11/11/21
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No. 21-727

In The Supreme Court of the United States

ROBERT R. SNYDER,

Petitioner,

vs.

KATHLEEN ALLISON, Sec. CDCR,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- Did the lower court's incorrectly apply *Christopher v. Harbury* in its attempt justify the dismissal of Petitioner's Active Interference claims? Does *Harbury* have any relevance to cases seeking prospective relief only?

- Did the lower courts improperly apply *Lewis v. Casey* to Petitioner's claims in the same manner?

- Should the district court have ruled on the challenges as to the constitutionality of state regulations that appeared to run contrary to applicable Federal judicial decisions?

- Did the Court of Appeals overlook procedural due process errors including but not limited to having combined an appealable dismissal Order with a non-appealable screening Order?

- Despite overwhelming evidence to the contrary, did the Court of Appeals decision to uphold the district court's determinations.., amount to an unjust legal error requiring Reversal?

- Did the Court of Appeals improperly apply *Hebbe v. Pliler's plausibility* standard for the first time on appeal?

- Did the Court of Appeals' minute Memorandum affirming the lower court's dismissal of Petitioner's Appeal, adequately address all of the claims in appellant's comprehensive Opening Brief?

- Would it be safe to say that actively and continuously erecting barriers for the sole purpose of interference with a prisoner's right of physical access to prison Law Library.., constitutes an injury per se? And does this type of deprivation become a matter involving the impairment of personal liberty?

- If there were actual pleadings deficiencies that rendered the complaint implausible, could that be easily attributable to being arbitrarily denied physical law library access during critical periods of time?

- Based upon the current three-circuit consensus, should the well-reasoned *active interference* doctrine become a constitutionally recognized exception to the holding in *Lewis v. Casey*?

PARTIES TO THE PROCEEDING

Petitioner: Robert R. Snyder was the petitioner in the lower court, district court and in the court of appeals proceedings.

Respondents: Initially, Kathleen Allison, CDCR Secretary; A. Mondet, R.J.D Ed. Supervisor; and Librarians: C. Tiscornia and D. Nowroozian.

Plaintiff is seeking review of a judgment from the United States Court of Appeals. There was no response to the Opening Brief, and of the original respondents, only the AG (for the CDCR) was served.

NO RELATED CASES

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PETITION FOR WRIT OF CERTIORARI

Robert Snyder respectfully petitions for a writ of certiorari to review an appeal of the dismissal of a civil rights complaint by the U.S. District Court for the Southern District Court of California.

OPINIONS AND ORDERS BELOW

Opinions and Orders From the Ninth Circuit Court of Appeals.

This court's mandate was filed on September 17, 2021. The finalizing of its judgment of the matter is attached at **App. 1 and 2.**

The August 26, 2021 court order affirming the District Courts dismissal of plaintiff-appellant's civil rights claim on direct appeal is attached at **App.'s 3 through 6** for Case No. 21-55105.

Opinions and Orders From Southern District Court of California:

The January 8, 2021 order dismissing Plaintiff's Second Amended Complaint for declaratory relief is attached at **App.'s 7 through 15** for Case No. 19-cv-01741-LAB.

JURISDICTION

This Petition is authorized by United States Supreme Court rules, Rule 10 subds. (a),(c) and is timely filed in accordance with Rule 13 and 30. This action is also 28 U.S.C. § 1254 relative.

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CONSTITUTIONAL PROVISIONS

This pro se Petitioner's case involves issues related to the First and Fourteenth Amendments to the United States Constitution.

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STATEMENT OF THE CASE

The controversy began right after officials moved the yard's library into an off-limits inaccessible security area, which allowed them to restrict prisoner access more easily. Therefore, petitioner filed his civil rights Complaint in the Southern District Court of California in September 2019. From there, over the next 16 months he diligently pleaded his cause, which amounted to nothing more than a misadventure. Petitioner attempted to appeal the dismissal of the TRO: C A 9/No. 19-56521. The case was ultimately dismissed with prejudice in February of 2021. Snyder filed

both a timely notice of appeal in the Ninth Circuit, Federal Court of Appeals, along with an Opening Brief. On August 26th, 2021 the court completed its review with a 2-page decision affirming the district court's denial of relief; their mandate issued on September 17th, 2021.

Prisoner/petitioner Snyder without counsel, lodged evidence in the trial court that presented a strong case against the state actors for flagrant civil rights violations. Federal Questions were timely, as well as properly introduced in both the lower courts. *Pars interponere's* complaint set forth a unique formula claiming the right to relief. Primarily, the public officials involved had actively and intentionally interfered with his right to physical access to a law library. The defaulted claims and retaliation[1] features were both minor themes although the court tried to make much of them for the purpose of dismissing the case purely on procedural grounds. The district court's unwillingness to protect Snyder's rights here was error; of which this high court should be aware.

The facts material to the district court's consideration involved a highly coordinated interference scheme, to deprive prisoners of legal research at critical periods where deadlines were pending—all the while pretending these abrupt

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[1] Either way, the defendants' retaliation manifested itself through the cleverly arranged obstacles to physical library access; *Cf. Madewell v. Roberts*, 909 F.2d 1203, 1207 (C A 8th 1990); ("The violation lies in the *intent* to impede access to Courts.") See *Sanders*, 724 F.2d 665 (C A 8th 1983).

library closures were somehow justified by pre-textual or otherwise speculative, institutional concerns. For long periods of time, prison officials employed strategies to impair Petitioner's progress in court. His First Amendment rights were so often being obstructed by powerful combinations of misconduct—to such an extent that the ordinary course of administrative procedures could not suppress their efforts. The new prisoner's grievance system within Cal. DOC has become a byword for futility...

The state's current regulatory scheme allows 4 hours weekly for inmates with active cases and only where a current deadline is pending. The lower court was confronted with facts suggesting that prisoners could not make effective use of those 4 hours because the library was missing most secondary sources of law such as digests, treatises, law reviews and updated case law. This is besides the fact that 4 hours even at an academic library facility, is simply not enough time to conduct meaningful legal research for one case, never mind two. Without an ample lot of research time, it is difficult to know if a single case exists that can draw a clearer factual comparison—to the instant matter—than would two or three decisions constructed side-by-side.

The trial court was unaffected by the highly detailed second amended complaint. It decided to again summarily derail the claims under the often relied upon 28 U.S.C. § 1915A(b). Neither the magistrate nor the state's attorneys were allowed to

weigh in over the course of this 30-document suit. The entire matter was personally handled by the Chief District Judge. In the process of screening out Petitioner's claims, the "CJ" utilized a confusing mixture of procedures to bulldoze the pro se litigant right out of the courtroom. The crux of his treatment was not that the complaints were completely barred under *Casey*; rather that the pleadings were deficient as put forth. Not allowing the state to defend itself, shortened the appeals process to the people's credit. This injuriously prejudiced the Plaintiff-Appellant in that the state's attorneys could not have been as proficient in handling their own defense. Do these deplorable circumstances described above warrant renewed constitutional inquiry?

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REASONS FOR GRANTING CERTIORARI

The state's educational goals for its prisoners are not quite as important overall as their obligation to provide medical care. However, with very many limitations upon our pursuit of hope and happiness.., learning the law is paramount. In order for convicted criminals to improve their character, they need to know that the judiciary will act to safeguard their constitutionally protected rights to personal liberties. They are confined with a view towards a restoration of sanity and improving marketable skills. Erecting insurmountable barriers to the gates of knowledge strikes at the very core of our nation's foundational principles of justice and reform based

incarceration. The Department of Corrections cannot offer any objective rationale for how and why library closure still seems to persist.[2]

In the case at bar, the district court unjustly upheld the aggressive misconduct of multiple defendants whom—over the course of years—had collectively deprived petitioner of his rights to petition the government for a redress of grievances. They accomplished this in many ways and to this day.., the aforementioned privation continues. The Court of Appeals paid tribute to the southern district's dismissal. A grant of certiorari here would enjoy broad public support. Corrections agencies are not known to correct systemic, constitutional deficiencies without judicial intervention. The legal errors complained of and described herein, incorrectly precluded the proper investigation of the truth; i.e., discovery and trial.

The litigation in the lower court only focused on a limited aspect of a much larger, overall problem. For the judgment in this case to be allowed to stand, undisturbed. . , would further encourage CDCR's library officials to easily suppress prisoner speech. The striking rhetoric in the second amended complaint lodged below, did nothing to overstate the problem. Violations of the First Amendment are the worst when a state is defendant. Petitioner supplied the district court with tangible documents and nearly a dozen willing witnesses to establish facts

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[2] As early as 1970, the district court had to order injunctive relief in *Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970).

and circumstances to suggest something much worse is taking place, than the usual denial of court access.

The prison officials are perpetrating this in a manner that *seems* to maintain an appearance of propriety. Individual wardens wield extensive independent authority in determining local operating procedures. These 'operational silos' result in a lack of accountability and responsibility by educational administrators in Sacramento, *Cf. Plata v. Schwarzenegger*, 2005 U.S. Dist. Lexus 43796 (*9). The noted problems are further complicated—librarians are pointing fingers at custody staff; the prison officials are pretending they do not know what's going on. In many respects, California's Department of Corrections and Rehabilitation operates under a veil of secrecy that needs to be pierced; God forbid this caustic mixture of scienter and malice intent would coalesce statewide.

ARGUMENT

A. Introduction

How does one imprisoned go about obtaining sufficient legal research when the librarians know the suit is directed at their colleagues? The records lodged in the lower courts effectively demonstrated Petitioner's difficulties in this regard. The right to learn the law while incarcerated is a matter of personal liberty. This case presents the court with

serious questions going to the administration of a state prison system.

No one, including a prison warden should be allowed to dispense with a prisoner's most valuable asset; the prison's law library is the sole vehicle for obtaining meaningful access to the courts. Whether by local policy, custom or otherwise this case proves how many unjust interference methods are available to prison officials. *Res ipsa loqitur*: (1) defaulted claims; (2) continuous denial of physical library access without adequate substitute; (3) retaliatory disciplinary reports; (4) deficient book collection; (5) a hostile work environment and more. Each time the Plaintiff's complaint was dismissed, the librarian's confidence led to reduced library access. Everything that could go wrong with a library setting, went wrong... And the district court pleadings captured as much. Once the appeal was filed, the library time increased; that was right up until it was affirmed...

Despite the lenient standard for a showing of good cause in the early stages of litigation, vital inquiry as to causation was prevented. To make matters worse, petitioner Snyder's legal action was ultimately met with what prison litigants call the 'procedural okey doke'.[3] Although the facts presented below indicate petitioner was injured.., the district court's erroneous dismissal relied exclusively on the misapplied *Casey* and *Harbury* combination.

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[3] Petitioner 'faced roadblocks at every turn' in trying to enforce his rights; *Chitwood v. Dowd,* 889 F.2d 781, (C A 8, 1989).

In this case, the majority of the numerous actual injuries were derived from the ongoing interference itself. The Ninth Circuit's post *Casey* decision in *Silva v. Di Vittorio*, 658 F.3d 1090 (2010) should have provided safe passage for the Plaintiff-Appellant. The fact that all claims were preserved—from the trial court pleadings—went overlooked. At the very least, the court failed to uphold Snyder's substantial rights.

To bring the factual triptych together in proper legal context, Petitioner now requests the Court would direct attention to the failure of consideration by the appellate courts, along side the merits of his district court complaint.

B: The Central Issues

It is certain, that at least three circuits have recognized 'actual interference' as the exception to the 'actual injury' rule in *Lewis v. Casey*[4] regarding denial of court access claims; 518 U.S. 343 (1996). To make this certiorari possible, the court of appeals departed from their own precedent. Because the Appellant's brief plainly depended upon many of its own decisions—including *Silva supra*—it seems now as though the court welcomed the Constitutional challenge now at hand.

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[4] The case history reveals that this arrived from the *Ninth Circuit's Casey v. Lewis*; 43 F.3d 1261, (1994).

To begin, the Opening Brief quoted *Silva id.* at 1103, "*Lewis* does not speak to a prisoner's right to litigate in the court's without unreasonable interference..." The language expressed here suggests that the ninth circuit identifies intentional interference with physical library access, as an exceptional violation that was not included in the analysis by the *Lewis* Court. Neither *Bounds v. Smith* nor *Lewis v. Casey* treated the question: What happens if custody agents obstruct library access with physical barriers?

Looking further ahead (*Silva id.* at 1102) explains, in *Sands v. Lewis*, 886 F.2d 1166, 1171 (9th Cir., 1989) "...that the court must first determine whether the right of access claimant alleges . . , a denial of adequate law libraries or adequate assistance from persons trained in the law. Secondly, if the claims do not involve such an allegation, the court must consider whether the Plaintiff has alleged an actual injury[5] to court access. Two of our sister courts have recognized this distinction. See *Snyder v. Nolen*, 380 F.3d 279, 290 (7th Cir., 2004); and *John L. v. Adams*, 969 F.2d 228, 235 (6th Cir., 1992). Furthermore, "In the interference line of cases, the Supreme Court has held that 'the First Amendment right to petition the government, includes the right to file other civil actions in court that have a reasonable basis in law and fact.' " [*Snyder supra* at 290 citing *McDonald v. Smith*, 472 U.S 479, 484 (1985).] Finally on 1102, the *Silva* court wrote "The right of court access does not require prison officials to provide

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[5] According to the 8th Cir., actual injury may rely upon something as simple as the state having improperly seized legal documents; *Cody v. Weber*, (2001) 256 F.3d 764, 769.

affirmative assistance in the preparation of legal papers, but rather forbids states from 'erecting barriers that impede the right of access of incarcerated persons.'" (quoting *John L. id.* at 235; Accord, *Snyder id.* at 291– "The right of access to the courts is the right of an individual, whether free or incarcerated to obtain access to the courts without undue interference."). We have nothing to the contrary indicating these statements were not well reasoned.

It can easily be concluded that when the court referred to 'barriers', it meant barriers 'to entry' into places where inmates or students can both research and focus without disruption. . , while using the 'tools necessary to attack their convictions and challenge their conditions of confinement,' (*Snyder ibid.*) When determining what the court meant by 'tools' one can imagine this term applies to computers and quiet working space. Used law books inside the crowded cells or adjacent rooms cannot fall into alignment with 'tools'—which is defined as: a device to help carry out a particular function. To be fair, prisoners should be supplied with the same tools as are used by the state's attorneys: computers, updated legal sources and a quiet place to learn/work.

Another legal error was committed by the court with application of *Christopher v. Harbury*, 536 U.S. 403 (2002). There are many problems with this application. Comparing the instant matter to *Harbury* is akin to placing a royal castle aside an apartment in a low-income housing complex. Besides having no bearing on Pro Se prisoner litigation.., *Harbury* also embraces backwards-looking claims only. In the

Opening Brief, the appellant defended his modest request for declaratory relief in the same way; his prayer for prospective relief was the complete opposite of what relief was sought by the Plaintiff in *Harbury*. The district court hereby, incorrectly focused on *Harbury's* language regarding the description of non-frivolous claims, 'as if it were being independently pursued'. This phrase is something that applies to defaulted claims only. It begs the question, "How does one go about detailing, therefore in independent pursuit of a forward-looking event—one that has yet to occur?" This is likely the same sort of frustration the three circuits courts encountered when it decided to reconcile a narrow exception to the actual injury holding; having recognized that it would not be squarely foreclosed by the subjective content of Justice Scalia's decision in *Casey*.

Petitioner's principal claims were grounded in the First and Fourteenth Amendment due process/ interference claims; although retaliation and defaulted claims were a minor component. In spite of the highly detailed, second amended complaint, the district court disposed of the matter without factual inquiry into causation. Concerning the application of *Casey*, the court's ruling below was contrary to glowing evidence—of which proved that the Plaintiff here was routinely denied these *tools* without excuse. His papers were neither lacking in form nor substance. Therefore, it is likely beyond reasonable dispute that the court of appeal was aware of Petitioner's favorable legal position when it recently affirmed his appeal. Because the Petitioner *sub-judice* can locate nothing seminal to establish clearly defined limits for these facts and

circumstances, he instead suggests a firm word from 1984's *Florida v. Rodriguez*, 469 U.S. 1, 7: "As the Court of last resort in the federal system, we have supervisory authority and therefore must occasionally perform a pure-error correcting function in Federal litigation"—Marshall, J. Dissenting.

Lastly but not the least bit unimportant, the Court of Appeals applied its own *Hebbe v. Pliler,* 627 F. 3d 338, (2010) inside its one and a half-page declaration of support for the district court's summary factual resolution. Their decision included the phrasing from *Pliler* 'plaintiff must present factual allegations sufficient to state a plausible claim for relief.' It is unusual for the appellate court to apply the plausibility standard here. Of course, the plausibility standard arrived from *Iqbal* and *Twombly*. Not once did the lower court judge mention these cases; nor any others that followed them such as *Hebbe v. Pliler*. Certainly, had its intention rested with applying a different procedural obstacle, it would have done so. Instead, the "CJ" thought it sufficient to rely on *Lewis and Harbury* in tandem. Speaking to the same point, in the Ninth Circuit's August 26th, 2021 Order they cite *Padgett v. Wright*, 587 F.3d 983, 985 n. 2 (9th Cir. 2009) with "We do not consider arguments and allegations raised for the first time in appeal..," as its bottom line. See App. 6. This is odd because the appellate court nonetheless did *just that*, when it quoted the plausibility standard for the first time on appeal. . .

It seems established that *Lewis* was misapplied in light of the Ninth Circuit's own well-recognized *interference* doctrine. Their prospective willingness to adhere to *stare decisis* may hinge upon whether or not this important question may find rest in the constitution. "This court has long recognized that its 'first duty' is always to 'follow the dictates of the United States Supreme Court..;'" *United States v. Contreras*, 667 F.2d 976, 979 (11th Cir., 1982). It seems odd to apply their own precedent on a spotted basis, simply because at the moment. . , the active interference doctrine is limited to three circuits. To remedy the situation, it appears that this open question may need constitutional resolution—at a minimum—to ensure uniform consistency—of their own decrees—on behalf of Ninth Circuit decisions.

C: Other Related Points Helpful In Determining The Core Questions.

Meaningful access to court requires physical access to a law library. Beyond anything disastrous, the prisoner population should never be deprived entrance into the library where they keep both law books alongside other non-legal reading material. The weeklong closures started several months before America initiated countrywide quarantining. Once the pandemic hit, the institution began closing the library for months at a time. All of this was alleged in the district court.

One of the major problems for the Plaintiff-Petitioner *ad litem*, was the district court ignored large portions of the pleadings—those that

challenged the state's unfair library regulations and instead, simply focused on bulldozing the whole matter out of court by applying procedural hurdles. This was accomplished by the Chief District Judge; neither the state's attorney nor any magistrate ever weighed in throughout the course of the proceedings. As well, although appellant-petitioner did address this fundamentally unfair procedure. . , the court of appeals issued a ruling not much longer than a post-card; *Smaj v. AT&T*, 291 F.3d 955, 956 (7th Cir., 2002)(Strong authority requires a court's opinion to contain sufficient analysis and/or discussion). This short statement of its decision failed to explain or justify the Court's affirmative, summary disposal of the issues presented. Trying to argue with the district court without the benefit of a research facility can be described in terms of bringing a fire hose to put out a campfire.

Cert. applicant would prefer to avoid any view that may depend on the intricacy and/or minutiae of state regulations—despite this, it might be necessary to point out the themes that went overlooked in the trial court. California's current regulatory scheme only allows a maximum 4 hours law library time for prisoners with active cases where either a court ordered *or* statutory deadline is pending; all others may receive 2 hours weekly. By all accounts this is hardly enough time to work on one case, much less 2 or more. 15 Cal. Admin. Code section 3120(a) places the duty on the prison Warden to provide a library on each facility. The facts material to this case, demonstrated that there was one library for the

whole high-security portion of the prison. The argument may have been put forth that some alternative to physical access was available for the petitioner. Surely they would quote for the court their usual defense. However, upon consulting the governing decisions on the matter, one might discover differently. From Petitioner's vantage point, there is no alternative to a library that is adequately stocked up with *all* required sources of State and Federal law.

Were there any other feasible alternative, that would be personal books because most libraries will not allow expensive reference books out of their sight. Evidence was introduced that our book list was decimated without notice back in 2016 to exclude digests and various treatises on state law.

> "A second factor relevant in determining the reasonableness of a prison restriction, as *Pell* shows us, whether there are alternative means of exercising the rights that remain open to prison inmates. Where 'other avenues' remain available for the exercise of the asserted right (citations omitted) courts should be particularly conscious of the 'measure of judicial deference owed to Corrections officials.' " See *Pell v. Procunier*, 417 U.S. 817, 828 (1974) quoted by *Turner v. Safely*, (1987) 482 U.S. 78, at 90.

Let us explore the regulatory limitations of this hypothetical, potential alternative. Due to

ongoing crowded conditions, California's corrections system (CDCR) has strict limitations in property to ensure room for a top-bunk—something that does not exist in 30 states of the union. Long ago, CDCR officials adopted Cal. Admin. Code § 3161, which states in pertinent portion: "Inmates may possess up to one cubic foot of legal materials/ documents related to their Active cases, in excess of the six cubic feet of allowable property in their assigned quarters/living area. Legal materials/documents in excess of this limitation shall be disposed of pursuant to section 3191(c)." *Id.* (Although prisoners may request some legal materials in excess of this mere 1 cubic foot be stored—such as lengthy reporter's transcripts—law books are not included in that storable property) as 3161 *ibid.* goes on to say, "inmate owned law books in excess of the additional allowance shall not be stored by the institution/ facility." For prisoners to receive assistance from their fellow inmates such as was the matter treated in *Johnson v. Avery*, (1969) 393 U.S. 483. . , this would be required to take place inside a library setting also.

In addition to the *Casey* hurdle, the state officials have regulated their way into legal immunity with this type of regulatory bullet-proofing.[6] Therefore, the only conceivable

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[6] *Straub v. Monge,* 815 F.2d 1467,1469 (11th Cir., 1987) supports petitioner's position, in that "Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts, are invalid," quoting *Procunier v. Martinez,* 416 U.S. 396 (1974).

alternative has been legislated right out of the equation by administrative enactment. The Court today can make significant progress in this byzantine dilemma by exercising its discretion to reduce another source of bad faith: lack of legal development at the national level regarding prisoner library privation. For instance in *Kaufman v. Schneiter*, 474 F. Supp. 2d. 1014, 1030-31 (2007, W.D. Wisc.), the court there ruled that prisons are not allowed to make inmates choose between library time and outdoor exercise. Of course, this exact problem was mentioned in the verified complaint under FRCP, Rule 11(b) that petitioner lodged in the Southern District of California. By no means are they under obligation to enforce this upon their local prison administrations unless this practice becomes nationally recognized as constitutionally prohibited.

D: Reading And Learning Is A Major Life Activity, The Deprivation Of Which Impairs Fundamental Personal Liberty.

There exists a compelling governmental interest in educating prisoners. No considerations of sound public policy could serve to justify the above expressed limitations being placed around library time with fast approaching court action due dates.

> "No legislature can bargain away the public health or the public morals. The people's themselves cannot do it much less their servants. The supervision of both these subjects of governmental power is continuing in nature

> and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. For this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself." See *Stone v. Mississippi*, (1879) 101 U.S. 814, 819.

These formative ideas apply with equal force to administrative officials inside the prison systems —those charged with a duty to incarcerate criminals with a prospect towards the restoration of sanity. It is hard to imagine an exigency so great that would justify the closure of a public library in a free society. What purpose does a prison's warden have in mind that could be 'reasonably related' to the advancement of a neutral institutional goal upon instructing his librarians to keep the lights out? There is no such legitimate security interest in this unconscionable procedure. Imagine if a city council were to enact a city ordinance with mayoral approval—one that placed similar restrictions upon local residents? How could they explain to their taxpayers that the police power would be used to severely limit access to books? Probably there would be no end to the populace outrage. The law reads no differently when applied to prisoners—their general welfare as well, depends upon the discipline of

continuing education.[7] This is true if one considers, "Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate. . ." See *Avery id.* at 487.

Most troubling, instant Petitioner specifically challenged the constitutionality of several state regulations governing the critical subject matter. The court(s) in an apparent attempt to insulate the matter from further review, declined to give any attention to this essential element of the complaint. It's important to remember, "States create a protectable liberty interest through mandatory language and prison regulation,.." and "this interest was for inmates under the Fourteenth Amendment Due Process clause when the deprivation in question 'imposes atypical and significant hardship upon the inmate in relation to the ordinary incidence of prison life'." [*Gray v. Salao*, (2011) U.S. Dist. Lexis 101711 quoting *Sandin v. Conner*, (1995) 515 U.S. 472, 483-84.] Therein lies the liberty implications of seeking redress in court and being denied the benefit of their concern.

Mandatory language within the California Admin. Codes called for circumstances in the library that were in derogation to many decisions of the Federal judiciary in multiple jurisdictions; yet a modest declaratory remedy was too much to ask in the southern district. Pulling the rug out from under our legal actions in this way is the worst form of Due

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[7] "The increasing complexities of our governmental apparatus at both the local and federal levels have made it difficult for a person to process a claim or even to make a complaint." *Avery*, *id.* at 491.

Process violation. With a retaliatory motive, they *completely* interfered with Petitioner's court ordered library access.[8] This said deprivation continues up to the present day. Their attitude seems to be, "Good luck with your petition," (without any legal research)... It is hard to imagine a more significant problem than the compound hardships that exist when one urgent problem cannot be remedied without ample library access being a constantly available, and reliable factor. The Cal DOC realizes how effective these measures are in reducing their organization's liabilities. The original complaint made reference to similar problems at multiple CDCR institutions statewide.

Of course, Prisoners retain their right to pursue a path that leads to happiness; education being a paramount life activity; *Talk v. Delta Airlines*, 165 F.3d 1021, (C A 5, 1999)(major life activity includes learning). Prison systems that utilize interference strategies to slow down litigation are inflicting a grievous harm upon modern American society. If criminals re-enter society without a marketable education, then they are likely to re-offend; therefore taxpayer's hard earned contribution is wasted. It follows then, that—even more so—officials cannot shrink from their duty to accommodate the Court's orders that inmates be provided physical law library access to comport with the time allotted to file a response. The *Lewis*

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[8] The trouble with routine interference is that prison employees become accustomed in their application of these effective techniques, thereby becoming the functional equivalent of requiring a court order before an inmate is allowed to enter the library. —See *Straub*, *id.*, at 1470.

decision only modified this court's comprehensive treatment found within its *Bounds v. Smith*, 430 U.S 817 (1977) decision. Therefore, come rain, sleet or snow, ensuring prisoners can both meet court deadlines and continue in their general studies without undue interruption.., remains a compelling governmental interest; strict scrutiny should apply within the refined meaning of the Fourteenth Amendment.

The factual basis for this action was not just a deprivation of personal liberty, it was an affront to the constitution—a set of acts and omissions perpetrated by the source of knowledge itself. . .

◆

CONCLUSION

By many accounts, Petitioner's claims were unfairly disparaged although the court had a responsibility towards the Plaintiff and others similarly situated.., to thoroughly examine the facts in this case. This failure on behalf of the lower courts to sanction the arbitrary and discriminatory acts by the state, was *inter alia*, violative of Petitioner's Due Process rights under the 7th and 14th Amendments to the Federal Constitutional. Having already suffered constitutional injury by the library, only to watch the merit of his suit disregarded by the court, Petitioner is placed in an even weaker position of negotiation for the next case.

For 1st Amendment claims of this nature to go unchecked anywhere, is to stall any and all progress towards a more perfect union, everywhere. Nowhere is it easier to profane that sacred guarantee, than inside the modern-day, state prison. The United States Constitution is already set on edge with the task of measuring the integrity of countless enactments and procedures. Legislators rarely if ever write laws in bad faith. In light of this, how can administrative officials dare make inroads towards the benchmark principles, in placing *further* burden upon the judiciary in cases such as this? History has gradually deposited its wisdom in good faith for all citizens to absorb. God forbid the California justice system would remain stagnant in that respect.

Probably nothing less than swinging the constitutional hammer, will remedy this polycentric problem. Certiorari is needed here to secure uniformity between the rulings of the trial courts and those of the appellate courts; also, to defend the guiding precedents of this Court against irreverence.

Should the questions presented be passed upon in a manner favorable to the Petitioner, he humbly asks this great Constitutional Court to overturn the mandate and decision of the Court of Appeals.