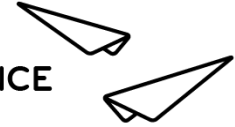


**PRISONER
CORRESPONDENCE
PROJECT**



In your hands you hold a copy of the first four chapters of the Jailhouse Lawyer’s Manual. It is published and updated by members of the Columbia Human Rights Law Review in New York City and it is intended to help prisoners understand the law. It is intended to serve as information and is not as advice or representation.

The full manual is approximately 1077 pages. We cannot send the full manual to everyone, however, we’re happy to send you any chapters you request that you think would be relevant for you. If you need the full manual, we can look into ordering a copy for your prison library.

You can also order a copy for yourself by sending a cheque or money order for \$30 to:

Columbia Human Rights Law Review, Attn: JLM Order,
435 W. 116th St.,
New York, NY 10027.

The Immigration and Consular Supplement is an Additional \$5.

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Immigration and Consular Access Supplement

CHAPTER 1

HOW TO USE THE *JLM*

A. General Comments

If you have been convicted of a crime and sentenced to prison, *A Jailhouse Lawyer's Manual* (the "*JLM*") is for you. It contains information about challenging your conviction or your sentence, what your rights are while you are in prison, and different ways to obtain an early release from prison. If your first language is Spanish, there is also a Spanish version of the *JLM*, which is a translation of the English *JLM*.¹

The *JLM* contains thirty-six Chapters. You should begin by reading Chapters 2, 5, and 6. These Chapters teach you the basics of understanding and using legal materials. You can also look in the Table of Contents for the subject or subjects that are related to your concerns.

The Appendices at the end of the *JLM* are also important. Appendices I and II contain the addresses of the federal courts and state courts in New York. Appendix III is a list of addresses for District Attorneys' offices in New York. Appendix IV contains a list of several organizations that help prisoners. Appendix V contains a dictionary of legal terms used in the *JLM*.

There are also supplements to *JLM*. There is an immigration supplement in both English and Spanish, which will give you information on how to handle any immigration-related legal problems you might have. State-specific supplements for Texas, California, and Louisiana are currently being written. For more information about these state supplements, refer to Chapter 1, Part D.

The entire *JLM*, appendices, and supplements are available online at <http://www3.law.columbia.edu/hrlr/jlm/toc/>. There is also the option of having certain chapters printed and mailed to you.

The *JLM* discusses only those areas of law that relate to prisoners' rights. To learn about the law relating to other matters—such as automobile accidents or apartment leases—you will need to look elsewhere. Chapter 2, "Introduction to Legal Research," explains how to research these and other areas of law in your prison law library.

Similarly, although the *JLM* explains the procedures you can use to attack your conviction, it does not explain many other areas of the law, such as the constitutional limits on the power of the police to search you, seize evidence from you, or arrest you. The *JLM* does not describe the limits on a grand jury's power to indict you, the limits on what the prosecutor can say to the jury, or the questions he cannot ask witnesses or defendants during the trial. If you have been convicted of a crime, these are areas of law that you will probably need to know more about to determine whether your conviction was lawful. The most important rules in these areas of the law derive from the Fourth, Fifth, and Sixth Amendments of the U.S. Constitution, and court rulings declaring what these amendments mean in relation to cases like your own. The best way to learn about Fourth, Fifth, and Sixth Amendment issues is to research them in the library using the skills you will learn by reading Chapter 2 of the *JLM*.

In general, it is always a good idea to seek the help of a lawyer in pursuing any legal action. But it is often not possible to get professional legal help—at least at first. If you do not have a lawyer, the *JLM* can help you initiate a legal action on your own or show you how to get a lawyer interested in your case. Even if you have a lawyer, the *JLM* will be helpful because no one is more concerned about your rights and needs than you. If you know what your lawyer should be doing, what papers he or she should be filing, and what questions he or she should be asking, you will be better able to actively participate in your case. You might even be able to help your lawyer with some of the work. Remember: there are very strict deadlines in criminal appeals and most other actions. Learn these deadlines and make sure your lawyer files all necessary papers on time.

Two final suggestions about using the *JLM*: use it cautiously and share it. *Use it cautiously* because it may contain statements that are out-of-date by the time you read them and because it may take years of litigation before you can vindicate your rights in court. To make sure that a statement, statute, or holding is not out-of-date, follow the steps described in Chapter 2, which explain "Shepard's" and "pocket-parts." Never

¹ You can request a copy of the Spanish version of the *JLM* by writing to Columbia Human Rights Law Review, 435 West 116th Street, New York, NY 10027.

forget that an incorrect or weak legal argument may waste a valuable opportunity to challenge a violation of your rights.

Share the JLM because there are not enough to go around and because you will benefit from others' understanding and assertion of their rights. One prisoner's victory in court may bring about changes in prison conditions that will improve life for all prisoners, including you.

B. How to Use the *JLM* to Learn About the Law

If you are not a jailhouse lawyer and you want to learn the basic tools of the jailhouse lawyer, begin by reading Chapter 2, "Introduction to Legal Research." If at all possible, read Chapter 2 in the law library and look at each book the Chapter mentions. Do not expect to understand all of Chapter 2 the first time you read it. It often takes law students many months before they understand how all of the different research tools work. The key to learning how to do legal research is practice.

The next step is to read Chapter 6, which introduces you to basic legal papers and to the most common types of legal proceedings. After you have read Chapters 2 and 6, you will be able to understand how the research for the memorandum in Chapter 6 was done and why the memorandum was written. From this point on, it is simply a question of improving your skills and becoming more familiar with the law. The best way to do this is to read the rest of the *JLM*.

If you come across a word in the *JLM* that you do not understand, refer to Appendix V. If the word is not explained there, use the legal dictionary in your prison's law library.

If you already know how to do legal research but have a specific problem, look at the Table of Contents to see which sections may apply to your problem. If you need to determine your rights in an area covered by the *JLM*, like religious freedom or temporary release programs, read the appropriate Chapter and then *confirm what it states through research in the library*. This is done by finding the part(s) of the Chapter discussing your problem and then writing down the cases or statutes that are cited in the footnotes. If these authorities are cases, read the cases and then Shepardize them; if they are statutes, find the statutes, check their pocket-parts to make sure that they have not been repealed or amended, and then look at the "notes of decisions" in the pocket-parts to see if they have been recently interpreted by the courts. Although terms like "Shepardize" and "notes of decisions" may seem strange to you right now, Chapter 2 will explain them. You should make sure to read all the Chapters that might contain information on any part of your case.

You should read Chapter 5 if you have a serious problem and you think you require relief (help) from a court. This Chapter directs you to other Chapters that explain the kinds of legal proceedings you can use. Again, verify and update anything cited in the *JLM* that you plan to use in your case. Outdated and incorrect cases or statutes will jeopardize your chances of winning or may delay the process.

If no Chapter in the *JLM* discusses your problem, you will have to start from the beginning, using the legal research skills that you will learn by reading Chapter 2. It is also possible that one of the Chapters in the *JLM* discusses a similar problem. If this is the case, it may be helpful to start your research by reading some of the cases or statutes cited in that Chapter.

C. How to Use the *JLM* When Filing a Lawsuit

Once you have decided that your rights have been violated or that you have a valid claim and you want to go to court, you should turn to the sample legal papers in Chapters 9, 16, and 17 (and Chapters 10, 20, and 22 for New York State Prisoners). Each of these Chapters discusses a different kind of lawsuit and provides examples of the legal papers that you must send to the court in order to initiate the suit. These legal papers are called "forms" because you can use the basic language provided in the sample form and fill in the blanks with the facts that apply to your case. For example, Chapter 9, "Appealing Your Conviction or Sentence," contains the types of papers you will need to start a criminal appeal.

It is important that you do not tear these sample legal papers out of the *JLM* and do not copy them word for word. If you tear them out and try to send them to a court, or if you simply copy them and then send your copy to a court, the court will either throw them out or send them back to you. Before using these forms, you should read the first part of the Chapter that discusses how to use them. Then follow the footnotes contained in each legal paper, which will tell you exactly how to prepare your own version.

After you have written your version of the legal papers, you must make copies of what you have written. Each Chapter tells you how many copies you will have to make. Then you will have to mail the original form plus several copies to a court. Appendices I and II tell you which court you should send the papers to. You may also have to send copies to the District Attorney. Appendix III contains the mailing addresses of all of

the District Attorneys in New York. Most prisons have photocopying machines. If your prison does not, you can copy your papers by retyping or rewriting them.

Chapters 4 and 9 also explain how to request a court-appointed lawyer to pursue your case. When you make this request—by filing “poor person’s” or *in forma pauperis* papers—you can also ask the court to assume the responsibility for “serving” all of your papers on your opponents and to allow you to proceed without paying court fees up front. Under the Prison Litigation Reform Act (“PLRA”), prisoners may be required to pay court-filing fees in full. The full cost of the fees will be deducted gradually from your prison account. For a fuller discussion of the PLRA and how it affects your rights, read Chapter 14 of the *JLM*, “The Prison Litigation Reform Act.”

D. How to Use the *JLM* if You Are Not Imprisoned in New York State

Many of the Chapters in the *JLM* discuss the law as it exists in New York State. If you are not a prisoner in the state of New York, these laws do not apply to you. You must find out what laws and regulations your state or municipality has issued. Similarly, cases decided by New York state courts that are described in the *JLM* do not apply directly to non-New York state prisoners.

If you are unable to find materials dealing with the laws and regulations of your state in the *JLM*, do not be discouraged. The *JLM* is valuable for prisoners outside of New York for several reasons. First, many of the Chapters discuss laws that affect prisoners outside of New York. Several Chapters have parts on, or are entirely focused on, the law of states other than New York, like Chapter 21, “State Habeas Corpus: Florida, New York, and Michigan.” In addition to Chapters in the *JLM* that address state law outside of New York, you may find information on the laws and regulations affecting you in the State Supplements. Currently, State Supplements are being written for prisoners in Texas, California, and Louisiana state prisons, with plans to write supplements for other states in the coming years. If you are a state prisoner in Texas, California, or Louisiana, these supplemental books will provide you with information on the state laws and regulations affecting your rights, especially when they are different from the laws discussed in the main *JLM*. The *JLM* is also valuable for prisoners outside of New York, Texas, California, and Louisiana for two other reasons. First, as you will learn in Chapter 2, decisions by the United States Supreme Court discussed in the *JLM* apply to all prisoners throughout the nation. Second, by reading the Chapters in the *JLM* you will learn how to effectively research the laws of your own state. Chapter 2 gives you the skills to become an excellent jailhouse lawyer no matter what state law applies to you.

Although this book does not always present you with the exact answer you need, it teaches you how to get the answer on your own. Wherever you are imprisoned, you can use your new skills to protect your rights and advance your interests. A careful reading of the Chapters that relate to your problem will allow you to think like a lawyer and to analyze your problem from a legal perspective. Knowing how to think this way is very important because what matters most is knowing what remedies you are entitled to, and not what remedies you think are best.

CHAPTER 2

INTRODUCTION TO LEGAL RESEARCH*

A. Introduction

To be an effective “jailhouse lawyer,” you must understand both how the judicial system is organized, and how to find and use the law so that you can work within that system. This Chapter will first explain the structure of the courts that make up the judicial system. Then this Chapter will discuss how you can research the law in your prison library. Legal research is important in helping you understand your legal rights, so that you can present your position to a court clearly and effectively.

Before you research the law, you will need to know the powers and functions of the court where you will make your argument. Different types of courts have different powers, and hear different types of arguments. For example, the argument you make in a trial court may not be appropriate in an appellate court. Part B of this Chapter describes how the judicial system is organized and will help you understand the different powers that courts have at each level of the system. Part C explains basic legal research and provides an outline for how to develop legal arguments. Part D provides the general rules for how to cite cases and statutes (laws passed by a state legislature or Congress) in documents that you submit to a court. Part E suggests next steps you should take after you complete your legal research, such as double-checking that all your cases are up-to-date and have not been overruled.

B. An Overview of the Court System

In order to move your case successfully through the judicial system, you need to understand the system’s basic structure. Some courts will only hear cases that have to do with a certain subject matter. Other courts will only hear specific types of legal proceedings (such as an appeal), or will only hear cases from a certain geographic area. So before you file a case, you have to make sure that you are filing it with the correct court. Courts are responsible for determining what a law means. There are two types of law: law created by a legislature, and law created by judges in a court. Understanding this basic structure will help you be an effective jailhouse lawyer.

1. The Court System

The American judicial system is made up of two types of courts: trial courts and appellate courts. In trial courts, lawyers put evidence before a judge or jury who will decide the outcome of the dispute. “Criminal trials” determine the guilt or innocence of the accused, while “civil cases” determine whether the defendant is “liable” (responsible for harms or wrongs) to the plaintiff. In civil cases, one party sues another party for a “remedy,” usually money. “Appellate courts” review the legal conclusions of trial courts for errors. If the appellate court finds legal errors, it may order a new trial. The major difference between trial and appellate courts is that the trial courts decide issues of fact (did person A hit person B with a baseball bat?), while appellate courts generally will only check to make sure that the trial court correctly applied the law to the facts that the trial court found (if person A did hit person B, was it an assault as defined by the law?). Appellate courts will rarely interfere with the facts that have been found by the trial court. (If the trial court decided person A did hit person B, the appellate court will generally accept that as true.) Appellate courts will normally only consider arguments about the law, and not about the facts.¹

* This Chapter was revised by Susan Maples based on previous versions by Kristin Heavey, Jennifer Parkinson, Paul Quinlan, William H. Knight, Andrew Cameron, and Patricia A. Sheehan.

1. Normally, appellate courts will overturn factual findings of a trial court only if the findings were “clearly erroneous.” “A fact finding is clearly erroneous only when ‘although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’” Catharine M. Goodwin, Jay E. Grenig & Nathan A. Fishbach, *Federal Criminal Restitution* § 13:4 (2012); *see also* Speedy Trial, 35 *Geo. L.J. Ann. Rev. Crim. Proc.* 360 (“Most courts adopt . . . a clearly erroneous standard of review for questions of fact.”).

Most states and the federal system have two levels of appellate courts. The “intermediate” appellate court² is often called the Court of Appeals in the state system and the Circuit Court of Appeals in the federal system. The higher level of appeal, normally the “court of last resort,” is often called the Supreme Court. If you are a criminal defendant, then you usually have an automatic right to appeal your conviction or sentence to the intermediate appellate court.³ You can only appeal to a higher appellate court if that court agrees to hear your case. Usually, higher appellate courts only grant appeals to cases that raise new legal issues. The typical court structure is shown below in Figure 1.

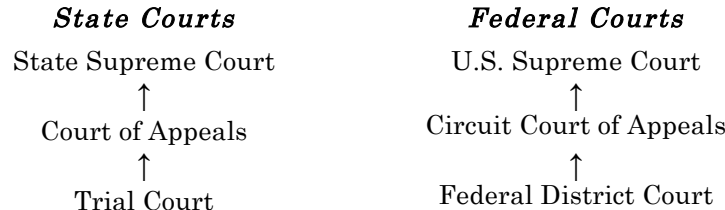


Figure 1: Typical Organization of State and Federal Courts. (For a more detailed diagram, see the inside front and back covers of the *JLM*.)

Some states have different names for their courts, but the basic organization remains the same.⁴ The organization of the federal system is similar to that of the states. Every state (and the District of Columbia) has its own system of courts. Each court system only handles cases in its “jurisdiction.” Jurisdiction is the area over which a court has the power to resolve disputes and enforce its decisions. Some courts have jurisdiction only over certain subject matter, and some courts only have jurisdiction over certain geographic territory. Both of these types of jurisdiction are discussed below.

(a) Subject Matter Jurisdiction

Courts are divided into state and federal courts. Federal courts have jurisdiction over cases that involve the U.S. Constitution or a law passed by the U.S. Congress (called a “federal statute”).⁵ You can also file a civil complaint in federal district court if you and the other party are citizens of different states and the dispute involves more than \$75,000.⁶ State courts are generally free to deal with any matter; that is, generally a state court can decide a dispute that has to do with a state law or a federal law. Defendants often prefer to bring their case in federal court, if possible, because federal courts can often hear cases more quickly than state courts.

In addition to the distinction between state and federal law, some courts are further limited in the subject matter of law they may consider. For example, the New York City Criminal Court can only hear non-felony criminal cases; the Federal Tax Court can only hear tax cases.⁷

2. The first level of appellate court is called an “intermediate” appeal court because it is between the trial court below and the higher appellate court above. However, some states lack an intermediate appellate court, and only have trial courts and the high appellate court.

3. Prosecutors, on the other hand, can only rarely appeal. *See, e.g.*, Gary Muldoon, Handling a Criminal Case in NY § 23:52 (2012) (“The prosecution has the right to appeal in certain limited circumstances.”); *see also* ABA Standards for Criminal Justice, 21-1.1 (2d ed. 1980) (noting universal recognition of every defendant’s right to obtain an appellate review).

4. For example, New York State has a more complicated court structure, but it still follows the basic pattern of other states. In New York, the trial court is called the Supreme Court. The intermediate appellate courts are called the Appellate Division, which is subdivided into four regional Departments; each Department has jurisdiction over different parts of the state. The highest court is called the Court of Appeals. For more details on the organization of the New York State court system, see the diagrams on the inside back cover of the *JLM*.

5. U.S. Const. art. III, § 2. The § symbol means “section.” Additional federal statutes also provide original jurisdiction in federal district court for civil cases that concern the “Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331 (2008).

6. 28 U.S.C. § 1332 (2012).

7. *See Handeland v. Comm’n of Internal Revenue*, 519 F.2d 327, 329 (9th Cir. 1975) (“[T]he basic jurisdiction of the Tax Court ... is now limited to ... [f]ederal income, estate, and gift taxes.”).

(b) Territorial Jurisdiction

Courts are also limited to hearing cases from particular regions. For example, the Criminal Court of New York City can only hear cases about crimes that took place in New York City. Similarly, the federal court for the Eastern District of New York is restricted to hearing cases about incidents arising in Long Island, Queens, Brooklyn, and Staten Island. So even if a case is within a court's subject matter jurisdiction, the court cannot hear the case unless it also took place in the court's territorial jurisdiction.

Appellate courts also have limited geographic jurisdiction. Each federal circuit court of appeals represents a specific geographic region; the regions are numbered and may include more than one state. The following are the twelve Circuit Courts and the states (and territories) that are in their jurisdiction:

First Circuit: Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island;

Second Circuit: Connecticut, New York, and Vermont;

Third Circuit: Delaware, New Jersey, Pennsylvania, and the Virgin Islands;

Fourth Circuit: Maryland, North Carolina, South Carolina, Virginia, and West Virginia;

Fifth Circuit: Louisiana, Mississippi, and Texas;⁸

Sixth Circuit: Kentucky, Michigan, Ohio, and Tennessee;

Seventh Circuit: Illinois, Indiana, and Wisconsin;

Eighth Circuit: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota;

Ninth Circuit: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and the Northern Mariana Islands;

Tenth Circuit: Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming;

Eleventh Circuit: Alabama, Florida, and Georgia;

D.C. Circuit: District of Columbia.

The U.S. Supreme Court is the highest appellate court in the federal judicial system and is the final court of appeal for all federal cases. The Court can also hear criminal appeals from the highest appellate state court, but only if those cases involve constitutional questions or issues of federal law.⁹ If a case does not have a federal legal issue, then the State Supreme Court is the court of last resort for criminal cases that began in the state court system.

Understanding the position and powers of different courts will help you make sure that you file your case in a court that has the power to hear it, and has the power to grant you the remedy you are asking for. If you know the limited jurisdiction of various courts, you will also know if a court has acted beyond its powers. For example, if you were convicted of assault in the Federal Tax Court, the conviction may be invalid because that court is only authorized to hear tax cases; convicting someone of assault would exceed its subject matter jurisdiction. Similarly, if you were convicted of a crime in the Criminal Court of New York City but the offense took place outside the City of New York, then the court would not have territorial jurisdiction over the case.

2. The Basis of Judicial Decision Making: What is “The Law”?

(a) Types of Law: Constitutions, Statutes, and Case Law

Judges make decisions based on law. Your goal as a jailhouse lawyer is to convince the judge that the law supports your arguments. There are three sources of law: (1) constitutions; (2) legislation (also called “statutes” or “statutory law”); and (3) “case law” (previous decisions made by judges). Judges weigh each source of law in the following order: constitutions are more persuasive (more convincing to the court) than legislation, and legislation is more persuasive than case law. Figure 2 lists the sources of law from most to least persuasive.

8. Before Oct. 1, 1981, the Fifth Circuit included all of the states that are now in the 5th Circuit plus all of the states now in the 11th Circuit.

9. As explained in Part B(1)(a) of this Chapter, federal law includes matters involving the Constitution, a federal statute, or a treaty.

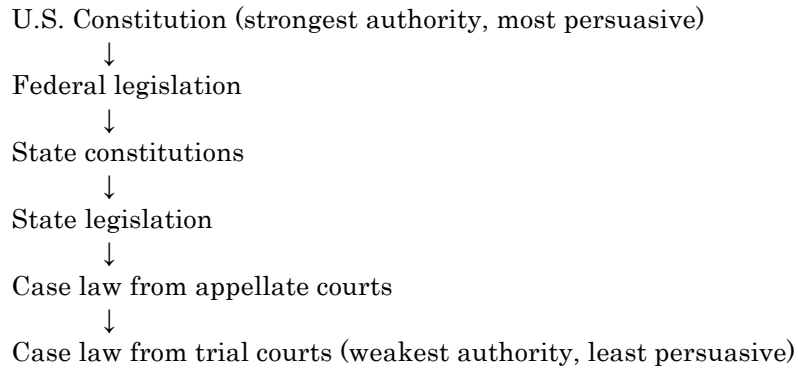


Figure 2: Hierarchy of Sources of Law

Part C of this Chapter will describe how to find the relevant law(s) for your case. Before you start researching, though, it is important that you understand how the different kinds of law work together.

A constitution is the supreme law of the jurisdiction. The United States Constitution is the supreme law of the United States. Each state also has a constitution; if a state constitution and the U.S. Constitution are in conflict, a court will follow the U.S. constitution.¹⁰

The second type of law, legislation, refers to laws passed by a legislature (by the U.S. Congress for federal law and state legislatures for state law). Legislation is the typical form in which laws are enacted.

Finally, case law is the law that results from a court decision regarding a particular dispute or criminal proceeding. Judges often write opinions explaining how they interpreted and applied the law in making their decision. The opinions are good places to look to figure out how to interpret statutes and constitutions. The following section provides additional information on case law.

(b) Case Law: How to Use Legal Precedents

In deciding a case, the court is making law in two ways. First, the court determines what the law says about the dispute between the parties directly involved in the case. Second, this decision will also affect other people because the court's resolution of the issues in the case forms "precedent" for other similar cases: the case becomes an example and sets a rule that other judges will follow in similar cases. When a court is deciding a case, it will look at how other courts decided similar cases in the past and will follow those examples (those precedents). Courts rely on earlier, similar cases to determine how a current case should be resolved. This process is called "stare decisis," which means "already decided." ***The greater the similarity between the cases, the stronger the precedent.*** Therefore, it is very important to find out whether issues in your case have already been decided by your court or other courts. These other cases can help you predict how a judge would rule in your case. You can also see what arguments were successful in other cases, so that you can use those arguments to succeed in your case. If you find arguments that hurt your case, you will need to rebut (argue against) them before the court and show why they are different from your case.

If you find precedential cases that support your arguments, you will try to show the court that your case is sufficiently similar to the previous cases so that the conclusions in those cases should be followed in your case. For example, suppose that you have been placed in solitary confinement because you complained to a newspaper reporter about prison conditions. You should look for a precedential case that ruled that the prison couldn't punish a prisoner, or put a prisoner in solitary confinement, for similar complaints. If you find such a case, your next step is to convince the court that you were placed in solitary confinement because of your complaints, and not for a different, valid reason. Then, you should use the rulings in the precedential cases to argue that your case should be decided in the same way.

If the precedential case works against you, you will have to convince the court that your case is different enough that the judge should not follow the precedent. This is called "distinguishing" a case.¹¹ One way you

10. U.S. Const. art. VI.

11. Ignoring the case is not a good idea because the other side will likely use it against you in its arguments.

can distinguish your case is to show that there were factual differences between your case and the earlier cases. A superficial (or insignificant) difference will not help your case, for example saying: “that case involved that person, but my case involves me.” A useful distinction is one that casts doubt on whether the precedent should be applied in your case. For example, it would be useful to demonstrate that the facts are so different that the cases are not really the same: “in that case the defendant didn’t get a speedy trial because he fired his lawyers three times when they were ready to go to trial, but my trial has been delayed over and over through no fault of my own.”

It is important for you to note that not all precedential cases are equally persuasive. If the case was decided by a judge on the same court as your judge, or by an appellate court above your court, the precedent case is very strong. In effect, the earlier case defined the law in your particular jurisdiction. A lower court must follow the higher court’s precedent or risk almost certain “reversal” (a decision by the appellate (higher) court rejecting the outcome decided by the lower court). The court that created the precedent is also unlikely to overrule itself without extremely good reasons. Precedents from the same court or from the appellate court above it are sometimes called “controlling precedents.”¹² Additionally, a case decided in the U.S. Supreme Court is controlling precedent for all other courts. Courts rarely refuse to follow controlling precedents. However, in some instances, older controlling precedents may carry less weight when applied to a modern case. Furthermore, precedents can be overruled (and therefore become useless) if a higher court believes a lower court made an incorrect decision, or if the legislature passes a law that invalidates a court’s decision. It is therefore very important to make sure the precedent you have found is still good law and has not been overruled.

Precedents from other jurisdictions are valuable but are not controlling (so your judge is not obligated to follow the precedential cases). A case from another jurisdiction sets out the law in that court, but not necessarily for your court. Still, the reasoning in the case might persuade your judge, especially if no court in your jurisdiction has ruled on the legal issue. For instance, if most courts in other states have decided an issue in the same way, those out-of-state decisions can still provide a suggestion for how your state should decide the issue.

Chapter 6 of the *JLM*, “An Introduction to Legal Documents,” will discuss the legal papers you need to provide to a court. These documents are very important; they should be written clearly and persuasively, and should have no errors. Before you write any papers, however, you will need to figure out your most compelling or convincing arguments and find cases to support those arguments. Finding precedential cases is an extremely important part of your research because those cases will reveal which arguments were successful with other courts, and which arguments were not. Cases from higher courts, and cases that are very similar to yours, carry the greatest weight and will help your case the most. You should search for similar cases not only in your jurisdiction but also in other jurisdictions (even though cases from your own jurisdiction will be much more persuasive). You will also need to distinguish any precedential cases that do not support your argument, as discussed above. Finally, you should also consider public policy reasons why a court should rule in your favor. Public policy reasons are arguments that a court should find in your favor because the resulting decision will be good for society as a whole, not just for you.

C. Legal Research: How to Find and Support Legal Arguments

1. Sources for Legal Research

There are three categories of resources in your law library. The first category is “primary sources.” Primary sources include the documents that make up the “law”: constitutions, legislation, and case law

12. Certain state court systems are structured to require trial courts to consider the decisions of all appellate courts within the state as controlling. For example, New York’s first level appellate courts are called the Appellate Division. The Appellate Division is divided into four departments. An appellate decision from any department is controlling for all trial courts within the state, unless the trial court’s own department rules otherwise. *Stewart v. Volkswagen of Am., Inc.*, 181 A.D.2d 4, 7, 584 N.Y.S.2d 886, 889 (2d Dept. 1992) (rev’d on other grounds by *Stewart v. Volkswagen of Am., Inc.*, 81 N.Y.2d 203, 613 N.E.2d 518, 597 N.Y.S.2d 612 (N.Y. 1993)); *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 664, 476 N.Y.S.2d 918, 919–20 (2d Dept. 1984). *But see* *People v. Salzarulo*, 168 Misc. 2d 408, 411, 639 N.Y.S.2d 885, 887 (Sup. Ct. N.Y. County 1996) (holding that while other departments are “entitled to have their rulings accorded great respect and weight,” trial courts are only bound by the appellate court in their judicial department).

(court decisions). Primary sources also include law created by “delegated authority.” That includes executive orders, regulations, and the rulings of administrative tribunals. Legislative bodies like the U.S. Congress cannot regulate the details of every law. So other government bodies (such as administrative agencies) fill in the details of generally worded statutes, usually by creating regulations. Courts base their decisions on all of these primary sources of law.

The second category of resources found in a law library is “secondary sources.” These are not law, but books and articles that discuss and comment on the law. This commentary can help you understand the law and help you find relevant primary sources. Secondary sources include textbooks, treatises, form books, dictionaries, periodical literature such as law journals, and manuals like the *JLM*. While courts prefer primary sources, sometimes you can use a secondary source, such as a law review article or a treatise, if you cannot find any applicable cases or statutes. These sources can be useful in persuading a court to rule a certain way. However, ***you should not use a manual such as the JLM*** as authority for the court—you should use the *JLM* to help you find law that you can use to persuade the court.

The third category of resources found in a law library is search books. Search books are library tools that help you find primary and secondary sources of authority. They include digests of court decisions, citators (such as Shepard’s), and annotated statute books. These search tools can help you find cases to make strong arguments. They are discussed in more detail in the rest of this Chapter.

2. Methods of Legal Research

Your goal in researching a legal question should be to find relevant primary sources. Your prison library will have research tools that will help you find these primary sources and, of course, the sources themselves. Although you will need to find different sources for each case, the research process will be similar. This process has seven basic steps:

- (1) Analyze the problem;
- (2) Get an overview of the subject matter;
- (3) Find relevant legislation;
- (4) Find relevant cases;
- (5) Check other sources;
- (6) Update your research; and
- (7) Cite cases. Part D of this chapter explains more about citations.

If you know an issue well you may be able to skip some steps. But we recommend that you follow all seven steps for each research issue. This way, you can be sure that you have researched your question completely and accurately.

Remember to take careful notes during your research. Your notes will provide a record of your research and will help you to avoid losing information. Careful note taking is very important in successful legal research.

(a) Analyze the Problem

Your case will begin with a story. While you will eventually translate the story into legal issues, you must first confirm the facts of your story. If you are preparing to appeal your criminal conviction, you must first review all the evidence from the trial court transcript. If you are filing a civil case (for example, if you are suing the prison for use of excessive force), you should gather as much information as possible about what happened. Written documentation (medical records, complaints you have filed, etc.) is especially important. As your research goes on, you will need to look at the facts again to figure out which ones are most important.

If you are planning to appeal a lower court decision, remember that the appellate court will accept the facts as found by the lower court. As footnote 1 of this Chapter explains, challenging the factual findings of the lower court is very difficult. Therefore, you should research your legal issues as they apply to the facts that the lower court found.

Once you have a strong grasp of the facts of your case, you should examine the legal issues they raise. In doing so, you should start by asking yourself the following three questions:

- (1) What are the legal issues that I want to raise?;
- (2) Which court has the power to hear my case and rule on the issues I will raise?; and

- (3) If the court agrees with my legal arguments and rules in my favor, does the court have the power to award me the relief that I seek (such as award me money, reverse my conviction, or force someone else to take a specific action)?

The last question is whether the court can grant you your requested remedy. Remedies are discussed in detail in Chapter 9 and Chapters 13–17 of the *JLM*. The rest of this Chapter deals with the first two questions.

The first question goes to the heart of your case: what legal issues do you want the court to consider? To answer, you should look first at the general areas of law in your case. Is your case about arrest? Bail? Parole?

In a civil case, you need to find out what you will have to prove in order to show that the defendant is liable for each claim you are asserting. In civil cases, you are the plaintiff and each person or prison you are suing is a defendant. You should also be prepared to rebut (argue against) any defenses the defendant may claim. You will find a lot of this information in case law, but statutes may also be important.

If you are appealing a criminal conviction, you should focus on errors made by the trial court. You should review secondary sources covering arrest and trial practices to learn the most common arrest and trial errors. Then you should carefully review the lower court proceedings and the judge's decision in your case to find any areas of possible error. Carefully researching the laws that apply to your case will help you figure out if an error was made. This Chapter focuses on how to conduct the legal research that you need for your appeal, but you should also read Chapter 9 of the *JLM*, "Appealing Your Conviction or Sentence." Chapter 9 has important information such as how to file your appeal, time limitations you might face, and your right to have a lawyer.

As you are deciding which issues to investigate, it may be helpful to break down the general areas of law into more specific problems. For example, you may start your research in a broad area of law (like "criminal procedure") and move to a narrower area (like "searches incident to arrest"). Then you can go to a precise question (like, 'can a police officer use a "choke hold" to arrest a suspect and search for drugs?'). It is easier to research a narrow issue and build it into a larger case than to try to research the entire case right away.

Once you have a legal question, you must ask which court has jurisdiction to hear it. As discussed in Part B(1) of this Chapter, there are both territorial (geographic) and subject matter limits on a court's power. You must bring your action or appeal in a court that has jurisdiction to hear it, or your case will be dismissed. Territorial jurisdiction for a trial court will depend on where the alleged incident took place. For an appellate court, territorial jurisdiction will depend on which court made the ruling that you are appealing.¹³ You should also confirm subject matter jurisdiction before doing more research on the merits of your case. Most cases will not have complicated jurisdictional issues, but you must make sure you are filing your case in a court that has jurisdiction to hear it.

(b) Get an Overview of the Subject Matter

Legal research is hardest at the beginning, since you will need to understand the general area of law that covers your case before you focus on narrower issues. Background reading will help you understand how to apply the current law to your facts. Legal encyclopedias are very helpful sources for general overviews because they provide short summaries of the law. Treatises are also very helpful and provide a more detailed analysis of a particular type of law. Prison libraries usually have the two most common legal encyclopedias, *American Jurisprudence* and *Corpus Juris Secundum*. They also usually have copies of treatises like *McCormick on Evidence*, *Johnson's The Elements of Criminal Due Process*, *Kerper's Introduction to the Criminal Justice System*, and *Kerper's Legal Rights of the Convicted*.¹⁴ As you read these background materials, take notes about any cases, legislation, or constitutional provisions that seem like they may apply your case. To find a subject in an encyclopedia or treatise, use either the "index" (usually found in the back of a book; if you are talking about more than one index, the plural is "indices") or the "table of contents" (usually found in the beginning of a book). Both types of research are fully described later in this Chapter.

13. See Part B(1) of this Chapter.

14. You can find a legal dictionary online at <http://www.duhaime.org/LegalDictionary.aspx>. Another good source is <http://www.lexisweb.com/>.

(c) Find Relevant Legislation

After learning the basics of a subject area, you should turn to the main sources of law—legislation and cases. Research can take a long time, so remember to take good notes about the sources you read and to follow the outline this Chapter provides.

You should start your research by reading legislation. Legislation includes constitutions, federal and state statutes, and supporting governmental enactments, like regulations and administrative decisions. Constitutions and statutes are generally broken down into parts called articles, sections (the § symbol means “section”), and clauses. Regulations issued by state or federal agencies, like the New York Department of Correctional Services or the U.S. Bureau of Prisons, are important forms of legislation and should be checked during your research. Each form of legislation will now be discussed in greater detail.

(i) Federal Constitution

Constitutions create the structure of government and define individual rights and liberties. They are the most important authorities. The Constitution of the United States is the supreme law of the United States.¹⁵ Any federal case or statute, or any state constitution, case, or statute that violates the U.S. Constitution is “unconstitutional,” which means it is completely invalid. So, the Constitution should be your first source to research your case. You should determine if a constitutional provision applies to your case at the beginning of your research. The first ten amendments to the Constitution (known as the “Bill of Rights”), along with the Fourteenth Amendment, are the most important parts of the Constitution for criminal defendants and prisoners. They have guarantees of personal rights and liberties. The First Amendment (freedom of speech, religion, and association), Fourth Amendment (search and seizure), Fifth Amendment (grand jury indictment, double jeopardy, self-incrimination, and due process), Sixth Amendment (jury trials for crimes and procedural rights), and Eighth Amendment (excessive bail and cruel and unusual punishment) are all very important. The Fourteenth Amendment is also very important because it prohibits state governments from depriving you of life, liberty, or property without due process of law (that is, certain legal procedures, typically including notice and a hearing). It also guarantees the equal protection of law (that is, it bans discrimination by the state on the basis of race, sex, and national origin). Similar rights are guaranteed to you from the federal government through the Fifth Amendment.

(ii) State Constitutions

Each state has its own constitution. The text of the New York State Constitution appears in the first few volumes of McKinney’s Consolidated Laws of New York Annotated (“McKinney’s”). Each state’s constitution is supreme over all other laws of that state. This includes state statutes passed by the legislature, and precedent from cases that state courts decide. But state constitutions are *not* supreme over federal law (federal law includes the U.S. Constitution and laws passed by the U.S. Congress). State constitutions apply only to state law. Many provisions of state constitutions are similar to provisions found in the U.S. Constitution, but your state constitution may give you more rights than the U.S. Constitution. So, you should always check your state constitution after reviewing the U.S. Constitution.

The U.S. Constitution and most state constitutions are found in annotated volumes. Following the constitutional text is a section titled “Notes of Decisions” (on Westlaw) and “Case Notes” (on LexisNexis) which has the case summaries grouped into separate legal subjects. There is an index to these legal subjects at the beginning of each Notes of Decisions section. You will find the case citation¹⁶ at the end of each summary. Annotated volumes also contain other helpful research tools. These include cross-references, which are citations to legal encyclopedias and relevant treatises in which the same legal subject is discussed. They also include the West “key number system,” which is discussed in Part C(2)(d) of this Chapter. Finally, annotated volumes often have summaries of legislative history, which give you information about why a particular law was passed.

15. The text of the Constitution can be found in each of the first twenty-eight volumes of the United States Code Annotated (“U.S.C.A.”). Annotated volumes include the text of each constitutional provision and summaries of cases that have interpreted them. The un-annotated text can be found at <http://www.law.cornell.edu/constitution/> or <http://constitutionus.com/> or many other websites.

16. Case citations are discussed in Part D of this Chapter.

To find the relevant constitutional provisions for your case, use the constitutional index found at the back of the final constitutional volume.¹⁷ The methods you use to locate statutes¹⁸ and cases¹⁹ related to your legal question are also applicable to finding relevant constitutional provisions in a constitutional index.

(iii) Federal Statutes

The U.S.C.A. contains the text of the U.S. Constitution and all laws passed by the U.S. Congress. Following the text of many of the legislative provisions is a section titled “Notes of Decisions” which contains summaries of cases that have interpreted each provision. These summaries are not law but will give you an idea of which cases may be helpful to read in detail. The U.S.C.A. also has other useful research tools like cross-references to the West key number system (discussed in Part C(2)(d) of this Chapter), which can be found in the section called “Library References,” located after each legislative provision.

The U.S.C.A. is divided into fifty “titles.” Each title brings together in one place all federal laws in a particular subject area. For example, Title 18 brings together all federal laws about crimes and criminal procedure. Title 28 does the same thing for laws about the judiciary and judicial procedure. Each title may have multiple volumes. There is a paperback index to the entire U.S.C.A. (not including the constitutional volumes) shelved after the main volumes. Each title also has its own index located in its last volume.

The text of all federal laws also appears in the United States Code (“U.S.C.”). The U.S.C. is organized in exactly the same way as the U.S.C.A. It is different from the U.S.C.A. only because each title only has the law, not the Notes of Decisions. Your prison library may have the U.S.C.A., the U.S.C., both, or neither.

If you are charged with an offense under federal law, a good starting point is to review the text of the provision you are charged with. Beneath the text of that provision of law there may be summaries of cases interpreting the text that will allow you to see how courts have applied that provision in other cases.

It is very important that your research is current. Hardcover volumes of sources are not replaced often. The most up-to-date information is in soft cover updates found in a folder inside the back cover of each hardcover volume or next to the volumes on the shelf (called the “pocket part”). Soft cover updates have information received after publication of the hardcover volume. These pocket parts will have any recent amendments (changes) to the statutory provision and any recent cases interpreting that provision. You must check the pocket part for the most current law whenever you use a hardcover volume of any source in your research.²⁰

The entire U.S.C. is updated every six years. The most recent volumes are from 2012. The U.S.C.A. is updated more often. If your prison library has not updated its collection of hardcover volumes, you should continue to check the pocket parts to make sure that your research is up-to-date.

You should ***always*** check whether statutes have changed before using them in a legal paper. When referring to a federal statute, cite to the most recent U.S.C. or U.S.C.A. in your prison library, meaning the book and pocket parts that you looked at while researching your case. It may not be the same year as the versions cited in the *JLM*.

(iv) State Statutes

State statutes are organized in a way similar to federal statutes. Each state organizes its statutes a little differently, but consider New York as an example. The permanent laws of New York are found in a set of books called McKinney’s Consolidated Laws of New York Annotated (“McKinney’s”).²¹ Like the U.S.C.A.,

17. Note that there is a separate index for the constitutional volumes of the U.S.C.A. A larger multi-volume paperback index is published for the rest of the U.S.C.A. volumes that refer to legislation, but that index does not contain any references to the Constitution.

18. Statutes are described in Part C(2)(c)(v) of this Chapter.

19. Cases are described in Part C(2)(d) of this Chapter.

20. When a statute has been amended or repealed within the past twelve months, the pocket part may not have the most recent change. For the most up-to-date information, consult the paperback supplement normally shelved at the end of the volumes you are using. Paperback supplements are updated monthly.

21. If you need to find a law that is no longer in force (for example, if you were convicted under a version of the Penal Law that was later changed), look first to McKinney’s for the current version of the law. After the current statute, find the “Historical and Statutory Notes” section, which will tell you what year of the Session Law to look at in order to find the old law. That year’s “Session Law” can be found in McKinney’s Session Laws of New York. It is unlikely, however, that a prison library will have the Session Laws. If your library does not have the Session Laws, the “Historical and Statutory Notes” section often lists a short

McKinney's is organized according to subject matter but divided into "books" rather than "titles," and arranged in alphabetical order. (But, like titles, each book may contain multiple volumes.) Thus, Book 10B brings together all New York laws on the subject of Correction Law (Prison Law), Book 11A does this for Criminal Procedure, and Book 39 does this for Penal Law (Criminal Law). McKinney's also contains "Notes of Decisions" summarizing cases that have interpreted each provision. When working with state statutes, as with federal statutes, be careful to consult the pocket parts (located inside the back cover of the book). The pocket part has information on the most current statutes and cases. State statutes are updated frequently. The years listed in *JLM* citations to state statutes may not correspond to the version in your prison library. As with federal statutes, cite to the version in your prison library.

McKinney's also contains a section called "Practice Commentary" following certain statutory provisions. This commentary is neither a case summary nor actual law; it is the comments of a lawyer who has studied the statute. The commentaries help researchers understand the law. Like general summaries of particular subjects, commentaries can be useful sources of analysis and research information. They explain how a lawyer would use the given statute or how that statute has been used in the past.

If you are charged with an offense under state law, a useful starting point is to review the text of the provision under which you are charged. In New York, crimes are defined in Book 39, "Penal Law." The procedural aspects of criminal prosecution are found in the New York Criminal Procedure Law ("N.Y. Crim. Proc. Law"). The N.Y. Crim. Proc. Law is found in the fifteen volumes that make up McKinney's Book 11A. Do not confuse the N.Y. Crim. Proc. Law with the New York Civil Practice Law and Rules ("N.Y. C.P.L.R."), which explains the rules of the courts in New York.

(v) Finding Statutes—The General Index

You will not always have a particular statute or statutory section to begin your research. If you are starting from scratch and the provision under which you were charged is not helpful, the best place to turn is the "general index" of a source. This is true whether you are researching the U.S. Constitution, federal legislation, or state legislation. The general index is normally found in separate volumes at the end of the source you are using. For example, the general index for New York legislation is found in several paperback volumes after the McKinney's main volumes. The index lists topics in alphabetical order, so you can begin by searching for a word that describes or is related to your problem. These descriptive words can refer to an event (for example, "arrest" or "homicide"), certain persons (for example, "addicts" or "police"), places (for example, "prison" or "hospital"), or things (for example, "motor vehicles" or "weapons"). General descriptive words are divided into subcategories. For example, under "weapons" you will find separate entries for different types of firearms. The general index is designed to lead you to the relevant statutes from a variety of descriptive words. Thus, you need not find the "perfect" word. Keep track of the different possible descriptive words as you research and use the many indices to help you find relevant authorities.

A second way to find legislation is to check the title or book index. The title or book index is similar to a table of contents, and is found at the beginning of each volume. So, for example, scanning the names of the McKinney's volumes shows three possible criminal titles: "Correction Law," "Penal Law," and "Criminal Procedure Law."²² If you were researching a procedural issue (say your home was searched pursuant to a search warrant in the middle of the night), the volumes on Criminal Procedure Law (Book 11A or "11A") seem like the most useful place to begin. You would then take out a volume of 11A and turn to its "book index." Note that this table appears after the shorter "Table of Contents" section, and is immediately before the statutory provisions. The book index breaks down the general subject of Criminal Procedure into smaller topics and subtopics.

Following each subtopic is a list of statutory sections that deal with that subtopic, so you can review the subtopics to find statutory provisions that may be helpful for your research. For example, on the issue of "nighttime searches," the book index in any of the volumes of 11A shows a section on "procedures for securing evidence," and another on "search warrants." If you go to the volume of 11A that contains the legislation on search warrants (Sections 690.05 to 690.55) and turn to the beginning of that section, you will

summary of changes that have been made to the original law.

22. Criminal Procedure Law sets out the procedures used to enforce and prosecute crimes. So, Criminal Procedure Law describes, for instance, how a trial is supposed to happen. Penal Law is the law that actually defines the crimes. Correction Law is the law relating to prisoners in correctional facilities.

see another listing of even more specific subtopics that includes “search warrants; when executable” (Section 690.30). Turning to that section of the legislation, you will find that, in New York, search warrants may only be used between 6:00 a.m. and 9:00 p.m. unless the warrant provides otherwise. Thus, you have found a law to support your complaint if the warrant used to search your house did not explicitly allow the search to be conducted after 9:00 p.m. After the text of Section 690.30, you will find a “Practice Commentaries” and a “Notes of Decisions” section that contains summaries of a number of cases applying this legal rule to various circumstances. To locate even more recent cases on nighttime searches, check the pocket part of that volume. Checking the pocket part is one way to update your research to make sure that there have been no new cases or statutes that have changed the law.

Do not be discouraged if you are having trouble finding a relevant law. Research takes time, and you may need to try the general index, the title or book index, or even a little browsing before you can find relevant legislation. Or, the issue in your case may have been dealt with through court cases rather than legislation. Finding case law is the subject of Part C(2)(d) of this Chapter.

(vi) Legislative History

When reading legislation, the “legislative intent,” or what the legislators hoped the statute would accomplish, is sometimes unclear. Knowing the legislative intent can often help you to better understand the legislation. It may help you apply the legal rule to the facts of your case. Your exact factual situation may not have been considered by the legislators when they created the law. The best way to find legislative intent is to review the “legislative history” of the legislation. State legislative history is difficult to find and often cannot be found at all. This Subsection will concentrate on how to find the legislative history of federal laws and therefore learn the congressional purpose behind federal legislation.

Legislative history consists of the written record of what Congress considered before passing a law. It includes the text of the bill²³ introduced into the legislature, any later amendments (changes) to the bill, committee and conference reports,²⁴ congressional hearings, and the debates of the House of Representatives and Senate. Committee reports are produced by the Congressional Committees that review legislation. Conference reports are produced by “conferences” set up when the House and Senate pass different versions of the same legislation. Because the conference report is produced jointly by the committees of both the Senate and the House just before the final passage of the legislation, it is perhaps the most important source of legislative intent.

Legislative history is found in many books that are not located in prison libraries. However, one publication, the United States Code Congressional and Administrative News (“U.S.C.C.A.N.”), publishes “compiled” legislative histories that bring several sources together in one place. Although the U.S.C.C.A.N. does not provide all legislative history, it is the only source of legislative history you are likely to find in a prison library. There are several volumes of the U.S.C.C.A.N. for each year. To use these books, you must know the year in which the statute was passed. The U.S.C.A. tells you the year the statute was passed at the end of each section. It may also tell you where in the U.S.C.C.A.N. to find the legislative history. Each set of annual U.S.C.C.A.N. volumes also contains a table of “Legislative History.” This table lists all the laws passed during that year and identifies certain parts of the legislative history. To find legislative history in U.S.C.C.A.N., look in the index found in the last volume of that year. Search the index for the name or the subject matter of the statute you are researching. The index will list the page number where you can find legislative history for that topic. The volumes of U.S.C.C.A.N. with “Legislative History” on their spines contain the text of the legislative report from the House of Representatives or the Senate.

If you review the legislative history of a statute, you will often find a statement by a member of Congress or by a committee that explains what Congress intended the statute to mean. If this explanation helps your argument, you should quote it in the papers you submit to the court.

Legislative histories of state statutes are hard to find because few states keep a record of the process of enacting a bill. In New York, legislative history is usually found in the New York Legislative Annual, which you are unlikely to find in a prison library. Your library may, however, have McKinney’s Session Laws of

23. A “bill” is a proposed statute before it has either been passed or rejected by legislators.

24. The House of Representatives and the Senate are subdivided into committees that work in particular areas. For example, the House Judiciary Committee works on legislation that concerns the federal judiciary.

New York (see footnote 18 of this Chapter), which contains limited legislative history for some bills enacted that year. This legislative history is found at the end of the final Session Law volume for that year.

(vii) Court Rules

Court rules lay out how to get a case into court and what procedures are used once the case is before the court. Sometimes these rules are called “rules of practice” or “rules of procedure.” The U.S. Supreme Court has created court rules that apply to all cases in federal courts. The rules are published as part of Title 28 of the U.S.C.A. (in the volumes that have the word “rules” on their spines) and include “Notes of Decisions” sections summarizing cases interpreting the rules. Formally, the rules are separated into three parts: the Federal Rules of Civil Procedure (rules for federal civil cases), the Federal Rules of Criminal Procedure (rules for federal criminal cases), and the Federal Rules of Appellate Procedure (rules for appellate procedure in all federal cases). There may also be additional local rules enacted by local federal courts. In addition, the Federal Rules of Evidence govern what can be used as evidence in federal cases. The Federal Rules of Civil Procedure and the Federal Rules of Evidence are published in separate volumes that are part of Title 28 of the U.S.C.A.

State courts have their own court rules. In New York, for example, the rules are contained in McKinney’s New York Rules of Court. This paperback volume contains the rules of court for all New York state courts. It also contains the “local federal rules” for the federal district courts in New York and the Second Circuit Court of Appeals. These rules will tell you which court to file papers in and how the papers should be filed (size, form, etc.). The rules will also tell you the normal court calendar. For example, some courts hear certain kinds of cases only on specific days of the week. The rules will also tell you what information is required for certain kinds of lawsuits. If you are involved in a New York State or federal case, always review the New York Rules of Court. In particular, review the section(s) that apply to the court to which you are sending your papers. This review should be done before filing any legal papers, since you do not want to find out afterwards that the deadline for filing the papers has already passed. If you cannot figure out something in the New York Rules of Court, sometimes a court clerk will tell you the answer over the telephone. The addresses and telephone numbers of the trial courts in New York are contained in Appendix II of the *JLM*. Call the courthouse and ask for the court clerk’s office. Although this does not always work, it might save you time and effort.

(viii) Administrative Codes

Federal and state legislatures often give government agencies the power to create rules or regulations that govern specific subjects. The rules are often referred to as “administrative” rules or regulations. Here are two examples: the federal government gives the Bureau of Prisons power to make specific rules about how federal prisons are run, and a state will often allow the state’s Department of Corrections to make specific rules about how state prisons are run.

All federal administrative rules and regulations are published in the Code of Federal Regulations (“C.F.R.”). Similarly, rules and regulations from all departments or agencies within a state are also collected together and published. Each state organizes the regulations a little differently, but the publications are often referred to as the administrative “code,” “rules,” or “regulations.” For instance, New York’s administrative rules are published in the Official Compilation of Codes, Rules & Regulations of the State of New York (“N.Y. Comp. Codes R. & Regs.”), and Texas’ codes are published as the Texas Administrative Code (“Tex. Admin. Code”). Your prison library may have a copy of the C.F.R. and/or a copy of your state’s administrative code.

If you are in a federal prison, you may want to review a copy of the C.F.R. to find out if any provisions are relevant to your case. The C.F.R. has many volumes, organized alphabetically by subject matter, and a separate general index will likely be shelved after the main volumes. This general index is a good place to begin your research. For instance, you can open the general index and look under “Prisons Bureau,” and under this main heading (which will be in bold type), there are several subtopics. You can scan those subtopics, and if any of them appears to be related to your case, the index will refer you to the appropriate title and section of the C.F.R. For example, if you are interested in parole issues, you can look under “Prisons Bureau” for the subtopic on “Parole,” which will refer you to “28 C.F.R. 572.” This means that the rules on parole in federal prisons are contained in Title 28, Part 572 of the C.F.R. You can then pull out the appropriate volume from the shelf (the title and part information is on the spine of the book), and read

through Part 572 to see if there is a “section” that interests you. Note that in the C.F.R., sections are simply subtopics under each Part. For example, if you are referring to a section under Part 572, for instance section 572.30, you would say “section 572.30,” not “Part 572.” The index to the C.F.R. is updated once every year.²⁵

If you are in a state prison, you may want to review a copy of your state’s administrative code. The administrative code will likely have many volumes, organized by subject. A good place to begin your research is in the general index, which should be in one or more volumes shelved after the code’s main volumes. For instance, if you have a question about how much exercise time prisoners are supposed to have, you may want to begin by looking in the general index under “prisons.” In New York, the index would then refer you to the section on “correctional institutions.” Under “correctional institutions,” there are many subtopics. One of these subtopics is “exercise,” which refers you to “7 § 304.3” and “7 § 1704.6.” If you then look at Title 7, section 1704.6 of the N.Y. Comp. Codes R. & Regs., you will find that in New York, most prisoners have the right to exercise outside of their cells for at least one hour each day. If you are using a state administrative rule or regulation in your legal papers, be sure to check whether the regulation has been recently updated or changed. Updates to state administrative codes can usually be found in soft cover volumes that follow the main volumes of the administrative code.

(d) Find Relevant Cases

The bulk of your research time will be spent trying to find cases to support your arguments. In researching cases, you want to search for a case that is similar to your case. To be most useful to you, the case must have very similar facts to your case and have been decided by a court in your jurisdiction. In addition, the cases cannot have been reversed on appeal, or overruled by a later case or statute. It also helps if the case is recent.

Sometimes you may hear about the “holding” or the “dicta” of a case. Parts of a judge’s decision may either be described as part of the “holding” or as “dicta.” The holding is the major part of the decision in a case and usually controls only those cases with facts like the case the court decided. Dicta is all of the other things that the court says in the opinion (“dicta” is the plural; when you are talking about only one such comment, say “dictum”). For example, the holding of a case may be that you have the right to an attorney in a criminal case, and other comments that the court may make about the general role of an attorney would be dicta. You will rarely find a “perfect” case (one that matches the facts of your case exactly). Thus, your search should be for cases that have strong similarities to your case.

In addition to looking for similar cases that help you, you need to be aware of any similar cases that do not support your position. You must be prepared to explain to the judge why that contrary case should not apply to your situation or why the judge should not follow that case.²⁶ Remember, your opponent will also be researching your case. You must be ready to respond to your opponent’s arguments and to make your own.

A law report is the written record of the decision reached by the court. The decision set out by the court is called an “opinion.” Books that contain these reports are known as “reporters.” This is where you will find case law to support your arguments.

(i) Federal Reporters

There are three levels of courts in the federal system, and each level has a separate reporter containing the court’s decision. The Supreme Court reporter is called the United States Reports (abbreviated as “U.S.”). The circuit court (the intermediate federal appellate court) reporter is called the Federal Reporter (abbreviated as “F.,” “F.2d,” or “F.3d”). The trial court is called a district court and its reporter series is called the Federal Supplement (abbreviated as “F. Supp.” or “F. Supp. 2d”). Not all decisions of federal district courts are published. Publication is called “reporting” a decision. In New York, there are four federal district courts: the Northern, Southern, Eastern, and Western Districts. Reported decisions of each of these courts are found in the F. Supp. Each reported case is found and referred to by its “citation.” The citation of a case provides the official way of referring to an opinion, and tells you where to find the text of the opinion in the correct reporter. Citations will be explained in Part D of this Chapter, but you may want to read that Part now.

25. To get updates before the new version is printed, you first have to look at the monthly “List of C.F.R. Sections Affected” which will refer you to the appropriate section in the Federal Register. Unfortunately, it is unlikely that you will have access to these resources in prison.

26. See Part B(2)(h) of this Chapter for more information on precedential cases.

Unfortunately, many opinions that are of interest to prisoners are “unreported” or “unpublished”—that is, they do not appear in the Federal Supplement or Federal Reporter volumes available in prison law libraries. Many cases that do not appear in a reporter are available on computer services like Lexis and Westlaw. Citations like “2000 U.S. App. LEXIS 12345” or “2000 U.S. Dist. LEXIS 12345” are Lexis citations. In the *JLM*, unpublished cases are generally cited to Lexis (“LEXIS”), and occasionally Westlaw (“WL”), and are always indicated with the text “(*unpublished*)” after the citation. Sometimes cases have book citations (such as “F.2d”) but the opinions are not actually printed; they are just listed in a table. In the *JLM*, table citations are included, where available, along with a citation to an electronic source.

You should note that a citation like “___ F. Supp. ___, 2013 U.S. Dist. LEXIS 12345” does not mean the case is unpublished, but that it is merely a recently reported decision that will be available in the Federal Supplement in the near future. You should check to see if this decision has been published in a reporter since the *JLM* was printed.

The *JLM* cites published decisions whenever possible. Courts generally prefer that you cite published cases, so you should research the rules of the court in which you are filing before you cite unpublished cases. Some courts may bar citations to unpublished cases altogether; some permit it in certain circumstances where specific requirements are met, such as serving a copy of the case on other parties and on the court. These rules can be obtained for a small fee from the court clerk (the *pro se* clerk in New York), and they should also be available on the websites of most courts.²⁷ At the very least, an unpublished case may help you predict the outcome of similar lawsuits. Many legal researchers find unpublished cases helpful because they can shed light on particular applications of settled law; in areas in which the law is unsettled, unpublished cases may provide the only insight into how a court may respond to a certain type of claim.

Recently, the Federal Rules of Appellate Procedure were changed, which affects your ability to cite to unpublished cases in certain situations. For federal appellate courts, you can now cite to any unpublished cases that were decided on or after January 1, 2007.²⁸ You should note that most unpublished cases are not precedential, which means that courts do not have to follow their holdings. They can be cited, however, for their persuasive value. Also, you generally must attach a paper copy of the case to your petition or brief, unless the case is available on a publicly accessible database.²⁹ Some jurisdictions have more specific rules. For example, many federal courts allow you to cite to unpublished cases of their own even if they were decided *before* January 1, 2007.³⁰

27. For example, the rules for New York courts can be found at <http://www.courts.state.ny.us/rules/index.shtml> and the rules for Texas courts can be found at <http://www.supreme.courts.state.tx.us/MiscDocket/08/08901700.pdf> (Rule 47). The New York rules do not actually address the issue whether unpublished opinions can be cited. Therefore, we recommend you call the *pro se* clerk to confirm where you can find a rule on the citing of unpublished opinions, or confirm whether unpublished opinions can be cited, even if the rules are available online.

28. Fed. R. App. P. 32.1.

29. The courts' own databases and the two commercial services mentioned above, Lexis and Westlaw, are examples of publicly accessible databases.

30. The 1st, 3rd, 4th, 5th, 6th, 10th, and 11th Circuit Courts allow citation to unpublished cases decided before and after Jan. 1, 2007, by specifically saying so or by not mentioning a date. 1st Cir. R. 32.1.0(a) (“An unpublished judicial opinion, order, judgment or other written disposition of this court may be cited regardless of the date of issuance.”) and 32.1.0(b) (“The citation of dispositions of other courts is governed by Fed. R. App. P. 32.1 and the local rules of the issuing court.”); 3rd Cir. I.O.P. 5.7 (“The court by tradition does not cite to its non-precedential opinions as authority. Such opinions are not regarded as precedents that bind the court because they do not circulate to the full court before filing.”) However, you should note L.A.R. 28.3 (“Citations to federal decisions that have not been formally reported must identify the court, docket number and date, and refer to the electronically transmitted decision.”); 4th Cir. R. 32.1 (“If a party believes . . . that an unpublished disposition of this Court issued prior to January 1, 2007, has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited if the requirements of FRAP [Federal Rules of Appellate Procedure] 32.1(b) are met.”); 5th Cir. R. 47.5.3 (“Unpublished opinions issued before January 1, 1996, are precedent. Although every opinion believed to have precedential value is published, an unpublished opinion may be cited pursuant to Fed. R. App. P. 32.1(a).”); 6th Cir. R. 32.1 (“The court permits citation of any unpublished opinion, order, judgment, or other written disposition. The limitations of Fed. R. App. P. 32.1(a) do not apply.”); 10th Cir. R. 32.1(C) (“Parties may cite unpublished decisions issued prior to January 1, 1997, in the same manner and under the same circumstances as are allowed by Fed. R. App. P. 32.1(a)(i) and part (A) of this local rule.”); 11th Cir. R. 36.2 (“Unpublished opinions are not considered binding precedent, but

There are a few ways you can learn about cases that don't appear in the federal reporters. First of all, you can read the *JLM*. While ordinarily you should never cite a case that you haven't read, for some cases you may have to rely on the descriptions in this book (if, having read the rules of the court in which you are filing your claim, you decide it is acceptable to cite unpublished cases).

The West Group sells a compilation of U.S. Court of Appeals unpublished opinions called the Federal Appendix, last updated (at the time of this printing) in 2013. You could ask your library to subscribe to the Federal Appendix, but your library might not grant your request, as the 182-volume set is very expensive. You can also ask a lawyer or someone else with access to Lexis or Westlaw to print out the case and send it to you. Keep in mind that these electronic sources are expensive and lawyers who assist *pro se* prisoners may not have the resources to respond to such requests.

Finally, some federal courts will send prisoners copies of unreported cases, upon request and for a fee; others will not. Send your request to the clerk of the court in which the case was decided. You could also try writing a letter to the chambers of the judge who wrote the opinion and request a copy. In both instances, be sure you include the case name, the docket number (for example, "No. 12-345 67"), the court, and the date of the decision you are requesting. All of this information should be available in the *JLM* citation. If you can tell which decision you are looking for (for example, the summary judgment motion, the motion to dismiss, or the motion to set aside the jury verdict, etc.), indicate that as well.³¹

Citations will be discussed further in Part D of this chapter. However, here is a short example of a citation: *Mukmuk v. Comm'r*, 369 F. Supp. 245 (S.D.N.Y. 1974). The italicized portions of the citation are the parties involved in the case. (Comm'r is the accepted abbreviation for "Commissioner.") The first number (369) is the volume number of the reporter, which appears on the spine of the book. "F. Supp." identifies the Federal Supplement reporter. The second number (245) is the page in the 369th volume of the Federal Supplement where the case of *Mukmuk v. Comm'r* begins (the 245th page). The information in parentheses refers to the court in which the case was decided (S.D.N.Y. is the accepted abbreviation for the Southern District Court of New York) and the year in which the case was decided (1974). Thus, if you need to refer to this case in your legal papers, you should use the citation listed above. In your research, you will come across many similar citations, or variations of such citations. You can use a citation to find the text of the case by following the procedure explained in this paragraph. A fuller explanation of citations is provided in Part D and Appendix A of this Chapter.

they may be cited as persuasive authority.") and I.O.P. 7 ("The court generally does not cite to its "unpublished" opinions because they are not binding precedent. The court may cite to them where they are specifically relevant to determine whether the predicates for res judicata, collateral estoppel, or double jeopardy exist in the case, to ascertain the law of the case, or to establish the procedural history or facts of the case."). However, the 2nd, 7th, 8th, and 9th Circuit Courts allow citation to unpublished cases only if the cases were decided on or after Jan. 1, 2007 or fall within specified exceptions. 2nd Cir. R. 32.1.1(b)(2) ("In a document filed with this court, a party may not cite a summary order of this court issued prior to January 1, 2007, except: (A) in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata; or (B) when a party cites the summary order as subsequent history for another opinion that it appropriately cites."); 7th Cir. R. 32.1 ("No order of this court issued before January 1, 2007, may be cited except to support a claim of preclusion (res judicata or collateral estoppel) or to establish the law of the case from an earlier appeal in the same proceeding."); 8th Cir. R. 32.1A ("Unpublished opinions issued on or after January 1, 2007, may be cited in accordance with FRAP 32.1. Unpublished opinions issued before January 1, 2007, generally should not be cited."); 9th Cir. R. 36.3(b) ("Unpublished dispositions and orders of this Court issued on or after January 1, 2007 may be cited to the courts of this circuit in accordance with Fed. R. App. P. 32.1.") and 36.3(c) ("Unpublished dispositions and orders of this Court issued before January 1, 2007 may not be cited to the courts of this circuit, except in the following circumstances . . ."). When filing in the D.C. Circuit Court, you can cite to its own unpublished opinions dating back to Jan. 1, 2002, but you can only cite to unpublished opinions from another circuit court decided prior to Jan. 1, 2007, if that particular court's rules allow it. D.C. Cir. R. 32.1 ("All unpublished orders or judgments of this court, including explanatory memoranda (but not including sealed dispositions), entered on or after January 1, 2002, may be cited as precedent . . . [U]npublished dispositions of other courts of appeals and district courts entered before January 1, 2007, may be cited when the binding (i.e. the Rule 32.1 res judicata or law of the case) or preclusive effect of the disposition is relevant. Otherwise, unpublished dispositions of others courts of appeals entered before January 1, 2007, may be cited only under the circumstances and for the purposes permitted by the court issuing the disposition . . .").

31. You can sometimes tell what motion the decision relates to by the parenthetical explanation that follows the citation. For example, if a case citation has a parenthetical explanation that begins with "(granting motion to dismiss where . . .)," the opinion you are looking for decided the motion to dismiss.

The second level of courts in the federal system is called the circuit court of appeals.³² There are twelve such circuits in the United States.³³ Circuit courts are the intermediate appellate courts in the federal system. Reports of all circuit court decisions are found in the Federal Reporter (abbreviated as “F.”, “F.2d” or “F.3d”). The Federal Reporter has three series of reporters (so the volume numbers do not get too high within each series) with volumes individually numbered within each series. Each circuit court of appeals covers the appeals from several federal district courts. For example, cases from the four New York federal district courts plus the district courts of Connecticut and Vermont are appealed to the Second Circuit Court of Appeals (abbreviated “2d Cir.”). Thus the case *United States v. Bush*, 47 F.3d 511 (2d Cir. 1995) is a 1995 case from the Second Circuit Court of Appeals found on page 511 of volume 47 of the Federal Reporter (Third Series).

The third and highest level of the federal court system is the United States Supreme Court. There is only one U.S. Supreme Court. In addition to hearing cases from lower federal courts, the Supreme Court can also hear certain cases from state high courts. All Supreme Court decisions are reported in the “official” reporter, United States Reports (abbreviated as “U.S.”). Decisions of the Supreme Court are also reported in two “unofficial” reporters, the Supreme Court Reporter (abbreviated as “S. Ct.”) and the United States Supreme Court Reports, Lawyers’ Edition (abbreviated as “L. Ed.” or “L. Ed. 2d”).³⁴ The text of the opinions published in any of the three Supreme Court reporters is identical, although the citations are different. However, if you are citing a case in a legal paper, use the United States Reports (“U.S.”) citation, if available. Thus, the citation for the famous case that requires the police to inform those in custody of their rights is *Miranda v. Arizona*, 384 U.S. 436 (1966). Because only Supreme Court cases are reported in the reporter “U.S.,” it is not necessary to list the court name in the citation.

Prison libraries usually have copies of only the Supreme Court Reporter. However, you can find the “U.S.” citation at the top of each case in the Supreme Court Reporter listed above the case name. The “S. Ct.” version of the case also provides cross-references throughout the opinion to the corresponding “U.S.” pages. This is useful if you are quoting text from the decision, since you can read the decision in the “S. Ct.” reporter but cite the correct page in the “U.S.” reporter. We have tried to give the citations to all three of the Supreme Court reporters in the *JLM*.

(i) State Reporters

State reporters are organized in the same way as federal reporters. New York has three levels of courts and three official state reporters. New York Miscellaneous Reports (abbreviated as “Misc.” or “Misc. 2d”) reports the decisions of state trial courts. Appellate Division Reports (abbreviated as “A.D.” or “A.D.2d”) reports the decisions of New York’s intermediate appellate courts. New York Reports (abbreviated as “N.Y.” or “N.Y.2d”) and the North Eastern Reporter (abbreviated as “N.E.” or “N.E.2d”) both report decisions rendered by New York’s highest court, the New York Court of Appeals.

Important appellate decisions of the New York courts are also reported in an unofficial reporter called the New York Supplement (abbreviated as “N.Y.S.” or “N.Y.S.2d”). This is the only New York reporter in most New York prison libraries. The text of opinions published in the New York Supplement is identical to that published in the official reporters. However, if possible, citations to the official reporter should be used when submitting papers to New York State courts. The N.Y.S. or N.Y.S.2d version of the case provides the official citation at the beginning of each opinion. Every state has its own official reporter. Check your prison library to find the official reporter of your state.

(ii) Reporters as Research Tools

All reporters are useful as research tools, but those published by West Publishing Company (“West”) are the most useful. West reporters begin each case by providing “headnotes.” Headnotes are separate paragraphs that summarize each of the major issues decided in the case. Each headnote is numbered and

32. When a losing party is not satisfied with the outcome of a trial court case in the federal system, it can challenge the decision by bringing the case before the Circuit Court for review.

33. See Part B of this Chapter for a discussion of the Circuit Courts of Appeals.

34. One advantage of the Lawyers’ Edition is that for selected cases, not only is the text of the case provided but attorneys’ briefs submitted to the Court are also summarized. This reporter also includes essays written by its editorial staff on significant issues raised by selected cases. These essays provide a good review of the case law on those issues.

labeled with a “key number” that identifies the legal issue that was discussed. As the next Subsection of this Chapter will explain, these key numbers allow you to find other cases that deal with the same issue.

Although they are useful research tools, headnotes are not official parts of the decision, so you should not quote or discuss them in legal papers. Reading only the headnotes may give you a mistaken understanding of the decision. If the headnote discusses a topic that might be relevant to your case, you should find and read the section of the decision on which the headnote is based. If this section of the decision is helpful, you can use that part of the decision in your legal papers. To find the part of the decision that supports a particular headnote, refer to the paragraph(s) in the decision labeled with the same number as the headnote. Because West publishes almost all of the major reporters, headnotes will be present in most case reports that you read. Ultimately, however, you must read the entire case to determine if the case will be truly useful to you.

(iii) Digests and the “Key Number System”

You may have found helpful cases while doing your background reading (for example, in treatises), or while researching relevant constitutional or statutory references (in the “Notes of Decisions” section of the applicable source). If you have not found any useful cases (and even if you have), the next step is to look at a “digest.” Your prison library probably has three digests. The United States Supreme Court Digest is the digest used to find relevant Supreme Court cases. For relevant cases from other federal courts, use the Federal Practice Digest. Your prison library should also have a state digest, which will help you find relevant cases from your state. In New York, that digest will be the New York Digest.

Digests summarize case law using the West headnotes discussed above. Whereas cases have individual headnotes for each issue discussed in the case, the digests take headnotes from all the reported cases and group them together by subject matter. These subject areas, known as the “Digest Topics,” are arranged alphabetically. You can use digests by finding the broad subject area relating to your issue. Examples of Digest Topics include arrest, bail, convictions, and criminal law. Within each Digest Topic, there will likely be many subtopics, each of which is assigned a “key number.” You will know you are looking at the key number because it will have a little picture of a key in front of it. Once you find the Digest Topic and key number of a particular legal point, you can use that number to find cases on that legal point in any jurisdiction. The key numbers are the same for all digests. For example, Criminal Law (110) key number 37(1)³⁵ can be used to find cases on the subject of entrapment in New York State courts (by looking in the New York Digest), in federal courts (by looking in the Federal Practice Digest), and in the U.S. Supreme Court (by looking in the U.S. Supreme Court Digest), or cases from any state court (by looking in the digest of that state). For this reason, finding a key number for a particular issue in your case can greatly advance your research.

Under each key number, a digest will list “headnotes,” i.e., cases and their citations that address the topic of the key number. Depending on how often a particular issue is litigated, there may be no headnotes, or there may be hundreds of headnotes under each key number. Headnotes are listed first by the level of the court that decided the case, next in alphabetical order by jurisdiction, and finally in reverse chronological order (by date, beginning with the most recent) within each jurisdiction. Each headnote also provides a citation to the relevant case.

Digests do not provide comments on cases; they simply contain organized lists of headnotes (cases by topic). It is up to you to decide whether a particular case might apply to your legal problems. Once you decide that a headnote discusses an issue that might be helpful, you should write down the citation given in the headnote and use that citation to find the text of the case in a reporter. You should decide whether the headnote has pointed you to a useful case only after you have actually read that case. Digests are only research guides; you may find that a headnote points you to a helpful case, but you also may find that a promising headnote leads you to an unhelpful case.

Note that digests are usually published in several series, with each series limited to a certain time period. For example, the fourth series of the New York Digest only contains headnotes for cases decided from 1978 to the present; for earlier cases, you would need to consult an earlier series of this digest. You must be aware of the period covered by the digest to maximize your research effort. Each digest will explain its

35. “110” refers to the section containing Criminal Law, “37” refers to the key number for entrapment, and “(1)” refers to the subsection of “entrapment” entitled “in general.” This is where you will find the cases most often cited for the concept of entrapment.

coverage in its preface, found at the beginning of each volume. As with all other sources, do not forget to update (check to make sure the statute is still accurate by referring to the pocket part³⁶ of each hardcover volume you consult.

(iv) Finding Key Numbers

There are three basic ways to find relevant key numbers. The first and easiest way is if you have already found a useful case. Obtain the case from a reporter published by West. Next, review the headnotes found at the beginning of the case. One or more of the headnotes will concern the issue(s) with which you are interested. At the beginning of the headnotes there will be a number preceded by the picture of a key. This is the “key number.” As described earlier, this key number can be used to find other cases that address the same issue by looking in the digests under that key number.

The two other ways of obtaining key numbers are similar to the way you would find relevant legislation. As described earlier, one of these ways is the “book index” method. This method requires looking in a digest’s book index (located at the front of the volume) and scanning the alphabetical list of subject areas (digest topics) and the breakdown of each subject area into smaller topics and even smaller subtopics. For example, suppose that you were looking for federal cases on whether a search pursuant to a search warrant could be executed at night. You would start by finding the volume that has “Search and Seizure” on the spine of the book (Volumes 84 and 85 in the Federal Practice Digest (Fourth Series)). At the beginning of the Searches and Seizures section is an index that breaks down the large topic of Searches and Seizures into smaller and more specific legal areas. Part III refers to “Execution and Return of Warrants.” By looking at the subtopics under Part III, you will find an entry for “Time of Execution” and an even more specific entry for “Nighttime Execution.” This last entry of “Nighttime Execution” corresponds to the key number 146 in the digest topic “Searches and Seizures.” You should then write down all possible key numbers (here, Search and Seizure 146) and look up each key number and review a few headnotes under the numbers. In this way you will find useful key numbers and potentially helpful cases.

The final way of finding key numbers is by using the general index to the digests. This index is called the Descriptive Word Index (“DWI”) and contains several volumes. The DWI lists words in their common, everyday usage. It then tells you what digest topic in the main part of the digest you should look at to find cases and headnotes related to that word. Often, the DWI will give you the key number under which to look.

For example, suppose that you wanted to know whether you were entitled to be represented by a lawyer in prison disciplinary proceedings. A reasonable place to start looking would be the digest topic “Prisons” since that is where the disciplinary proceeding is to occur. In the DWI of the New York Digest (Fourth Series), there is a subheading under “Prisons” called “Proceedings” under which you will see a section titled “Discipline and Grievance,” which includes “Counsel and Counsel Substitutes.” Next to “Counsel and Counsel Substitutes” is the key number Prisons 13(9).

You would then look at the digest volume containing the digest topic “Prisons” and turn within that volume to key number 13. You will see that the specific issue of whether you are entitled to be represented by counsel in prison disciplinary proceedings is discussed as the ninth heading under key number 13, or “13(9).” As indicated earlier, you should read the descriptions of the cases, write down the citations of possibly useful cases, and then read these cases. To find similar cases in another jurisdiction, look up “Prisons 13(9)” in the digest for that jurisdiction.

A more specialized digest index is the Words and Phrases Index, which is found in a separate volume of each digest series. This index gives citations of cases that define a word or phrase. For example, if you want to know in detail what is meant by the term “detention,” look it up in this index. The index will give you the citations of cases that have defined that term. Although the Words and Phrases Index will not give you a key number, you can go to the cases it cites to obtain relevant key numbers.

D. Citation

Whenever you mention cases, statutes, regulations, etc. in your legal writing, these materials must be referenced in a proper legal form known as a “citation.” Legal citations allow a reader to easily find the sources that you use in your legal writings.

36. For a discussion on pocket parts see Part C(2)(c)(iii) of this Chapter.

There are many rules about citation style, and the major ones are detailed below. Also, Appendix A at the end of this Chapter analyzes the most common types of citations and will help you understand basic citation style. Detailed rules for every imaginable legal citation are contained in *A Uniform System of Citation* (commonly called “The Bluebook”), a publication that your prison library may have. Proper legal citation of cases, constitutions, and statutes should not be ignored, as it not only helps your readers find the materials that you are discussing, but also gives the judge a good first impression of your research.

1. Citing Cases

A case citation includes information about the parties involved in the case, the reporter (a bound compilation of cases) in which the case can be found, the court that decided the case, and the date of decision. An example of a complete case citation is: *People v. Delaremore*, 212 A.D.2d 804 (N.Y. App. Div. 1995). The “case name” (a listing of the names of the parties on either side) comes first and is underlined or italicized: *People v. Delaremore* or People v. Delaremore. Next comes the information that tells you where to find the case, in this order: the volume number of the reporter, the abbreviation of the reporter, and the page number where the case starts (in this example, 212 A.D.2d 804). The final portion of the citation is enclosed in parentheses. It includes the court that decided the case and the year the decision was released (here, (N.Y. App. Div. 1995)). The court name “N.Y. App. Div.” stands for the New York Supreme Court, Appellate Division. Note that in New York, the intermediate level of appellate court (the Appellate Division) is split into four separate “Departments.” If you are citing a case that was decided in the Appellate Division of the New York Supreme Court, you may also want to include which Department the decision came from. So in the example above, the court name could be expanded to “N.Y. App. Div. 2d Dept.” in order to show that the decision came from the Second Department. If the reporter that you are using publishes the decisions of only one state (for example, N.Y.S.2d), it is not necessary to repeat the state in the court name. For example, a correct citation would be: *People v. Aponte*, 759 N.Y.S.2d 486 (App. Div. 1995), not “(N.Y. App. Div. 1995).” If the reporter publishes the decisions of only one court (for example, the “S. Ct.” reporter only publishes Supreme Court cases), it is not necessary to list that court in the citation. Appendix A at the end of this Chapter summarizes the major citation styles.

You will sometimes want to refer to a particular page within the written opinion. If you are citing part of a case for the first time, put a comma after the number of the first page of the case and then put the specific page number (called a “pin cite”). For example, *Allen v. Hardy*, 478 U.S. 255, 259 (1986) indicates you are specifically referring to page 259 of the case *Allen v. Hardy*, which starts on page 255. If you have already given a citation to that particular case earlier in the paper, you can use a “short form citation” (abbreviated citation). The basic rule for a short form is to write the name of the first party in the case (for example, *Allen*), then the volume number of the reporter and the reporter abbreviation, and then the word “at,” followed by the page number of what you want to cite (478 U.S. at 259). So, the short form citation of this case would be: *Allen*, 478 U.S. at 259. If the first party is a governmental party, use the other party’s name. Thus, *United States v. Rosario* would be shortened to *Rosario* and never to *United States*.

Normally, you cite to the decision of the highest court that considered a case. For example, if the case was ultimately decided by the New York Court of Appeals (the highest state court in New York), it is not necessary to cite to the decisions of the lower New York courts that heard the same case. There may be times, however, that you wish to cite to the lower court decision. It would be appropriate to cite a lower court decision where the lower court considered an issue that a later court upheld without comment. However, if the case has been appealed to a higher court, this should be reflected in the citation. For example, *Schmuck v. United States*, 840 F.2d 384 (7th Cir. 1988), *aff’d*, 489 U.S. 705 (1989). In this citation, “*aff’d*” shows that the U.S. Supreme Court “affirmed,” or upheld, the decision of the Seventh Circuit Court of Appeals in the *Schmuck* case. If a decision has been reversed on appeal but the part of the decision that helps you was not reversed, the citation should reflect this—for example, *People v. Perkins*, 531 N.E.2d 141 (Ill. App. Ct. 5th Dist. 1988), *rev’d on other grounds sub nom. Illinois v. Perkins*, 496 U.S. 292 (1990). This citation tells you that the Supreme Court decided the *Perkins* appeal two years after the Fifth District of the Illinois Appellate Court made its decision and that it reversed that decision for a reason unrelated to the part of the case that helps you. The citation also shows that the Supreme Court considered the case under a different name than the Fifth District of the Illinois Appellate Court (that is what “*sub nom.*” means).

When you cite a federal appellate court decision, you also should show whether the Supreme Court has refused to review the decision. For example, *United States v. Fisher*, 895 F.2d 208 (5th Cir. 1990), *cert.*

denied, 493 U.S. 834 (1989). “Cert.” stands for “writ of certiorari,” which is what the Supreme Court issues when it decides to review a lower court decision. “Cert. denied” means that a party asked the Supreme Court to review the case but the Supreme Court refused to grant certiorari (refused to review the case). The Supreme Court refuses to review an overwhelming majority of the cases that come before it for certiorari.

You must check each case you cite to find out whether it was appealed and whether it was reversed or affirmed on appeal. Read Part E(2)(a) of this Chapter for information of how to update a case. If the entire case was reversed, you should not mention the lower court’s decision in your legal papers because it is no longer good law.

2. Citing Statutes

Citations for statutes are similar to other legal citations. The citation shows: (1) the “volume” number of the book the statute is in (the “title” or “book” number); (2) the statutory source in which you found the statute (for example, the United States Code Annotated is cited as U.S.C.A.); (3) the section of the law to which you are referring; and (4) the date of publication of the volume in which you found the statute. An example is 42 U.S.C.A. § 1983 (2006). Here, “42” is the title, “U.S.C.A.” is the abbreviation for United States Code Annotated, “§” means section, “1983” means the section 1983 within title 42, and “2006” is the year the volume you looked at was published. If the statute was changed recently, you must cite to the changed version of the statute. You can determine if a statute has been changed by looking at the supplement or “pocket part” at the back of the hardcover volume. For instance, if section 1983 had been amended in 2007, you would cite the amended section like this: 42 U.S.C.A. § 1983 (Supp. 2007). If you want to refer to the entire statute and only part of it has been amended, you would cite it like this: 42 U.S.C.A. § 1983 (2006 & Supp. 2007).

Citations for federal administrative regulations are very similar to citations for statutes. The citation includes (1) the title number of the regulation; (2) the source in which you found the regulation (the Code of Federal Regulations is cited as C.F.R.); (3) the specific section cited; and (4) the date of the code edition. For example, 28 C.F.R. § 544.70 (2013) refers to section 544.70 of Title 28 of the C.F.R. of the volume published in 2013. This section discusses the Federal Bureau of Prisons’ literacy program.

The format for citations to state administrative codes is slightly different in each state, but generally contains the same information as citations to statutes or federal regulations. Generally, the citation includes (1) the source that contains the state’s administrative code (for example, the Official Compilation of Codes, Rules & Regulations of the State of New York, cited as N.Y. Comp. Codes R. & Regs.); (2) the title or book number of the regulation (for example, in New York, Title 7 contains the rules and regulations of the Department of Corrections); (3) the specific section of the regulation to which you are referring; and (4) the publishing date of the volume in which you found the regulation. For example, N.Y. Comp. Codes R. & Regs. tit. 7 § 1704.6 (2013) is the correct citation for Title 7, section 1704.6 of the Codes, Rules, and Regulations of the State of New York. Although the format varies slightly in each state, you may be able to find the correct citation format for your state’s administrative code by looking in the first few pages of any volume of the code. Depending on the publisher of your state’s code, these pages may include information that gives the correct, official citation format.

Any citation in a footnote should be followed by a period.

E. Important Next Steps

1. Check Other Sources

A final way to research an issue is to read the *JLM*. If there is a chapter that discusses the issue or topic that you are interested in, read the cases cited in that chapter. If you want additional cases in a subject area, you can obtain the key numbers by looking at the case headnotes in the relevant reporter. The key numbers will allow you to find additional cases in the digests.

To find out more about a relevant case and its subject matter, you can look up that case in the “Table of Cases” in a relevant treatise. If the case is listed, read what the treatise author has to say about the case and the issues it discusses. While not binding on courts, treatise commentary can be helpful to a researcher and can be used to support your legal arguments.

Although legislation and case law will be the major sources of support for your legal arguments, other sources in your library might also be useful. Another review of general treatises may be helpful in explaining some of the cases you found, and may also provide leads for other potential arguments. You should also read

legal magazines and newspapers. Your prison library will likely have the local legal newspaper, such as the New York Law Journal. Any other type of legal aid found in your library should also be consulted. Practice commentaries, loose-leaf services, manuals, form books, textbooks, and legal dictionaries are all useful sources that your law library may have.

2. Update Your Research

It is extremely important that your research is up-to-date. You should make sure that any authority you use is current law. For example, you might want to use a case from two years ago, but there could have been a case one year ago that changed the law in some way. If you do not check, you could miss important changes. To make sure that statutes are current, look at the latest code editions and supplements. As described in Part C(2)(c)(iii) of this Chapter, a hardcover volume will likely have soft cover updates in the pocket located at the back of the volume. There could also be other updates that were shelved separately from the hardcover volume. Additionally, you must make sure that any case or statute you use has not been changed (overruled, overturned, amended, repealed, etc). Finally, you must check to see if recent cases or statutes have changed the issue you have been researching. You normally check to make sure that cases and the issues decided in them are up-to-date with a research tool called Shepard's Citations ("Shepard's").

(a) Shepard's

Shepard's is a research tool that provides a listing of all cases that have cited the case you are checking. You can also use Shepard's with statutes. Using this tool is called "Shepardizing." Shepard's serves two purposes: (1) it allows you to update your research and to make sure that other cases have not overruled, criticized, or otherwise affected the case you want to use in your legal documents, and (2) it points you to more cases that might be helpful.

There is a separate series of Shepard's volumes for each level of federal courts. Thus, there is a separate series for the Federal Supplement, the Federal Reporter, and the United States Reports (U.S.C.). Shepard's volumes are also available for state reporters. The basic function of Shepard's is to list every reported case that discusses a particular case. You use it to check for updates to cases that you want to cite. Updating means checking to see if the case is still good law that you can rely on. Thus, if ten other cases discuss *Miranda v. Arizona*, Shepard's will identify these ten cases. Shepard's will list a case that overrules the case you are researching, as well as other cases that discuss, explain, or even mention the case you would like to use. This will allow you to find out what other courts have said about the case you are researching and will also show you how other courts have handled the issues raised by that case.

Cases are listed in Shepard's only by citation, not by name. To "Shepardize" a case, first find the Shepard's series that matches the reporter in which your case is found. The reporter name is printed on the binding of each Shepard's volume. For example, if the case you are updating is reported in "F.2d," find the Shepard's volumes that have "Federal Reporter (Second Series)" printed on the binding. The binding will also show what year(s) or volume(s) of the reporter are covered by that Shepard's volume. Next, find the volume number in the citation of the case you are updating. (The volume is the first number in the citation.) Look for the binding that includes the volume number of the reporter. Then, search for that volume number in the upper right hand corner of the page. Once you've found the page where the citations for that volume number begin, look down the columns of citations listed until you find the starting page number of the case you are updating. This page number will be printed in large bold type. Beneath the bold page number are citations to cases that have mentioned the case you are researching. Citations in Shepard's are provided alphabetically by jurisdiction. Within each jurisdiction, the cases are listed from most recent to the oldest. The citations are not given in full. They contain only the volume number, the reporter, and the page number that refers to the case you are researching. Note that the page number is the page that mentions the case that you are researching. It is not the first page of that particular case.

Each Shepard's volume has a list of abbreviations in the front to help you decode the reporter abbreviations. There are often letters in front of the listed citations. The letters tell you whether a later court overruled, criticized, or followed the case that you are researching. The code letters are explained in a table on the inside of the front cover of each Shepard's volume. The most important symbols to look for are "o" which means the case you are researching has been overruled, "r" which means that the case you are researching has been reversed, and "d" which means that the case you are researching has been distinguished (that is, another court has created an exception to the case you are researching). These are

“negative treatments” of the case. Negative treatment makes a case less reliable. If the case you are researching has been overruled or reversed, then it is no longer useful to you. If it has been distinguished, try to figure out why it was distinguished. Then, you will have to think of reasons why the court should not distinguish your situation from the case you are researching. Sometimes a court reverses, overrules, or distinguishes only a part of a previous case rather than the entire opinion. That means that you might still be able to use that case. Therefore, it is important to determine whether the specific issue of interest to you has been reversed, overruled, or distinguished. Even if the court overruled or reversed the case based on a different issue, if you use this case in your legal documents, your case citation should show that the case was reversed on other grounds so the court knows you have done your research.

To find the most recent cases that have mentioned the case you are updating, check the hardcover supplements, if any. Next, check the current paperback supplements. You should check the supplements just as you would the main volume because they are organized in the same way. There are also volumes of Shepard's citations for statutes and federal rules, which list the judicial opinions that cite particular statutory provisions or federal rules. These are used to update statutes and rules in the same manner as the series for updating case law.

You can Shepardize not only to update cases but also to find other helpful cases. If you already have one case that is useful, Shepardizing that case will often lead you to other cases that will be helpful. The disadvantage of this method of finding cases is that Shepard's does not contain headnotes. Thus, you must read the cited case to learn whether it is helpful. However, you can shorten your search if you know the relevant headnote number from the case you are updating. You can use this headnote number to limit the cases you need to review to those containing the same number. In some citations there is a small superscript number between the reporter abbreviation and the page number; this shows that the cited case discusses the issue described in that headnote (superscript is text written small and high like this word: ^{superscript}). If you are interested in the issue discussed in headnote number 2 of the case you are updating, scan the list of citations for those that have a superscripted “2” in the citation. This will limit your review of cases to those that discuss the issue corresponding to headnote number 2 of the case you are updating. However, not all citations will list which headnotes are discussed. If you find a citation that does not list which headnotes are discussed, then you cannot tell whether that case will be useful until you read it.

Regardless of whether you use Shepard's to find cases, you must always use it to ensure the cases you are citing were not overruled, reversed, or distinguished.

F. Summary

Research is a key step in developing and presenting a legal argument. This Chapter has suggested an outline for the development of your legal arguments:

- (1) Analyze the problem: separate your case into small, separate issues. This will help you get started and provide manageable issues for you to research;
- (2) Get an overview of the subject area: review treatises and legal encyclopedias to obtain an introduction to the details of particular areas of law;
- (3) Find relevant legislation: consult the annotated codes to find U.S. and state constitutional provisions, federal statutes, state statutes, and legislative history;
- (4) Find relevant cases: read cases cited in annotated codes such as U.S.C.A. and McKinney's. Find additional cases through digests, key numbers, indices, words and phrases tables, and Shepard's;
- (5) Check other sources: review treatises, legal periodicals, practice commentaries, manuals, form books, texts, and legal dictionaries for additional commentary;
- (6) Update your research: make sure that you rely on the most up-to-date editions and supplements, and that you Shepardize your case law and legislation; and
- (7) Complete your citations: properly cite the authorities upon which you rely.

Two issues you should figure out before beginning your research are: (1) which court has jurisdiction to hear your case (both territorial and subject matter jurisdiction), and (2) if you are appealing a conviction, whether the prosecutor followed proper court rules to get your case to court. The following are the sources most often used in prison law libraries to find the law.

For federal law:

- (1) U.S.C.A. (for statutes and the annotations that follow the statutory text); and
- (2) Modern Federal Practice Digest (for federal cases on specific topics).

The major reporters you will be looking to for reported federal cases will be: (1) the Federal Supplement, cited as __ F. Supp. __, __ F. Supp. 2d __, and __ F. Supp. 3d __ (the 3d series will contain the most recent cases), for selected cases from all federal district courts; (2) the Federal Reporter, cited as __ F. __, __ F.2d __, and __ F.3d __ (the 3d series will contain the most recent cases), for cases from all federal circuit courts of appeals; and (3) the Supreme Court Reporter, cited as __ S. Ct. __, for cases from the U.S. Supreme Court. In case citations the reporter volume number goes before the reporter name, and the page number on which the case begins goes after.

For New York law:

- (1) McKinney's (for statutes and for the case annotations that follow the statutory text); and
- (2) New York Digest (for New York cases on specific topics).

The major reporter for reported New York cases is the New York Supplement (Second Series). It is cited as __ N.Y.S.2d __.

G. Other Ways to Learn About Legal Research

Many organizations have developed materials to help non-lawyers understand the law. For example, Gale Group publishes Gale Encyclopedia of American Law,³⁷ which is directed toward non-lawyers. Additionally, you can find a detailed explanation of how to conduct legal research in M. Cohen's Legal Research in a Nutshell.³⁸ Finally, the law is full of technical terms. Black's Law Dictionary (9th ed. 2010)³⁹ is particularly helpful in explaining legal terms.

H. Conclusion

Legal research is an important task for jailhouse lawyers because it provides you with the legal rules and principles you will need to argue your case effectively. The process begins with identifying the appropriate court (state versus federal, trial versus appellate, one with proper jurisdiction). The next step involves breaking down the issues in your specific case—the factual story—to see what legal sources you can use to make your argument. You should start with finding the legislation or administrative rules that apply, which can help you identify where your rights have been violated or how the court got it wrong. It will then be important to find previous cases that have facts similar to your case and support your position. Finally, after you gather different legal sources, you must make sure these sources are still valid and up-to-date (i.e., Shephardize) and cite to them properly.

37. Gale Encyclopedia of American Law (Donna Batten ed., 3d ed. 2011).

38. Morris L. Cohen & Kent Olson, Legal Research in a Nutshell (10th ed. 2010).

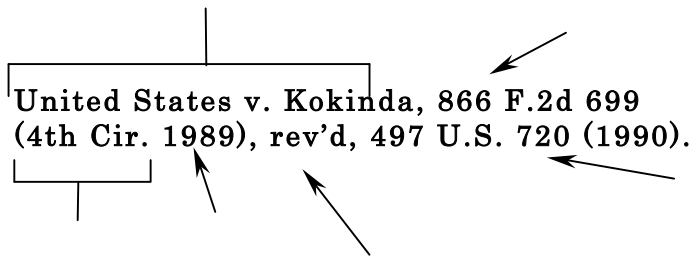
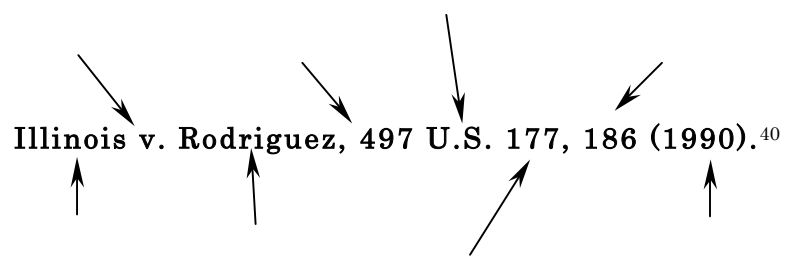
39. Black's Law Dictionary (9th ed. 2010).

THIS CASE HAS BEEN REPRODUCED FROM THE JLM (JUDICIAL LAWYER'S MANUAL) SERIES. (case name should be italicized) Do not use a governmental party as the first party name in a citation of case in which named party (e.g., State), because "rev'd" stands for reversible. Do not use a governmental party as the first party name in a citation of case in which named party (e.g., State), because "rev'd" stands for reversible. Do not use a governmental party as the first party name in a citation of case in which named party (e.g., State), because "rev'd" stands for reversible.

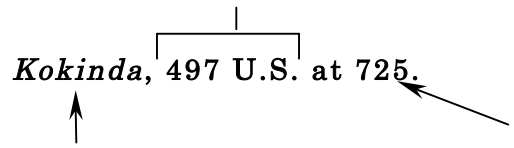
APPENDIX A

CITATION EXAMPLES OF COMMON AUTHORITIES

A-1. Federal Cases



Shortform (abbreviated) citation for the above case after it has been cited in full earlier in your legal paper:



40. You will notice that the *JLM* often cites to many different reporters for each case. Often, cases are published in more than one reporter; these "extra" citations are "parallel citations." If possible, you should always cite to an official reporter (for example, "U.S.," or "F.2d."). If you do not have the official reporter available at your prison library, just make sure that your citation to an unofficial reporter is accurate.

A-4. Statutes

Federal Statute

↓
28 U.S.C.A. § 1291 (1988).
↖

State Statute

N.Y. C.P.L.R. § 7801 (McKinney 1997).

A-5. Definitions for Common Statutory Abbreviations

Ann.	Annotated
App.	Appendix
art.	Article
Civ.	Civil
Comp.	Compilation
Const.	Constitution
Ct.	Court
Crim.	Criminal
et seq.	et sequentes, latin for 'and the following ones'
Gen.	General
Jud.	Judicial
P. or Proc.	Procedure
Rev.	Revised
R.	Rules
Stat.	Statutes
S. Ct.	Supreme Court
tit.	Title

CHAPTER 3

YOUR RIGHT TO LEARN THE LAW AND GO TO COURT*

A. Introduction

Although many rights are suspended while you are in prison, courts have protected a prisoner's constitutional right to access the state and federal courts.¹ This right includes a prisoner's ability to prepare and submit petitions and complaints, including federal habeas corpus petitions and civil rights actions.² The Supreme Court held in *Bounds v. Smith* that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."³ In other words, the Supreme Court believes that prisoners have a right to legal resources to prevent harmful legal outcomes. If the state stands in the way of your ability to do legal research or get legal assistance, you may be able to file a suit claiming that you have been denied access to the courts. You may also be able to file a suit claiming a denial of court access if the state prevents you from creating and mailing your legal papers by withholding necessary resources or materials. The Supreme Court stated in *Bounds* that the right of access to the courts includes the state's obligation to provide indigent prisoners "with paper and pen to draft legal documents, with notarial services to authenticate them, with stamps to mail them."⁴

The Supreme Court has limited the circumstances in which a prisoner can win a denial of access suit. In 1996, the Court held in *Lewis v. Casey* that to win a right of access case, the inmate must show that (1) he suffered an "actual injury" that (2) was connected to a "non-frivolous legal claim."⁵ The Court explained the "actual injury" requirement: "[A]n inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is sub par in some theoretical sense."⁶ In other words, you cannot simply base your claim on any perceived harm caused by the denial of access. The harm must be related to the loss of an opportunity to raise a specific substantive legal claim.⁷ One example could be losing the opportunity to file an appeal.⁸

Congress has also limited the ability of prisoners to bring denial of access suits. In 1995, Congress enacted the Prison Litigation Reform Act ("PLRA") which, among other things, requires prisoners to exhaust

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1. See *Procunier v. Martinez*, 416 U.S. 396, 419, 94 S. Ct. 1800, 1814, 40 L. Ed. 2d 224, 243 (1974) (describing right of access to courts as part of constitutional due process of law requirements); see also *Murray v. Giarratano*, 492 U.S. 1, 11 n.6, 109 S. Ct. 2765, 2771 n.6, 106 L. Ed. 2d 1, 12 n.6 (1989) (tracing right of access to courts to due process and equal protection clauses of United States Constitution).

2. *Bounds v. Smith*, 430 U.S. 817, 828 n.17, 97 S. Ct. 1491, 1498 n.17, 52 L. Ed. 2d 72, 83 n.17 (1977). For an explanation of federal habeas corpus petitions and how to use them, see *JLM*, Chapter 13. Civil rights actions involve the violation of your constitutional rights. For more information about your constitutional rights and how to sue those who violate your constitutional rights, see Chapter 16 of the *JLM*, which discusses Section 1983 and *Bivens* actions.

3. *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72, 83 (1977). For recent cases discussing the right of access, see *Hebbe v. Plier*, 627 F.3d 338 (9th Cir. 2010) (holding that the prisoner *Hebbe* satisfied the *Lewis* "actual injury" requirement, because while the prison was on lockdown, *Hebbe* was denied access to the law library to file a brief for his appeal); *Benjamin v. Kerik*, 102 F. Supp. 2d 157, 164–69 (holding that three of the eight allegations of "actual injury" fulfilled the *Lewis* requirement).

4. *Bounds v. Smith*, 430 U.S. 817, 824–25, 97 S. Ct. 1491, 1496, 52 L. Ed. 2d 72, 81 (1977).

5. *Lewis v. Casey*, 518 U.S. 343, 352–55, 116 S.Ct. 2174, 2180–2182 (1996).

6. *Lewis v. Casey*, 518 U.S. 343, 353, 116 S. Ct. 2174, 2181, 135 L. Ed. 2d 606, 617–19 (1996).

7. *Lewis v. Casey*, 518 U.S. 343, 351–53, 116 S. Ct. 2174, 2180–81, 135 L. Ed. 2d 606, 617–19 (1996). *Lewis* was a class action claiming denial of prisoners' right of access to courts. The Supreme Court reversed a Ninth Circuit decision ordering Arizona to provide prisoners with extensively equipped law libraries and experienced library staff.

8. *Lewis v. Casey*, 518 U.S. 343, 350–51, 116 S. Ct. 2174, 2179–89, 135 L. Ed. 2d 606, 617–18 (1996); see also *Christopher v. Harbury*, 536 U.S. 403, 413–14, 122 S. Ct. 2179, 2185–86, 153 L. Ed. 2d 413 (2002) (distinguishing between forward-looking claims, where future adjustments can solve the problem, and backward-looking claims where the opportunity was already lost).

their prison's administrative remedies before filing claims alleging violation of civil rights under 42 U.S.C. Section 1983 in federal court. The information provided in this Chapter is to be used *only as a supplement* to the information provided in Chapter 14 of the *JLM*. **If you decide to pursue any claim in federal court, you must read Chapter 14** of the *JLM* on the Prison Litigation Reform Act. Failure to follow the requirements in the PLRA can lead, among other things, to the loss of your good-time credit and to the loss of your right to bring future claims in federal court without paying the full filing fee at the time you file your claim.

This Chapter explains what constitutes a violation of your right of access to the courts. Parts B and C explore the threshold requirements you must prove before the court will examine your opportunities for access: (1) that you suffered an actual injury, and (2) that you did so because the state failed to fulfill its duty. Part B explains the actual injury requirement, as stated in *Lewis*. Part C outlines the reach of the state's⁹ duty to provide you access to the courts. The later Parts explain your rights once these requirements have been met. Part D explains what adequate law libraries must contain. Part E explains what constitutes adequate assistance from persons trained in the law (including the role of jailhouse lawyers¹⁰ in providing adequate assistance). Part F explains the state's duty to provide you with legal materials. The Appendix at the end of this chapter provides a list of useful publicly accessible online resources. Most of these websites provide access to searchable databases of recent trial and appellate decisions, in addition to Supreme Court cases. The Appendix highlights websites that integrate various types of secondary resources most effectively.

Be aware, however, that these organizations usually charge a fee for their services.

Because the rights described in this Chapter relate to the conditions of your confinement, **the PLRA requires you first try to protect your rights through your institution's administrative grievance procedure. Read Chapter 15 of the *JLM* for further information on inmate grievance procedures.** If you are unsuccessful or do not receive a favorable result through these procedures, you can then either bring a case under 42 U.S.C. Section 1983, file a tort action in state court (or in the Court of Claims if you are in New York), or file an Article 78 petition in state court if you are in New York. More information on all of these types of cases can be found in Chapter 5, "Choosing a Court and a Lawsuit," Chapter 14, "The Prison Litigation Reform Act," Chapter 16, "42 U.S.C. § 1983," Chapter 17, "Tort Actions," and Chapter 22, "Article 78," of the *JLM*.

B. Fulfilling the Actual Injury Requirement

The Supreme Court in *Lewis* narrowly interpreted the *Bounds* decision by holding that establishing a violation of your right to access the courts requires showing "actual injury" from the alleged violation.¹¹ The

9. "State" in this chapter means either a state government or the federal government. In other words, if you are a federal prisoner, when we refer to "state" in this chapter, for you it means the federal government.

10. *Black's Law Dictionary* 851 (9th ed. 2009) defines a jailhouse lawyer as "[a] prison inmate who seeks release through legal procedures or who gives legal advice to other inmates."

11. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 617–18 (1996); *see also* *Chirceol v. Phillips*, 169 F.3d 313, 317 (5th Cir. 1999) (finding that denial of access to funds from prison accounts to pay for filing fees did not constitute an actual injury because the complaint had been successfully filed); *Tourscher v. McCullough*, 184 F.3d 236, 242 (3d Cir. 1999) (finding that defendant failed to allege facts demonstrating that the number of hours he was required to work frustrated his access to the courts); *Klinger v. Dep't of Corr.*, 107 F.3d 609, 617 (8th Cir. 1997) (showing a complete and systematic denial of access to the law library or legal assistance was not enough to demonstrate actual injury); *Oliver v. Fauver*, 118 F.3d 175, 178 (3d Cir. 1997) (dismissing a claim because the prisoner suffered no injury as a result of alleged interference with legal mail); *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996) (holding that *pro se* prisoners failed to demonstrate that inadequacy of the prison law library or legal assistance caused actual injury); *Sabers v. Delano*, 100 F.3d 82, 84 (8th Cir. 1996) (finding prisoner had to show actual injury due to denial of access to courts, even if denial was systematic; specifically, prisoner had the burden of showing that the "lack of a library or the attorney's inadequacies hindered [her] efforts to proceed with [the] legal claim in a criminal appeal, post-conviction matter, or a civil rights action."); *Stotts v. Salas*, 938 F. Supp. 663, 667–68 (D. Haw. 1996) (holding that a state prisoner transferred to another state must show actual injury to have law books sent from the state of his former prison); *Cody v. Weber*, 256 F.3d 764, 769–70, (8th Cir. 2001) (holding that there was no "actual injury" when the inmate was not allowed to access his computer which stored his legal data, because no specific injury was demonstrated rather the inmate vaguely claimed that the data would set him free); *Hartmann v. O'Connor*, 415 Fed. Appx. 350, 352–35, 2011 WL 681094 (C.A.3

actual injury requirement is not a new concept, but the *Lewis* approach makes things harder for prisoners. Establishing that the prison's law library or legal assistance program is inadequate is not enough to prove actual injury. You must also show that you were kept from pursuing a non-frivolous claim—that is, “a claim for relief that is at least arguable in law and in fact”¹²—because of these inadequacies.¹³

One way to prove an actual injury may be to show a complaint you prepared was dismissed for failure to meet a “technical requirement” you could not have known about because of the insufficient legal assistance provided at your prison facility.¹⁴ “Technical requirement”, in this context, could refer to a procedural or document-related rule of a court that, if broken, might be grounds for dismissal of the claim.¹⁵ Another way may be to show you were prevented from filing a claim in the first place because of weaknesses in the legal facilities provided.¹⁶ If you and others bring a class action, you must show the injury was systemic—that is, you must show a system-wide problem.¹⁷

C. How The State's Limited Duty to Provide Access to the Courts May Apply to You

There are a few things to keep in mind when developing your claim: (1) your state's duty to provide you with adequate law libraries or adequate assistance from persons trained in law may not extend to the type of action you want to bring; (2) your correctional facility can choose how it will meet its duty to provide legal information or expertise; (3) the state's duty almost always applies regardless of the kind of facility in which you are incarcerated; (4) it is currently unclear how far the state's duty to provide access extends; (5) the state's duty applies whether or not you are considered indigent (meaning whether or not you can afford to sue).¹⁸

First, courts disagree about whether your right of access to the courts is applicable in all cases or only in those cases involving constitutional rights. In *Lewis*,¹⁹ the Supreme Court stated that your right of access does not guarantee your right to file any claim; instead, this right is limited to non-frivolous lawsuits that attack prison sentences or challenge the conditions of confinement.²⁰ Though this language is somewhat

(Del.) (3rd Cir. 2011) (holding that there was no “actual injury” when the inmate was allegedly denied access to the internet, because the inmate eventually made his legal claims in court).

12. *Lewis v. Casey*, 518 U.S. 343, 399, 116 S. Ct. 2174, 2203, 135 L. Ed. 2d 606, 662 (1996).

13. *Lewis v. Casey*, 518 U.S. 343, 352–53, 116 S. Ct. 2174, 2179, 135 L. Ed. 2d 606, 616 (1996). The Court said, “the inmate . . . must . . . demonstrate . . . the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.” *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996).

14. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996).

15. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996).

16. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996) (arguing that a prisoner could prove actual injury if the “inadequacies of the law library” prevented him from even filing a complaint).

17. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 349, 116 S. Ct. 2174, 2179, 135 L. Ed. 2d 606, 616 (1996) (holding that “isolated instances of actual injury” are not enough to show a systemic *Bounds* violation).

18. *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72, 83 (1977) (holding federal habeas corpus or state or federal civil rights actions are encompassed within right of access to the courts); *see also Knop v. Johnson*, 977 F.2d 996, 1009 (6th Cir. 1992) (determining that requiring a state to provide affirmative legal assistance to prisoners in actions unrelated to constitutional rights or their incarceration would be “an unwarranted extension of the right of access”); *cf. Glover v. Johnson*, 75 F.3d 264, 269 (6th Cir. 1996) (finding female prisoners *not* entitled to legal assistance in child custody matters); *John L. v. Adams*, 969 F.2d 228, 235–36 (6th Cir. 1992) (holding states do *not* have a duty to provide affirmative assistance to prisoners on civil matters arising under state law, but noting that “states are required to provide affirmative assistance in the preparation of legal papers in cases involving constitutional rights and other civil rights actions related to their incarceration . . . [and also that] in all other types of civil actions states may not erect barriers that impede the right of access of incarcerated persons”); *Walters v. Edgar*, 900 F. Supp. 197, 229 (N.D. Ill. 1995) (finding prisoners have no constitutional right to assistance from the state to pursue child custody matters).

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

20. The Supreme Court in *Lewis* held:

“*Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other*

unclear, *Lewis* and subsequent cases have narrowly defined the claims to which the right of access to the courts extends.²¹ For example, some courts have held that the state's duty extends only to the initiation of habeas corpus proceedings, direct appeals, and civil rights actions,²² because these are the only actions specifically mentioned in *Bounds*.²³ Thus, your state's duty to provide access to the courts may not extend to ordinary civil proceedings.²⁴ Nonetheless, you should check your state's law on this issue, which *may* cover civil proceedings.

Second, the state may choose how to fulfill its duty.²⁵ The state may provide you with an adequate law library, adequate assistance from persons trained in the law, a combination of the two, or something slightly different.²⁶ For example, an inadequate or non-existent law library may not violate a prisoner's right of access when the state provides some other sort of legal assistance.²⁷ At the same time, while the state is free

litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.”

Lewis v. Casey, 518 U.S. 343, 355, 116 S. Ct. 2174, 2182, 135 L. Ed. 2d 606, 620 (1996).

21. See, e.g., *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999) (holding that “a prisoner’s right to access the courts extends to direct appeals, habeas corpus applications, and civil rights claims only”); *Wilson v. Blankenship*, 163 F.3d 1284, 1291 (11th Cir. 1998) (holding that the civil forfeiture case that the plaintiff was attempting to litigate was “not a type of case that is included under the right of inmates’ access to courts under *Lewis*”).

22. *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999).

23. *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72, 83 (1977) (holding federal habeas corpus or state or federal civil rights actions are encompassed within right of access to the courts); see also *Knop v. Johnson*, 977 F.2d 996, 1009 (6th Cir. 1992) (determining that requiring a state to provide affirmative legal assistance to prisoners in actions unrelated to constitutional rights or their incarceration would be “an unwarranted extension of the right of access”); cf. *Glover v. Johnson*, 75 F.3d 264, 269 (6th Cir. 1996) (finding female prisoners *not* entitled to legal assistance in child custody matters); *John L. v. Adams*, 969 F.2d 228, 235–36 (6th Cir. 1992) (holding states do *not* have a duty to provide affirmative assistance to prisoners on civil matters arising under state law, but noting that “states are required to provide affirmative assistance in the preparation of legal papers in cases involving constitutional rights and other civil rights actions related to their incarceration . . . [and also that] in all other types of civil actions states may not erect barriers that impede the right of access of incarcerated persons”); *Walters v. Edgar*, 900 F. Supp. 197, 229 (N.D. Ill. 1995) (finding prisoners have no constitutional right to assistance from the state to pursue child custody matters).

24. See *Glover v. Johnson*, 75 F.3d 264, 269 (6th Cir. 1996) (holding female prisoners *not* entitled to legal assistance in child custody matters); *John L. v. Adams*, 969 F.2d 228, 235–36 (6th Cir. 1992) (holding that states do *not* have a duty to provide affirmative assistance to prisoners on civil matters arising under state law).

25. *Morello v. James*, 810 F.2d 344, 346–47 (2d Cir. 1987) (“The right of access to the courts is substantive rather than procedural. Its exercise can be shaped and guided by the state but cannot be obstructed, regardless of the procedural means applied.” (citations omitted)); *Ramos v. Lamm*, 639 F.2d 559, 583 (10th Cir. 1980) (“*Bounds* does not hold that inmates have an absolute right to any particular type of legal assistance. The states are still free to choose among a variety of methods or combinations thereof in meeting their constitutional obligations [to provide access to the courts].” (citations omitted)); *Glover v. Johnson*, 75 F.3d 264, 266–67 (6th Cir. 1996) (holding that state could terminate funding for prison legal services program that provided female prisoners with assistance on child care matters because the termination did not violate the right of access to courts).

26. The Supreme Court has pointed out that “while adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts,” alternative programs may be acceptable. *Bounds v. Smith*, 430 U.S. 817, 830, 97 S. Ct. 1491, 1499, 52 L. Ed. 2d 72, 84 (1977). The *Bounds* Court suggested some alternatives to having a law library:

“Among the alternatives [to providing law libraries] are the training of inmates as paralegal assistants to work under lawyers’ supervision, the use of paraprofessionals and law students . . . , the organization of volunteer attorneys through bar associations or other groups, the hiring of lawyers on a part time consultant basis, and the use of full-time staff attorneys, working either in new prison legal assistance organizations or as part of public defender or legal services offices.”

The *Bounds* Court did not consider this list of proposed alternatives complete, stating that “a legal access program need not include any particular element we have discussed, and we encourage local experimentation.” *Bounds v. Smith*, 430 U.S. 817, 831–32, 97 S. Ct. 1491, 1499–1500, 52 L. Ed. 2d 72, 84–85 (1977).

27. Prison authorities may “replace libraries with some minimal access to legal advice and a system of

to devise its own legal access plan, there is no guarantee that courts will find it sufficient to satisfy your right of access to the courts.²⁸

Third, the state's duty to provide you with access to the courts is not limited to those in state prison, but also extends to prisoners in county and city jails,²⁹ incarcerated juveniles,³⁰ persons serving brief sentences in local jails, pretrial detainees, and mental patients under commitment. Prisoners who are transferred from one state correctional facility to another or from a state correctional facility to a federal correctional facility retain their right of access to the courts and therefore must be provided some legal access program.³¹ However, as in *Blake v. Berman*, the court may find that the state has fulfilled its duty by providing you with persons trained in the law but no legal materials pertaining to the state in which you were convicted.³² For example, a federal court in New York has suggested that a state might fulfill its obligation to provide access to the courts by either supplying law books or providing legal counsel to state prisoners incarcerated in federal facilities.³³

Fourth, the extent of a state's duty to assist your access to the courts is unclear. For instance, is it enough for a state to assist only until you are finished writing your complaint? *Lewis* greatly limits the *Bounds* decision by explaining that prison authorities have no duty to enable the prisoner to find or recognize violations of his rights³⁴ or to "litigate effectively once in court."³⁵

Finally, the right of access to the courts applies to prisoners regardless of their financial status.

D. What is an Adequate Law Library?

The Supreme Court has never defined exactly what an "adequate" law library is.³⁶ The American Association of Law Libraries' ("AALL") Special Committee on Law Library Services to Prisoners has a

court-provided forms . . . that asked the inmates to provide only the facts and not to attempt any legal analysis." *Lewis v. Casey*, 518 U.S. 343, 352, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618–19 (1996) (citations omitted). *See also* *Blake v. Berman*, 877 F.2d 145, 146 (1st Cir. 1989) (finding law school clinical program might be considered an adequate alternative to a law library).

28. *See* *Novak v. Beto*, 453 F.2d 661, 663–64 (5th Cir. 1971) (finding that a prison legal access program consisting of a small "library," permission to use the law books of fellow prisoners, the prison employment of two full time attorneys, and three senior law students employed one summer may not be a sufficient alternative to allowing prisoners to provide some form of legal assistance to one another).

29. *See* *Leeds v. Watson*, 630 F.2d 674, 676–77 (9th Cir. 1980) (finding that there is a question of obstruction when prisoners in a county jail are required to get a court order to have access to a law library close by, and must be accompanied by a guard, and are not given sufficient information concerning these requirements); *Williams v. Leeke*, 584 F.2d 1336, 1340 (4th Cir. 1978) (finding that a situation where a prisoner in a city jail was only allowed access to legal resources 45 minutes a day, three days a week was "on its face a constitutional violation"); *Cruz v. Hauck*, 475 F.2d 475, 476–477 (5th Cir. 1973) (holding that prison regulations must not unreasonably invade the relationship of the prisoner to the courts in a case where the prisoner was in a county jail); *Tuggle v. Barksdale*, 641 F. Supp. 34, 36–37 (W.D. Tenn. 1985) (discussing how the fundamental right of access to the court may be applied in a county jail).

30. *John L. v. Adams*, 969 F.2d 228, 233 (6th Cir. 1992) (holding that incarcerated juveniles have a constitutional right of access to the courts).

31. *Messere v. Fair*, 752 F. Supp. 48, 50 (D. Mass. 1990) (holding that neither a copying service providing Massachusetts law that required specific citations, nor a Connecticut legal assistance program that refused to work on Massachusetts legal materials, provided a prisoner "meaningful access to the Massachusetts courts within the contemplation of *Bounds v. Smith*").

32. *Blake v. Berman*, 877 F.2d 145, 146 (1st Cir. 1989) (finding prison program providing legal assistance instead of full law library satisfied access requirements).

33. *See* *Kivela v. U.S. Att'y Gen.*, 523 F. Supp. 1321, 1325 (S.D.N.Y. 1981) (holding prisoners' right of access to courts satisfied where state has provided either law books or legal counsel), *aff'd*, 688 F.2d 815 (2d Cir. 1982).

34. *Lewis v. Casey*, 518 U.S. 343, 354, 116 S. Ct. 2174, 2181, 135 L. Ed. 2d 606, 619 (1996) (denying that "the State must enable the prisoner to discover grievances" (emphasis omitted)).

35. The *Lewis* Court restricted the *Bounds* ruling to require states to provide the tools "that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Lewis v. Casey*, 518 U.S. 343, 355, 116 S. Ct. 2174, 2182, 135 L. Ed. 2d 606, 620 (1996).

36. The Court simply stated that prisoner access to the courts should be "adequate, effective, and meaningful" and that "[m]eaningful access' to the courts is the touchstone." *Bounds v. Smith*, 430 U.S. 817,

suggested list of resources that should be in a prison law library, but states are not required to follow the AALL's guidelines, and various circuits have come up with their own list of what a prison law library should contain.³⁷ Even if a prison has a law library that meets either a circuit's requirements or the AALL's guidelines, a court may still decide that access to the court has been denied if books are frequently missing³⁸ or if prisoners cannot use the library.³⁹ For example, functionally illiterate prisoners,⁴⁰ non-English speakers,⁴¹ and the blind cannot use typical law libraries.⁴² When prisoners cannot use the law library because of illiteracy, an inability to speak English, or a disability, the state may need to provide a legal assistance program consisting of persons trained in the law in addition to, or in place of, an adequate prison law library.⁴³

Generally, the state may limit your access to law libraries and legal materials for security reasons.⁴⁴ The Supreme Court held in *Lewis* that restrictive practices justified by security concerns will be upheld even if they obstruct court access.⁴⁵ For instance, prison officials may restrict the amount of time an individual

822–23, 97 S. Ct. 1491, 1495, 52 L. Ed. 2d 72, 79–80 (1977) (quoting *Ross v. Moffitt*, 417 U.S. 600, 611, 615, 94 S. Ct. 2437, 2444, 2446, 41 L. Ed. 2d 341, 351, 353 (1974)).

37. In *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 856 (9th Cir. 1985), the Ninth Circuit held that the following list of books “meets minimum constitutional standards and provides inmates with sufficient access to legal research materials to prepare *pro se* pleadings, appeals, and other legal documents” for Idaho State: Idaho Code; Idaho Reports; United States Reports, from 1962 to present; Federal Reporter Second Series, beginning with volume 273 [1960]; portions of the United States Code Annotated, including Federal Rules of Appellate Procedure and Federal Rules of Evidence; Appellate Rules of the Ninth Circuit Court of Appeals; Local Rules of the United States District Court for the District of Idaho; various Nutshells on procedure, civil rights, criminal law, constitutional law, and legal research; West Pacific Digest Second Series; various volumes of Federal Practice & Procedure; Manual for Complex Litigation Pamphlet Subscription; Federal Practice & Procedure, Criminal Pamphlet; West Federal Practice Digest 2d; Pacific Digest Second Series; Federal Supplement, beginning with volume 482 [1980]. In *Tuggle v. Barksdale*, 641 F. Supp. 34, 39 (W.D. Tenn. 1985), the court stated that the law library in this case should include the following: “[all] volumes and titles of U.S.C.A . . . which cover the United States Constitution, and Titles 5, 15, [and] 18 [of the U.S.C.A.] with complete rules of the various courts, [Title] 28 with complete rules, [Title] 42 and the General Index . . . Federal Practice and Procedure by Wright and Miller, . . . Tennessee Code Annotated Volume 7 and 10 and Criminal Law Library (2-volume set, latest edition)[,] . . . [and] Black’s Law Dictionary latest edition.” See also *Griffin v. Coughlin*, 743 F. Supp. 1006, 1020–25 (N.D.N.Y. 1990), in which the court detailed and examined the inventory of the Clinton Main law library and stated that it was constitutionally sufficient and provided prisoners with “access to a law book inventory which rises above the constitutional minimum.”

38. *Walters v. Edgar*, 900 F. Supp. 197, 226–27 (N.D. Ill. 1995) (finding that prison’s replacement of missing volumes only once a year appeared to be inadequate maintenance of library, and holding that even if prisoners might be responsible for stealing the missing volumes, “each plaintiff’s right of access to the courts is individual, and therefore a . . . [prisoner] cannot be prevented access by . . . theft”).

39. See, e.g., *Cruz v. Hauck*, 627 F.2d 710, 721 (5th Cir. 1980) (“Library books, even if ‘adequate’ in number, cannot provide access to the courts for those persons who do not speak English or who are illiterate.”); *Acevedo v. Forcinito*, 820 F. Supp 886, 888 (D.N.J. 1993) (“[F]or prisoners who cannot read or understand English, the constitutional right of access to the courts cannot be determined solely by the number of volumes in, or size of, a law library.”).

40. See, e.g., *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 855–56 (9th Cir. 1985) (stating that “[a] book and a library are of no use, in and of themselves, to a prisoner who cannot read”); *U.S. ex rel. Para-Prof. Law Clinic v. Kane*, 656 F. Supp. 1099, 1105–07 (E.D. Pa. 1987) (the elimination of a jailhouse lawyer association, leaving only a law library for prisoners, would leave functionally illiterate prisoners without court access), *aff’d*, 835 F.2d 285 (3d Cir. 1987).

41. See, e.g., *U.S. ex rel. Para-Prof. Law Clinic v. Kane*, 656 F. Supp. 1099, 1106 (E.D. Pa. 1987) (stating that “Spanish-speaking inmates who cannot read or write English are unable to present, with reasonable adequacy, complaints to the courts without assistance”).

42. *Phillips v. United States*, 836 F. Supp. 965, 967–68 (N.D.N.Y. 1993) (stating that a prisoner’s blindness may effectively deny him access to the prison law library).

43. *Phillips v. United States*, 836 F. Supp. 965, 967–68 (N.D.N.Y. 1993) (stating that denial of access to a legal assistance program may give rise to a claim of denial of access to the court).

44. *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 858 (9th Cir. 1985) (stating that “[p]rison officials of necessity must regulate the time, manner, and place in which library facilities are used”) (citing *Twyman v. Crips*, 584 F.2d 352, 358 (10th Cir. 1978)).

45. *Lewis v. Casey*, 518 U.S. 343, 361–62, 116 S. Ct. 2174, 2185, 135 L. Ed. 2d 606, 624 (1996) (holding that “delays in receiving legal materials or legal assistance” are “not of constitutional significance, even

prisoner may spend in the library⁴⁶ and the amount of time the library is open “in light of legitimate security considerations.”⁴⁷ But, the state may not limit your access to law libraries or legal assistance to the point that your right of access to the courts is frustrated.⁴⁸

Prison regulations that affect segregated prisoners’ access to law libraries, legal materials, and legal assistance have spawned a great deal of litigation. Courts have stopped states from enforcing regulations restricting or withholding law books from prisoners in solitary confinement.⁴⁹ Several (but not all) courts have criticized requirements that make prisoners request specific books to be delivered to their cells,⁵⁰ or identify the exact materials they want to use before entering the library.⁵¹ However, a prison can meet its obligation to provide a segregated prisoner with access to the courts by allowing some, but not unfettered, access to legal materials or some access to legal assistance.⁵²

E. The State’s Duty to Permit Access to Adequate Legal Assistance

While the *Bounds* Court described various legal substitutes for law libraries,⁵³ it never defined the elements of an adequate legal access program or adequate assistance from persons trained in the law. Therefore, it is not exactly clear what “adequate” means in these contexts, but courts have occasionally described what might qualify.⁵⁴ For example, if the state only provides people to assist you who are *not*

where they result in actual injury” as long as they come from “prison regulations reasonably related to legitimate penological interests”).

46. *Shango v. Jurich*, 965 F.2d 289, 292–93 (7th Cir. 1992) (holding that restrictions on library hours which included: being closed nights, weekends, and holidays; allowing general population prisoners to use library, optimally for 10 to 11 hours, one day each week; and limiting the library visitation hours for prisoners in segregation and protective custody to about three hours every third to fifth weekday, did not deny prisoners the constitutional right of meaningful access as described in *Bounds*); *see also* *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 858 (9th Cir. 1985) (stating that library being open a minimum of eleven hours each day was “an adequate amount of total library access time”).

47. *Shango v. Jurich*, 965 F.2d 289, 292 (7th Cir. 1992) (quoting *Caldwell v. Miller*, 790 F.2d 589, 606 (7th Cir. 1986)).

48. *See* *Straub v. Monge*, 815 F.2d 1467, 1469 (11th Cir. 1987) (stating that “[r]egulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid”) (quoting *Procunier v. Martinez*, 416 U.S. 396, 419, 94 S. Ct. 1800, 1814, 40 L. Ed. 2d 224 (1974)).

49. *See, e.g., Knell v. Bensinger*, 489 F.2d 1014, 1017 (7th Cir. 1973) (holding that, although a prisoner in isolation does not have unlimited rights to use the library, if a prisoner in solitary confinement is prevented from using the library or consulting an advisor to prepare a petition, the courts may find that the prisoner’s right of access was effectively denied); *U.S. ex rel. Para-Prof. Law Clinic v. Kane*, 656 F. Supp. 1099, 1104–05 (E.D. Pa. 1987) (finding prison’s program of providing a small number of cases or books to segregated prisoners was unconstitutional, and prison had a “duty to insure that the ‘opportunity to do legal research [given to segregated prisoners] must be at least the equivalent of the opportunity that is available to an inmate who is permitted to go personally to the prison library’”) (quoting *Wojtczak v. Cuyler*, 480 F. Supp. 1288, 1301 (E.D. Pa. 1979)); *Johnson v. Anderson*, 370 F. Supp. 1373, 1383–85 (D. Del. 1974) (holding prison rules allowing a prisoner in solitary confinement access to only one law book of his choosing on two times during the week violated the prisoner’s due process right), *modified on other grounds*, 420 F. Supp. 845 (D. Del. 1976).

50. The runner system or paging system, “also known as an ‘exact-cite system’ because an inmate must request materials by exact cite,” has been deemed an inadequate legal access system for both segregated and non-segregated prisoners by some courts. *Cannell v. Bradshaw*, 840 F. Supp. 1382, 1389 (D. Or. 1993) (holding paging system alone does not provide adequate access to the courts); *Griffin v. Coughlin*, 743 F. Supp. 1006, 1023 (N.D.N.Y. 1990) (finding book request system deprived protective custody prisoners of meaningful access to the courts).

51. *See, e.g., Cepulonis v. Fair*, 732 F.2d 1, 4 (1st Cir. 1984) (finding requirement that prisoners identify specific volumes sought prior to entering library to be suspect); *Williams v. Leeke*, 584 F.2d 1336, 1339 (4th Cir. 1978) (“It is unrealistic to expect a prisoner to know in advance exactly what materials he needs to consult.”).

52. *See, e.g., Lovell v. Brennan*, 566 F. Supp. 672, 696–97 (D. Me. 1983) (stating that an adequate legal access plan would provide segregated prisoners with access to law books and a prisoner advocate, or other persons trained in the law, depending on the circumstances), *aff’d*, 728 F.2d 560 (1st Cir. 1984).

53. *Bounds v. Smith*, 430 U.S. 817, 831, 97 S. Ct. 1491, 1499–500, 52 L. Ed. 2d 72, 84–85 (1977).

54. In *Gluth v. Kangas*, the Ninth Circuit upheld the district court’s imposition of a training program for prisoner legal assistants. The *Gluth* Court stated that “*Bounds* requires, in the absence of adequate law

trained in the law, the court would most likely find that such assistance does not satisfy your right of access to the courts.⁵⁵

Occasionally, the state may decide to fulfill its obligation to provide you with access to courts by allowing other prisoners to assist you.⁵⁶ Prisoners who provide other prisoners with legal assistance are called jailhouse lawyers or “writ writers.”⁵⁷ In *Johnson v. Avery*, the Supreme Court held that a state could not prevent one prisoner from assisting another prisoner in the preparation of his writ in the absence of reasonable alternatives to such assistance.⁵⁸ Therefore, if the state does not provide you with any sort of adequate legal access program, it cannot prohibit you from getting assistance from a jailhouse lawyer.⁵⁹ Although the state may not prohibit you from getting assistance from a jailhouse lawyer, the state still has the power to reasonably regulate the activities of jailhouse lawyers.⁶⁰ For example, the state can require that a jailhouse lawyer get approval from the state prior to helping another prisoner.⁶¹ The state can also prohibit jailhouse lawyers from visiting the cells of the prisoners they are assisting,⁶² and from receiving payment for their services.⁶³

F. The State's Duty to Provide Materials

The Supreme Court has held that the right of access to the courts includes providing indigent prisoners “with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them.”⁶⁴ In other words, even if the state provides an adequate law library or assistance from persons

libraries, some degree of professional or quasi-professional legal assistance to prisoners. Although legal training need not be extensive, *Bounds* does require that inmates be provided the legal assistance of persons with at least some training in the law.” *Gluth v. Kangas*, 951 F.2d 1504, 1511–12 (9th Cir. 1991) (citations omitted). *See also Darby v. Schmalenberger*, 1:12-CV-033, 2012 WL 5471881 (D.N.D. May 7, 2012). (holding that the inmate has “neither right to internet access nor a right to file electronically” because the State has a “legitimate penological interest in restricting inmates' internet access.”)

55. *Valentine v. Beyer*, 850 F.2d 951, 956 (3d Cir. 1988) (“An untrained legal research staff is insufficient to safeguard an inmate’s right of access to the courts.”) (quoting *Para-Professional Law Clinic v. Kane*, 656 F. Supp. 1099 (E.D. Pa. 1987), *aff’d*, 835 F.2d 285 (3d Cir. 1987), *cert. denied*, 485 U.S. 993, 108 S.Ct. 1302, 99 L. Ed. 2d 511 (1988)).

56. This has also been called “mutual assistance among inmates.” *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969).

57. *See Johnson v. Avery*, 393 U.S. 483, 487–88, 89 S. Ct. 747, 749–50, 21 L. Ed. 2d 718, 722–23 (1969) (discussing role of prisoners who provide legal assistance to other prisoners).

58. *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969) (striking down a prison regulation that forbade prisoners from providing each other with any sort of legal help or advice).

59. *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969) (“[U]nless and until the State provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, it may not validly enforce a regulation . . . barring inmates from furnishing such assistance to other prisoners.”). However, you have no right to demand the assistance of a specific jailhouse lawyer. *See Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981) (prisoner had no right to “services of a particular writ writer”); *Prisoners’ Legal Ass’n v. Robertson*, 822 F. Supp. 185, 190 (D.N.J. 1993) (holding a prisoner has no “right to the assistance of a particular prisoner”).

60. *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969) (“[T]he State may impose reasonable restrictions and restraints upon the acknowledged propensity of prisoners to abuse both the giving and the seeking of assistance . . . for example, by limitations on the time and location of such activities . . .”); *Sizemore v. Lee*, 20 F. Supp. 2d 956, 958 (W.D. Va. 1998) (holding the prisoner can be ordered not to engage in writ writing on an individual basis when the security of the prison requires the order and that writ writers were not mandated where the prison provided prisoners with a law library and legal assistance.)

61. *Rivera v. Coughlin*, 210 A.D.2d 543, 543–44, 620 N.Y.S.2d 505, 506 (3d Dept. 1994) (upholding determination of disciplinary violation by a prisoner who sent a letter to the FBI on behalf of another prisoner without receiving prior approval for providing such assistance pursuant to state directives).

62. *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984) (holding that prisoner was not denied effective assistance of counsel where jailhouse lawyers were prohibited from visiting his cell).

63. *Johnson v. Avery*, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718, 724 (1969) (discussing the State’s power to limit and regulate jailhouse lawyers in situations where they may be punished for receiving payment for legal assistance); *Henderson v. Ricketts*, 499 F. Supp. 1066, 1069 (D. Colo. 1980) (distinguishing that right of access to the court cannot be denied but “[c]ompensation to jailhouse lawyers by other inmates may be prohibited”).

64. *Bounds v. Smith*, 430 U.S. 817, 824–25, 97 S. Ct. 1491, 1496, 52 L. Ed. 2d 72, 81 (1977).

trained in the law, failure to provide you with the materials necessary for drafting, notarizing, and mailing your legal documents may also violate your right to access the courts.

There are a few important things to remember before claiming that you have been denied access to the courts because of the state's refusal to provide you with materials. First, you may not be entitled to all or any of the materials that you request. The courts have held: that prisoners may be given pencils instead of the pens mentioned in *Bounds*;⁶⁵ that prisoners have no constitutional right to use or possess computers or typewriters;⁶⁶ that the state is not required in all cases to provide free photocopying;⁶⁷ that the state need not provide unlimited free postage;⁶⁸ and that a notary need not be available at all times.⁶⁹ Second, unlike its duty to provide adequate law libraries or assistance from persons trained in the law, the state's duty to provide you with materials may only apply to indigent prisoners. You may need to research the laws and regulations in your state to determine what the accepted standard for indigence is in your correctional facility and in your state.⁷⁰ Third, your right of access to the courts may be balanced against the state's

65. *Canell v. Bradshaw*, 840 F. Supp. 1382, 1391 (D. Or. 1993) (“Security considerations may . . . justify the issuance of two-inch ‘golf’ pencils.”) (citing *Jeffries v. Reed*, 631 F. Supp. 1212, 1215 (E.D. Wash. 1986)). However, the court also stated that if the prisoner in *Canell* had suffered from a medical condition preventing him from drafting legal documents longhand with a two-inch pencil, then “[u]nder those circumstances, a full-sized writing instrument or typewriter might become an indispensable tool for communicating with the court. If prison officials know of such a problem, then their denial of . . . [the prisoner’s] request could constitute a deprivation of necessary legal supplies unless that action was justified by a sufficient penological interest.” *Canell v. Bradshaw*, 840 F. Supp. 1382, 1391 (D. Or. 1993).

66. *See, e.g., Taylor v. Coughlin*, 29 F.3d 39, 40 (2d Cir. 1994) (finding “no constitutional right to a typewriter as an incident to the right of access to the courts . . . [and no] constitutional right to typewriters of a specific memory capacity” (citations omitted)); *Sands v. Lewis*, 886 F.2d 1166, 1169 (9th Cir. 1989) (holding that prisoners have no constitutional right to a typewriter); *Am. Inmate Paralegal Ass’n v. Cline*, 859 F.2d 59, 61 (8th Cir. 1988) (“Prison inmates have no constitutional right of access to a typewriter and prison officials are not required to provide one as long as the prisoner is not denied access to the courts.”) (citation omitted); *Walters v. Edgar*, 900 F. Supp. 197, 229 (N.D. Ill. 1995) (“[P]risons are not required to provide inmates with typewriters.”); *Howard v. Leonardo*, 845 F. Supp. 943, 946 (N.D.N.Y. 1994) (“[I]nmates have no constitutional right to the possession and use of a typewriter . . . since prisoners are not prejudiced by filing hand written briefs.”) (citation omitted); *Lehn v. Hartwig*, 13 F. App’x 389, 392 (7th Cir. 2001) (holding that “if prisoners have no constitutional right to a typewriter, they certainly do not have a right to a computer”) (citations omitted); *but see Tuggle v. Barksdale*, 641 F. Supp. 34, 38 (W.D. Tenn. 1985) (holding jail must provide a sufficient number of usable typewriters in legal room unless they can be proven to be a security threat).

67. *Gittens v. Sullivan*, 670 F. Supp. 119, 122 (S.D.N.Y. 1987), *aff’d* 848 F.2d 389 (2d Cir. 1988) (finding a provision of carbon paper to prisoners was “sufficient to provide proper access to the courts The State should not be forced to provide free access to copier machines for prisoner use when there is an acceptable, less costly substitute.”); *Dugar v. Coughlin*, 613 F. Supp. 849, 854 (S.D.N.Y. 1985) (noting prisons may make prisoners pay for photocopies, as this is a “reasonable balance of the legitimate interests of both prisoners and the State”); *but see Canell v. Bradshaw*, 840 F. Supp. 1382, 1392 (D. Or. 1993) (holding that prisoners clearly have an established right to photocopying under certain limited circumstances).

68. *Gittens v. Sullivan*, 670 F. Supp. 119, 123 (S.D.N.Y. 1987) (holding that a provision of \$1.10 per week for stamps and an additional advance of \$36 for legal mailings to indigent prisoner satisfied the constitutional minimum for access to the courts); *Dugar v. Coughlin*, 613 F. Supp. 849, 853 (S.D.N.Y. 1985) (upholding the directive providing that prisoners could mail five one-ounce letters per week free of charge but would have to pay for any mail weighing more than one ounce, or in excess of five one-ounce letters in one week, because “a prisoner’s constitutional right of access to the courts . . . does not require that prisoners be provided with unlimited free postage”); *see also Pacheco v. Commissioner*, 897 F. Supp. 671, 681 (N.D.N.Y. 1995) (Department of Correctional Services’s refusal to advance postage to prisoner for legal mail did not violate inmate’s right of access to courts because prisoner could not show that the delay interfered with an upcoming legal action.).

69. The courts have held that correctional facilities must provide prisoners with notaries public. *Tuggle v. Barksdale*, 641 F. Supp. 34, 39–40 (W.D. Tenn. 1985) (holding the prison “must continue to afford notary publics for all inmates”). Correctional facilities, however, need not make the notary services available five days a week. *Dugar v. Coughlin*, 613 F. Supp. 849, 854 (S.D.N.Y. 1985) (holding that prisoners do not have a constitutional right to notary services five days a week).

70. *See, e.g., Gluth v. Kangas*, 951 F.2d 1504, 1508–09 (9th Cir. 1991) (holding that the Department of Correction’s indigency policy, which only allowed a prisoner to apply for indigency classification if his prison account balance was less than \$12.00 was unconstitutional because it forced prisoners to choose between

“legitimate interests, including budgetary concerns.”⁷¹ In other words, a court could determine that the state’s duty to provide you with materials is limited by state budgetary or security concerns. Fourth, the state’s duty to assist you may only apply to habeas corpus petitions and civil rights actions involving constitutional claims.⁷²

Finally, when you sue on the basis of the state’s refusal to provide necessary materials, you also need to show that you suffered an “actual injury” as a direct result of that refusal. Because standards vary depending on where you are, you will need to research this “actual injury” requirement in your state and circuit. *Canell v. Bradshaw* is an example of one state’s particular requirements. In *Canell*, a prisoner claimed that he was denied access to the courts because the state would not make photocopies for him. The court stated that he could prove that the state had deprived him of meaningful access to the courts, but in order to do so he would have to: demonstrate that he wanted to copy specific documents which could not be duplicated longhand; that those documents were to be filed with the court as part of a specific memorandum or other document; that he had advised [prison] officials of this need; his request was denied either by or in accordance with a policy promulgated by the defendants; that those documents were relevant and necessary to the particular case; and had to be omitted from the filing as a consequence of the prison officials’ refusal to provide photocopying services.⁷³

Remember, if you are going to pursue this type of action, you must bring a Section 1983 or a *Bivens* claim. Please see Chapter 16 of the *JLM* for more details on these claims.

G. The State’s Duty in the Internet Age

Internet and database search technologies have revolutionized legal research in recent decades and dramatically increased the accessibility of court documents and legal knowledge. Despite this, courts have not recognized a right to use these tools.⁷⁴

H. Conclusion

In this Chapter, you have learned that if you (1) exhaust your prison’s administrative remedies for getting your complaint heard, (2) are not able to go to court or are hindered in pursuit of your claim by state interference, and (3) suffer an injury as a result of the state’s interference or denial of your right to access the courts, you may pursue a claim against the state. You can request that the state provide you with access to an adequate law library, adequate assistance from someone trained in the law, or some other legal access program. A state can regulate its jails and prisons for the purpose of discipline and safety, but cannot completely deny a prisoner’s right of access to the courts.

Pursuing a claim has several requirements. First, you must show that you suffered an actual injury from the state’s failure to provide you with an adequate opportunity to litigate your claim.⁷⁵ Second, some state

purchasing the mandatory hygienic supplies and essential legal supplies, and that an indigency standard of \$46 was more appropriate).

71. See *Gittens v. Sullivan*, 670 F. Supp. 119, 122 (S.D.N.Y. 1987) (“The State should not be forced to provide free access to copier machines for prisoner use when there is an acceptable, less costly substitute.”); *Dugar v. Coughlin*, 613 F. Supp. 849, 853–54 (S.D.N.Y. 1985) (holding that making prisoners pay for photocopies is a “reasonable balance of the legitimate interests of both prisoners and the State”).

72. See *Lewis v. Casey*, 518 U.S. 343, 354–55, 116 S. Ct. 2174, 2181–82, 135 L. Ed. 2d 606, 620 (1996) (holding that *Bounds* only requires states to provide tools that “inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.”).

73. *Canell v. Bradshaw*, 840 F. Supp. 1382, 1392 (D. Or. 1993), *aff’d*, 97 F.3d 1458 (9th Cir. 1996). Compare *Woodward v. Subia*, CIV S-07-498 JAMKJMP, 2008 WL 4196692 (E.D. Cal. 2008) (holding that the confiscation of the prisoner’s computer that stored materials which the prisoner claimed would set him free was too vague to demonstrate actual injury).

74. See, e.g., *Darby v. Schmalenberger*, 1:12-CV-033, 2012 WL 5471881 (D.N.D. May 7, 2012) (holding that the inmate has “neither right to internet access nor a right to file electronically” because the State has a “legitimate penological interest in restricting inmates’ internet access”).

75. See *Lewis v. Casey*, 518 U.S. 343, 350–51, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 617–18 (1996) (explaining that there is no general right to a law library or legal assistance except as they relate to a prisoner’s actual ability to access the courts).

courts have held that the state only needs to provide you with an adequate law library or legal access program if you want to pursue federal habeas corpus petitions or state or federal civil rights actions. Third, the state, not you, decides what type of legal access you will get, though it must provide you meaningful access to the courts.⁷⁶ Fourth, the state must adhere to the requirements laid out in this Chapter whether or not you are considered indigent. Finally, the state can place reasonable limits on your ability to use the library or other legal access programs.

76. *Williams v. Leeke*, 584 F.2d 1336, 1339 (4th Cir. 1978) (“Under *Bounds*, the state is duty bound to assure prisoners some form of meaningful access to the courts. But states remain free to satisfy that duty in a variety of ways.”).

APPENDIX A

DIRECTORY OF SELECTED LAW LIBRARIES OFFERING SERVICES TO PRISONERS AND OF ONLINE LEGAL RESOURCES**

Section A covers national online resources. Section B covers circuit specific library and online resources. Lastly, Section C covers specific library and online resource. Because the sections are divided by region, the new order should be helpful to your research. For example, if you are interested in state resources, you can refer to Section C.

A. General Online Resources

Cornell University Law School Legal Information Institute (LII):

<http://www.law.cornell.edu>

LII is a great free online legal resource of federal and state statutes, summaries of laws, a legal encyclopedia, federal cases, and more. The LII is really good for finding statutes, the meaning of legal terms, and summaries of laws. You may have to register to access some information, but registration is free. To register, you will have to use an email for the system that will verify that you are a user (i.e. email confirmation).

FindLaw: <http://www.findlaw.com>

FindLaw is a good resource for learning about various areas of the law. There are over a dozen subjects, including criminal law, DUI, marriage/family and divorce law, civil rights, and more. The site provides a detailed and straight-forward description of these areas of the law. FindLaw also has a legal forum, blog, current events section, and a question and answer section.

Lexis Web: <http://www.lexisweb.com/>

Lexis Web provides a range of material on legal matters, but the majority of the content requires registration at a fee.

Wikipedia: <http://www.wikipedia.org>

Wikipedia is a general online resource that also has information about legal issues. Wikipedia offers a broad range of information, including case summaries, case citations, history about the case or legal topic, definitions of legal terms and more. Wikipedia provides straightforward information about some issues that may be more complicated to understand. It is important to remember that some of the information on Wikipedia is provided by the general public, so the information on the website may not always be correct. It would be a good idea to double-check the information on Wikipedia with another source.

Zimmerman's: <https://law.lexisnexis.com/infopro/zimmermans/disp.aspx?z=1739>

Zimmerman's Research Guide provides more comprehensive guidance for accessing other potentially relevant court documents. Zimmerman's has a search engine that allows you to search for resources related to your interests. The guide provides both state and federal information.

** These are the libraries or facilities that provide materials in states where the most *JLMs* are sold. If you live in a different state than those listed, you should contact law school or governmental law libraries in your state.

B. Federal Cases Online

PACER: <http://www.pacer.gov/>
pacer@psc.uscourts.gov
PACER Service Center Number: (800) 676-6856

Public Access to Court Electronic Records (PACER) is a centralized electronic service that provides public access to information about cases that have been filed in the federal courts. PACER allows public users, including prisoners, to obtain information about cases filed in federal appellate, district and bankruptcy courts. In addition to opinions, PACER includes case docket information about a case and may provide briefs and other filings from the parties.

PACER is not a free service, and to use it, users must register online to receive a login and password. Fees for viewing cases online are \$.10 per page.

The Supreme Court: <http://www.supremecourt.gov/opinions/opinions.aspx>
The Supreme Court Website is a limited resource. The website itself contains a searchable database that is limited to opinions rendered since 2007. For an entire list of cases, you can click on the “opinions” link. It also contains PDF versions of the complete volumes of cases dating back to 1991.

D.C. Circuit: <http://www.cadc.uscourts.gov/internet/opinions.nsf>
The D.C. Circuit’s official website provides all published D.C. Circuit opinions and summary orders and selected unpublished decisions from 1997 at no cost.

1st Circuit: <http://www.ca1.uscourts.gov/?content=opinions/main.php>
The First Circuit’s official website provides First Circuit opinions and summary orders from 1992 at no cost. Opinions and orders before 1999 are available in HTML form only. Later opinions may be downloaded in PDF or WordPerfect form.

2nd Circuit: <http://www.ca2.uscourts.gov/opinions.htm>
The Second Circuit’s official website provides Second Circuit opinions and summary orders from 2002 at no cost.

3rd Circuit: <http://www.ca3.uscourts.gov/indexsearch/archives.asp>
The Third Circuit’s official website provides Third Circuit opinions and summary orders from 1994 at no cost. The website also provides a basic guide for searching the database at: <http://www.ca3.uscourts.gov/indexsearch/ixtiphlp.htm>.

4th Circuit: <http://pacer.ca4.uscourts.gov/opinions/opinion.htm>
The Fourth Circuit’s official website provides Fourth Circuit opinions and summary orders from 1996 at no cost.
Simple Search Option: <http://isysweb.ca4.uscourts.gov/isyanatural.html>

5th Circuit: <http://www.ca5.uscourts.gov/Opinions.aspx>
The Fifth Circuit’s official website provides Fifth Circuit opinions and summary orders from 1992 at no cost. The opinions are also available in a searchable database and for bulk download.
Keyword Search: <http://www.ca5.uscourts.gov:8081>
Bulk Download Server: <ftp://opinions.ca5.uscourts.gov> (Note: Accessing download database requires accessing an FTP server. This may not be available due to restrictions on your internet access.)

6th Circuit: <http://www.ca6.uscourts.gov/opinions/opinion.php>

The Sixth Circuit's official website provides published Sixth Circuit opinions from 1999 and unpublished opinions from 2004 at no cost. The opinions are also available in a searchable database and for bulk download.

Bulk Download: <ftp://ca6.uscourts.gov>

7th Circuit: <http://www.ca7.uscourts.gov/fdocs/docs.fwx?dname=opinion>

The Seventh Circuit's official website provides access to both published and unpublished opinions from 1999, as well as selected unpublished court orders, oral arguments, and other court documents from that period.

The court's primary database must be searched by docket number. The court's library provides a complete listing of all decisions dating from 2007, along with a series of relevant terms for each decision on a single webpage. (<http://www.lb7.uscourts.gov/ArchivedURLs.html>). The court recommends using a web browser's "Find" function to perform a keyword search of these opinions. To use this function, press "Control F" (when using a Windows computer) or "Command F" (when using an Apple computer).

8th Circuit: <http://www.ca8.uscourts.gov/opns/opFrame.html>

The Eighth Circuit's official website provides all published Eighth Circuit opinions and summary orders and selected unpublished decisions from 1995 at no cost. The database is searchable by docket number, keyword, party name, and attorney name.

Keyword and Docket Number Search: <http://www.ca8.uscourts.gov/opns/opFrame.html>

"One Stop Search (Use docket number or party or attorney name)": <http://www.ca8.uscourts.gov/onestop.html>

The website also provides Mp3 audio recording of all oral arguments from 2009 at no cost. To find an oral argument, use the "One Stop Search" option.

9th Circuit: <http://www.ca9.uscourts.gov/opinions/>

The Ninth Circuit's official website provides all published Ninth Circuit opinions and summary orders from 1995 and unpublished opinions from 2002 at no cost.

Published Opinions (2005–Present): <http://www.ca9.uscourts.gov/opinions/>

Published Opinions (1995–2005): <http://archive.ca9.uscourts.gov/ca9/newopinions.nsf/>

Unpublished Opinions (2009–Present): <http://www.ca9.uscourts.gov/memoranda/>

Unpublished Opinions (2002–2009): <http://archive.ca9.uscourts.gov/coa/memdispo.nsf/>

10th Circuit: <http://www.ca10.uscourts.gov/clerk/opinions.php>

The Tenth Circuit's official website provides all published opinions from 1995 and all unpublished opinions from 1996 at no cost. The database is searchable by date, docket number, and keyword.

11th Circuit: <http://www.ca11.uscourts.gov/opinions/index.php>

The Eleventh Circuit's official website provides all published Eleventh Circuit opinions and summary orders from 1995 and all unpublished decisions from 2005 at no cost.

Published Opinions: <http://www.ca11.uscourts.gov/opinions/indexpub.php>

Unpublished Opinions: <http://www.ca11.uscourts.gov/unpub/search.php>

C. Online and Library Resources By State

If your state is not listed you or someone you know should check the Southern Center for Human Rights' webpage (<http://www.schr.org>) for organizations providing legal materials to prisoners.

CALIFORNIA

Internet Resources:

Many decisions (including all decisions published or ordered for publication) of California's appellate courts are available online. Some California Superior Court decisions are available online.

A note about the California court system –

- California's trial court is the California Superior Court.
- California's appellate courts are the California Supreme Court and the California Courts of Appeal. The California Courts of Appeal is California's second highest court and hears appeals from the California Superior Court. Appeals from any of California Court of Appeal are heard by the California Supreme Court, California's highest court that makes binding decisions over all California lower courts.

(1) California Appellate Decisions

The California Official Reports: <http://www.lexisnexis.com/clients/CACourts/>

All published California state appellate court decisions are available online at no cost. LexisNexis, the official publisher of the California Reports, provides access to opinions from 1850 to the present. The California Official Reports website is updated monthly, and generally decisions are made available online within sixty days of filing.

Appellate Slip Opinions: <http://www.courts.ca.gov/opinions.htm>

Slip opinions, which are uncorrected California opinions as filed, are available for free online at the California Courts official website. Slip opinions are opinions that have not been officially published in the California Reports but have been ordered to be published. Slip opinions are only available for recent matters—opinions that have been filed within the last 120 days. Where the option is available, it is generally preferably to cite to California Reports, as these include corrections and other changes that will not be incorporated into the slip opinions.

Unpublished Appellate Opinions: <http://www.courts.ca.gov/opinions-nonpub.htm>

Unpublished California appellate opinions are available online for up to 60 days on the California Courts official website.

(2) California Trial Court Decisions

The Guide to California Court Records: <http://www.courtreference.com/California-Courts.htm>

Some California Superior Court opinions as well as docket information can be found online at the Guide to California Courts website.

Library Resources:

Oakland **Alameda County Law Library**
125 Twelfth Street
Oakland, CA 94607
(510) 208-4832
<http://www.acgov.org/law/index.htm>

Serves Alameda County prisoners. Photocopies are \$1/page plus a \$10 handling fee, tax, postage and prepayment. Emailed materials are \$15/citation. The library requires correct citations and gives no legal advice. 30-page limit per request.

Los Angeles **Los Angeles County Law Library**
301 W. First Street.
Los Angeles, CA 90012
(213) 629-3531
<http://lalaw.lib.ca.us>

This library serves prisoners and other institution residents in California. No material is loaned. Correct citations are required and limited reference work is done. Prepayment is required. A debit account is formed with the library, and the library charges the debit account. The library emails or faxes the requested material.

Photocopies: \$12.00 transaction charge per document for the first 25 pages (includes postage and tax) and sales tax if applicable. \$0.25 per page over first 25 pages. Ask to speak to Christine.

Payee: Los Angeles County Law Library

San Diego **San Diego County Public Law Library**
1105 Front Street
San Diego, CA 92101-3904
(619) 531-3900
<http://www.sdcpll.org>

This library serves prisoners and other institutional residents located at institutions in California. It lends materials to prisoners of San Diego County Jail under procedures set up by the Sheriff under a federal court consent decree. Loan periods are 1, 3, or 7 days. Correct citations are required.

Photocopies: For mail, email, and local fax (i.e. San Diego area code) the price is \$15 for a package of 20 pages or less. For every additional page over 20 pages, the rate is \$1.25 per page. If the fax is long distance (an area code outside of San Diego) the price is \$30 for a group of 20 pages or less, and for every additional page the price is \$2.25. To request material, go to sdcpll.org. Click on a link called "document request" that will provide a document delivery form on which you can make your document requests.

Payee: San Diego County Public Law Library

Santa Clara **Heafey Law Library**
Attn: Prisoner requests
Santa Clara University
500 El Camino Real
Santa Clara, CA 95053
(408) 554-4452
<http://law.scu.edu/library/>

The Heafey Law Library no longer provides services to individual prisoners. Interlibrary loan is the only way this library can offer material. The material is provided only to the prisoner libraries. However, the material that can be requested is limited. Heafey Law Library does not provide the following material: case reporters (including case law), statutes, journals, and treatises.

Ventura **Ventura County Law Library**
800 South Victoria Avenue
Ventura, CA 93009-2020
(805) 642-8982
<http://vencolawlib.org>

This library serves prisoners in California. Correct citations are required and only material that is available is provided. Material includes cases, statutes, and journal articles.

Photocopies: First 3 pages are free. Afterward the fee is \$0.25 per page, plus postage. Prepayment is required; limit of 20 pages per letter. Prepayment by cash or check.

Payee: Ventura County Law Library

LOUISIANA

Internet Resources:

(1) **Louisiana Appellate Decisions and Supreme Court Decisions**

Published Appellate Opinions: <http://198.173.79.92/resources.htm>

The Louisiana Court of Appeals is made up of five circuit courts. Appellate opinions from each of the five circuits are accessible through the links provided on the website. Additionally, access to Supreme Court materials is available through a hyperlink on the site.

(2) Louisiana Trial Court Decisions: <http://207.67.203.75/L20013/OPAC/Index.aspx>

Trial court decisions can be found accessed through the link above. Both the Eastern and Western Louisiana District courts use PACER (discussed above) to make decisions available online. As mentioned above, PACER is not a free service. However, the Middle District provides opinions from the Middle District Court dated as early as 1999.

Library Resources:

Statewide: State Library of Louisiana
P.O. Box 131
Baton Rouge, LA 70821-0131
(225) 342-4913
<http://www.state.lib.la.us/about-the-state-library/policies/interlibrary-loan-policy>

Serves only in-state institutions. No material is loaned. Photocopies are made by request.

NEW JERSEY

Internet Resources:

(1) New Jersey Appellate Decisions and Supreme Court Decisions

Published Appellate Opinions: <http://njlaw.rutgers.edu/collections/courts/>

The Rutgers University Law Library maintains a free online database containing all Supreme Court and published appellate level opinions issued since 1995. Additionally, the database contains all unpublished appellate level opinions issued since 2005. Library staff is may be contacted via email to assist users.

Library Contact: courtweb@camlaw.rutgers.edu

Recent Appellate Opinions: <http://www.judiciary.state.nj.us/opinions/index.htm>

All appellate opinions are available on the New Jersey Judiciary official website for ten days after filing. After that period, the decisions will be available in the Rutgers University database.

Unpublished Appellate Opinions: <http://njlaw.rutgers.edu/collections/courts/>

Unpublished appellate decisions filed after September 20, 2005 are available in the Rutgers University database. Unpublished decisions filed before that date are maintained by the Appellate Division and cannot be accessed electronically.

Appellate Division Contact: 609-984-5761

(2) New Jersey Trial Court Decisions

Recent Trial Court Decisions: <http://www.judiciary.state.nj.us/decisions/index.htm>

Certain trial court opinions are made available for six weeks on the New Jersey Judiciary official website. This service is provided for the convenience of parties involved in the cases.

Library Resources:

Trenton New Jersey State Library
185 West State Street P.O. Box 520
Trenton, NJ 08625-0520

(609) 278-2640
www.njstatelib.org

Serves only prison libraries located at institutions operated by New Jersey State Department of Corrections. Requests must be submitted by NJDOC prison librarians on behalf of prisoners. There is no charge to prison libraries, but there is a limit of 50 pages per day per prison. No material is loaned, and all material must be law-related. Correct citations are required. Limited reference work is done, and no legal advice is given.

Newark **Seton Hall Law School, Rodino Law Library**
One Newark Center
Newark, N.J. 07102
973-642-8720
<http://law.shu.edu/library/index.html>

Only provides documents via email or fax. Specific citations are required. Note that there is no formal document delivery service at this library and the librarians that receive the request have the discretion to decide whether to fulfill the request. There are no fees.

Trenton **New Jersey State Library**
185 West State Street
Trenton, N.J. 08625
(609) 278-2640
<http://www.njstatelib.org/>
http://slic.njstatelib.org/Request_Forms/Copy_Request.php

For in-state, the fees are as follows: \$3 per citation plus \$0.50 per page. The minimum fee is \$5.00. For out-of-state requests, the fees are \$3 per citation plus \$1 per page. The minimum fee is \$10. For both in-state and out-of-state, the maximum pages per request are 100 pages. The material will be emailed to the appropriate prison administrator. There are no additional fees for emailing. The library does not work directly with inmates. Instead, inmates must make their requests to the appropriate prison administrator, who will then make that request with the library on inmates' behalfs.

NEW YORK

Internet Resources:

Many decisions from New York State's trial and appellate courts are available online.

A note about the New York State court system –

- The New York State Unified Court System is, like other states, divided into three levels, but the terminology used for these three levels differs from other states.
- The New York Supreme Court is New York State's trial court (the lowest level court). It is the primary civil court in New York and it also hears criminal prosecutions of felonies. The New York Supreme Court, Appellate Division is New York's second highest court and hears appeals from the New York Supreme Court. The New York Court of Appeals is New York State's highest court and makes decisions that bind all of New York's lower Courts.

(1) New York Appellate Courts

New York Official Reports Decisions: <http://www.courts.state.ny.us/reporter/Decisions.htm>

Provides free access New York Supreme Court, Appellate Division and New York Court of Appeals decisions and motions. Coverage begins from roughly 2003, depending on the type of filing being searched.

New York Official Reports Services: <http://government.westlaw.com/nyofficial/>

Provides free access to all decisions appellate decisions published in the New York Official Reports from 1980. Has selected coverage of landmark and other notable decisions prior to 1980.

(2) New York Trial Courts

New York Supreme Court: <http://decisions.courts.state.ny.us/search/query3.asp>

Provides New York Supreme Court Civil and Criminal Cases, from selected counties, from 2001.

Library Resources:

Albany

Prisoner Services Project—New York State Library

Cultural Education Center

Empire State Plaza

Albany, NY 12230

(518) 474-5355

<http://www.nysl.nysed.gov/index.html>

Serves only prisoners located at institutions operated by New York State Department of Correctional Services. To access library services, a prisoner should send a letter to the library and the library will respond by sending the proper forms. Some prison libraries already have these forms available, so it is best to check with your prison library first. No material is loaned and all material must be law related. Correct citations are required and limited reference work is done, and no legal advice is given. If the requested material is covered by the project (e.g. case law, statutes, etc.), there is no charge for photocopies. But if the material is not covered, the following fees apply: \$10 for every group of 10 pages. (For example, if you requested 11 pages, the fee is \$20.) Prepayment is required.

VIRGINIA

Internet Resources:

(1) Virginia Appellate Decisions and Supreme Court Decisions:

Opinions Search – Supreme Court of Virginia and Court of Appeals of Virginia:

<http://www.courts.state.va.us/search/textopinions.html>

Provides Supreme Court of Virginia decisions from 6/9/95; published Court of Appeals of Virginia opinions from 5/2/95; and unpublished Court of Appeals of Virginia opinions from 3/5/02.

(2) Virginia Trial Court Decisions:

District Court Decisions:

<http://epwsgdp1.courts.state.va.us/gdcourts/caseSearch.do?welcomePage=welcomePage>

Provides free access to Virginia Trial Court decisions for both civil and criminal cases.

Library Resources:

Williamsburg

Wolf Law Library

William and Mary School of Law

PO Box 8795

Williamsburg, VA 23187-8795

(757) 221-3255

<http://www.wm.edu/law/lawlibrary/>

The library will provide cases if correct citations are given. No legal advice is given. In addition, prisoners may borrow certain materials that circulate (books and treatises, not statutes or case reporters) through inter-library loan if their prison library has an official ILL program. Alternatively, photocopies of documents can be used.

Photocopies: Prepayment is required. \$10 per citation plus \$.15 per page. \$.30 per page for microforms. Payment is by check, money order, or cash.

Payee: Wolf Law Library

TEXAS

Internet Resources:

(1) Texas Appellate Decisions and Supreme Court Decisions:

<http://www.search.txcourts.gov/CaseSearch.aspx?coa=coa01>

Provides free access to Texas Supreme Court decisions and the decisions of several Court of Appeals (i.e. 1st, 4th, 5th, 6th, 9th, 12th, and 14th). For the other Court of Appeals not listed, you must visit their specific webpages which are provided at the following link: <http://www.1stcoa.courts.state.tx.us> .

(2) Texas Trial Court Decisions: <http://www.txcourts.gov/searchable.asp>

Provides a list of trial courts with searchable databases for case law. Some of the trial courts require a login or fee to access the case law.

Library Resources:

Lubbock **Texas Tech University Law Library**
1802 Hartford Avenue
Lubbock, Texas 79409-0004
(806) 742-3957

Photocopies: Specific citations only. \$15 per citation plus \$.50 per page. Prepayment is required. Only money orders are accepted. To submit a request, send a letter to the address above with the specific citations. The library will send an invoice with the total cost. Inmate sends money order, and the documents will be delivered.

Payee: Texas Tech University Law Library

CHAPTER 4

HOW TO FIND A LAWYER*

A. Introduction

Finding a lawyer can be difficult. It can be even more difficult if you do not have the money to pay a private lawyer. But even then, finding a lawyer is not impossible. Before you try to find a lawyer, you must know the following:

- (1) The type of correctional institution you are in (city, county, federal or state);
- (2) The type of case for which you are seeking representation (civil, criminal, or criminal appeal);
- (3) If you are seeking a criminal appeal, the name of the county in which you allegedly committed the crime; and
- (4) Your county of residence.

The more specific information you know about your case, the easier it will be to find a lawyer and to help the lawyer prepare your case. There are generally two types of cases in which you may be involved:

- (1) **Criminal:** In a *criminal case*, the *state* charges you with a crime. If you have already been convicted and are in prison, you are probably not currently involved in a criminal trial. One exception is if the state thinks that you committed a crime *while* you were in prison. Please note that this chapter does not discuss how to find a lawyer for a criminal trial. But, you may want to try a *criminal appeal*. In a criminal appeal, you appeal from the conviction or sentence that sent you to prison. If you have a right to a criminal appeal and you cannot afford a private lawyer, you have the right to a court-appointed lawyer.¹ Read Part B below if you would like to find a lawyer to help you in your criminal appeal.
- (2) **Civil:** In a *civil case*, either you *bring a claim* against someone (an individual or the state), or an individual brings a non-criminal claim against you. You file a civil lawsuit whenever you bring any of the suits explained in the *JLM* Chapters about federal and state habeas corpus, Section 1983, Article 78 of the New York Civil Practice Law and Rules, or tort actions. Unlike in criminal cases and appeals, you do not have the right to a lawyer when filing a civil case. Read Part C if you would like to try to find a lawyer to help you in your civil case.

B. Lawyers for Criminal Appeals

If you have the right to bring a criminal appeal and you are unable to pay a private lawyer to represent you, you have the right to have a lawyer assigned to your case.² If you cannot afford an attorney for your criminal appeal, you should petition the court to proceed as a person who cannot afford a lawyer (or what in legal terms is called *in forma pauperis*) and ask the court to assign an attorney to your case. Chapter 9 of the *JLM*, “Appealing Your Conviction or Sentence,” has sample *in forma pauperis* forms.

One of the first places you should try contacting when looking for a lawyer is the Public Defender or Indigent Defender office in any of the following places:

- (1) The county where the appellate court (the higher court) is located;
- (2) The county where your prison is;
- (3) The county where your original trial took place; or
- (4) The county where you live.

* This Chapter was written by Won Park based on a previous version by Angie Armer and members of the 1991–1992 *Columbia Human Rights Law Review*.

1. *Douglas v. California*, 372 U.S. 353, 357–58, 83 S. Ct. 814, 816–17, 9 L. Ed.2d. 811, 814–15 (1963) (finding that a state must provide counsel for an indigent defendant in a first appeal from a criminal conviction).

2. *Douglas v. California*, 372 U.S. 353, 357–58, 83 S. Ct. 814, 816–17, 9 L. Ed.2d. 811, 814–15 (1963). There are some higher-level appeals that you do not necessarily have the right to bring, such as an appeal to the United States Supreme Court. In these cases, you may not have the right to a lawyer if you cannot afford one. See *Ross v. Moffitt*, 417 U.S. 600, 610, 94 S. Ct. 2437, 2443, 41 L. Ed.2d 341, 351 (1974) (holding that a state need not appoint counsel to aid a poor person pursuing a second-tier discretionary appeal).

These offices can provide you with more information about having a lawyer assigned to your criminal appeal. If you have access to the Internet, the easiest way to find a Public Defender is by doing a simple Internet search. For example, you can try using the term “Public Defender” and the name of one of the four counties mentioned above on a research site like Google or Yahoo.³

If you would like to choose your lawyer instead of being assigned one, you have fewer options than if you were filing a civil suit. Most Legal Aid offices do not handle criminal appeals. But, some organizations have specific criminal appeals divisions. The Legal Aid Society of New York City is one such organization. See Appendix IV of the *JLM* for a list of other such groups. You might also contact local prisoners’ rights groups, which may refer you to organizations that handle criminal appeals free of charge.⁴ Keep in mind that lawyers cannot arrange contingency fees with you for a criminal case. Read Part C for more information about contingency fees.

C. Lawyers for Civil Cases

If you are looking for a lawyer for a civil case in the *federal* courts, think about whether it is worth it to bring your case in light of what may happen under the Prison Litigation Reform Act (“PLRA”). You must read Chapter 14 of the *JLM*, “The Prison Litigation Reform Act,” to understand the requirements of the PLRA. Failure to follow the requirements in the PLRA can have negative consequences. For example, you can lose the good-time credit you have earned so far. Some attorneys do not know very much about the PLRA, so you should make sure to know about it yourself so that you can tell your attorney about the requirements.

If you have a civil case and you are incarcerated in a New York *state prison*, you may be able to find a lawyer through the Prisoners’ Legal Services of New York (“PLS”). PLS is described in the very beginning of Appendix IV of the *JLM* (Part A(1)(a)). PLS provides assistance to prisoners in state institutions in cases involving habeas corpus, jail time and sentence problems, and warrants and detainers. They may also be able to forward your letter to a private attorney who could handle your Section 1983 case, Article 78 petition, or tort action. But, unlike the Legal Aid Society of New York mentioned above, PLS does not handle criminal cases or criminal appeals.

If you are in a *city, county, or federal prison*, check the other organizations listed in Appendix IV to see if special legal assistance programs serve prisons in your area. Check if a Legal Aid office exists in the county in which you are incarcerated. If none exist in your county, check for offices in the surrounding counties, since these organizations might still be able to help you. Note that Legal Aid organizations usually handle only civil matters, unless they have a special criminal appeals division. Many Legal Aid offices may not be able to help you because their government funding does not allow them to help prisoners. However, the Prisoners’ Rights Project of the Legal Aid Society of New York does not receive government funding, and it sometimes takes cases that help prisoners.

You can also ask the court to appoint a lawyer for you. You should do this at the same time that you file your *in forma pauperis* forms.⁵ New York law states that a New York court may assign an attorney to you in

3. To find a list of Federal Public Defenders, visit the Office of Defender Services website, *available at* <http://www.fd.org>. Federal Public Defenders either work for the federal government directly, or are paid through federal government funds. Note that Federal Public Defenders take on fewer cases than state or local Public Defenders. For a partial list of Federal Public Defenders, New York State Public Defenders, and New York City Public Defenders, visit the New York State Association of Criminal Defense Lawyers website, *available at* <http://www.nysacdl.org>.

4. The American Civil Liberties Union (“ACLU”) publishes a Prisoners’ Assistance Directory with contact information for organizations helping prisoners around the U.S., *available at* <http://www.aclu.org/prisoners-rights/2012-prisoners-assistance-directory>. You may also buy a physical copy of the book for \$35. If you would like to buy it, write to:

National Prison Project of the ACLU
Attn: Prisoners’ Assistance Directory
915 15th St. NW, 7th Floor
Washington, D.C. 20005

You may also find contact information for the New York State Bar Association’s Lawyer Referral Service and Information Service on its website, *available at* <http://www.nysba.org/>. Please bear in mind that these are private lawyers who may or may not charge a consultation fee. If you use the referral service, you should ask whether the lawyer charges a consultation fee before telling him about your case.

5. Chapters 2–8 of the *JLM* discuss how to bring a lawsuit. Chapter 9 of the *JLM*, “Appealing Your

a civil case at the same time it permits you to proceed as a person who cannot afford legal representation, but this is very rare.⁶ If you can establish your inability to pay a lawyer, then you may be able to get a lawyer assigned to your case if your claim is substantial. For example, you are much more likely to get a lawyer if there is a lot of factual investigation that must be done on your case that you cannot do because you do not have the money. You are also more likely to get a lawyer if the facts of your case depend on the credibility (believability) of people involved.⁷ If your case requires you to know particularly complex legal issues that you may not be able to understand and handle on your own, the court may be more willing to assign you a lawyer to help with your case.⁸

For example, the Seventh Circuit has listed some factors (“Maclin factors”) that district courts take into consideration in determining whether or not to appoint counsel for a civil claim.⁹ First, district courts will generally consider the merits of the claim and determine if it is frivolous (frivolous means that the claim lacks merit) or substantive (substantive means the claim has merit).¹⁰ The more likely a claim is to be successful (the stronger the legal argument being made), the more likely the district court will be to appoint counsel.¹¹ Next, district courts will generally consider additional factors such as the complexity of the facts and legal issues being raised.¹² For example, if the claimant is not able to properly investigate the “crucial facts” of a case, counsel will generally be appointed.¹³ A court is also more likely to appoint counsel in situations where there is conflicting testimony about relevant evidence, and the factual issues are complicated in such a way that “trained” attorneys would be more likely to uncover the truth.¹⁴ Additionally, district courts should appoint counsel in situations where the claimant lacks the ability to present the case himself because of either physical or mental illness.¹⁵

Furthermore, if you are not assigned a lawyer but your case survives the defendant’s motion for summary judgment,¹⁶ you should again request that the court assign you a lawyer, as they may be more likely to do so at that stage.¹⁷ Remember, if the court assigns you a lawyer, you will have little or no say as to

Conviction or Sentence,” explains how to file poor person’s (also called *in forma pauperis*) papers in the context of an *appeal*. You should change the affidavit example shown in Appendix B-3 of *JLM* Chapter 9 to show that you are filing poor person’s papers in a civil case, *not* a criminal appeal. See N.Y. C.P.L.R. § 1101 (McKinney 2010). These papers establish that you do not have the money to pay for a lawyer. See also New York State Application for Poor Person Status and Assignment of Counsel in a Criminal Appeal, *available at* <http://www.courts.state.ny.us/ad3/Criminal/NEWFinancialAffPoorPersonRelief.pdf> (last visited October 13, 2012).

6. N.Y. C.P.L.R. § 1102(a) (McKinney 2010). The court has the discretion to appoint you a lawyer for free if a lawyer is needed to reach a fair decision. But, you do not have a constitutional or statutory right to a lawyer. See *In re Smiley*, 36 N.Y.2d 433, 438, 330 N.E.2d 53, 55, 369 N.Y.S.2d 87, 91 (1975) (noting that there is no absolute right to assigned counsel and that the determination to assign an attorney lies within the discretion of the court).

7. See *Maclin v. Freake*, 650 F.2d 885, 888 (7th Cir. 1981) (quoting *Manning v. Lockhart*, 623 F. 2d 536) (8th Cir. 1980) for the proposition that courts should appoint counsel where the credibility of witnesses is an issue). For example, if you claim that your warden assaulted you, the facts of your case would depend on the credibility of you, your warden, witnesses, and maybe other prisoners or staff members who knew you and the warden. In such a case, a court might be more willing to assign you a lawyer.

8. See *Hodge v. Police Officers*, 802 F.2d 58, 61–62 (2d Cir. 1986) (reaffirming that the *Maclin* factors apply to judicial determinations of appointment of counsel); *Maclin v. Freake*, 650 F.2d 885, 887–889 (7th Cir. 1981) (setting forth the factors for a district court to consider in determining whether to appoint counsel). *But see* *Stewart v. McMickens*, 677 F.Supp. 226, 227–228 (S.D.N.Y. 1988) (interpreting *Hodge* to require appointment of counsel “only where the individualized assessment suggests that an apparently legitimate case cannot proceed without the assistance of an attorney”).

9. *Maclin v. Freake*, 650 F.2d 885, 887–889 (7th Cir. 1981).

10. *Maclin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981).

11. *Maclin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981).

12. *Maclin v. Freake*, 650 F.2d 885, 887–889 (7th Cir. 1981).

13. *Maclin v. Freake*, 650 F.2d 885, 887–888 (7th Cir. 1981). The court found that the claimant’s status as a parapalegic made it such that it would be hard for him to investigate the facts of his case.

14. *Maclin v. Freake*, 650 F.2d 885, 888 (7th Cir. 1981).

15. *Maclin v. Freake*, 650 F.2d 885, 888 (7th Cir. 1981).

16. F. R. C.P. 56. Summary judgment is when a court decides before a trial that no trial will be necessary because in applying the law to important undisputed facts, one party is clearly the winner.

17. You should request assignment of counsel again at this stage because if your case survives a summary judgment motion, then the court thinks that it is worthy of a trial or hearing. See *Hendricks v.*

who your lawyer will be. Thus, you may want to first try on your own to find a lawyer whom you trust and who is committed to helping you.

Remember that many lawyers will be taking your case to earn a fee. Whether you pay a flat fee (fixed amount of money for the lawyer to represent you), an hourly fee, or a contingency fee, you will still be expected to pay for the lawyer's litigation expenses, either before or after money is spent on your case.¹⁸ These expenses may include things like long-distance telephone calls, postage, photocopying, stenographers for depositions, hiring an investigator, medical reports, etc. Unless you get poor person's status, you are also responsible by law for all court costs, such as filing fees.

If you cannot pay a lawyer's fees, a lawyer might take your case for a contingency fee.¹⁹ You will be asked to sign an agreement giving the lawyer a percentage (usually 33%) of whatever money the other side gives you if you win (the "recovery"). If you do not win, your lawyer gets no money. Lawyers *cannot* ask you for a contingency fee in criminal or domestic relations (family law) cases.

D. Conclusion

Finding a lawyer whom you trust and who you can work with is an important part of your legal process. You should feel that you can be truthful with your lawyer, and that your lawyer is working in your best interest. Even if finding a good lawyer seems frustrating, keep on trying. When you write letters to ask for legal help, provide as much specific information about your case as possible so that a lawyer can see you have a good case.

If you cannot find a lawyer, or you choose not to hire an attorney, you have the option of acting *pro se*. This means that you represent yourself without the aid of an attorney. You should still try to proceed *pro se* if you cannot find a lawyer.

Coughlin, 114 F.3d 390, 393 (2d Cir. 1997) (invalidating lower court's application of a bright line rule of appointing counsel only after plaintiff's case survived a motion for summary judgment).

18. See N.Y. State Bar Assoc., *The Courts of New York: A Guide to Court Procedures with a Glossary of Legal Terms*, 66–68 (2001), available at <http://www.nysba.org/Content/NavigationMenu/PublicResources/GuidetotheiCourtsOfNewYork/CourtsOfNY2002.pdf> (discussing the basis of your legal fees as well as your rights as a client).

19. You cannot be convinced to enter into a contingency fee arrangement by fraud, nor can your lawyer ask for so much money that the lawyer obviously took advantage of you. See *Gair v. Peck*, 6 N.Y.2d 97, 106, 160 N.E.2d 43, 48, 188 N.Y.S.2d 491, 497–498 (1959) (holding that contingency fees may be disallowed where "the amount of the fee, standing alone and unexplained, may be sufficient to show that an unfair advantage was taken of the client or, in other words, that a legal fraud was perpetrated on him"); see also *King v. Fox*, 7 N.Y.3d 181, 191, 851 N.E.2d 1184, 1191, 818 N.Y.S.2d 833, 840 (2006) (stating that a contingency fee may be unconscionable (excessive or unreasonable) if not proportional to the value of the services rendered).