

Chapter Six: The Legal System and Legal Research

If you've had to do legal research before, you know how confusing it can be. Sometimes the whole legal system seems designed to frustrate people who are not familiar with the law and to make them totally dependent on lawyers.

The law could be written and organized in a way that allows ordinary people to understand it and use it. The National Lawyers Guild and other groups are engaged in a political struggle to make the law accessible to the people.

This chapter of the Handbook gives the basic information you need to use the rest of the Handbook. The chapter is only a general introduction to legal research for a Section 1983 lawsuit. It does not explain how to research other legal problems you face, and it does not go into every detail that could be useful for a Section 1983 suit.

If you plan to do a lot of research, you will probably want to read some more books. A good detailed explanation of all types of legal research is a book called "*Cohen and Olson's Legal Research in a Nutshell*," which might be in your prison library. If not, you can order a copy for \$25.50 (plus tax). Technical legal terms are defined in *Ballantine's Law Dictionary* and *Black's Law Dictionary*, one of which is supposed to be in your prison library. The detailed rules for every kind of legal citation are in a paperback called *The Bluebook: A Uniform System of Citation*, which you can get for \$16.

Important Books You Can Order

Cohen and Olson's Legal Research in a Nutshell, 8th Edition
West Publishing
610 Opperman Drive
Eagan, MN 55123

The Bluebook: A Uniform System of Citation
Attn Business Office,
Bluebook Orders
Harvard Law Review
Association
Gannett House
1511 Massachusetts Ave.
Cambridge, MA 02138

More order information available in Appendix E.

A. THE IMPORTANCE OF PRECEDENT

To understand how to make legal arguments, it is important to have an understanding of our court system. This section focuses on the Federal Court system. Every state has its own state court system, which is separate from the federal system.

1. The Federal Court System

The federal court system is not separated by state, but rather by districts and circuits. A federal suit begins in a United States District Court. The District Court is the trial court of the federal system. In total there are 94 U.S. District Courts. Some states, such as Alaska, only have one district. Others have several. New York, for example, is composed of four districts: the Northern, Western, Eastern, and Southern Districts. District Courts all have the name of a state in them, like the "Eastern District of New York."

Someone who loses in the District Court has a legal right to appeal to the United States Circuit Court of Appeals. The Court of Appeals is divided into regions called "circuits." There are 11 circuits in the United States that have number names. For instance, the "First Circuit" includes all the districts in Maine, New Hampshire, Massachusetts, Rhode Island, and Puerto Rico. D.C. however, is just known as the "D.C. Circuit;" it does not have a number.

Someone who loses in the Court of Appeals can ask for review by the United States Supreme Court. This is called "petitioning for certiorari." Generally, the Supreme Court can decide which decisions it wishes to review, called "granting cert." and can refuse to review the others, called "denying cert."

2. How Judges Interpret Laws on the Basis of Precedent

To sue on the basis of Section 1983, you must show that an official of the state or local government, or someone acting with authority from the state or local government, has violated your rights under the U.S. Constitution or federal law. (See Chapter Two). Most Section 1983 cases are based on one of the Constitutional Amendments. The amendments that are most useful for a suit based on Section 1983 are reprinted in Appendix C at the back of this book. Amendments are very short and they are written in very broad and general terms. Courts decide what these general terms mean when they hear specific lawsuits or "cases." For instance, you probably already know that the Eighth Amendment prohibits "cruel and unusual

Order of Precedents:

- ❑ **Supreme Court.** The most important precedents are decisions by the U.S. Supreme Court. Every court is supposed to follow these precedents.
- ❑ **Appeals Court.** The next best precedent is a decision of the appeals court for the circuit in which your district court is located. Every U.S. District Court in your circuit is supposed to follow the decisions of the Circuit Court, unless those decisions have been overruled by the Supreme Court.
- ❑ **District Court.** The third-best precedent is an earlier decision by the district court which is considering your suit. This may be by the judge who is in charge of your suit or by a different judge from the same court.

punishment.” However, there is no way to know from those four words exactly which kinds of punishments are allowed and which aren’t. For instance, you may think to yourself that that execution is very “cruel and unusual.” But, execution is legal in the United States. To understand how judges interpret “cruel and unusual punishment” you need to read cases in which other people, in the past, argued that one type of punishment or another was “cruel and unusual” and see how they turned out.

Each court decision is supposed to be based on an earlier decision, which is called “**precedent**.” To show that your constitutional rights have been violated, you point to good court decisions in earlier cases and describe how the facts in those cases are similar to the facts in your case. You should also show how the general principles of constitutional law presented in the earlier decisions apply to your situation.

Besides arguing from favorable precedents, you need to explain why bad court decisions which might appear to apply to your situation should not determine the decision in your case. Show how the facts in your case are different from the facts in the bad case. This is called “distinguishing” a case.

The most important precedents are decisions by the U.S. Supreme Court. Every court is supposed to follow these precedents. The next best precedent is a decision of the appeals court for the circuit in which your district court is located. This is called “**binding precedent**” because it *must* be followed.

The third-best precedent is an earlier decision by the district court which is considering your suit. This may be by the judge who is in charge of your suit or by a different judge from the same court.

Some questions in your case may never have been decided by the Supreme Court, the Circuit Court, or your District Court. If this is the case, then you can point to decisions by U.S. Appeals Courts from other circuits or by other U.S. District Courts. Although a district court is not required to follow these kinds of precedents, it should consider them seriously. This is what is known as “**persuasive authority**.”

Federal courts use the same method to enforce laws passed by the U.S. Congress, like Section 1983. These laws are called “statutes.” Judges interpret the words in these laws in court cases. This method also governs how judges apply the Federal Rules of Civil Procedure, which are made by the U.S. Supreme Court.

Since statutes and rules are more specific than provisions in the Constitution, they leave less room for judicial interpretation. Still, the meaning of a key word or phrase is often unclear until a court has to apply it in specific situations.

3. Other Grounds for Court Decisions

Sometimes no precedent will be very close to your case, or you will find conflicting precedents from equally important courts. Other times there may be weak precedents which you will want to argue against. In these situations it helps to explain why a decision in your favor would be good precedent for future cases and would benefit society in general. This is called an argument based on “policy.”

You can refer to books and articles by legal scholars to back up your arguments. Sometimes when a judge writes an opinion to explain his decision, he will set forth his views about a whole area of law which is relevant to that decision. Although the judge’s general views do not count as precedent (precedent is limited to the questions the court actually decides in a particular case), you can quote his view in support of your arguments just as you would quote a “legal treatise” or an article in a “law review.” A “legal treatise” is a book about one area of the law and a “law review” is a magazine or journal that has essays about different parts of the law written by legal scholars.

B. LEGAL CITATIONS – HOW TO FIND COURT DECISIONS AND OTHER LEGAL MATERIAL

When you make a legal argument, you should always back it up by citing the names of the cases you are referring to. Case citation is a very picky and frustrating activity, but it is very important to making a legal argument. Before you worry about how to cite to a case, the first thing you need to deal with is *finding* a case.

1. Court Decisions

Reported Decisions

Court decisions are published in books called “Reporters” or “Reports.” All U.S. Supreme Court decisions are in the *United States Reports*, which is abbreviated “U.S.” They also are in the *Supreme Court Reporter*, abbreviated “S.Ct” and the *United States Supreme Court Reports Lawyers Edition*, abbreviated “L.Ed.” or “L.Ed. 2d.” These different reporters all have the same cases, so you can just use whichever version your prison law library has.

All decisions of the U.S. Circuit Courts of Appeal are in the **Federal Reporter**. There are two series of the Federal Reporter: the second series abbreviated F.2d, and the third series, abbreviated F.3d. All new cases are in the third series.

Most U.S. District Court decisions are in the Federal Supplement, abbreviated “F. Supp.” or the Federal Supplement Second series, abbreviated “F.Supp. 2d.” Others are in the Federal Rules of Decisions, cited as “F.R.D.”

Every decision has an official “citation,” which is the case name, followed by a bunch of letters and numbers that tell you where you can find a copy of the decision. The citation also explains what court made the decision and in what year. For example, this is a typical Supreme Court citation:

***Johnson v. Avery*, 393 U.S. 483 (1969)**

- ❑ “**Johnson v. Avery**” is the name of the case. Usually, the case name comes from the last name of the person who brings the suit, and the last name of the person being sued. The name of the plaintiff always comes first at the trial level, but the names can switch order after that, depending on which party is appealing. You should always *italicize or underline* the case name.

How to Read a Case

When a judge decides a case, he or she writes a short description of the facts of that case, the law the judge used to get to his or her decision, and the reason they decided one way or the other. When you first start reading cases, you may have trouble understanding them, but be patient, and follow these suggestions to get as much as possible from the case.

The Summary – Many times when you look up a case in a book, the first thing you will see under the name of the case is a short paragraph stating who won the case.

Key Number Links - Directly under the summary, you may see numbered paragraphs with headings and little pictures of keys. These paragraphs are there to help you with your research. They set out general rules of law that you will encounter in the case.

The Syllabus – The syllabus is a summary of the “holding” or decision in the case. It may help you get a sense of what the case is about, but be careful – it was not actually written by the Judge, and you cannot cite it on your brief.

The Facts – After the syllabus, you will see the name of the judge or judges who decided the case in capitol letters, and the names of the attorney as well. After that comes the actual official opinion. Most judges start out an opinion by stating the facts – who sued who, over what. Read the facts carefully, you will need to use them if you want to show how the case is like or unlike your situation.

Legal Reasoning – Most of what you read in a case is legal reasoning. The judge will state general legal rules, or holdings from past cases, and explain them. This part of a case can be very complicated and difficult, but the more you read, the more you will understand.

The Holding- The holding is the actual decision in a case. After the judge goes through the facts and the legal reasoning, he or she will apply the law to the facts, and state the outcome of the case. It is important to figure out what the holding is, so you know whether the case hurts you, or helps you.

- ❑ The “**U.S.**” indicates that the decision can be found in United States Reports.
- ❑ “**393**” is the number of the volume of U.S. Reports in which you can find the case.
- ❑ “**483**” is the page number in volume 393 on which the decision begins.

- “1969” is the year in which the decision was announced.

If you want to quote from a decision, or refer to reasoning used in the decision, you will also need to include the page number where your point appears in the decision. This is called a “pin cite” or “jump cite.” In the following example, “485” is the pin cite:

***Johnson v. Avery*, 393 U.S. 483, 485 (1969)**

Sometimes a U.S. Supreme Court decision will be cited to all three sets of reports, like:

***Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 797, 21 L.Ed. 2d 718 (1969).**

You can cite all three if you want, but it is usually not required. Do not give only a “S.Ct.” or L.Ed.” citation without also giving the U.S. citation, unless the decision has not yet been reported in U.S. or you cannot find out its U.S. citation. If this happens, cite the case as: *Johnson v. Avery*, ___ U.S. ___, 89 S.Ct. 747, 21 L.Ed. 2d 718 (1969). If you have only S.Ct. or only L.Ed. put what you have after “___ U.S. ___.”

The Supreme Court Reporter and the Lawyer’s Edition, which are supposed to be in your prison library, usually give the “U.S.” cite for each decision.

A typical Circuit Court citation is:

***U.S. v. Footman*, 215 F.3d 145 (1st Cir. 2000)**

This decision starts on page 145 of volume 215 of the Federal Reporter, third series. The information in parentheses tells you that this decision is from the First Circuit, and that it was decided in the year 2000.

A typical District Court citation is:

***Bracewell v. Lobmiller*, 938 F. Supp. 1571 (M.D. Ala. 1996)**

This decision starts on page 1571 of volume 938 of the Federal Supplement. It was issued in 1996 by the U.S. District Court for the Middle District of Alabama.

Unpublished Decisions

Not every district court or circuit court decision is reported. Some decisions are “unpublished,” which means they do not appear in the official reporters.

Unfortunately, a lot of cases about prisoners are unpublished. Not all courts allow you to cite to unpublished cases, and they are very hard for prisoners to get. To find out whether or not you can use unpublished cases, look in your district court’s local rules. If the local rules allow you to use unpublished cases, look to see if they require the side that uses them to give copies to the other parties. This is probably the case, and it means that you should demand copies of all unpublished cases cited in your opponent’s briefs.

A publication called *U.S. Law Week*, which may be in the prison law library, prints a few important decisions by various courts before those decisions appear in regular reports. You can use a *Law Week* citation until the decision appears in a reporter. Use the same general form as for reported case, but indicate the court, the case number on the court docket and the exact date of the decision (not just the year). For example:

***Oswald v. Rodriguez*, 40 U.S.L.W. 3597 (U.S. June 19, 1972) (No. 71-1369).**

Sometimes you may learn about a helpful decision which has not appeared in a Reporter or in *U.S. Law Week*. Either the decision has not yet been published or it is a district court decision which will not be published. In either situation, you can still give a citation for the decision. You list the official case number on the court docket and give the exact date of the decision. For example:

***Boothe v. Procunier*, No. C-70-1990-ACW (N.D. Cal. Sept. 29, 1970).**

When you want to use a case in a memorandum of law or a brief or any other legal document, you should put the case cite, as it appears in the examples above, at the end of every sentence that refers to a fact or a legal rule or a quote that comes from that case.

This may sound confusing at first, but it is not. Throughout this handbook, there are many examples that can help you see how this works. For instance, on page – in Chapter Two, we wrote:

“A prison official cannot censor your mail just because it makes rude comments about the prison or prison staff. *Bressman v. Farrier*, 825 F.Supp. 231 (N.D. Iowa 1993).”

We “cited” the case *Bressman v. Farrier* because it supports our statement about censorship of mail. Citing a case allows the reader to go look up the case for proof

that what the writer has written is true.

Sometimes you also need to include more information about the case. When you refer to a decision which has been appealed, list all the decisions in the case and indicate what each court ruled. For example:

***Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970), *aff'd sub nom Younger v. Gilmore*, 404 U.S. 15 (1971).**

The abbreviation “*aff'd*” stands for “affirmed.” This citation indicates that the U.S. Supreme Court “affirmed” or agreed with the decision of the District Court in the Gilmore case. This happened one year later, under a slightly different name, which is abbreviated “*sub nom*”. The name is different because Younger had replaced Lynch as Attorney General of California, and Gilmore – one of the prisoners who filed the suit – had his name second because he was now defending against Younger’s appeal of the district court decision in favor of the prisoners.

You might want to cite a decision which has been reversed on appeal, if the part of the decision which helps you was not reversed. The citation would look like:

***Toussaint v. McCarthy*, 597 F. Supp. 1388 (N.D. Cal. 1984), *aff'd in part, rev'd in part on other grounds*, 801 F.2d 1080 (9th Cir. 1986).**

The abbreviation “*rev'd*” stands for “reversed.” Here the case name was not changed on appeal, so you don’t have to include it a second time.

When you cite a circuit court decision, you should indicate if the Supreme Court has agreed to review the decision or has refused to review it, if that decision was made in the last three years. For example:

***Jones v. Gibson*, 206 F.3d 946 (10th Cir. 2000), *cert. denied* 531 U.S. 998 (2000).**

“Cert” stands for the “writ of certiorari” that the Supreme Court issues when it decides to review lower court decisions. If the Supreme Court had decided to grant a writ of certiorari in the *Gibson* case, the citation would read “*cert. granted*.”

Once you have cited the full name of a case once, you don’t have to cite it fully again. Instead, you can use a short form of the official cite. So, instead of writing

Hershberger v. Scaletta, 33 F.3d 955 (8th Cir. 1994) over and over again, you can just write:

***Hershberger*, 33 F.3d at 960.**

Just remember to cite the case in full the first time you use it. Notice that the last number, “960,” is the actual page of the case that you want to refer to, rather than the page on which the case starts. If you cite a case for a second time and you haven’t cited any other cases in between, you can use another, shorter, short form: *Id.* at 960. “*Id.*” is an abbreviation for the Latin word “*idem*” which means “same.”

You may see in a memo or an opinion “*Hershberger v. Scaletta*, supra at 960” or just “*Hershberger v. Scaletta*, supra.” “*Supra*” is Latin for “above.” It means that the full citation was given earlier.

You do not have to use words like “*supra*” and “*id.*” It is your choice how you want to write your citations. You will probably find it simpler to put the full case name and the full citation each time you refer to a case. This is perfectly fine. But you will need to know the fancy words because lawyers like to use them. Remember, whenever you don’t know what a term means, try to get a hold of ***Black’s Law Dictionary***, ***Ballantine’s Law Dictionary***, or any other law dictionary. We also have included a limited glossary at the end of the Handbook.

2. Legislation and Court Rules

Besides court decisions, you will also want to find and refer to laws passed by the U.S. Congress, like Section 1983. The main places to find federal statutes are in the **United States Code** (abbreviated U.S.C.) or the **United States Code Annotated** (abbreviated U.S.C.A.), which are supposed to be in every prison library. Both sets of books are organized in the same way, except that the “Code Annotated” version also summarizes the main court decisions that interpret each statute. It also lists related law review articles and states the history of the statute. In using the Code or the Code Annotated, be sure to check for paperbound additions in the back of books. These additions update the material in that book.

Citations for statutes follow roughly the same form as citations to court cases. For example:

42 U.S.C. § 1983

refers to section 1983 of title 42 of the United States Code. A “title” is a group of somewhat related laws

which are collected together. One book of the Code or Code Annotated may contain several titles or only part of a title.

The “U.S.C.A.” also includes the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure. These rules are published as an appendix to Title 42. The U.S.C.A. annotates each rule the same way it does each statute. It summarizes important court decisions which interpret the rule, etc. The correct way to cite a rule is: Fed. R. Civ. P. (rule number) or Fed. R. App. P. (rule number).

3. Books and Articles

Citations to legal treatises and law review articles follow the same general pattern as statutes and court decisions. For instance:

Jason Sanabria, *Farmer v. Brennan: Do Prisoners Have Any Rights Left Under the Eighth Amendment?* 16 Whittier L. Rev. 1113 (1995).

You can tell from this citation that Jason Sanabria wrote an article that appeared in volume 16 of the Whittier Law Review, on page 1113, and that it came out in 1995. You should always give the author’s full name and italicize the name of the article.

Citing a book is relatively easy:

Deborah L. Rhode, *Justice and Gender* 56 (1989)

You write the author’s full name, the name of the book, the page you are citing too, and the year it was published.

4. Research Aids

Prison law libraries should include books which help you do legal research. The most important books for legal research are **Shepard’s Citations**.

Shepard’s Citations

These books tell you whether any court has made a decision that affects a case that you want to rely on. They also list, to the exact page, every other court decision which mentions the decision you are checking. A booklet that comes with each set of citations explains in detail how to use them. **It is very important for you to read that booklet and follow all of the**

directions.

When you use Shepard’s Citations, it is often called “shepardizing.” “Shepardizing” a decision is the only way you can make sure that decision has not been overruled. It also can help you find cases on your topic. Be sure to check the smaller paperback “advance sheets” which come out before each hardbound volume.

Digests

A “digest” has quotations from court decisions, arranged by subject matter. Every topic has a “key-number.” You look in the subject index to find the key number of your topic. Under that number you will find excerpts from important decisions. The last volume of each digest has a plaintiff-defendant table, so you can get the citation for a case if you only know the names of the parties. The prison library is also supposed to have the **Modern Federal Practice Digest** (covering all federal court decisions since 1939) and **West’s State Digest** for the state your prison is in.

The same key-number system is used in all the books put out by the West Publishing Company, including **Corpus Juris Secundum** (explained below), **Supreme Court Reporter**, **Federal Supplement**, and **Federal Rules Decisions**. Every decision in a **West Company Reporter** starts with excerpts or paraphrases of the important points in the decision and gives the key number for each point.

Encyclopedias

Your law library may include **Corpus Juris Secundum**, abbreviated “CJS.” CJS is a “legal encyclopedia.” It explains the law on each of the key-number topics and gives a list of citations for each explanation. Be sure to check pocket parts at the back of each book to keep up to date.

The explanations in CJS are not very detailed or precise. But they can give you a rough idea of what is happening and lead you to the important cases.

Encyclopedias and digests are good ways to get started on your research, but it usually is not very helpful to cite them to support arguments in your legal papers. Judges do not consider the opinion of a legal encyclopedia as a solid base for a decision.

C. LEGAL WRITING

Here is where you put it all together, and learn how to write a brief. Although the rules explained in this chapter are very complicated, it is important to keep in mind that most judges will understand that you are not a lawyer, and they won't disregard your arguments just because you cite a case wrong. Lawyers spend years perfecting their legal research and writing skills, and usually have the benefit of well-stocked libraries, expensive computers, and paid paralegals to help them. Most prisoners don't have any of these things, so just do your best. This is especially true with writing. You should not worry about trying to use fancy legal terms or make your writing sound professional. Don't try to write like you think a lawyer would write. **Just write clearly and simply.**

There is a simple formula for writing clearly about legal issues that you can remember by thinking of the abbreviation: **IRAC**. IRAC stands for:

Idea
Rule
Application
Conclusion

First, start with the **idea** that you plan to support through your argument. For example:

Warden Wally violated the Eighth Amendment by putting me in a cell with a prisoner who smokes cigarettes.

Next, state the **rule** of law that sets out the standard for your idea. If you can, you should also explain the rule in this section, by citing cases that are similar to yours. For example, in the section below, we first state the full rule, then we explain, in two separate sentences, the two clauses in the rule.

*Prison Officials violate the Eighth Amendment when they act with deliberate indifference to a prison condition that exposes a prisoner to an unreasonable risk of serious harm. **Helling v. McKinney**, 509 U.S. 25, 33 (1993). Prison officials act with deliberate indifference when they ignore an obvious and serious danger. **Farmer v. Brennan**, 511 U.S. 825, 835 (1994). Exposure to second-hand cigarette smoke presents an unreasonable risk of serious harm. **Reilly v. Grayson**, 310 F.3d 519 (6th Cir. 2002).*

Third is **Application**. For this step, you want to state the facts that show how your rights were violated. In

other words, you should show the court how and why the rule applies to the facts of your specific case. Be detailed and specific, but also brief and to the point. For example:

As I wrote in my complaint, upon admission to Attica Correctional Facility, I was placed in a cell with Joe Shmoe. Joe Shmoe smokes two packs of cigarettes a day in our cell. The window in our cell doesn't open, so I am forced to breathe smoky air. I spend about twelve hours a day in this smoky environment. I sent a letter to Warden Wally on May 6, 2003 explaining this problem, and he did not respond. I sent him another letter two weeks later, and he still hasn't dealt with the problem. Then, in June, I used the prison grievance system to request a transfer to another cell due to the smoke, and when that grievance was denied, I appealed it. Guards pass by my cell everyday and hear me coughing, and smell and see the smoke. I yell to the guards to tell the warden about this problem. I have been coughing a lot.

Finally, you should finish your section with a **Conclusion**. The conclusion should state how your rights were violated in one or two sentences. For example:

Warden Wally's refusal to move me to a different cell or otherwise end my exposure to secondhand smoke amounts to deliberate indifference to an unreasonable risk of serious harm, in violation of the Eighth Amendment. For this reason, his motion to dismiss my case should be denied.

If you use this formula for each and every point you need to address in your complaint, you have a much better chance of getting the Judge to treat your case with the attention it deserves.