

## CHAPTER 2

### INTRODUCTION TO LEGAL RESEARCH<sup>1\*</sup>

#### 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

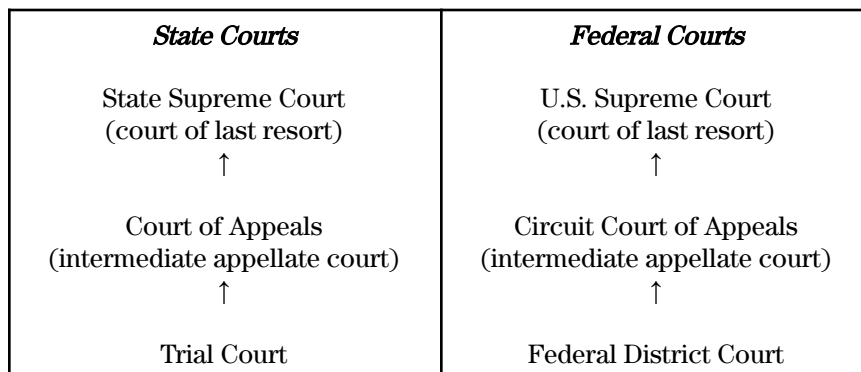
The American judicial system is made up of two types of courts: trial courts and appellate courts. In trial courts, lawyers put evidence before a judge or jury who will decide the outcome of the dispute. “Criminal trials” determine the guilt or innocence of the accused, while “civil cases” determine 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 (for example, “did person A hit person B with a baseball bat?”). However, appellate courts generally will only check to make sure that the trial court correctly applied the law to those facts (for example, “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 a 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.<sup>2</sup>

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<sup>1\*</sup> 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.

<sup>2</sup> 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. GREINIG & NATHAN A. FISHBACH, FEDERAL CRIMINAL RESTITUTION § 13:4 (2012); *see also Speedy Trial*, 35 GEO. L.J. ANN. REV. CRIM. PROC. 360, 380 n.1269 (“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. In the state system, the “intermediate” appellate court<sup>3</sup> is often called the Court of Appeals. In the federal system, it is called the Circuit Court of Appeals. The higher level of appellate court, sometimes referred to as the “court of last resort,” is often called the Supreme Court. If you are a criminal defendant, you usually have an automatic right to appeal your conviction or sentence to the intermediate appellate court.<sup>4</sup> 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.

Some states have different names for their courts, but the basic organization usually remains the same.<sup>5</sup> Eight states do not have an intermediate appellate court; in these states, rulings made by a trial court are appealed directly to the State Supreme Court.<sup>6</sup> Only two states, Oklahoma and Texas, have two different “courts of last resort”: one for civil appeals and one for criminal appeals.<sup>7</sup>

Every state (and the District of Columbia) has its own court system. 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 (for example, criminal matters), and some courts only have jurisdiction over certain geographic territory. Both of these types of jurisdiction are discussed below.

#### (a) Subject Matter Jurisdiction

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”).<sup>8</sup> 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.<sup>9</sup>

<sup>3</sup> 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.

<sup>4</sup> Prosecutors, on the other hand, can only rarely appeal. *See, e.g.*, GARY MULDOON, *HANDLING A CRIMINAL CASE* IN NY § 24:44 (2023–2024 ed.) (“The prosecution has the right to appeal in certain limited circumstances.”).

<sup>5</sup> 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.

<sup>6</sup> The eight states without any intermediate appellate courts are: Delaware, Maine, Montana, New Hampshire, Rhode Island, South Dakota, Vermont, and Wyoming.

<sup>7</sup> In Oklahoma, criminal cases are appealed directly to the Oklahoma Court of Criminal Appeals and *cannot* be appealed again to the Oklahoma Supreme Court. Civil cases go to a court of civil appeals and can then be appealed to the Oklahoma Supreme Court. In Texas, both civil and criminal cases go to a court of appeals. However, criminal cases can then be appealed to the Texas Court of Criminal Appeals, while civil cases would then be appealed to the Texas Supreme Court.

<sup>8</sup> 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.

<sup>9</sup> 28 U.S.C. § 1332.

State courts, on the other hand, 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 when possible, because federal courts 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;<sup>10</sup> the Federal Tax Court can only hear tax cases.<sup>11</sup>

### (b) Territorial Jurisdiction

Courts are also limited to hearing cases from particular regions, called their territorial jurisdiction. 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 territorial 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;<sup>12</sup>
- **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 U.S. Supreme Court can also hear criminal appeals from the highest appellate state court, but only if those cases involve a federal legal issue (one involving the U.S. Constitution or a federal statute).<sup>13</sup> 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 (except, as described above, in Oklahoma and Texas).

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 (also called relief) that 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 would be invalid because that court is only authorized to hear tax cases, so convicting someone of assault would exceed the Tax Court's subject matter jurisdiction. Similarly, if you were convicted of a

<sup>10</sup> N.Y. CITY CRIM. CT. § 31 (McKinney 2019).

<sup>11</sup> See *Handeland v. Comm'r 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.” (quoting *Burns, Stix Friedman & Co., Inc. v. Comm'r of Internal Revenue*, 57 T.C. 392, 396 (1971))).

<sup>12</sup> Before Oct. 1, 1981, the Fifth Circuit included all of the states that are now in the Fifth Circuit plus all of the states now in the Eleventh Circuit. See *generally* Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub. L. No. 96-452, 94 Stat. 1994 (1980).

<sup>13</sup> As explained in Subsection B(1)(a) of this Chapter, federal law includes matters involving the Constitution, a federal statute, or a treaty.

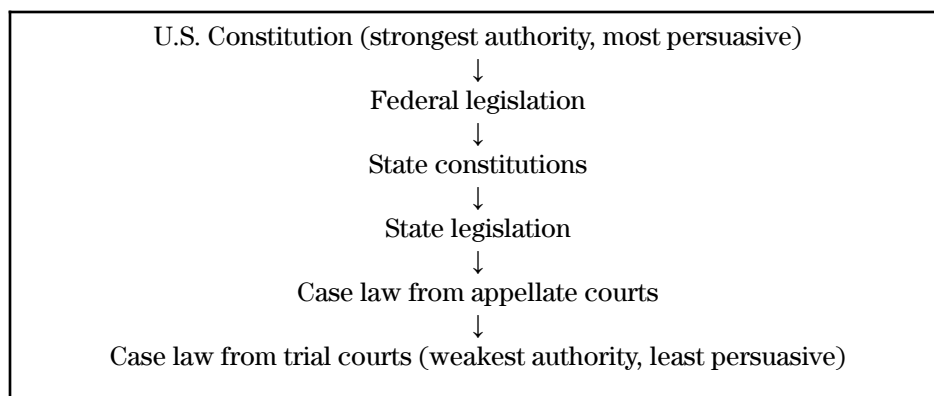
crime in the Criminal Court of New York City but the offense took place outside the City of New York, then that court would not have territorial jurisdiction over the case.

## 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 the most to the least persuasive.



**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.<sup>14</sup>

The second type of law, legislation, refers to laws passed by a legislature (by the U.S. Congress for federal law, and by 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 explain how they interpreted and applied the law when making their decision by writing an “opinion.” 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 in the future 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. Therefore, when a court is deciding a case, it will look at how other courts decided similar precedential cases in the past and will follow those examples (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.** This means that if a past case is very similar to your case, it will be more persuasive to the judge. However, if there are important distinctions between your case and the past case, the judge may have more freedom to depart from that decision. Therefore, it is very important to find out whether issues in your case have

<sup>14</sup> U.S. CONST. art. VI.

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 which are similar to your case, where the court ruled favorably on issues that you want to argue, you can use them to support your arguments. You will try to show the court that your case is similar enough 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 could not punish an incarcerated person, or put an incarcerated person in solitary confinement, for similar complaints. If you find such a case, your next step is to convince the court that you were put 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. One way you 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, just saying, “that case involved that person, but my case involves me,” would not be a helpful distinction to make. 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. You might want to say, “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.” You should always try to distinguish a precedential case that works against you. Ignoring the case is not a good idea because the other side will likely use it against you in its arguments.

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 case will be very persuasive. After all, earlier cases define 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 its prior decision without extremely good reasons. Precedents from the same court or from the appellate court above it are sometimes called “controlling precedents.”<sup>15</sup> Thus, a case decided in the U.S. Supreme Court, the highest court, is controlling precedent for all other courts.

Courts almost always follow controlling precedents. However, there are exceptions. In some instances, courts will recognize that older controlling precedents have become outdated when applied to modern facts. Furthermore, precedents can be overruled and therefore become useless. This might happen 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 those 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. Additionally, if most courts in other states have decided the issue in the same way, that can be a persuasive suggestion for how your state should decide the issue.

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<sup>15</sup> 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 (N.Y. App. Div. 2d Dept. 1992), *rev’d on other grounds*, 81 N.Y.2d 203, 597 N.Y.S.2d 612, 613 N.E.2d 518 (N.Y. 1993); *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 664, 476 N.Y.S.2d 918, 919–20 (N.Y. App. Div. 2d Dept. 1984). *But see People v. Salzarulo*, 168 Misc. 2d 408, 411, 639 N.Y.S.2d 885, 887 (N.Y. Sup. Ct. 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).

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. They will also show you which arguments failed and why the court rejected them. 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 for why a court should rule in your favor. Public policy arguments focus on why ruling in your favor 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 (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. If you learn something in the *JLM* that you want to cite, look at the footnotes to find the legal authority.

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” (which are indexes of legal resources, 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 may 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 constitutional provisions, legislation, and regulations;
- (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 documents (like medical records, complaints you have filed, etc.) are 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 one 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 to be true in your case.

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

- (1) What are the legal issues that I want to introduce?
- (2) Which court has the power to hear my case and rule on the issues I will bring up?
- (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 defense 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 (such as "criminal procedure") and move to a narrower area (such as "searches incident to arrest"). Then you can go to a precise question (such as: "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 Section 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.<sup>16</sup> 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*.<sup>17</sup> As you read these background materials, take notes about any cases, legislation, or constitutional provisions that seem like they may apply to your case. To find a subject in an encyclopedia or treatise, use either the "index" (usually found in the back of a book) or the "table of contents" (usually found in the beginning of a book). Both types of research are fully described later in this Chapter.

### (c) Find Relevant Constitutional Provisions, Legislation, and Regulations

After learning the basics of a subject area, you should turn to the main sources of law—constitutions, legislation, regulations, 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 relevant provisions in your state constitution and the U.S. Constitution, as well as relevant legislation and regulations. Legislation includes federal and state statutes (laws passed by legislatures), as well as supporting governmental enactments, such as the Rules of Criminal Procedure, the Rules of Civil Procedure, and the Rules of Evidence. Constitutions and statutes are generally broken down into parts called articles, sections (the § symbol means "section"), and clauses. Regulations and administrative decisions are rules that are issued by state or federal agencies, such as those issued by the New York Department of Correctional Services or the U.S. Bureau of Prisons. Each of these types of law 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.<sup>18</sup> 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 U.S. 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 incarcerated people. 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

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<sup>16</sup> See Section B(1) of this Chapter.

<sup>17</sup> Online legal dictionaries are available at <https://dictionary.law.com/> (last visited January 25, 2019) or <https://www.merriam-webster.com/legal> (last visited January 25, 2019).

<sup>18</sup> 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 is available at <http://www.law.cornell.edu/constitution/> (last visited January 25, 2019), or at <http://constitutionus.com/> (last visited January 25, 2019).



equal protection of law (meaning it bans discrimination by the state on the basis of race, sex, and national origin). The Fifth Amendment ensures that these guaranteed rights apply to both state and federal actions.

### (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** more important than 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 have 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 citation<sup>19</sup> 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.

To find the relevant constitutional provisions for your case, use the constitutional index found at the back of the final constitutional volume.<sup>20</sup> The methods you use to locate statutes<sup>21</sup> and cases<sup>22</sup> related to your legal question also apply to finding relevant constitutional provisions in a constitutional index.

### (iii) *Federal Statutes*

The U.S.C.A. (which stands for United States Code Annotated) 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, and will show you how the law was applied to different situations. 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 contains all federal laws about crimes and criminal procedure. Title 28 contains all 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 that tells you where a given subject can be found in the U.S.C.A. 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.

<sup>19</sup> Case citations are discussed in Part D of this Chapter.

<sup>20</sup> 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.

<sup>21</sup> Statutes are described in Subsection C(2)(c)(v) of this Chapter.

<sup>22</sup> Cases are described in Subsection C(2)(d) of this Chapter.

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.<sup>23</sup>

The entire U.S.C. is updated every six years. The most recent edition was published in 2018. 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”).<sup>24</sup> Like the U.S.C.A., McKinney’s is organized according to subject matter but divided into “books” rather than “titles.” It is arranged in alphabetical order. 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,” which summarizes cases that have interpreted each provision of the statutes. When working with state statutes, like 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 a 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

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<sup>23</sup> 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.

<sup>24</sup> 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 summary of changes that have been made to the original law.

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. So, you do not need to 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."<sup>25</sup> If you were researching a procedural issue (say your home was searched under 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."<sup>26</sup> 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 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. Remember that legislators may not have considered your exact factual situation when they created the law. One of the best ways 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 bill<sup>27</sup> introduced into the legislature, any later amendments (changes) to the bill,

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<sup>25</sup> Criminal Procedure Law sets out the procedures (processes) used to enforce and prosecute crimes. So, Criminal Procedure Law describes, for example, how a trial is supposed to happen. Penal Law is the law that actually defines the crimes. Correction Law is the law relating to incarcerated people in correctional facilities.

<sup>26</sup> N.Y. CRIM. PROC. LAW § 690.05 (McKinney 2009).

<sup>27</sup> A "bill" is a proposed statute before it has either been passed or rejected by legislators.

committee and conference reports,<sup>28</sup> congressional hearings, and the debates of the House of Representatives and Senate. Committee reports are produced by the Congressional Committees that review legislation.<sup>29</sup> 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,<sup>30</sup> which you are unlikely to find in a prison library. Your library may, however, have McKinney’s Session Laws of New York (see footnote 22 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, which contains two volumes.<sup>31</sup> The first paperback volume contains the rules of court for all New York state courts. The second volume 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

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<sup>28</sup> The House of Representatives and the Senate are both subdivided into committees that work in particular areas. For example, the House Judiciary Committee works on legislation that concerns the federal judiciary.

<sup>29</sup> See *About Committee Reports of the U.S. Congress*, CONGRESS.GOV, available at <https://www.congress.gov/help/committee-reports> (last visited Oct. 7, 2023).

<sup>30</sup> N.Y. Legis. Ann. (2009).

<sup>31</sup> N.Y. Ct. R., vols. I–II (McKinney 2023).

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,<sup>32</sup> 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 publications of the rules and regulations 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's 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."<sup>33</sup> 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 volume from the shelf which contains Title 28, Part 572 (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. In the C.F.R., "sections" are simply subtopics under each Part. For example, if you are referring to a smaller subtopic within 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.<sup>34</sup>

If you were charged or convicted of a crime by the state government, 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 incarcerated people 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 of the N.Y. Comp. Codes R. & Regs.<sup>35</sup> If you then read Title 7, section 1704.6 of the N.Y. Comp. Codes R. & Regs., you will find that in New York, most incarcerated people 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

<sup>32</sup> 18 U.S.C. § 4042.

<sup>33</sup> 28 C.F.R. § 572 (2023).

<sup>34</sup> 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. This can be accessed online at <https://www.govinfo.gov/help/lsa> (last visited Oct. 7, 2023).

<sup>35</sup> N.Y. COMP. CODES R. & REGS. tit. 7, § 304.3 (2024); N.Y. COMP. CODES R. & REGS. tit. 7, § 1704.6 (2024).

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 time researching will be spent trying to find cases to support your arguments about how the court should decide your case or request. In researching cases, you want to search for a case that is similar to your case. To be most useful to you, the case should have very similar facts to your case and have been decided by a court in the same jurisdiction in which you have been charged with the crime. In addition, the cases cannot have been reversed 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 “*dictum*” of a case. Parts of a judge’s decision may either be described as part of the “holding” or as “*dictum*.” The holding is the major part of the decision and usually controls only in cases with similar facts. *Dicta* (plural of *dictum*) are all of the other things that the court says in the opinion. 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*. *Dicta* can also be found in the footnotes to a case. For example, the Supreme Court decided in a case that the defendant had to prove that they were under duress (being threatened), instead of the government disproving that they were under duress, but the Court described the elements of what a good duress defense would look like in a footnote in the decision.<sup>36</sup> 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 conflicting case should not apply to your situation or why the judge should not follow that case.<sup>37</sup> 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.”<sup>38</sup> 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. 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.”).<sup>39</sup> The circuit court (federal court that will hear your case if it is appealed) reporter is called the Federal Reporter (abbreviated as “F.,” “F.2d,” or “F.3d”).<sup>40</sup> 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.

Unfortunately, many opinions that are of interest to incarcerated people are “unreported” or “unpublished”—that means they do not appear in the Federal Supplement or Federal Reporter volumes available in prison law libraries. Many unpublished cases may appear in the Federal Appendix. Citations to the Federal Appendix look like citations to cases in the Federal Reporter or Federal Supplement, but cite

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<sup>36</sup> Dixon v. United States, 548 U.S. 1, 4 n.2, 126 S. Ct. 2437, 2440 n.2, 165 L. Ed.2d. 299 (2006).

<sup>37</sup> See Subsection B(2)(b) of this Chapter for more information on precedential cases.

<sup>38</sup> See, e.g., United States Reports (for Supreme Court decisions) and North Eastern Reporter (for New York Court of Appeals decisions).

<sup>39</sup> See, e.g., Brown v. Plata, 563 U.S. 493 (2011).

<sup>40</sup> See, e.g., Welch v. Galie, 207 F.3d. 130 (2d Cir. 2000).

instead to the Federal Appendix (F. App'x).<sup>41</sup> Other 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. Citations like “2016 WL 1256789” are Westlaw citations. In the *JLM*, unpublished cases are generally cited to Lexis (“LEXIS”), and occasionally Westlaw (“WL”). These cases are always indicated with the text, “(*unpublished*)” after the citation. Citations to the Federal Appendix in the *JLM* are also followed by an “(*unpublished*)” indication. 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. 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 not allow citations to unpublished cases altogether; some allow it in certain circumstances where specific requirements are met, such as serving (providing) a copy of the case to other parties and to 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.<sup>42</sup> 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 law or provide insight into how a court may respond to a certain type of claim. Recently, the Federal Rules of Appellate Procedure were changed. For federal appellate courts, you can now cite to any unpublished cases that were decided on or after January 1, 2007.<sup>43</sup> 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 electronic database.<sup>44</sup> 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.<sup>45</sup>

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<sup>41</sup> See, e.g., *United States v. Hayes*, 409 F. App'x 277 (11th Cir. 2010) (*unpublished*).

<sup>42</sup> For example, the rules for New York courts can be found at <http://ww2.nycourts.gov/rules/index.shtml> (last visited Oct. 7, 2023) and the rules for Texas courts can be found at <https://www.txcourts.gov/media/1437631/texas-rules-of-appellate-procedure-updated-with-amendments-effective-2117-with-appendices.pdf> (last visited Oct. 7, 2023). The New York rules do not address the issue whether unpublished opinions can be cited. Therefore, we recommend you call the *pro se* clerk to ask where you can find a rule on citing unpublished opinions and confirm whether unpublished opinions can be cited, even if the rules are available online.

<sup>43</sup> FED. R. APP. P. 32.1A.

<sup>44</sup> The courts' own databases and the two commercial services mentioned above, Lexis and Westlaw, are examples of publicly accessible databases.

<sup>45</sup> The First, Third, Fourth, Fifth, Sixth, Tenth, and Eleventh Circuit Courts allow citation to unpublished cases decided before and after January 1, 2007, either 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.”); 1st Cir. R. 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.”); 3d Cir. L.A.R. 28.3(a) (“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).”); 5th Cir. R. 47.5.4 (“Unpublished opinions issued on or after January 1, 1996, are not precedent” but “may be cited pursuant to Fed. R. App. 32.1(a)”); 6th Cir. R. 32.1(a) (“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 they may be cited as persuasive authority.”); 11th Cir. R. 36, 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

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*. Usually, you shouldn't cite a case that you haven't read. For some cases, however, you may have to rely on the descriptions in this book; but you should only do so after you read the rules of the court where you are filing your claim and have decided 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. 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* incarcerated people may not have the resources to respond to such requests.

Finally, some federal courts will send incarcerated people 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 to 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. 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.<sup>46</sup>

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

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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 Second, Seventh, Eighth, and Ninth Circuit Courts allow citation to unpublished cases only if the cases were decided on or after January 1, 2007 or fall within specified exceptions. 2d 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(d) ("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 FRAP [Fed. R. App. P.] 32.1."); 9th Cir. R. 36-3(c)(i)—(iii) ("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. (i) They may be cited . . . when relevant under the doctrine of the law of the case or rules of claim preclusion or issue preclusion. (ii) They may be cited . . . for factual purposes, such as to show double jeopardy, sanctionable conduct, notice, entitlement to attorneys' fees, or the existence of a related case. (iii) They may be cited . . . in a request to publish a disposition or order made pursuant to Circuit Rule 36-4, or in a petition for panel rehearing or rehearing en banc, in order to demonstrate the existence of a conflict among opinions, dispositions, or orders.").

When filing in the D.C. Circuit Court, you can cite to its own unpublished opinions dating back to January 1, 2002, but you can only cite to unpublished opinions from another circuit court decided prior to January 1, 2007, if that particular court's rules allow it. D.C. Cir. R. 32.1(b)(1)(B) ("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."); D.C. Cir. R. 32.1(b)(2) ("Unpublished 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 other 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, and unpublished dispositions of district courts entered before that date may not be cited. Unpublished dispositions of other federal courts entered on or after January 1, 2007, may be cited in accordance with FRAP [Fed. R. App. P.] 32.1.").

<sup>46</sup> 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.



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.

For now, however, this Subsection will continue the discussion of the federal reporters. District courts are at the lowest level in the federal system. They are trial courts, and their reporters were described at the beginning of this Subsection. The second level of courts in the federal system is called the circuit court of appeals.<sup>47</sup> There are twelve such circuits in the United States.<sup>48</sup> 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, to keep the volume numbers from getting too high within each series. Volumes are 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 federal 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 the highest state 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”).<sup>49</sup> 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 only have copies of the Supreme Court Reporter (S. Ct.). 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*.

### (ii) 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.<sup>50</sup> Appellate Division Reports (abbreviated as “A.D.” or “A.D.2d”) reports the decisions of New York’s intermediate appellate courts.<sup>51</sup> 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 by New York’s highest court, the New York Court of Appeals.<sup>52</sup>

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

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<sup>47</sup> 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.

<sup>48</sup> See Section B(1) of this Chapter for a discussion of the Circuit Courts of Appeals.

<sup>49</sup> 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 important issues raised by certain cases. These essays provide a good review of the case law on those issues.

<sup>50</sup> See, e.g., *Ross v. Fay’s Drug Co.*, 132 Misc. 2d 65 (Sup. Ct. Albany County 1986).

<sup>51</sup> See, e.g., *Small v. Lorillard Tobacco Co.*, 252 A.D.2d 1 (1st Dept. 1998).

<sup>52</sup> See, e.g., *Sabetay v. Sterling Drug*, 69 N.Y.2d 329 (1987).

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.

### (iii) *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 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.

### (iv) *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.” A digest is a book with a list of legal concepts showing which cases support each concept. 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. The Digest Topic number will be the first number in a key cite. 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. The key number will be the second number in a key cite. 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, the digest topic number for criminal law is 110 and within that topic, the key number for the subject of entrapment is 37(1). So, if you use the New York Digest to find Criminal Law (110) key number 37(1)<sup>53</sup> you will find cases in on the subject of entrapment in New York State. That same key number can be used to find cases in the Federal Practice Digest on the subject of entrapment under federal law, in the U.S. Supreme Court Digest to find U.S. Supreme Court cases on the subject of entrapment, or in the digest for any state for cases on entrapment from 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,

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<sup>53</sup> “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.

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 issue. Once you decide that a headnote discusses a topic that might be helpful, you should write down the citation given in the headnote and use that case 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. But remember that 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 coverage in its preface, found at the beginning of each volume. As with all other sources, do not forget to check to make sure the statute is still accurate by referring to the pocket part of each hardcover volume you consult.<sup>54</sup>

#### (v) *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 headnote, 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 to obtain 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 Search and Seizure section is an index that breaks down the large topic of Search and Seizure 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 “Search and Seizure.” You should then write down all relevant key numbers (here, “Search and Seizure 146”) and look up each key number and review a few headnotes under each number. Through this process, you can find useful key numbers and potentially helpful cases.

The final method to find key numbers is to use the general index of 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).”

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<sup>54</sup> For a discussion on pocket parts, see Subsection C(2)(c)(iii) of this Chapter.

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 potentially 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, you must reference them 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.

There are many rules about citation style, and the major ones are detailed below. In addition, 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 *The Bluebook: A Uniform System of Citation*—a publication that your prison library may have. Proper legal citation of cases, statutes, regulations, etc. should not be ignored, as proper citation 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: (1) information about the parties involved in the case, (2) the reporter (a bound compilation of cases) in which the case can be found, (3) the court that decided the case, and (4) the date of the 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 “pincite”). 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 of the 478<sup>th</sup> volume of the “U.S.” reporter. 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. For example, 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 appealed and 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, when you wish to cite to the lower court decision specifically. It would be appropriate to cite a lower court decision where the lower court considered an issue that a later court upheld, or agreed with, without commenting on or not addressing at all why it agreed. 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 agreed with, 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 (which 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, or gives, to the parties 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 (meaning refused to review the case). The Supreme Court refuses to review most 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 and Administrative Regulations

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 is cited as U.S.C.); and (3) the section of the law to which you are referring. An example is 42 U.S.C. § 1983. Here, “42” is the title, “U.S.C.” is the abbreviation for United States Code, “§” means section, and “1983” means section 1983 within title 42 of the U.S.C. If the statute was changed recently, you must cite to the changed version of the statute. You can see 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 2019, you would cite the amended section like this: 42 U.S.C. § 1983 (Supp. 2019). 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 (2018 & Supp. 2019). Note that the U.S.C. is only published in full every six years, so if a statute was amended in between the six-year period, you must cite to the supplement or pocket part. Please cite to the United States Code when possible. However, if a statute does not yet appear in the United States Code but does appear in an unofficial code (like West's *United States Code Annotated* or the *United States Code Service*), you should cite to the unofficial code instead. The proper citation for a statute in the United States Code Annotated is: 12 U.S.C.A. § 1321 (West).

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 year of the code edition you found the regulation published in. For example, 28 C.F.R. § 544.70 (2013) refers to section 544.70 of Title 28 of the C.F.R. 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 federal statutes or 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 you are referring to; and (4) the publishing year of the volume where 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 volume that was published in 2013. 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. Otherwise, the Bluebook has a complete guide to each state's citation style.

Any citation in a footnote should be followed by a period, unless it is part of a string or list of citations, in which case each citation but the last one would not be followed by a period, but a semicolon. The last citation should end with 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" of a relevant treatise. A treatise is a written work that gives an in-depth explanation of a topic of the law. If the case is listed in the table of cases, 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 possible arguments. You may also want to 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 Subsection C(2)(c)(iii) of this Chapter, a hardcover volume will likely have soft cover supplements 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 or statutes that have cited the case or statute you are checking. Shepard's comes in a print version call the Shepard's Citation booklet and on internet legal research databases like Westlaw and LexisNexis. However, you will need someone with

accounts on these websites to help you get access online. 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 Citation booklet 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. 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 any cases that overrule 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 spine of each Shepard’s booklet 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. Under the bold page number are citations to cases that have mentioned the case you are researching. Citations in Shepard’s are provided alphabetically by the jurisdiction where the court is that decided the case. Within each jurisdiction, the cases are listed from the 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. The page number listed in Shepard’s 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 identified why this case is different from others dealing with the same rule). 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 you are going in front of or filing your papers in 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 Shepard’s supplement books, if any. Next, check the current paperback Shepard’s supplement books. 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 regulations, which list the judicial opinions that cite particular statutory provisions or federal regulations. These are used to update statutes and regulations 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: <sup>superscript</sup>). For example, 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 become familiar with a particular area 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, which is directed toward non-lawyers.<sup>55</sup> Additionally, you can find a detailed explanation of how to conduct legal research in M. Cohen's Legal Research in a Nutshell.<sup>56</sup> Finally, the law is full of technical terms. Black's Law Dictionary is particularly helpful in explaining legal terms.<sup>57</sup>

### **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, and 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 support 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.

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<sup>55</sup> GALE ENCYCLOPEDIA OF AMERICAN LAW (Michael J. Tyrkus & Carol A. Schwartz eds., 4th ed. 2022).

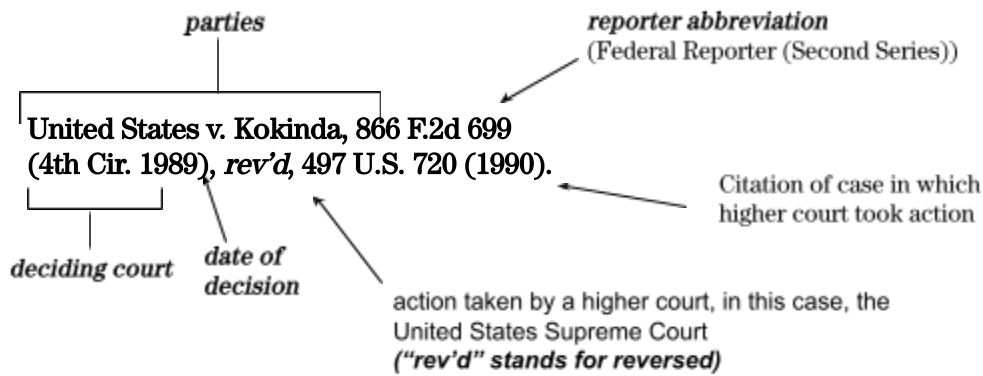
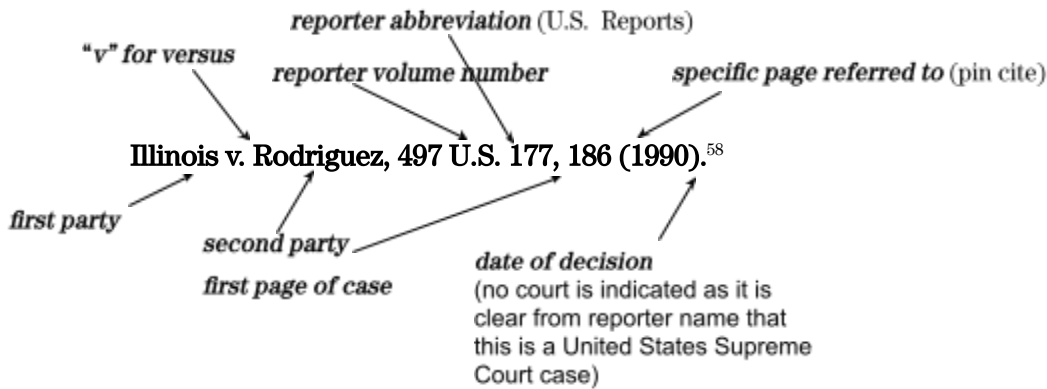
<sup>56</sup> MORRIS L. COHEN & KENT OLSON, LEGAL RESEARCH IN A NUTSHELL (11th ed. 2013).

<sup>57</sup> BLACK'S LAW DICTIONARY (11th ed. 2019).

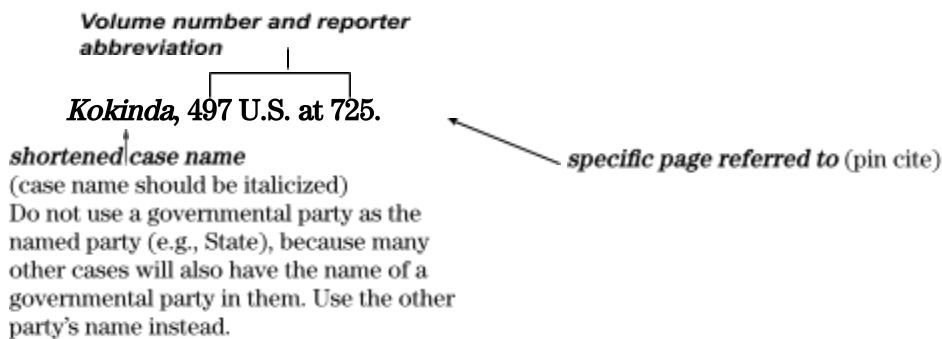
## Appendix A

### CITATION EXAMPLES OF COMMON AUTHORITIES

#### A-1. Federal Cases

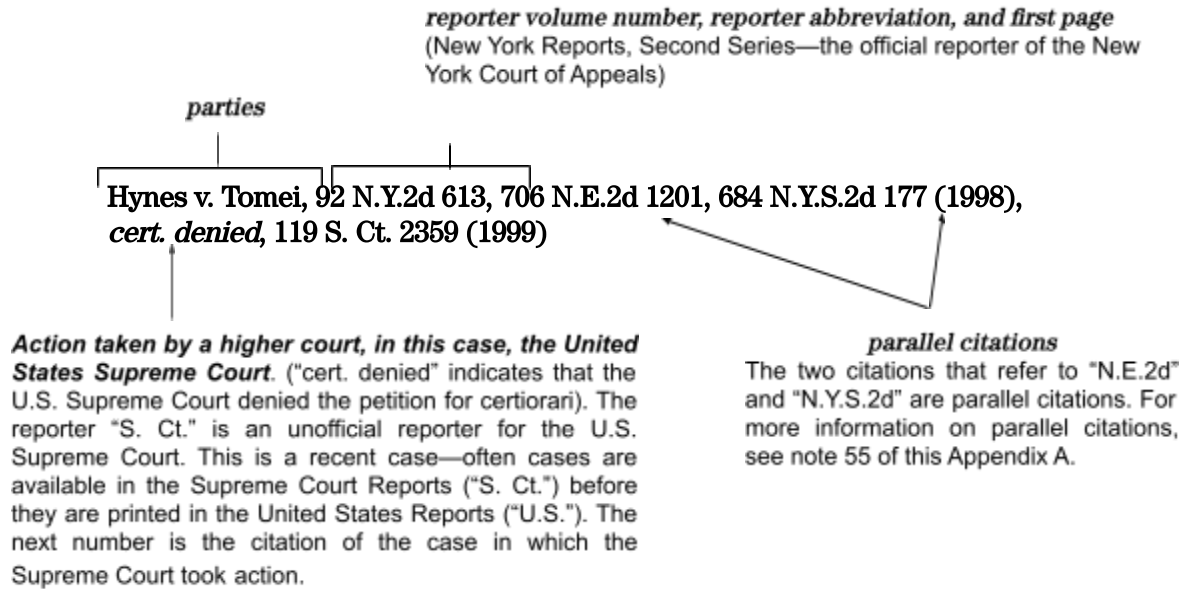


Shortform (abbreviated) citation for the above case after it has been cited in full earlier in your legal paper:



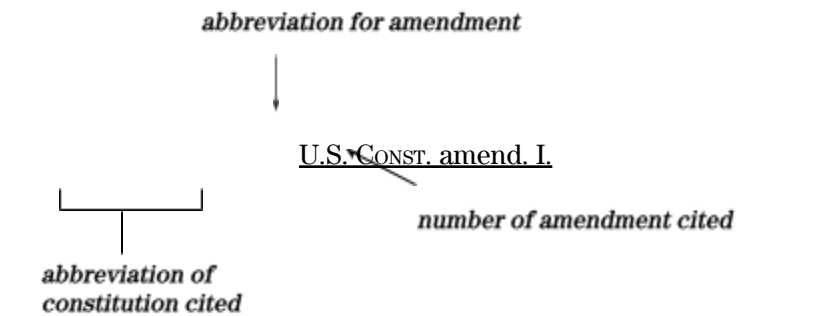
<sup>58</sup> You will notice that the *JLM* often cites to many different reporters for each case. Often, cases are published in more than one reporter; these “extra” citations are known as “parallel citations.” If possible, you should always cite to an official reporter (for example, “U.S.,” or “F.2d.”). 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-2.State Cases**

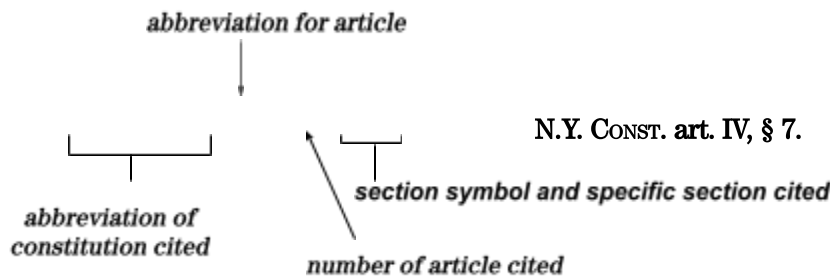


**A-3. Constitutions**

**United States Constitution**

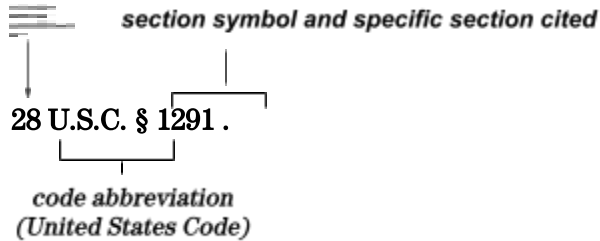


**State Constitution**

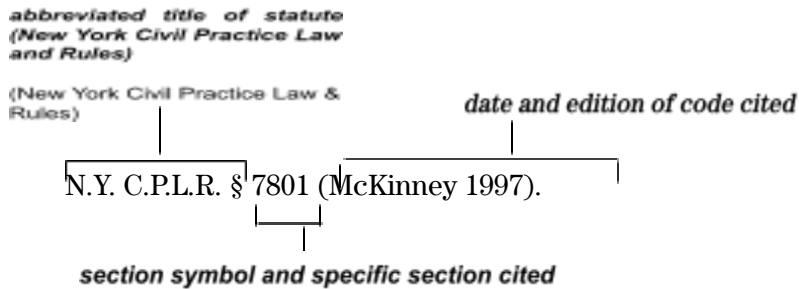


## A-4. Statutes

### Federal Statute



### State Statute



## 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