

1996

Joseph M. Wisden v. Washington County : Brief of Appellee

Utah Court of Appeals

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Robert R. Wallace; Bruch M. Pritchett, Jr.; Hanson, Epperson and Smith; Attorneys for Appellee.
Joseph M. Wisden; Attorney for Appellant; Pro Per.

Recommended Citation

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IN THE UTAH COURT OF APPEALS

JOSEPH M. WISDEN,)	
)	CASE NO. 960021 CA
Petitioner/Appellant,)	
)	
vs.)	
)	
WASHINGTON COUNTY,)	Priority #15
)	
Respondent/Appellee.)	

On Appeal from the Fifth District Court
In and For Washington County, State of Utah
The Honorable G. Rand Beacham, Presiding
Judgment of Dismissal dated November 30, 1995

BRIEF OF RESPONDENT/APPELLEE

Robert R. Wallace, #3366
HANSON, EPPERSON & SMITH, P.C.
4 Triad Center, Suite 500
P.O. Box 2970
Salt Lake City, Utah 84110-2970
Tele: (801) 363-7611

ATTORNEYS FOR RESPONDENT/APPELLEE

Joseph M. Wisden
465 South Bluff Street, #160
St. George, Utah 84770
Tele: (801) 674-0378

ATTORNEY FOR PETITIONER/APPELLANT
PRO SE

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COURT OF APPEALS

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Joseph M. Wisden
465 South Bluff Street, #160
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ATTORNEY FOR PETITIONER/APPELLANT
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JURISDICTION

This Court lacks jurisdiction. See Point I, below.

STATEMENT OF ISSUES

Whether this Court has jurisdiction when a notice of appeal was filed late.

Whether under the Government Records Access and Management Act (GRAMA), a public agency is required to allow a party requesting records to physically enter secured parts of the agency's office and to remain there for extended periods of time reviewing massive volumes of records.

Whether an agency has an obligation under GRAMA to produce records without a request for specific, limited numbers of records as opposed to a wholesale request to review all records of a certain type.

Whether an agency has an obligation under GRAMA to produce entire volumes of copyrighted books, especially where such books are 1) catalogued, indexed and available in libraries, and 2) available for purchase in the open market.

Whether rights 1) to access to the Courts, 2) to self-representation, etc. require a public agency possessed of law books to allow access of private, non-prisoner citizens to enter the agency's secure offices for lengthy periods of time to review such books, where the citizen has personally waived his rights to be represented by an attorney.

STATUTORY PROVISIONS WHICH ARE DETERMINATIVE

Utah Code Annotated § 63-2-103(17):

"Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

Utah Code Annotated § 63-2-103(18)(b):

(b) "Record does not mean:

(iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;

Utah Code Annotated § 63-2-201(8)(a)(b):

(8)(a) A governmental entity is not required to create a record in response to a request.

(b) Upon request, a governmental entity shall provide a record in a particular format if:

(i) the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for its additional costs actually incurred in providing the record in the requested format.

Utah Code Annotated § 63-2-204(1):

(1) A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity.

STATEMENT OF THE CASE

This is an appeal from the lower Court's ruling that respondent County Attorney's Office was not obligated to allow appellant access to the County Attorney's secure offices to review law books kept there.

The respondent objects to appellant's Statement of the Case and Statement of Facts to the extent that they includes facts irrelevant to the proceedings at hand. See, e.g., the Statement of the Case, Course of Proceedings and Disposition in the Court Below, paras. 5, 6, 8, 11, 12, 13, 14, 15, parts of Exhibits 16 and 17, relating to such matters as notices to submit for decision, and 18. See also, Statement of Facts, paras. 5, 7, 8, the last sentence of paragraph 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 23, the last sentence of paragraph 25, the last sentence of paragraph 26, 27, last sentence of paragraph 29, 30, 37, and 38. Respondent further objects to the Statement of Facts to the extent that it constitutes argument. See, e.g., paragraphs 43, 47, 48, 49, and 50.

Respondent adds the following facts to appellant's paragraph 32. The additions are the names of the publishers of the various sets of books which appellant requested the County Attorney's Office to produce under the Government Records Access and Management Act (hereafter "GRAMA"), Utah Code Annotated §53-2-101, et. seq.:

A. The United States Code Annotated is published by West Publishing Company, St. Paul, Minnesota; copyrighted on various dates. (R. at 100, 105.)

B. The Pacific Reporter is published by West Publishing Company, St. Paul, Minnesota; copyrighted on various dates. (R. at 100, 107.)

C. The Pacific Reporter 2nd series is published by West Publishing Company, St. Paul, Minnesota; copyrighted on various dates. (R. at 100, 109.)

D. American Jurisprudence (Am. Jur.) is published by the Lawyers Cooperative Publishing Company, Rochester, New York; copyrighted on various dates. (R. at 101, 117.)

E. Corpus Juris Secundum is published by the American Law Book Company; copyrighted on various dates. (R. at 101, 119.)

F. Corpus Juris Secundum is published by West Publishing Company, St. Paul, Minnesota; copyrighted on various dates. (R. at 101, 121.)

G. American Law Reports, first series, is published by the Lawyers Cooperative Publishing Company, the Edward Thompson

Company and Bancroft-Whitney Company; copyrighted on various dates. Later series of the American Law Reports are published by different publishing companies and copyrighted on various dates, for example, the ALR 2nd, 3rd and 4th series are published by the Lawyers Cooperative Publishing Company, Rochester, New York and Bancroft-Whitney Company, San Francisco, California. (R. at 101, 123, 125, 127, 129.)

H. The Utah Law Review is published by the West Publishing Company and copyrighted by the Utah Law Review Society on various dates. (R. at 101, 133.)

I. West Federal Reporter is published by the West Publishing Company, St. Paul, Minnesota; copyrighted on various dates. (R. at 101, 135.)

Respondent accepts as true appellant's paragraph 32 of his State of Facts and emphasizes from that paragraph that the appellant requested the County Attorney's Office to produce all volumes of all the above-mentioned series of books.

The respondent submits the following additional facts:

1. The law library at issue is centrally located in the Washington County Attorney's Office and is directly connected to the offices of several personnel, including Deputy County Attorneys. (R. at 38-42, para. 4.)

2. In order to obtain access to the law library, one must either pass by or through the offices of the County Attorney's

Office personnel, and by or through a main filing room. Both the County Attorney's Offices and the filing room contain confidential files relating to prosecutions and other serious matters handled by the County Attorney's Office. (R. at 38-42, para. 5.)

3. From the Washington County Attorney's law library one may readily observe and overhear the confidential conversations of office personnel, and may readily access other areas of the County Attorney's Office containing confidential information. (R. at 38-42, para. 6.)

4. The Washington County Attorney's Office is neither staffed nor equipped to handle public library services or to provide the requisite security measures to prevent harm to both property and personnel in the Washington County Attorney's Office; an attempt to provide such services would substantially interfere with the responsibilities of the Washington County Attorney's Office. (R. at 38-42, para. 7.)

SUMMARY OF ARGUMENT

This appeal was filed late, therefore, this Court lacks jurisdiction.

The Government Records Access and Management Act (GRAMA) does not require a public agency which deals in sensitive matters to allow its secure offices to be entered by the public for the public's review, for lengthy periods of time, of law books housed

there. That is especially true where the books are not agency records but are copyrighted materials, and which are 1) catalogued, indexed and available in public libraries, and 2) available by purchase on the open market. Such works are not records of the agency subject to GRAMA.

GRAMA also does not require agencies to produce massive volumes of general records, but only requires the production of records pursuant to specific, limited requests for production.

When a person chooses to represent himself in litigation, he necessarily forgoes some rights which may include availability of law books. Both this Court and federal courts hold that even prisoners, who are recognized as having perhaps the greatest need for law books, waive that right when they voluntarily choose to represent themselves.

The County Attorney's Office has no duty to maintain and allow access in their secure offices to a law library for the benefit of non-prisoners who choose to represent themselves in litigation.

Appellant has no right to access the County Attorney's secure offices, and seeks only a more convenient source of generally publicly available materials.

ARGUMENT

POINT I

APPELLANT'S APPEAL IS UNTIMELY AND THIS COURT DOES NOT HAVE JURISDICTION.

The order from which the Appellant appeals was entered November 30, 1995 (R. at 147-152; Appellant's Statement of Case, para. 19). Appellant filed his Notice of Appeal on Wednesday, January 3, 1996. Being filed on Wednesday, January 3, it was untimely and this Court does not have jurisdiction. Debry v. Fidelity National Title Ins. Co., 828 P.2d 520 (Utah App. 1992); State v. Sampson, 806 P.2d 233, 234 (Utah App. 1991); Madsen v. Borthick, 769 P.2d 245, 250 (Utah 1988); Armstrong Rubber Co. v. Bastian, 657 P.2d 1346, 1348 (Utah 1983).

Although jurisdiction can be raised at any time, respondent timely objected. See Objection to Notice of Appeal filed in the Court below. (R. at 156-157.)

No motion for extension of time to file Notice of Appeal was ever made under Utah Rule of Appellate Procedure 4(e).

POINT II

GRAMA DOES NOT REQUIRE A PUBLIC AGENCY TO ALLOW ACCESS TO THE PUBLIC OFFICE IN ORDER TO COMPLY WITH GRAMA REQUESTS.

The Governmental Records Access and Management Act (hereafter "GRAMA"), Utah Code Ann. § 63-2-101 et seq., requires a governmental agency, upon a specific request of a private

citizen, to produce certain records requested by that private citizen. Utah Code Ann. §§ 63-2-201, 204. Nowhere does GRAMA require the governmental agency to allow the private citizen access into the corridors, halls, rooms or offices of the governmental agency.

Appellant claims that GRAMA was violated, not because the County Attorney failed to give him copies of reasonably limited, specific records he requested, but because he was denied general access into the physical facilities of the County Attorney's Office, behind locked doors and partitions in that office. See, e.g., Appellant's Statement of Facts paragraphs 1, 3, 11, 21, 22, 24, 28, and 29, wherein appellant alleges that he "attempted to gain access to the law library at the Washington County Attorney's Office," (emphasis added), or alleges the equivalent of that statement concerning gaining access.

Appellant admits that a partition exists with a locked door blocking access to the library within the County Attorney's Office. See, Appellant's Facts at para. 2, 4, and 22.

The law library at the Washington County Attorney's Office is centrally located within the office. See, Facts, above, para. 1. It is directly connected to offices of several personnel in the County Attorney's Office, including Deputy County Attorneys. See Facts, above, paras. 2-3. In addition, in order to get to the library, one must pass by or through offices of personnel of the Washington County Attorney's Office or a main filing room

where confidential information and files are held concerning prosecutions and other serious matters being handled by the County Attorney's Office. See, Facts, above, paras. 2-3.

From the law library one may easily overhear the conversations of a confidential nature among office staff in the County Attorney's Office. See, Facts, above, para. 3.

Nothing in GRAMA requires a governmental agency to compromise its own security and allow private parties to enter areas where they can access confidential files, overhear confidential communications, assault personnel, etc.

Access to the general public would create serious interference with the agency and its function. See Facts, above, paras. 3-4. There are two strong safety concerns: life and property. From the library there is easy, quick access to nearby confidential files relating to serious prosecutions and to other offices of County Attorneys. Id. Tampering of files, witness statements, and evidence could occur without constant surveillance of the library if members of the general public are allowed access.

Because the County Attorney's Office prosecutes major crime, safety of personnel is also a concern. Frisking or searching members of the general public or installing equipment to check for weapons would also be an interference with personnel and public funds, but may be necessary if the courts force the respondent to allow the general public into the office with easy

access to the agency's personnel. Besides security concerns for confidential information and personnel, the following are also examples of general interference if the general public is allowed access to the library:

1. Personnel being interrupted by those desiring access or entrance;

2. Personnel wasting time to oversee the public in the library to protect from vandalism;

3. Personnel being interrupted with questions from lay people about location of books, how to do legal research, etc.;

4. Personnel being disrupted checking carrying cases of those leaving to ensure materials are not removed.

5. Personnel being disrupted to keep order, if necessary, (e.g. if young people have access for school projects);

6. Personnel being disrupted, if immediate copies are allowed, for making copies or overseeing copying, keeping track of payments, giving receipts for payments, reconciling accounts relating to payments, obtaining and making change for payment, etc.

Because such problems could exist with the opening of an agency's office doors to the general public, the Legislature was well justified in not requiring access into an agency's offices. No such requirement exists. Utah Code Ann. § 63-2-201 recognizes the competing interests between interference with an agency's duties and functions in requiring production of records

in a specific format only where there will be no such interference:

(8)(a) A governmental entity is not required to create a record in response to a request.

(b) Upon request, a governmental entity shall provide a record in a particular format if:

(i) the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for its additional costs actually incurred in providing the record in the requested format.

Utah Code Ann. § 63-2-201(8)(a)(b).

POINT III

APPELLANT DID NOT REQUEST SPECIFIC DOCUMENTS FOR THE GOVERNMENTAL ENTITY INVOLVED TO PRODUCE, BUT SOUGHT MASSIVE SETS OF VOLUMES WHICH INCLUDED BASICALLY THE ENTIRE LIBRARY.

Utah Code Annotated requires a specific narrow request for records from the requestor prior to an obligation to produce records:

(1) A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity.

Utah Code Ann. § 63-2-204(1) (emphasis added).

Specific requirements apply when the number of pages requested exceeds 50 pages of record. Utah Code Ann. § 63-2-201(9).

The right to inspect public records is subject to the reasonable specificity requirement of § 63-2-204. See Utah Code Ann. § 63-2-201(1) ("every person has the right . . . subject to §§ 63-2-203 and 63-2-204.")

Appellant admits that his GRAMA request was not reasonably specific, as required under GRAMA. He admits he requested the County Attorney's Office to produce all pages of all volumes of the following massive collections of books including: "United States Code; Pacific Reporter, all volumes; Pacific Reporter 2d, volumes 1 through the present; Pacific Reporter Digest, 1st, 2nd and 3rd editions; American Jurisprudence, all volumes; Words and Phrases, all volumes; Corpus Juris Secundum, all volumes; American Law Review, 1st, 2nd, 3rd, 4th and federal editions, all volumes; Utah Law Review, all volumes; Federal Reports, all volumes; U.S. Reports, Lawyers Edition, all volumes; Black's Law Dictionary; and any other reference material, book, or periodical being maintained in the law library or any attorneys' offices housed in the Washington County Attorney's Office at the above address." See, Appellant's Facts para. 32.

In order to satisfy the GRAMA request of appellant, the Washington County Attorney's Office would have to copy an entire library and provide it to the appellant, or allow wholesale

copying of copyrighted books (see Point IV, below) under Utah Code Ann. § 63-2-201 (9). Appellant's petition does not allege that he identified any specific documents or portions of records during his in-person visits to the County Attorney's reception area, nor in his written GRAMA request.

The sheer volume of material which appellant requested, without his specifying in any manner with respect to the portions of the public records which may have reference to him or his cases, on its face makes his request unreasonable, and beyond the scope of GRAMA. See, also, Point IV, below.

GRAMA contemplates that after a GRAMA request is made, the governmental entity to whom the request is made shall have five to ten days to respond by producing the materials requested or denying the request. Utah Code Ann. § 63-2-204(3). Producing the materials requested would be an extreme impracticality, if not impossibility, if not illegal under copyright laws. See Point IV, below.

POINT IV

THE BOOKS AT ISSUE FROM THE COUNTY ATTORNEY'S LIBRARY ARE NOT "RECORDS" UNDER GRAMA SUBJECT TO PRODUCTION TO THE PUBLIC, BECAUSE THEY ARE COPYRIGHTED BOOKS.

1. Copyrighted Materials Are Not "Records" Under GRAMA.

GRAMA does not require production and copying of copyrighted materials. This makes good sense, since a legislative mandate to allow production and copying of copyrighted materials might

affect copyright rights. Thus, copyrighted materials are specifically excluded from the definition of "record":

(b) "Record" does not mean:
. . .

(iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision.

Utah Code Ann. § 63-2-103(18)(b)(iii) (emphasis added). The whole point of GRAMA is to allow access to government records. However, books authored or compiled by private entities are protected by copyright as authorized by the United States Constitution and federal law. They are not government records. If one wants them, one must buy them or otherwise lawfully use them.

2. Copyrighted Materials Are Also Protected From Disclosure By The United States Constitution And Federal Copyright Law.

The Constitution of the United States specifically allows for copyright protection. It provides:

Section. 8. The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; . . .

U.S. Const. Art. I § 8, Clause 8.

Congress has passed copyright laws, which protect compilations, including compilations of cases and statutes. Copyright protection subsists in original works of authorship fixed in any tangible medium of expression. 17 U.S.C.A. §

102(a). The copyright protection specified by Section 102 "includes compilations." 17 U.S.C.A. § 103(a). A "compilation" is defined as "a work formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated, or arranged . . ." 17 U.S.C.A. § 101.

The United States Supreme Court has specifically held that case reporters are subject to copyright protection. Callaghan v. Meyers, 128 U.S. 617, 32 L. Ed. 547, 9 S. Ct. 177 (1888). The Court held that the order of arranging cases, the division of law reports into volumes, and the numbering and paging of those volumes, is the lawful subject of copyright:

Such work of the reporter, which may be the lawful subject of copyright, comprehends . . . the order of arrangement of the cases, the division of the reports into volumes, the numbering and paging of the volumes, the table of the cases cited in the opinions, (where such table is made) and the subdivision of the index into appropriate, condensed titles, involving the distribution of the subjects of the various head-notes, and cross-references, where such exist.

Callaghan, 128 U.S. at 649, 9 S.Ct. at 185 (emphasis added). The landmark case of West Publishing Co. v. Mead Data Central, Inc., 799 F.2d 1219 (8th Cir. 1986) recently reaffirmed the right of a law book publisher to copyright its case reporters. And, of course, other works such as commentaries are copyright protected.

In short, case reporters, legal indexes, and other legal compilations are subject to copyright protection, a right conferred by the U.S. Constitution.

3. All Books Which Appellant Specifically Requested in his Petition Are in Fact Copyrighted.

The twelve massive sets of books which appellant requested (see Appellant's Br., Facts, para. 32) are all copyrighted. See Facts, above, paras. A-J. Each work and its copyright holder are listed above. Id. The Record at 105-137 shows the copyright page of a representative volume in each set. See also, Facts, above, paras. A-J.

Moreover, in general terms, West Publishing Company has already demonstrated to the Courts that, upon completion of each volume, it registers a copyright claim with the Registrar of Copyrights. West Publishing v. Mead, 799 F.2d at 1222.

Because the books which plaintiff seeks to be produced are copyrighted, GRAMA does not require their production.

POINT V

THE BOOKS AT ISSUE FROM THE COUNTY ATTORNEY'S LIBRARY ARE NOT "RECORDS" UNDER GRAMA SUBJECT TO PRODUCTION TO THE PUBLIC, BECAUSE THEY ARE BOOKS WHICH ARE CATALOGUED, INDEXED AND AVAILABLE IN COLLECTIONS OF LIBRARIES WHICH ARE OPEN TO THE PUBLIC.

GRAMA is designed to make certain "records" of governmental agencies open to the public. The Act specifically excludes certain books available in libraries from the definition of "records" of governmental entities:

`[R]ecord' does not mean: . . .

(vi) Books and other materials that are cata-
logued, indexed or inventoried and contained
in the collections of libraries open to the
public, regardless of physical form or char-
acteristics of the material; . . ."

Utah Code Ann. § 63-2-103(18)(b)(vi)(hereafter "subsection (vi))
(emphasis added).

All of the types of documents which GRAMA declares are not
records are not subject to GRAMA, and an agency need not produce
them. An agency can keep books closed to the general public as
long as they are in collections of libraries open to the public
somewhere.

Therefore, Subsection (vi) of Utah Code Ann. § 63-2-
103(18)(b) applies to books such as those in the County
Attorney's Office, and allows them to remain closed to the
general public, as long as they exist in public libraries.

The books which appellant seeks to use are books catalogued
and indexed in collections of libraries open to the public,
including libraries at Brigham Young University, the State
Capitol, and the University of Utah.

In addition, the Dixie College library, the Washington
County Public Library, and the Southern Utah University Library,
have the Utah Code annotated, with excerpts of relevant Utah
cases; Black's Law Dictionary; the U.S. Code; some Supreme Court
cases; and some legislative reports. (R. at 35-38.)

One might try to argue from the definition quoted under subsect. (vi), above, that the books which are defined as not being records under GRAMA, are only those particular volumes themselves which are physically located in the libraries which are open to the public, and not other volumes of the same books which are housed in government offices. Such an interpretation does not comport with the rules of statutory construction, nor with the purpose and intent of GRAMA.

A basic principle of interpreting a statute is to read an act and related statutes as a whole, and harmonize and give meaning to all provisions. See, for example, Beynon v. St. George-Dixie Lodge No. 1743, 854 P.2d 513, 518 (Utah 1993); Jensen v. IHC, 679 P.2d 903, 906-07 (Utah 1984).

Under GRAMA generally, if something is a public record (except under certain circumstances), requests for inspection and copies may be made. Utah Code Ann. § 63-2-201. By defining certain books as not being records under GRAMA, the act is stating that such books do not fall within the act, and are, therefore, not open to the public even if in a governmental agency's possession. Utah Code Ann. § 63-2-201, above.

Those books which GRAMA excludes as not being "records," and therefore not open to the public, would not be the particular volumes of those books held in the libraries because those volumes are already open to the public. GRAMA must be referring to other copies of the books which are available in public

libraries, which other copies are kept by governmental agencies for their own purposes.

In statutory interpretation, meaning and effect should be given to all statutes. Versluis v. Guarantee Nat'l. Cos., 842 P.2d 865, 867 (Utah 1992). Because books in public libraries are already open to the public for inspection and copying, it would be unnecessary and meaningless to even mention them in GRAMA. Such books don't need to be included in GRAMA to make them accessible because they are already. Thus, the above-quoted subsection (vi) would be superfluous and of no effect if it pertains to specific books already in libraries. Therefore, the exclusion of such books from GRAMA, and a declaration that they don't need to be produced, must apply to copies thereof in the possession of agencies of government to give any meaning or effect. See also, Point VI, below, for policy reasons for the restriction.

POINT VI

APPELLANT DOES NOT SEEK A RIGHT BUT MERE CONVENIENCE.

As indicated above, equivalent books are available in public libraries, even though some are possibly three or four hours from appellant's residence. Thus, appellant does not argue that books are unavailable, just not conveniently located. He seeks not a right, but mere added convenience.

POINT VII

APPELLANT'S POSITION WOULD CREATE A DUTY ON THE PART OF THE WASHINGTON COUNTY ATTORNEY'S OFFICE TO PROVIDE AND MAINTAIN A LIBRARY FOR THE GENERAL BENEFIT AND CONVENIENCE OF THE PUBLIC, A DUTY NOT EVEN RECOGNIZED TO PRISONERS.

In prisoner cases, a base right to access to legal materials or assistance is recognized. Prisoners may be provided law books, or they may be provided an alternative, such as legal counsel to consult with. See federal cases mentioned below. If legal assistance is available, the prisoner does not have a right of access to law books.

No right of non-prisoners to access to law books has been found after diligent research. Even if such a right existed, the appellant has access to alternatives to books, such as to lawyers, to books in public libraries, etc., therefore he would not have a right to the County Attorney's books.

If appellant chooses not to use a lawyer, he may need to suffer some of the inconvenience he desires to avoid by this suit. In State v. Drobek, 815 P.2d 724 (Utah App. 1991), cert. denied, 836 P.2d 1383 (Utah 1991), this Court recognized that even in the case of a prisoner who decides to represent himself, he may have to suffer the consequences of his decision, including limitations on access to legal research material:

The choice to represent oneself does not automatically give defendant access to research resources enjoyed by professional counsel. (Citations omitted). A pro se crim-

inal defendant relinquishes many of the traditional benefits associated with the right to counsel. Besides the wisdom, training, and experience of professional counsel, the benefits relinquished necessarily will include full access to legal materials, when the defendant remains in custody pending trial.

Id. at 736.

The court continued:

Because a choice to represent oneself amounts, in effect, to a choice to proceed to trial at a severe disadvantage, we agree that the "hard reality" of that choice includes both one's own ignorance of the law and the likelihood that independent legal research opportunities will be limited. (Citations omitted.) Drobek, having voluntarily, knowingly, and intelligently made his choice, must accept the hard realities entailed in it.

Id. at 736 (emphasis added). No one needed to provide Drobek legal books, even though he was, as a prisoner, vastly more restricted than Appellant in travel and access to libraries:

. . . and it appears that he [Drobek] expected some form of unrestricted . . . legal research rights by virtue of his pro se status. Such rights, however, are not part of the right of self-representation.

Id. at 736 (emphasis added).

Federal courts have been no more sympathetic than this Court to prisoners who forego means available to them and choose to represent themselves. In U.S. v. Sammons, 918 F.2d 592 (6th Cir. 1990), the court held that the "Defendant waived his right to

access to law library by waiving his right to counsel." Id. at 602.

In U.S. v. Smith, 907 F.2d 42 (6th Cir. 1990), the court stated that a defendant who voluntarily waives his right to counsel as well as standby counsel is not entitled to access to a law library to secure his rights to due process and access to the courts, nor may he complain about the resultant quality of his own defense by arguing that it amounted to ineffective assistance of counsel.

See also, U.S. v. Knox, 950 F.2d 516 (8th Cir. 1991), wherein the court stated that the due process rights of pro se drug defendant were not violated due to denial of access to law library.

If the appellant in a civil case also chooses to represent himself, and chooses not to use public libraries available to him, he may have to suffer the same consequent disabilities which the courts say even a prisoner must endure, who does not have access to public libraries. At least Appellant should have no more rights than a prisoner.

If Appellant's position is given credence, this Court would have to find a duty on the part of the County Attorney to maintain and provide a library to Appellant where no such duty is recognized at law, not even to prisoners with travel restrictions which the Appellant does not have.

CONCLUSION

Appellant's appeal should be dismissed for lack of jurisdiction, or the decision of the court below affirmed.

DATED this 22nd day of May, 1996.

HANSON, EPPERSON & SMITH



ROBERT R. WALLACE
ATTORNEY FOR WASHINGTON COUNTY

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing BRIEF OF RESPONDENT/APPELLEE was mailed, postage prepaid, this 22nd day of May, 1996, to the following:

Joseph M. Wisden
Attorney for Appellant, Pro Se
465 So. Bluff Street, #160
St. George, Utah 84770

