are self-taught on the law. A post-release legal education credit model addresses this gray area, while keeping costs and administrative burdens low.

Previous concerns of providing legal education in prisons – that is, concerns of classroom diversion, prisoner delusion, and prisoner sensitivity to subjects – are also mitigated by a system that provides a post-release legal education credit for prisoners. I propose that a post-release education credit would be largely self-taught and self-managed by prisoners. Like the Mitchell Hamline's J.D. model for incarcerated scholars, a post-release credit model would allow prisoners to go at their own pace relative to their sentencing. This dissolves a need for a diplomatic instructor, who has the difficult task of teaching subject matter while maintaining classroom harmony.

A salient concern lies in tracking how much legal research a prisoner did. One solution might be to institute a time-tracking system, such as those employees use to clock in and out of work. Perhaps a guard or prison administrator would monitor progress and keep a prisoner's time up to date. But this leaves too much room for user error, or worse, user abuse. A simpler model

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<sup>92</sup> Kevin R. Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean's Perspective*, 96 IOWA L. REV. 1549 (2011).

already exists. Lexis and Westlaw have software in place which tracks how frequently a user engages with the website.<sup>93</sup> For Lexis, consistent usage is rewarded with “points” which a user may then spend on “prizes.”<sup>94</sup> By giving prisoners individual Lexis and Westlaw ID’s, they may keep track of their time spent researching, which can then be presented upon requesting the post-release education credit. Notably, this model capitalizes on current practices (many prisons have Lexis and Westlaw available for prisoners, as mentioned above) and removes the need for oversight or intervention from prison wardens and staff, thus presenting a cost-effective solution to administration of the program.

The objective of a post-release education credit is to assist prisoners with re-entry into society. As such, the authority of the credit should be explored. In this model, a legal education credit would function like a legal research certificate of completion, or a general education credit for lower-division undergraduate students. Further, as the goal is to help prisoners with re-entry into society, it would likely not be available to inmates serving life sentences, or inmates serving less than one year of prison time.

Requirements for the credit could vary; there could be a baseline requirement applicable to all prisoners. However, this creates an unequal playing field for prisoners serving mid-length sentences (two to five years) compared to inmates serving longer sentences (ten to fifteen years). Instead, the credit program should require hours relative to the inmate’s sentence. A potential formula: an inmate must spend double the number of hours legal researching as there are months in their sentence. As such, an inmate with a five-year sentence would need 120 hours of legal

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<sup>93</sup> Shirlene Brown, *A Law Student’s Perspective: LexisNexis Tips*, LAW SCHOOL TOOLBOX (Feb. 20, 2017) <https://lawschooltoolbox.com/law-students-perspective-lexisnexis-tips/#:~:text=Lexis%20Rewards&text=As%20you%20research%2C%20you%20collect,even%20just%20research%20on%20Lexis>.

<sup>94</sup> *Id.*

research total, or approximately 24 hours a year of research. Since the legal education credit functions more like a low-level college class or skills certificate course, this model is reasonable for setting the time required by inmates.

Because historically there are varied approaches to giving “exams” or “assignments” to prisoners in legal research classes, a mixed approach could be used at first to evaluate skillsets. Perhaps the first few years of the program, quizzes and exams could be uploaded onto Westlaw and Lexis and made as requirements for the credit. Later on, these evaluations could be expanded, minimized, or deleted based on research findings and data.

Where oversight must be instituted is in awarding the post-release legal education credit to prisoners. Like other correctional education programs, a board of professionals could meet to award (or deny) applications for the legal education credit. However, the board should be comprised of legal academics, lawyers, law librarians, and at least one law student representative, so as to have a representative body governing the process. In the future, the board may consider having a former prisoner who completed the program as a member on the board, to further aims of legitimacy, democracy, and fair governing practices.

## **VI. Conclusion**

Throughout American history, the accessibility of legal education for prisoners has been fraught with obstacles and untenable barriers. Often, these obstacles and barriers were decided by people and institutions outside of prisons, making prisoners wholly excluded from the process. Unequivocally, a post-release legal education credit dispels concerns about inmates and instructors in a classroom setting. By structuring the post-release credit program to be self-paced, inmates are given flexibility to complete their hours as necessary. The integration of electronic legal research platforms like Lexis and Westlaw gives inmates the ability to keep track of their

own engagement with the systems, eliminating further need for administrative oversight. While there may be concerns about the practicality of such a model, the above examples of cost-efficiency, successful jailhouse lawyers, and the positive correlation between education and decreased recidivism rates establishes a post-release credit model as a model for both utility and rehabilitation.

In an era where strides towards access to justice are possible and plausible, the legal community at large should continue advocating for the rights and opportunities of the less fortunate, and especially prisoners who desire to obtain a legal education.