Stop ... Go Directly to Jail, Do Not Pass Go, and Do Not Ask for a Notary, 31 J. Marshall L. Rev. 879 (1998)

R. Jason Richards

Follow this and additional works at: https://repository.law.uic.edu/lawreview

Part of the Constitutional Law Commons, Courts Commons, Law Enforcement and Corrections Commons, Legal History Commons, and the State and Local Government Law Commons

Recommended Citation
R. Jason Richards, Stop ... Go Directly to Jail, Do Not Pass Go, and Do Not Ask for a Notary, 31 J. Marshall L. Rev. 879 (1998)

https://repository.law.uic.edu/lawreview/vol31/iss3/10

This Symposium is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.
STOP!...GO DIRECTLY TO JAIL, DO NOT PASS GO, AND DO NOT ASK FOR A NOTARY

R. JASON RICHARDS

(N)otary services are not provided to the jail inmates for security reasons. The...female notary [is]...located in the Sheriff's office, as well as are firearms. Inmates are not prohibited from having their legal materials (or any documents)...notarized on the outside by relatives and friends, and then returned to the inmate. Such a limitation does not rise to the level of a constitutional violation.¹

I. INTRODUCTION

Statements like this are not only incorrect and counterproductive but also of doubtful constitutional validity. First, protection of the "female" notary is of little relevance given that it is unnecessary for a notary to have physical contact with a prisoner to provide notarial services.² Furthermore, it fosters a stereotype of the notary as being female (similar to secretaries and court reporters) which may not be the case.³ Certainly, the jail system could obtain the services of a male notary. Identification of the notary as female also fosters the stereotype that prisoners are male, while the reality is that

---

² For example, a transparent partition may be used so that the notary can witness the prisoner sign the document, whereby the document may then be notarized and returned to the prisoner. Or, perhaps the notarization could be performed as the prisoner remains inside his cell. Any such procedure certainly would ensure the safety of both the prisoner and the notary.
³ In fact, recent studies show that only 68% of notaries are women. Are You An "Average" Notary?, NOTARY BULL., Feb. 1996, at 14. Moreover, such thinking is reminiscent of the backward days when woman were disqualified from serving as notaries or from holding public office of any kind, just as they were refused the right to vote and denied the right to enter the legal profession. See, e.g., Minor v. Happersett, 88 U.S. 162, 173 (1874) (upholding a male only voting statute); Bradwell v. Illinois, 83 U.S. 130, 139 (1872) (precluding women from the practice of law); Opinion of the Justices, 62 A. 969, 971 (N.H. 1906) (holding that women could not serve as notaries).


2. For example, a transparent partition may be used so that the notary can witness the prisoner sign the document, whereby the document may then be notarized and returned to the prisoner. Or, perhaps the notarization could be performed as the prisoner remains inside his cell. Any such procedure certainly would ensure the safety of both the prisoner and the notary.
3. In fact, recent studies show that only 68% of notaries are women. Are You An “Average” Notary?, NOTARY BULL., Feb. 1996, at 14. Moreover, such thinking is reminiscent of the backward days when woman were disqualified from serving as notaries or from holding public office of any kind, just as they were refused the right to vote and denied the right to enter the legal profession. See, e.g., Minor v. Happersett, 88 U.S. 162, 173 (1874) (upholding a male only voting statute); Bradwell v. Illinois, 83 U.S. 130, 139 (1872) (precluding women from the practice of law); Opinion of the Justices, 62 A. 969, 971 (N.H. 1906) (holding that women could not serve as notaries).
many inmates are female. Second, because most institutions are located in remote and rural locations, it may not be fair to assume that prisoners can easily access or, for that matter, even have friends or relatives on the outside who are willing or able to provide such services. Third, the judge’s opinion misstates the law on notarizations, thus perpetuating one of the most fundamental and serious infractions committed by absent document signers and the notaries who conspire with them. Notarial law requires that notarization of a document be accomplished by having the document signer in the physical presence of the notary to sign or acknowledge the signature. Fourth, the quotation overlooks the fact that states have an “affirmative obligation” to provide prisoners with notarial services. As the United States Supreme Court held in Bounds v.

4. The reality is that some 75,000 prisoners or 6.3% of the prison population consists of women. Ann Donahue, Female Prison Population Up, DENV. POST, July 21, 1997, at A1. And, this number is rising. See George Lardner Jr., Percentage of Woman in Criminal Population Is Rising, Justice Department Report Says, WASH. POST, Aug. 18, 1997, at A13 (stating that this percentage is rising).

5. For the sake of clarification, jails and prisons are different institutions, with different objectives. James R. P. Ogloff et al., Mental Health Services in Jails and Prisons: Legal, Clinical, and Policy Issues, 18 L. & PSYCHOL. REV. 109, 110 (1994). For example: Jails serve as the entry point for the criminal justice system. They typically house three different categories of inmates: 1) those awaiting arraignment; 2) those who were denied bail and are being held until trial; and 3) those who received short sentences (less than one year). By contrast, prisons serve to confine those inmates who received a sentence of greater than one year.

Id. Another distinction noted by the Supreme Court, provides that prisons are rehabilitative in nature, while jails serve primarily as detention centers. McGinnis v. Royster, 410 U.S. 263, 270-71 (1973). But the efficacy of rehabilitation in prisons has been questioned by many commentators and more recently by some members of the Supreme Court itself. Carchman v. New Jersey Dep’t. of Corrections, 473 U.S. 716, 751 n.20 (1985) (Brennan, J., dissenting) (quoting S. REP. No. 98-225, at 38 (1983); see also Mark E. Burns, Comment, Electronic Home Detention: New Sentencing Alternative Demands Uniform Standards, 18 J. CONTEMP. L. 75, 80 (1992) (commenting on the societal belief that rehabilitation in prisons has failed); Robert Martinson, What Works?, Questions and Answers About Prison Reform, 35 PUB. INTEREST 23, 25 (1974) (concluding that prison rehabilitation programs designed to reduce recidivism have failed); James Robison & Gereal Smith, The Effectiveness of Correctional Programs, 17 CRIME & DELINQ. 67, 80 (1971) (reporting a California study finding “no evidence to support any program’s claim of superior rehabilitative efficacy”). See generally FRANCIS A. ALLEN, THE DECLINE OF THE REHABILITATIVE IDEAL 1-59 (1981).


7. Id. at 729; RAYMOND C. ROTHMAN, NOTARY PUBLIC: PRACTICES & GLOSSARY 11 (1978).
Smith, "[i]t is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents with, notarial services to authenticate them, and with stamps to mail them." In the opinion by Justice Thurgood Marshall, the Court stressed that "meaningful access to the courts is the touchstone." The reasoning is simple: prisoners cannot meaningfully access these materials and services on their own given their confinement. But when courts routinely acknowledge the frequency with which prisoners are "unable to obtain the services of a notary public," perhaps some basic reconsideration of these reasons is required.

The stories are familiar. For instance, defendant prison fails to provide notarial services resulting in the prisoner’s untimely petition for writ of habeas corpus. Defendant prison denies the prisoner the right to verify legal documents as a means of “harassing and impeding his [legal] efforts on . . . appeal.” Defendant prison need not provide prisoner with notarial services even though the failure to do so results in the denial of prisoner’s post-conviction petition.

9. Id. at 823 (quoting Ross v. Moffitt, 417 U.S. 600, 611, 615 (1974)).

These citations are merely illustrative of the point and do not purport to exhaust the instances of such conduct. Furthermore, it is fair to say that for every case in which a prisoner is formally acknowledged to have been denied the services of a notary public, numerous other instances go unreported.

13. Collier, 918 S.W.2d at 356. Other courts have come to the opposite conclusion. See Haines, 641 So.2d at 465 (reversing lower court's finding that post-conviction motion was untimely); Olkewicz, 633 So.2d at 1132 (holding that a two-day delay in filing a post-conviction motion is not conclusively untimely).
The Supreme Court’s decision in *Bounds* establishes a floor for which notarial services must be provided to inmates (i.e. for documents filed with the court). Recently, however, the Supreme Court in *Lewis v. Casey*,14 extended these rights to other areas, stating in effect that prisoners should also be provided notarial services for matters relating to their confinement.15 The *Lewis* language is significant because it formerly acknowledges the realities of institutional life. Here it is important to note that prison, while physically confining, does not terminate the personal affairs of inmates. For instance, prisoners may require notarial services not only for documents submitted to courts, but also for personal matters that are indirectly beneficial to securing their freedom. Consider, for example, prisoners who must have financial documents notarized so that they can remove or transfer personal assets in order to pay their legal fees or post bond. Without the services of notaries public, prisoners would be unable to perform such simple but necessary functions, because the formalities of any such financial transaction would include the verification of the absent document signers’ (i.e. prisoners’) identity. As literate and trusted public officials “recognized by the commercial law of the world,”16 notaries would likely provide this important verification function.17 Even if it were acknowledged that prisoners could obtain notarial services from other sources (such as from friends or relatives), the obligation of penal institutions is the same, because it remains the responsibility of the institution to provide notarial services to inmates.18 But, many penal institutions still refuse to provide these services to inmates, thereby blurring the supposedly distinct rights of prisoners to access notarial services. This blurring may reflect current prison reality, but it does not make good law. In order for prisoners to fully realize the rights ensured by *Bounds* and *Lewis*, states must provide notarial services for any situation that directly or indirectly affects an inmate’s ability to challenge his or her confinement.19 But, one need not look far to understand this dichotomy, for “[t]he degree of civilization in a society can be judged by entering its prisons.”20

---

15. Id. at 2182 (stating that the tools “require[d] 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”).
17. See Closen & Richards, supra note 6, at 716-17 (observing that notaries historically have been trusted with drafting and safeguarding important records and business transactions).
19. See Lewis, 116 S. Ct. at 2182 (stating that the tools “require[d] 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”).
20. Fyodor Dostoevsky, cited in RESPECTIVELY QUOTED 286 (Suzy Platt ed.
The public perception of prisoners is not a kind one. Convicted of one or more crimes against individuals or society in general, the prisoner, formerly a member of the community, becomes an outcast, an "other" who is relegated to the status of a social misfit— not just in his or her own community, but in all of society, for all time. Imprisonment is a loss of one's freedom of movement and of association. In a word, imprisonment is a loss of one's liberty, not just inside the institution but on the outside as well. This is because even after release from the institution, the convicted individual carries a badge of shame, a kind of terminal sentence. The stigma exists regardless of whether convicted persons have paid their debts to society, or otherwise made retribution for their crimes. The terms associated with persons convicted of crime— whether they be convicts, outlaws, felons or ex-cons— are not terms of forgiveness, but rather words chosen to identify the perpetually unforgiven and disenfranchised among us.

These observations are not intended to invoke sympathy for the convicted because much of the blame rests with the prisoners themselves, but for the purpose of emphasizing something that the Supreme Court observed over twenty years ago, and that is that, "a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country." Certain rights remain, and for good reason. However, the right to access notarial services does not always seem to be among them.

To illustrate, prisoners still retain substantial religious freedoms under the First and Fourteenth Amendments, protection under the Equal Protection Clause of the Fourteenth Amendment against racial discrimination, protection against cruel and unusual punishment, freedom from the arbitrary use of authority, etc.

1989).


22. Leighton, supra note 21.

23. But, as Justice Stevens has observed: "The restraints and the punishment which a criminal conviction entails do not place the citizen beyond the ethical tradition that accords respect to the dignity and intrinsic worth of every individual." Hudson, 468 U.S. at 557 (Stevens, Brennan, Marshall, Blackmun, J.J., concurring in part and dissenting in part).


tion from the unlawful deprivation of life, liberty or property without due process of law and the right to access the courts, among others. Simply put, "a prisoner does not shed his constitutional rights at the prison gate." Unfortunately, however, more and more prisoners are testing this theory.

There are more than 1,700,000 inmates in the jails and prisons of this country, meaning that there are as many prisoners incarcerated in the United States as there are citizens in fifteen states, or people in the cities of Kansas City, Milwaukee or San Francisco. At the same time, there are approximately 4,500,000 notaries public in the United States, and this number is rising. Given this almost four-to-one ratio, it seems that there should be at least one notary public among prison personnel just to meet the administrative needs of the prison alone. So, why are prisoners so often refused notarial services? Some courts blame the prison environment itself claiming it is not conducive to providing such services. This argument is presumably based upon the difficulty in getting the notary and the prisoner safely together to perform the notarization. But, this argument has little merit. First of all, prisoners routinely leave their cells for visitation and recreational purposes. Therefore, it is unlikely that providing notarial services to inmates poses a substan-

---

32. John Bacon et al., Inmate Population Jumps by 6%, Justice Reports, USA TODAY, Jan. 19, 1998, at 3A. This number represents the largest of any industrialized country in the world. Ogloff, supra note 5, at 109.
33. See generally State Rankings 1997 - A Statistical View of the 50 United States VI (Kathleen O'Leary Morgan & Scott Morgan eds., 8th ed. 1997) (indicating that 15 states have populations of approximately 1.7 million people or less).

To put that number into perspective, there are 30 states each with less than 4.5 million residents. There are more notaries than there are police officers, firefighters, and teachers combined. There are so many notaries that, if you laid all of them together from head to toe, their length would span 4,687 miles, or twice the diameter of the moon.

Id.
37. See Hudson v. Evans, No. 93 Civ. 6398, 1994 WL 263525, at *3 (S.D.N.Y. June 13, 1994) (stating that because of the unusual circumstances of incarceration, prisoners "may be unable to obtain the services of a notary public").
Notarial Services for Prison Inmates

885

entially greater risk to others than that which is confronted by prison personnel on a daily basis. Secondly, even if a prisoner poses a significant danger to the notary, there is no reason why the notarization cannot be performed while the prisoner remains in his or her cell. Surely this would provide sufficient protection for the notary.

Moreover, are the circumstances of incarceration that unusual? As alluded to earlier, a prison facility functions just like any other business with the same scattering of administrators and business personnel, including a secretarial and clerical staff. Given the ratio of notaries public to the population in any state,\(^\text{38}\) there should be enough notaries among prison personnel to provide notarial services to both prison officials and prisoners, regardless of the unusual circumstances of incarceration. Even assuming that a prison does not presently employ a notary, prisons officials could easily see to it that certain employees obtain notarial commissions. After all, other business employers regularly insist that their employees maintain notary commissions,\(^\text{39}\) and some employers pay for the expense attendant to such commissioning (such as filing fees, notary bond premiums and the costs of notary seals and other supplies).\(^\text{40}\)

In fact, the reality is that currently notarial services may be provided in many ways and by many different people in the prison environment. Notarial services are provided by prison librarians,\(^\text{41}\) prison secretaries,\(^\text{42}\) civilians employed specifically to provide such services\(^\text{43}\) or anyone else designated by the prison administrator,\(^\text{44}\) including prisoners themselves if not prohibited by statute.\(^\text{45}\) But, the provision of notarial services is simply too informal and haphazard. Notarial services can be very important in connection with the personal financial lives of prisoners in association with their efforts

---

\(^{38}\) For example, there is more than one notary "for every 49 citizens in Alaska and Tennessee, for every 34 citizens in Florida, and for every 24 citizens in South Carolina." Closen, supra note 35, at A23.

\(^{39}\) See id. (stating that many employers encourage or require their employees to become notaries as a convenience to their employers).

\(^{40}\) Closen & Richards, supra note 6, at 707 n.18.


\(^{42}\) See, e.g., Pyles v. Carlson, 698 F.2d 1131, 1132-33 (11th Cir. 1983) (describing one prison where a prison secretary also served as the prison notary).

\(^{43}\) See, e.g., McKinnon v. Patterson, 425 F. Supp. 383, 389 n.8 (S.D.N.Y. 1976) (discussing one New York prison that employs a notary specifically to perform notarial services for the prison population).

\(^{44}\) See, e.g., Hartsfield v. Mayer, No. 95-1411, 1996 WL 43541, at *3 (6th Cir. Feb. 1, 1996) (indicating that prison officials have discretion as to who may provide notarial services within a prison).

\(^{45}\) Although the author was unable to find a cited instance where a prisoner served as a notary, it is theoretically possible absent statutory prohibition. For a partial list of the states that forbid persons convicted of felonies or other crimes from becoming notaries, see infra Section II.
to effect the criminal proceedings charging or convicting them of crimes, including the sentences imposed upon them. However, these needs are too often being overlooked in our jails and prisons.

Meaningful access to notarial services for prisoners is the focus of this article. While several commentators have explored other rights of prisoners, the extent to which prisoners are entitled to notarial services has been largely ignored by the legal community. This article thus aims to show that the arguments for failing to provide prisoners with notarial services, not unlike access to paper and pen or stamps, is a fundamental feature of a prisoner's ability to meaningfully access the courts. First, this article notes some recent developments in states' notary laws concerning misconduct and the effect that the stigma associated with wrongdoing has had on the notarial profession. Next, it will address the federal statutory scheme that authorizes prisoners to "self authenticate" their own signatures on documents submitted to federal court. This article then defines what is meant by "meaningful" access to the courts and discusses how a prisoner's access to notarial services fits within this definition. Finally, this article will offer possible solutions that the author believes best resolve the problem of providing notarial services to prisoners.

II. MISCONDUCT AND ITS IMPACT ON THE NOTARIAL PROFESSION

One area in which states have been active is in statutorily prohibiting persons convicted of crimes or other immoral offenses from becoming notaries public. These statutes are arguably necessary to ensure that the office of notaries public maintains its credibility in the business community. However, there is no doubt that the office's reputation is not what it once was. Since the appointment of the American Colonies' first notary, who was thrown out of office for falsifying documents, notaries have been their own worst enemy. In fact, "[n]otaries in this country have suffered a downhill regression commencing in about the second half of the Nineteenth Century." And, this regression is due in large part to

47. Closen & Richards, supra note 6, at 713 n.54.
48. Id. at 716.
incidents of notarial misconduct, both past and present.

A significant amount of errors and omissions occurs in the daily routine of notarial practice in this country. Some notaries engage in the unauthorized practice of law. Some notaries contribute indirectly to the deceptive business activities of charlatans as practiced upon consumers. Notaries are imprecise and incomplete in executing notarizations. Employers of notaries encourage or direct them to take shortcuts. Some notaries conspire directly with scoundrels to defraud others. Of special concern is that attorneys who are notaries and attorneys who employ notaries are guilty of most of these same failures in notarial practice. No matter whether the notarial violations are due to instances of unintentional neglect or unlawful motive, the practical effect of each of these erroneous acts (which sometimes become known and publicized) is that the office of notary public is diminished, in terms of both public perception and public trust.49

Such wrongdoing is the product of many things (e.g. notarial indifference, misunderstanding and even illegal conduct), but it is also representative of a characteristic shared by all professions - negligent or willful conduct by members of the profession. Nevertheless, its existence cannot be tolerated.

Therefore, the statutory focus on notarial misconduct is understood in terms of both ensuring that those holding notarial commissions are qualified for the position and that the public perception and public trust in notaries public is not further eroded. But, states differ as to how they assess the characteristics of notaries public and notary applicants.50 For example, some states simply prohibit persons convicted of felonies from becoming notaries public,51 or, if the person is already a notary at the time of committing the felonious act, then a state may revoke that person's commission upon conviction.52 Other states have even stricter conduct requirements for obtaining a notary license. For instance, Oregon not only prohibits persons convicted of felonies

---

49. Closen & Richards, supra note 6, at 713-14.
50. See, e.g., COLO. REV. STAT. ANN. § 12-55-104(e) (West 1996) (providing power to the Secretary of State to deny a notary commission because of a felony conviction). Compare Gombach v. Dept. of State, 692 A.2d 1127, 1132 (Pa. Commw. Ct. 1997) (upholding the denial of a notary commission based on an income tax invasion conviction, which involved a determination that such crime called into question the applicant's good moral character) with In re Shorter, 570 A.2d 760, 766 (D.C. 1990) (holding that tax evasion "does not, per se, involve an act of moral turpitude").
52. See MONT. CODE ANN. § 1-5-402 (1996) (stating that a "conviction of a felony vacates the office and is equivalent to resignation"). In addition, civil and criminal liability is also possible for notarial misconduct. See generally MICHAEL L. CLOSEN ET AL., NOTARY LAW & PRACTICE: CASES AND MATERIALS 247-307 (1997).
from becoming notaries, but they also prevent those convicted of “a lesser offense incompatible with the duties of a notary public” from being commissioned. Similarly, Texas prohibits anyone “convicted of a felony or crime involving moral turpitude” from becoming a notary public.

Incidentally, assuming notary applicants truthfully reveal such misconduct on their applications, who conducts the investigation to determine whether or not the suspect conduct is “incompatible with the duties of a notary public” or a crime involving “moral turpitude?” Notary investigators (part private detective, part tribunal) act as the investigative arm of the Secretary of State, or other state branch designated to issue notary commissions. Notary investigators also “protect the public by screening commission applicants for criminal or questionable histories inconsistent with the duties of a Notary and handle allegations of notarial misconduct against commissioned Notaries.”

These investigations undoubtedly assess the fitness of notary applicants as well as commissioned notaries public in fulfilling the responsibilities attendant the office and provide vital information for state officials in determining whether or not to issue or revoke


In order to discover such offenses, “[m]ost but not all state Notary applications ask applicants if they’ve ever been convicted of a criminal act . . . .” Id. This procedure was reaffirmed recently by the passage of a New Hampshire law which removed the requirement that notary applicants sign a sworn statement as to whether they have ever been arrested, but kept the provision requiring applicants to reveal under oath whether they had ever been convicted of a crime. NOTARY BULL., Oct. 1997, at 7.
56. It is not uncommon for notary applicants to lie on their applications concerning past offenses. See infra note 60.
57. Douglass M. Fischer, Guardians of the Gate: Investigators Maintain Integrity of Notary Office, THE NAT’L NOTARY, Jan. 1995, at 16 [hereinafter Fischer, Guardians]. In California, New Jersey and Maryland, investigative teams or “units” handle notarial investigations, while in Ohio, such investigations may be conducted by a branch of the Bar Association’s “Notary Public Committee.” Id. at 16-17.
58. The Secretary of State is delegated the responsibility of processing notary applications in most states. Closen & Richards, supra note 6, at 719.
59. Fischer, Guardians, supra note 57, at 16.
Notarial Services for Prison Inmates

Moreover, these background checks reflect the specific goals of states, which is to ensure, at a minimum, the good moral fitness of notaries public within their jurisdictions. Such insight is necessary because notaries, as impartial public officials, are expected to possess high moral integrity and honesty. And, given the routine occurrence of notarial misconduct in this country, it is unrealistic to believe that notaries can police themselves. Therefore, it is reasonable for an applicant having committed a crime involving fraud or dishonesty to be denied a commission.

But what about non-violent offenses, such as convictions for drinking and driving or for involuntary manslaughter? Do such crimes warrant the revocation of a notarial commission or the rejection of a notary application? Are these crimes involving honesty or integrity? Probably not. As a result, the states that flatly prohibit a person convicted of a felony or lesser offense from becoming a notary - without more - have done too much. This observation is not intended to undermine the need for qualified and moral notaries. Instead, it is meant only to discount the popular misconception that persons who commit crimes are social outcasts undeserving of opportunity. The author firmly believes that there is no room for the perpetuation of such stigma in notarial legislation. After all, "[w]ho among us hasn't done something foolish or regrettable in the past? And we all [remember a troubled youth that] grew up to be a decent and respected member of society. In this country more than any other, there is such a thing as re-

60. The effectiveness of such investigations was recently illustrated in Pennsylvania where a notary applicant indicated on his application that he had never been convicted of a crime or pleaded nole contendre when in fact he was currently serving four years' probation. Police Say Man Lied About Criminal Past, ALLENTOWN MORNING CALL, Apr. 9, 1997, at B3.


62. See Fischer, Guardians, supra note 57, at 16 (indicating that in some states a conviction for a crime of moral turpitude will likely result in the denial of notary commission).

63. As one commentator has noted:

Misdemeanor charges, such as driving while intoxicated, may not automatically cause a commission to be denied. Commissions are generally denied to applicants who have criminal records that call their judgment and character into question, such as convictions for perjury, forgery or fraud. Simply put, an individual convicted of filing false documents will find it difficult to be commissioned.

Fischer, Guardians, supra note 57, at 16.

64. See, e.g., S.D. CODIFIED LAWS § 18-1-1 (Michie 1997) (forbidding the Secretary of State from commissioning a felon).
This philosophy suggests a change in the way that society looks at convicted persons. In short, it suggests that notarial laws should give those persons convicted of offenses the opportunity to explain their crimes - to defend prior misconduct that may or may not call into question their ability to hold notarial office. Surely when state legislatures take on the function of judge and jury, they should make the punishment fit the crime. But, in light of history, there is good reason to think that decision makers exceed this measured approach because they are generally prone to want to please constituents (i.e., voters who, if typical, prescribe to the "once a criminal, always a criminal" mentality). Therefore, any legislation prohibiting the holding of a notarial commission on the basis of a felony conviction alone, or on the subjective moral offensiveness of the conduct, is without merit. Simply put, such a blanket prohibition is unnecessary as other reasonable alternatives exist.

A better approach is one that permits states to "consider" felony convictions and lesser offenses as a means of determining the fitness of notaries public. This is not only a more equitable means of assessing the qualifications of notarial office holders, but it is a more rational one as well. Such an approach is followed to an extent in the state of Oregon, where the statute prevents persons convicted of felonies from receiving a commission but only if that conviction occurred within the ten years preceding the date of application. For any conviction older than ten years, the Secretary of State has discretion to determine whether or not to issue a license. While this legislation represents progress toward alleviating the stigma surrounding criminal convictions, it falls both short and wide of the mark. In effect, the statute establishes a ten-year period within which the disgrace of a conviction remains. As already noted, any such stigma is unacceptable and should be removed from notarial legislation altogether.

While it is not unimportant for states to ensure that the office

65. Fischer, Guardians, supra note 57, at 16.
67. The Oregon statute provides in part as follows:
(1) To assist in determining the identity of an applicant for notary public, or if the applicant has been convicted of a felony or of a lesser offense incompatible with the duties of a notary public, upon consent of the person making application for appointment as notary public and upon request of the Secretary of State, the Department of State Police shall furnish to the Secretary of State any information that the department may have in its possession from its central bureau of criminal identification . . . .
(2) A person making application for appointment as a notary public shall be deemed, upon signing or with signature upon the application . . . to have given consent necessary for purposes of subsection (1) of this section.
of notary public maintains its high standard for honesty and integrity (especially in light of present and past misconduct), the essential inquiry remains whether, and to what extent, prisoners should have access to notaries in preparing their legal and personal documents. Any doubt should be resolved in favor of the prisoner, as it remains the responsibility of states to provide prisoners at state expense with notarial services. Moreover, this duty may be partially satisfied in more than one way, as noted directly below.

III. THE FEDERAL STATUTORY ALTERNATIVE TO NOTARIES PUBLIC

On the federal level, persons are authorized under § 1746 of the United States Code to submit court documents “under penalty of perjury.” This means that individuals filing federal court documents can “self-authenticate” their own signatures, and eliminate the need for a notary altogether. According to Congress, “[t]he purpose of this legislation is to permit the use in Federal proceedings of unsworn declarations given under penalty of perjury in lieu of affidavits” sworn to before a notary public. In other words, the statute’s goal was to simplify the filing of documents in federal court. Although this statute makes no reference to prison litigation,
federal courts and commentators have read Section 1746 as one of general applicability so as to include prisoner petitions. Therefore, federal prisoners, like free persons, can also “self-authenticate” their own court documents. While there are exceptions to the application of the statute, such as when taking an oath of office, the statute has benefited the federal prison system in two principle ways. Of initial practical significance, the statute alleviates the need for federal prison officials to supply notaries all the time, thus saving the prison administration time and expense. More importantly, however, is the benefit that the statute provides to prisoners. With the passing of this statute, federal prisoners are no longer subject to the whims of prison administrators or personnel who refuse to provide notarial services. Prisons may now take responsibility for their own conduct concerning the verification of their petitions. It should be noted, however, that this statute is only a partial solution, because it does not address the problem facing both federal and state penal institutions, that is, how to fulfill the obligation of notarizing prisoners’ personal documents as required under Lewis v. Casey. Nevertheless, Section 1746 does serve its primary purpose well in that it relieves federal prison officials of the responsibility of notarizing prisoners’ court documents, which no doubt encompasses most of the inmate notarization requests. Notwithstanding its benefits, this statutory alternative has not caught on among states. In fact, only a small minority of states have adopted “self-authentication” statutes. As of this writing, only six states and the territory of Guam provide a procedure for the self-authentication of signatures paralleling that of 28 U.S.C. § 1746. It is remarkable that so many states have flatly ignored the passing of Section 1746 as well as the constitutional mandate of the Supreme Court’s decision in Bounds v. Smith, whose literal reading leaves little doubt that the constitutional right to access the courts includes, at a minimum, the availability of notarial services.

71. See, e.g., Carter v. Clark, 616 F.2d 228, 230-31 (5th Cir. 1980) (“Congress did not expressly exclude prisoner petitions” from coverage of § 1746, and “there is no [other] indication whatsoever that the statute does not include prisoner petitions”); Duncan v. Foti, 828 F.2d 297, 297-98 (5th Cir. 1987) (applying § 1746 to an inmate’s claim that unavailability of notary services in the parish prison precluded his ability to gain needed documents).
72. See supra notes 10-13 for a discussion of cases arising out of the denial of notarial services to inmates.
73. CAL. CIV. PROC. CODE § 2015.5 (West 1997); FLA. STAT. ANN. § 92.525 (West 1997); 6 GUAM CODE ANN. § 4308 (1996); NEV. REV. STAT. ANN. § 53.045 (Michie 1995); N.J. RULES OF COURT. § 1:4-4 (West 1997); PA. CONS. STAT. ANN. § 4904 (West 1983); TEX. CIV. PRAC. & REM. CODE ANN. § 132.001 (West 1997).
IV. ACCESS TO THE COURTS: A MEANINGFUL REQUIREMENT

Early in our history, courts were extremely reluctant to afford prisoners any rights at all. Based in part on the "hands off" doctrine, which gave great deference to states in the administration of their prisons, some states suspended the civil rights of prisoners altogether by way of "civil death statutes." Civil death statutes effectively mean that, upon incarceration, a prisoner is deprived of all his or her civil rights. Put another way, under a state's civil death statute a prisoner is considered civilly dead. Fortunately, however, "[t]his doctrine weakened over time as courts began recognizing that prisoners retain many of their constitutional rights notwithstanding their incarceration." 

One such right is the right to meaningfully access the courts. For prisoners, this right is of paramount importance, as it "encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him." Emanating from several provisions of the United States Constitution, the right of access to the courts was firmly established in the landmark case of Bounds v. Smith, where the Court held that states must provide inmates with law libraries or alternative means of acquiring legal knowledge as a means of ensuring a prisoner's right of access to the courts. But, as the Court noted, its decision was not meant to be construed as requiring both. Instead, the

75. Snyder, supra note 46, at 1692.
76. Id.
77. The State of New York still has a civil death statute. N.Y. CIV. RIGHTS LAW § 79-a(1) (McKinney 1997).
78. Snyder, supra note 46, at 1692. It is fair to say that the concept of civil death has been condemned by virtually every court and commentator to study it.” Thompson v. Bond, 421 F. Supp. 878, 885 (W.D. Mo. 1976). See Delorme v. Pierce Freightlines Co., 353 F. Supp. 258, 260 (Or. 1973) (declaring Oregon's civil death statute unconstitutional); Danny E. Adams, Note, Arizona's Living Dead: Civil Death and Disabilities in Arizona, ARIZ. ST. L.J. 137, 152 (1975) (urging the State legislature to reform Arizona's civil death statute); Note, Methods of Circumventing the Civil Disabilities of Convicts, 48 YALE L.J. 912, 912-16 (1939) (advocating the repeal of civil death statutes).
79. Bounds, 430 U.S. at 821-22 (stating that "[i]t is now established beyond doubt that prisoners have a constitutional right of access to the courts . . ." and that such access must be "adequate, effective, and meaningful").
81. Some indications of the right of access to the courts can be drawn from numerous Constitutional provisions, including the First Amendment, the Privileges and Immunities Clauses of Article IV, Section 2 and Section 1 of the Fourteenth Amendment and the Due Process Clause of the Fifth and Fourteenth Amendments. Snyder, supra note 46, at 1703 & nn.118-20.
82. 430 U.S. at 821.
83. Id. at 828.
84. Id. at 830.
The John Marshall Law Review

Court preferred to “encourage local experimentation . . . .”\textsuperscript{85} In that vain, at the time of the \textit{Bounds} decision nearly half of the states had elected to provide legal assistance in lieu of libraries.\textsuperscript{86} The Court further noted that such legal assistance may be provided by many different persons trained in the law, including law students, volunteer attorneys, and even other inmates, otherwise known as “jailhouse lawyers” or “writ-writers.”\textsuperscript{87} True to their name, writ-writers assist fellow prisoners with their legal work, such as filing writs of habeas corpus and civil rights actions.\textsuperscript{88} While distinguishable in their individual abilities, writ-writers share several common characteristics: (1) they are incarcerated; (2) they are usually not lawyers and most lack a formal legal education; and (3) all have developed some legal skills desirable to other inmates.\textsuperscript{89} In the absence of more adequate assistance, writ-writers provide a valuable service to inmates, because most prisoners are incapable of framing and submitting legal documents by themselves given the complexity of the legal and procedural hurdles involved.\textsuperscript{90} But what is critical to remember is that the \textit{Bounds} Court held that prisoners are constitutionally entitled to have legal materials or alternative legal assistance at their disposal in preparing their legal defenses as a means of meaningfully accessing the courts. As one state supreme court has observed, it makes sense that if legal “aids are essential to highly educated and seasoned attorneys, [then] it [is] self-evident that they are even more critical to inmates . . . who are attempting to prepare [their cases],”\textsuperscript{91} and who most often are proceeding pro se.\textsuperscript{92}

Similarly, several other basic rights of prisoners have also been recognized. For example, the Supreme Court of Idaho has

\textsuperscript{85.} Id. at 832.
\textsuperscript{86.} Id. at 831.
\textsuperscript{87.} Id. “All petitions, complaints, and the like are generally referred to by the prison population as ‘writs.’ Consequently, jailhouse lawyers are frequently termed ‘writ-writers.’” Vaughn v. Trotter, 516 F. Supp. 886, 891 n.2 (M.D. Tenn. 1980). The right to be assisted by writ-writers was first recognized over fifty years ago in \textit{Ex parte} Hull, 312 U.S. 546, 549 (1941), but is subject to restriction in cases of inmate abuse. Johnson v. Avery, 393 U.S. 483, 490 (1969). See Hill, supra note 46, at 977-80, for a more thorough discussion of the prisoner’s right to receive assistance from writ-writers.
\textsuperscript{89.} See, e.g., Larry Smith, \textit{Amid Unbearable Frustration, the Legend of Jerry Rosenburg Continues to Grow}, 11 INSIDE LITIG. 7 (1997) (describing one such famed jailhouse lawyer).
\textsuperscript{90.} HERBERT IRA HANDMAN, THE RIGHTS OF CONVICTS 68 (1975).
\textsuperscript{91.} Free v. State, 874 P.2d 571, 578 (Idaho 1993).
\textsuperscript{92.} JIM THOMAS, PRISONER LITIGATION: THE PARADOX OF THE JAILHOUSE LAWYER 156 (1988); \textit{See also Bounds}, 430 U.S. at 825-26 (noting that “if a lawyer must perform such preliminary research, it is no less vital for a pro se prisoner”).
held that the failure of prison officials to provide pen and paper impairs a prisoner's ability to access the courts.\textsuperscript{93} Citing \textit{Bounds} throughout, the court recognized that "such basic tools as a pen or pencil and paper are so fundamental to a fair opportunity to make an effective [argument] that denial of those tools is inherently prejudicial and a deprivation of due process."\textsuperscript{94} Likewise, of what value are written petitions without envelopes with which to enclose them and stamps with which to mail them? Thus, both courts and commentators have similarly found that prisoners need and are entitled to envelopes and stamps so that they can forward their petitions to the appropriate court.\textsuperscript{95}

As mentioned earlier, it is also of doubtful constitutionally validity for prison officials to refuse to notarize inmates' personal documents when such services are necessary for prisoners to indirectly attack their sentences. This is because the United States Supreme Court held in \textit{Lewis v. Casey} that the tools inmates are "require[d] 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."\textsuperscript{96} In that vain, while the author certainly does not advocate that inmates should be able to transform themselves into "litigating engines"\textsuperscript{97} necessitating twenty-four hour notarial service, prisoners should be provided notaries for personal matters when such services are necessary for inmates to meaningfully challenge their confinement. In short, if the services of a notary are in any way relevant to a prisoner's ability to secure his freedom, the services should be provided. For example, when a prisoner needs a notary so that they can execute financial documents and obtain funds for his legal defense. Indeed, the availability of notarial services under such circumstances, far from being a collateral issue, would seem to be a central issue in an inmate's ability to meaningfully access the courts. Critics of providing notarial services for prisoners' personal mat-

\textsuperscript{93.} \textit{Free}, 874 P.2d at 578.
\textsuperscript{94.} \textit{Id.} See also \textit{Tuggle v. Barksdale}, 641 F. Supp. 34, 38 (W.D. Tenn. 1985) (requiring prison officials to provide access to typewriters); \textit{Wade v. Kane}, 446 F. Supp. 678, 685 (E.D. Pa. 1978) (indicating that prison inmates are entitled to writing materials); \textit{Ahrens v. Thomas}, 434 F. Supp. 873, 899 (W.D. Mo. 1977) (explaining that indigent inmates are entitled to writing materials at state expense). \textit{But see American Inmate Paralegal Assoc. v. Cline}, 859 F.2d 59, 61 (8th Cir. 1988) (providing that there is no constitutional right to use typewriters to prepare legal documents).
\textsuperscript{95.} \textit{MICHAEL B. MUSHLIN, RIGHTS OF PRISONERS 64} (2d ed. 1993). \textit{See also Bounds}, 430 U.S. at 824-25 (entitling indigent inmates to postage for mailing legal documents); \textit{Gluth v. Kangas}, 773 F. Supp. 1309, 1324 (Ariz. 1988) (ordering postage to be provided to indigent prisoners for all legal mail); \textit{Gramegna v. Johnson}, 846 F.2d 675, 677 (11th Cir. 1988) (requiring state to pay postage expenses for legal mail).
\textsuperscript{97.} \textit{Id.} at 2182.
ters might argue that there is not a sufficient basis for determining the validity of inmates' requests under such circumstances. But, this view overlooks the realities of the penal system. This is because prison officials make such subjective determinations everyday. For example, prison administrators regularly decide when inmates are entitled to visit the prison library, determine what mail prisoners can or cannot receive or send, and regulate what prisoners are allowed to read. Thus the desired objective of providing notarial services for inmates' personal matters asks no more of prison officials than that which is already demanded of them.

It follows, then, that if prisoners are constitutionally entitled to be provided with pens, paper, envelopes, stamps, and legal assistance as a means of meaningfully accessing the courts, then so too are they constitutionally entitled to receive notarial services for documents that must be notarized before they can be filed with the court. This argument is buttressed by the fact that the Bounds Court did not distinguish between entitlements when it held that "[i]t is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them." Several courts and commentators have agreed. Furthermore, it also appears to be the law that inmates are to be provided notaries for all personal documents that could affect their ability to "attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement."

Notwithstanding the relative clarity of these holdings and

98. See Johnson v. Avery, 393 U.S. 483, 490 (1969) (holding that prisoners have a constitutional right to be assisted by jailhouse lawyers or otherwise provided adequate legal assistance).

99. See Bounds, 430 U.S. at 824-25 (stating that it is "indisputable that indigent inmates must be provided at state expense with . . . notarial services . . ."). The failure to provide notarial services to federal prisoners, however, may not result in a per se violation of Bounds, given that Section 1746 of title 28 of the United States Code allows documents to be submitted under penalty of perjury in lieu of having them notarized. See also Hudson v. Robinson, 678 F.2d 462, 466 n.5 (3rd Cir. 1982) (noting that such failure is not a per se violation).

100. Bounds, 430 U.S. at 824-25.

101. MUSHLIN, supra note 95, at 63. "Some documents must be notarized before they can be presented to the court. In these instances, the failure of corrections officials to supply a notary public unconstitutionally infringes on an inmate's right of access to the court." Id. See also Gluth, 773 F. Supp. at 1321 (requiring the prison to provide notarization for legal documents); Dawson v. Kendrick, 527 F. Supp. 1252, 1279 (S.D. W. Va. 1981) (stating that the failure to cooperate with an inmate's attempt to obtain notarial services amounts to a denial of access to the courts); O'Bryan v. Saginaw County, 437 F. Supp. 582, 600 (E.D. Mich. 1977) (holding prisoners must have access to a notary); Owens-EL v. Robinson, 442 F. Supp. 1368, 1387 (W.D. Pa. 1978) (reiterating the importance of providing prisoners with notarial services).

102. Lewis, 116 S. Ct. at 2182.
commentaries, they are not uniformly recognized in our court system. For example, in affirming the dismissal of a prisoner's complaint, the Eleventh Circuit boldly proclaimed that the failure to provide stamped envelopes for the inmate's legal papers, the initial refusal to notarize the inmate's legal documents, and a challenge concerning the sufficiency of the legal assistance program did not state a "cognizable" basis for relief.\textsuperscript{103} The Fifth Circuit similarly held that a prisoner's claim that he was denied, among other things, "the right to have legal documents notarized" was "frivolous," and, "even conceding the truth of . . . the allegation[], we cannot conclude that [it] involve[s] actual or potential constitutional significance."\textsuperscript{104} Such a violation was not "substantial," said the court.\textsuperscript{105} Likewise, the Seventh Circuit classified a prison administrator's refusal to notarize a prisoner's legal papers as a "minor interference[]."\textsuperscript{106} And, a federal court in Missouri recently held that even though prisoners are denied access to notarial services altogether, that "[s]uch a limitation does not rise to the level of a constitutional violation."\textsuperscript{107} The common thread that runs through each of these decisions is that they seek to avoid, rather than enforce, the constitutional mandate of the Supreme Court's decision in \textit{Bounds}. At the same time, however, these cases provide little if any rational for their conclusions. But, the basis for such assertions presumably lies in the fact that these inmates lacked standing to challenge the alleged violation of their rights to access the courts, meaning that they failed to allege prejudice of some sort.\textsuperscript{108} Put another way, the prisoners failed to show actual injury, which is a prerequisite for establishing a \textit{Bounds} violation, or, for that matter, any alleged constitutional violation.\textsuperscript{109}

Doubtless there is room for healthy disagreement over when, if at all, a prisoner has sustained an injury of constitutional significance. In point of fact, in contrast to the non-injurious holdings above, at least one court has held that such an injury is estab-

\textsuperscript{103} Pyles v. Carlson, 698 F.2d 1131, 1132-33 (11th Cir. 1983).
\textsuperscript{104} Gardner v. Thomkins, 464 F.2d 1031, 1031-32 (5th Cir. 1972). One should not be misled into believing that because this case was decided prior to \textit{Bounds} that a prisoner's right to meaningfully access the courts was a new concept. Quite the contrary is true. As recognized in \textit{Bounds}, this right was established many years earlier in the case of \textit{Ex Parte Hull}, 312 U.S. 546 (1941), and then reaffirmed in \textit{Ross v. Moffitt}, 417 U.S. 600 (1974). See \textit{Bounds}, 430 U.S. at 821-23 (describing the evolution of this theory).
\textsuperscript{105} Gardner, 464 F.2d at 1032.
\textsuperscript{106} Martin v. Davies, 917 F.2d 336, 341 (7th Cir. 1990).
\textsuperscript{108} Martin, 917 F.2d at 341.
\textsuperscript{109} Lewis, 116 S. Ct. at 2179. "Insofar as the right vindicated in \textit{Bounds} is concerned, 'meaningful access to the courts is the touchstone,' and the inmate therefore must . . . demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim." \textit{Id.} at 2180.
lished when a prisoner is denied reasonably prompt notarial service.\textsuperscript{110} And, there is little doubt that if a prisoner is denied notarial services and is therefore unable to comply with a court filing deadline, then actual injury occurs.\textsuperscript{111} As noted by the Third Circuit, "[c]learly no greater harm than the inability to meet filing deadlines, potentially precluding litigation forever, is possible when the question of access to the courts is at issue."\textsuperscript{112} Furthermore, several courts and commentators have held that the total denial of notarial services for prisoners is an unconstitutional deprivation of inmates' rights of meaningful access to the courts and gives rise to a cause of action.\textsuperscript{113} Still, courts routinely dismiss prisoners' petitions for the failure to submit notarized documents even though the inmates submitting such documents may have had little or no control over whether or not they received notarial services.\textsuperscript{114} This phenomenon can be explained in part by the degree of deference that state institutions are given in the administration of their prisons. The Supreme Court recently described the standard this way: "[a] prison regulation impinging on inmates' constitutional rights 'is valid if it is reasonably related to legitimate penological interests.'\textsuperscript{115} In other words, prison regulations are subjected only to minimal scrutiny. Through former court opinions, we know that as a practical matter almost any penological interest is legitimate, and that any rational short of absurd will pass constitutional muster. For example, it is all right to deny notarial services to prisoners to protect a "female" notary, although it is unnecessary to have physical contact with prisoners to provide notarial services and even though the prison system certainly could obtain the services of a male notary.\textsuperscript{116} Similarly, it is acceptable to deny notarial services to prisoners to ensure the pro-

\textsuperscript{110} See Gluth v. Kangas, 773 F. Supp. 1309, 1321 (Ariz. 1988) (mandating notary service to be provided within 24 hours of request unless a legal deadline requires it sooner).

\textsuperscript{111} See supra notes 8, 10. But see State v. Collier, 918 S.W.2d 354, 356 (Mo. Ct. App. 1996) (affirming the lower court's post-conviction denial of a prisoner's petition for failure to meet filing deadline even though notarial services were required for filing but were not provided to the prisoner).

\textsuperscript{112} Valentine v. Beyer, 850 F.2d 951, 957 (3d Cir. 1988). Citing to Bounds, the court stated that, "stringent security measures are necessary to maintain a working and enforceable penal system. Also of paramount importance, however, must be the fact that the Supreme Court has emphatically reaffirmed the constitutional right of prisoners of meaningful access to the courts." Id. at 958.

\textsuperscript{113} See cases cited supra note 101.

\textsuperscript{114} See, e.g., Collier, 918 S.W.2d at 356 (refusing to consider inmate's late post-conviction motion even though the only reason for the delay was the mail collection schedule at the prison).

\textsuperscript{115} Lewis, 116 S. Ct. at 2185 (quoting Turner v. Safley, 482 U.S. 78, 89 (1987)).

tection of prison guards, even though guards are compensated, in part, for their job-related risks and remove prisoners from their cells everyday for many other reasons.\footnote{117} And, it is certain that the costs of obtaining a notarial commission is sometimes a partial basis for denying notarial services to prisoners, although notarial commission fees generally range between $15 and $30 in most states,\footnote{118} and even though the Supreme Court has held that “the cost of protecting a constitutional right cannot justify its total denial.”\footnote{119} If these cases seem to illustrate questionable legal justifications for withholding notarial services from inmates, they should. Nevertheless, penal institutions regularly deny notarial services to prisoners for just these reasons, and then prevail on appeal. The obvious question is why the prison administrators or, in particular, why the courts would condone such irrational justifications when to do so renders prisoners’ rights meaningless. In fact, permitting this behavior might be tantamount to disrespecting even the minimal scrutiny prong of constitutional analysis — if that is possible. Should not the basis for denying notarial services to prisoners be better tailored? Put another way, the justifications for denying notarial services to inmates must be more closely related to legitimate “penological interests” than the examples provided above if Bounds and its progeny are to serve as anything other than dusty old opinions void of significance and meaning.

V. POSSIBLE SOLUTIONS FOR PROVIDING NOTARIAL SERVICES IN STATE AND FEDERAL PRISONS

Institutions that fail to provide notarial services for prisoners regularly find themselves in court trying to defend their actions, and for good reason. Frankly, the rationale proffered by penal institutions for denying notarial services to inmates is insulting. But, it does not need to be this way. Both state and federal prisons have within their power the opportunity (and, the obligation) to give Bounds and its progeny substance, for the Supreme Court has made clear the rights and obligations involved. First of all, we know from the Court’s opinions in Bounds and Lewis that prisoners are entitled to notarial services for all documents (both personal and private) that relate to an inmate’s ability to meaningfully access the courts. Therefore, it is incumbent upon both state and federal prisons to institute an effective notarial service plan in their facilities. The easiest means of fulfilling this obligation is to simply designate that one or more employees (e.g. prison secretar-

\begin{itemize}
\item \footnote{117} See id. at 883 (stating that “notary services are not provided to the jail inmates for security reasons”); Valentine, 850 F.2d at 957-58 (noting the particular security concerns of the prison administration with providing notarial services to prisoners).
\item \footnote{118} Closen & Richards, supra note 6, at 720 n.99.
\end{itemize}
ies or prison librarians) obtain a notarial commission. After all, several other institutions already have such a procedure in place, and the costs of obtaining a commission ($15 to $30 on average) can hardly be considered cost prohibitive for a license which generally lasts about for years in duration.\textsuperscript{120}

Moreover, state prisons can alleviate much of the burden of providing notarial services by simply doing what the federal prison system and a few states have already done, that is, adopt self-authentication legislation.\textsuperscript{121} In fact, many, if not most, of the states that have implemented such legislation have adopted the federal statutory scheme (or its equivalent) as outlined in Section 1746. For example, California and the territory of Guam’s statutes mirror the language of the federal statute,\textsuperscript{122} while other states, such as Texas, have adopted an abbreviated version of the same language.\textsuperscript{123} But, California’s statute is representative of the lot. It provides:

(a) If executed within this state:

‘I certify (or declare) under penalty of perjury that the forgoing is true and correct:’

\begin{tabular}{c}
\hline
(Date & Place)(Signature) \\
\end{tabular}

(b) If executed at any place, within or without this state:

‘I certify (or declare) under penalty of perjury under the laws of the state of [name] that the forgoing is true and correct:’

\begin{tabular}{c}
\hline
(Date)(Signature) \textsuperscript{124} \\
\end{tabular}

This simple but significant provision has the effect of reducing the number of notarizations that notary-employees are required to perform, which, in turn, saves the institution time and money. Under penalty of perjury statutes already regulate administrative legal conduct in several states.\textsuperscript{125} So, it seems logical to extend this convenient alternative to prisoner petitions, particularly in light of

\textsuperscript{120} Closen & Richards, supra note 6, at 722.
\textsuperscript{121} See sources cited supra note 73.
\textsuperscript{122} CAL. CIV. PROC. CODE § 2015.5 (West 1997); 6 GUAM CODE ANN. § 4308 (1996).
\textsuperscript{123} TEX. CIV. PRAC. & REM. CODE ANN. § 132.001 (West 1997).
\textsuperscript{124} CAL. CIV. PROC. CODE § 2015.5.
\textsuperscript{125} See, e.g., Gompers v. Finnell, 616 N.E.2d 490, 493 n.3 (Mass. App. Ct. 1993) (discussing a state statute that authorizes agencies to submit, under penalty of perjury, documents that verify the authenticity of one’s medical bills and treatment records).
the aforementioned benefits, rights and obligations involved. Furthermore, states are undoubtedly spending more money defending actions arising out of the failure to provide notarial services than if they were to simply adopt self-authentication legislation. In light of all this, it makes little sense, and in fact is just plain silly, for the state and federal prisons of this country to continue seeking to avoid the legal rights of prisoners to obtain the services of notaries public. Denying a person of a constitutional right does not make the right go away; rather, it merely brings its loss to the attention of others.

VI. CONCLUSION

State and federal prisons have failed on two levels. Prison officials have denied inmates notarial services for reasons that, upon scrutiny, fail to make good sense. Such irrational thought needlessly hinders and, in some cases, completely forecloses prisoners' efforts to defend themselves against the charges or convictions levied against them or even contest the conditions of their confinement. At a more fundamental level, though, prison officials have deprived inmates of a basic constitutional right - that of meaningful access to the courts. Arguments such as those that began this article, which deny notarial services to prisoners because the notary is "female," or because other means for obtaining notarial services exist (such as from friends or relatives), is representative of the stereotypical and incorrect language that courts use to justify their conduct. But, no such language can mask the fact that these courts are doing violence to a right that is as fundamental as any other. This is because the United States Supreme Court did not distinguish between entitlements when it indisputably recognized that inmates must be provided at state expense with pen, paper, stamps and notarial services.126

Ironically, some of the means available for compliance are, and have been, available for some time. After all, Section 1746 has been around for over twenty years. That it or an alternative has not been uniformly adopted by states reflects the legislators' recalcitrance to examine head-on the problem of notarial access for prisoners. By exposing the frequency with which prisoners are unable to obtain notarial services, the prejudicial effect of such conduct, and the irrational justifications for denying these services, this article has attempted to motivate remedial state and federal action. The crux of our judicial system is recognizing and protecting fundamental liberty interests, not ignoring or avoiding them. As one judge recently noted, "[a] constitutional right incapable of being exercised is tantamount to no right at all; it is hol-

low indeed."\textsuperscript{127}

\textsuperscript{127} Goldsmith v. State, 651 A.2d 866, 891 (Md. 1995) (Bell J., dissenting).