

CONS entrating
on
the
Law

**A Program of Self-Directed Legal Research
For Prison Course Givers**

William David Mongelli, M.L.S.

**F & W Associates, Inc.
San Jose, California**

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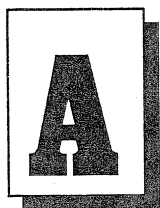
To my Father and Mother,
who taught me the vital difference between "law" and "justice"

To Louie, one of the few true men I know

For Christa, for always

"I know what's legal, not what's right. And I'll stick to what's legal...
I'm not God...But in the thickets of the law, oh there I'm a forester...
What would you do? Cut a great road through the law to get after the Devil?...
And when the last law was down, and the Devil turned round on you,
where would you hide, the laws all being flat?
This country's planted thick with laws from coast to coast
--man's laws, not God's--
and if you cut them down...d'you really think you could stand upright
in the winds that would blow then?...
Yes, I'd give the Devil benefit of law, for my own safety's sake."

-- Robert Bolt, *A Man for All Seasons*
(Act I, pp. 37-38; Vintage Books, 1962)



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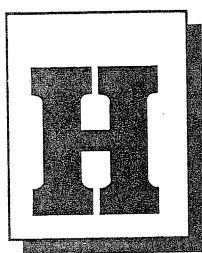
Thanks to the Massachusetts Board of Library Commissioners for having the foresight in 1977 to develop a 10-lesson slide presentation specific to teaching legal research to prisoners, upon which some of the lesson plans herein are loosely based....

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How To Use This Book....

For the purpose of reaching the widest possible audience, a contrived and particularly pretentious snippet of jargon has been invented for this text when referring to you, Gentle Reader. That pretentious snippet of jargon is "CourseGiver." When you see this term, mentally insert your name or, in the alternative, the first-person singular pronouns "I" or "me." From here on out, you're a CourseGiver.

The scope of this book is such that anyone from the most con-wise corrections veteran to the complete and utter novice can get started learning about what it takes to present a legal research program to prisoners. What your job is as a professional--librarian, law student, teacher, lawyer, prisoner rights advocate, or dedicated prison volunteer--dictates where to start in the book. Determine which of the following statements applies to you, and then go to the corresponding symbol below for further instructions.

- "I never taught before! They'll eat me alive!"
- "I want to dive into the abyss by writing the Program Proposal."
- ◆ "I'm already con-wise, a research guru, and chomping at the proverbial bit to provide legal research instruction to convicted felons!"

■ Teaching For The 1st Time

First of all, you should be congratulated for having the courage to try teaching in an environment and field of librarianship that absolutely, positively has to be experienced to be believed. Since you are new to the game, take a few minutes to read the information designated by the symbol at left. These sections will provide you with the following information:



- ▶ Chapter One, Prison Law Libraries: Why They Are, including tips on identifying types of inmate law library users
- ▶ Chapter One, a section called "*CourseGivers With Attitudes*," giving an explanation of what the Course is and what it isn't, and about who actually benefits from the Course
- ▶ Chapter Two, CourseGiver's Guide, wherein is provided answers to the question, "*What Should I Tell the Officers About the Course?*" This gives an important message about security staff and why you need them

● “What if I'm interested in writing the Program Proposal?”

If you need to know how to get the program started, you should begin reading at Chapter One, Writing the Start-Up Proposal, which will provide you with some hard-earned advice about getting the course on paper and approved by your administration.

◆ “What if I'm prepared to offer the Course *now*?”

See Chapter Two, CourseGiver's Guide. This information will give you the foundation you need to apply the information contained in chapters Three and Four. This is the heart and soul of this book and will tell you what you need to know about teaching and administering a successful legal research program for your inmates.



Say “Hello!” to Jailhouse Joe

This is Jailhouse Joe. Joe will appear in the text when he has something helpful to add which represents the interests and views of his brethren who are, in Joe's case, fellow law library users. Being a jailhouse lawyer, Joe likes to talk, so you'll be hearing a lot from him as the text progresses.

“Where Can I Find...?”

Specific Terms -- If you need to locate specific information, e.g., the need for humor in your lecture style, please consult the exhaustive-but-never-exhausting *Index*.

Sample Material -- If you want to review sample handouts quizzes, CellWork, & class/group exercises, please see Chapter Four, Course Material.

Legal Research Help -- If you need to polish your legal research skills, please refer to the section “*Continuing Education for CourseGivers*” in Chapter Two, CourseGiver's Guide.



Opening Night -- If you'd like to find out how to prepare for the first Module of the Course (a/k/a “Opening Night”), please see Chapter Three, Modules.

“WORD TO THE WISE”

These text boxes will be interspersed throughout the book and will emphasize critical points, such as the following....



Word to the Wise

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Before starting the Course, please review Chapter 2, which explains the important relationship between CourseGiver and Correctional



1

A Word (or 2) to Prison Administrators

Prison Law Libraries: Why They Are

First of all: this book does not apologize for the American system of criminal justice.

The fact that we as a society allow those unjustly convicted or wrongly accused a means of regaining their freedom after incarceration has nothing *per se* to do with librarianship, or prisons, or legal research. This "postconviction relief" exists independently of all three concepts, and is endemic to the American Experiment. This is, for Americans, a cultural fact of life. If the reader finds it difficult accepting this reality, my advice is to work hard to revise your thinking before permitting a course like the one outlined in this book.

Many outside of corrections find it bizarre to discover that there are, in fact, law libraries in prisons. Furthermore, many inside of corrections find it equally bizarre! Your law libraries have prisoners in them all the live-long day. These prisoners are typing motions, composing letters to attorneys, writing appellate briefs, obtaining legal stationery, making photocopies, reading case law, asking the law librarian reference questions, etc.

This is usually the time when the novice CourseGiver's head starts to spin. "Why," s/he may blather, "is there a working law library here that I have to supervise? And why does it take so much of my time?"

If you've been pondering these very thoughts, you can now put your professional *angst* to rest. The next section gives you More Stuff About the Right of the Incarcerated to Unimpeded Access to the Courts Than A Body Has a Right to Know.



Word to the Wise ①

"Effective & meaningful access" is the key to accepting prison law libraries which exist, in part, because of the Supreme Court opinion called *Bounds v. Smith*.

The citation is:

430 U.S. 817 (1977)

You need to read this case!

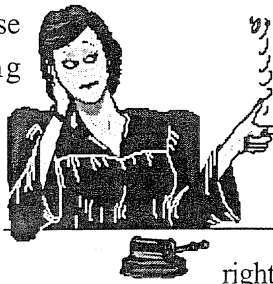
Due Process: the touchstone

Always remember: *every United States citizen has a constitutional right of unimpeded access to the courts after he or she is incarcerated.* This is the reason why there are law libraries in prisons.

Our criminal justice system is predicated on a fundamental adversarial relationship: Us versus Them, He versus She, Me versus You. Somebody is claiming that somebody else did them wrong. *At the same time*, every accused person in the United States is, in the eyes of the law, innocent of the charges levied

against him until those charges are proven beyond a reasonable doubt in a court of law. This is the American idea of justice and fair play. Also, there are those who make the rules, those who interpret the

rules, those who enforce the rules, those break the rules. According accused of breaking the rules retains and liberty from the potential abuses of the rules.



who abide by the rules, and those who to our conception of justice, anyone several critical rights protecting his person power from those who make & enforce

The central idea is this: if these protections were not in place--if you could not preserve your "due process" rights--then the American Way would ultimately degenerate into a totalitarian police state where The Powers That Be could and would do anything to their citizenry, and in many names: security, treason, keeping the peace, etc.

The problem many people have with this philosophy is the potential for the system to be abused when the power to do so is placed in the wrong hands. Most of us believe that it is one thing to preserve the procedural rights of the accused, and quite another to do battle for someone who is truly guilty. The question becomes twofold:

- ▶ *"Do we really believe that upholding the civil rights of the incarcerated extends to helping a guilty person get out of jail?"*
- ▶ *"Why do we afford postconviction relief to dangerous and evil people who really do exist and who have done terrible things?"*

The answer lies both in the faith that we collectively place in our compassion toward one another, and in our collective definition of justice. We believe that, for the most part, our system does work most of the time. Because of this belief, we give the wrongly accused and the unjustly convicted a way to correct procedural mistakes and therefore preserve their right to due process. Due process contains several key elements which, taken together, illustrates the protections it affords you. As the accused, you have a right to:

- ▶ **Face your accusers**
- ▶ **Refuse to be a witness against yourself**
- ▶ **Remain innocent until proven guilty**
- ▶ **Know the charges levied against you**
- ▶ **Be zealously defended**
- ▶ **Be safe from unwarranted search & seizure of your person and/or property**

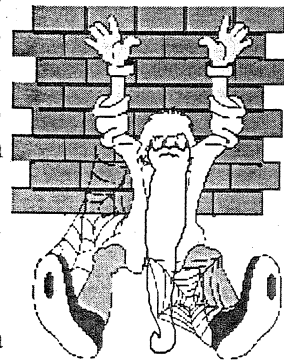
By virtue of our citizenship, we as Americans tacitly accept this system of justice and abide by it. As surprising as it is to many, these protections carry over into the life of the incarcerated.

Enter the Law Library

When do prison law libraries come into the picture? In 1969, the United States Supreme Court ruled in *Johnson v. Avery*¹ that "jailhouse lawyers" or "writ-writers"--that is, inmates with self-taught legal skills--were permitted to assist illiterate inmates in preparing petitions for writs of habeas corpus, absent any similar program provided by the state. In *Wolff v. McDonnell*, the Supreme Court expanded the doctrine of *Johnson* to include civil rights actions. Then, in 1977, the Supreme Court in *Bounds v. Smith* ruled that each Department of Correction satisfy the mandate of not impeding an inmate's access to the courts by providing, for example, either adequately-stocked law libraries or assistance from persons trained in the law. Later, some federal courts (e.g., *Hadix v. Johnson*) decreed that *both* well-stocked law

¹ For citations to case law, see *Appendix F, Table of Cases Anecdoted*.

libraries and persons trained in the law were what was required to ensure effective and meaningful court access. As late as June 1996, the Supreme Court ruled in *Lewis v. Casey* that although Bounds suggested providing law libraries or legal assistance, these were only suggestions, not a mandate, and it is left to the discretion of each Corrections Department how best to ensure that inmate's court access is not being "impeded."² Quite often when talking about law libraries for prisoners, someone invariably shakes their head in disbelief and laments, "Only in America!" When I hear this, I respond "Yes! And thank your lucky stars, too!" For in many countries, once you are incarcerated, *that's it*. It doesn't matter if you were wrongly accused or unjustly convicted. In these places, there is no such thing as a direct appeal of your conviction, a revision of your sentence, collateral attacks or other post-conviction relief. If the police said you did it, *you did it*. And once incarcerated, *you are there until they let you go*. Post-conviction relief exists in our criminal justice system so that if we find ourselves an innocent bystander on the wrong end of the law, we can regain our freedom by winning a new trial, persuading a judge to reduce an unfair sentence, or appealing an incorrect decision from a lower court. We Americans like to think of ourselves as just and fair; this is also what we choose to believe about our system of justice.



Something you must keep in mind is that there is no such thing as a "technicality" or "loophole" when discussing rights of the incarcerated. This is the wrong frame of reference for any prison employee, and if you're someone who espouses this view, I urge you to revise your thinking. What the layman refers to as a "technicality" is actually a *procedural error of law*. These errors are serious business. They happen somewhere in the adjudication of a case, from the moment someone is stopped or questioned by a police officer to the moment when the prison doors slam shut behind him. Using a term like "technicality" cheapens the concept of procedural protections which guarantee the due process rights of all U.S. citizens. This is something you should understand if your prison experience through this Course is to hold meaning for both your CourseGiver and yourself.

So, it is our belief as a free, democratic, and compassionate society that, for those meriting freedom or redress of a civil complaint while incarcerated, there is a legal avenue that they can pursue. Prison law librarianship and assistance from persons trained in the law--to name but a few-- are legitimate responses to help satisfy this duty and responsibility.

At the risk of belaboring the point-- In 1776, an American freedom fighter named Thomas Paine observed: "He who would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty, he establishes a precedent that will reach to himself." Please carefully consider those words.

Inmate Law Library Users

Understanding the attitudes of both inmates and prison administrators toward prison law libraries will reveal the dynamics of the library and elucidate the importance of providing legal research instruction to inmates. Who these library users are and how they use the law collection shows how both the law library and the Administration are perceived. How successful your CourseGiver is in dealing with these user types is correlative to the degree of positive impact this course will have.

Five distinct types of inmates use the law library. They are:

² For a comprehensive and provocative history and discussion on prison library origin, see William J. Coyle, *Libraries in Prisons: A Blending of Institutions* (Westport, CT: Greenwood Press, 1987).

- ▶ **Narcissists**
- ▶ **Loop-Holers**
- ▶ **Hustlers**
- ▶ **Writ-Writers**
- ▶ **Lost Souls**

Narcissists

Virtually every prison employee can name at least one self-centered litigious inmate who harbors a vendetta against the prison administration. These inmates, the ***Narcissists***, refuse to accept responsibility for their incarceration and enjoy filing suit against their keepers as a purgation that brings about a release from tension caused by the fact of their incarceration.

Narcissists know a great deal about civil procedure, and can recite chapter, section, and page to all statutes, case law, administrative regulations, and constitutional articles and amendments pertinent to any issues involving inmate liberty interests. They keep an extensive reference collection of photocopies and legal textbooks in their cells. Often considered model inmates in terms of submission to law library rules, they smile warmly and tell a topical joke while handing your librarian a photocopy request describing a complaint in which the librarian is the lead defendant.

Many prison employees fear the Narcissists' legal prowess, and many inmates respect them for rocking the boat or "spanking" the administration. Narcissists appeal to other inmates who espouse the philosophy that their keepers are law breakers just like themselves, and rejoice when Narcissists prevail in court.

The Narcissists' ego prevents them from participating in a staff-taught legal research program, because their attendance would undermine the prestige they have carefully cultivated with fellow inmates. The sad fact is that the Narcissist is a law library user who cannot be reached through a legal research course. Fortunately, Narcissists comprise less than 5% of the inmate population!

Jailhouse Joe Says:

"Narcissists give the law library, librarians, and corrections a bad name. Notevenjailhouselawyerslike them!Narcissists cannot harm any competent prison employee!"



Loop-Holers

These inmates comprise a small yet significant portion of prison law library patrons.

Loop-Holers are the inmates who give prison law libraries a bad reputation with institution staff. It is precisely this inmate who perplexes the uninformed citizen, who reads about inmates regaining their freedom due to "technicalities" in the law (properly known as *procedural law*) and wonders about the wisdom of a system which allows criminals to escape justice.

Enthusiastic when they first enter the law library, Loop-Holers believe that they can quickly uncover errors in the adjudication of their case which will win them their freedom. Probably because of their refusal to fully accept the consequences leading to their incarceration, these inmates talk loud and long about how they was framed by the D.A., how their public defender lied, how the judge erred in giving jury instructions, or how incompetent their attorneys were by not objecting to salient points brought out at trial. The good news is that, although some effort is required to keep them interested, the attitude of Loop-Holers can be tempered through formal research training. Also, Loop-Holers comprise about 25% of the total number of law library users. If Loop-Holers are unlucky, however, they will end up soliciting the services of the next kind of law library user--the Hustler.

Hustlers

Legal know-how is a treasured commodity in prison, and predatory **Hustlers** take advantage of this in every conceivable way. Their marks are the young inmates desiring a quick fix to their incarceration. Hustlers con these gullible inmates into the belief that they alone have the answers, and will refer to those upon whom they prey as "clients." It is the Hustlers for whom the cliché "A little knowledge is a dangerous thing" was coined. Hustlers also personify the Supreme Court's definition of *obscene*, their practices being "without redeeming social value" in the prison community.

Hustlers appear to be champions of law library rules, often correcting the behavior of other inmates in the presence of your librarian to gain the librarians' confidence. The law librarian must be wary of the Hustler's manipulative behavior: efforts to secure more than the prescribed number of legal stationery; circumventing photocopy rules; borrowing non-circulating books; or otherwise testing the limits. Of course, these inmates are the most vocal when problems arise regarding library hours of operation, supplies requisition, or a broken photocopier, because these situations directly affect their "business."

Hustlers refuse to attend a research course, even if invited, and strongly object to the very idea, knowing that their limited abilities are easily exposed by those who understand legal research. Hustlers comprise, on average, 40% of law library users.

Writ-Writers

Writ-writers are the quintessential jailhouse lawyers because of their talent for making the legal system understandable to research novices. They champion those who cannot help themselves but are willing to learn how to do so. As prison employees, however, we keep in mind that there's nothing altruistic about their behavior--writ-writers enjoy extra spaghetti, cigarettes, money, etc. as much as any inmate.

Writ-writers have learned the hard way to respect the law, admiring its complexities and even defending the criminal justice system when, in their view, it actually dispenses justice. Although they never hesitate to speak out about failings of the court, criminal justice system, or prison regulations, they understand implicitly the need for discretion and good order. They steadfastly refuse to give inmates false



Word to the Wise ②

**Of the 5 inmate law library users,
3 will attend your research course:**

**Loop-Holers
Lost Souls
Writ-Writers**

**Use Writ-Writers, Narcissists
and Hustlers to help determine who the
Lost Souls are.**

hopes, and despise the Hustler-type inmates who do.

Writ-Writers know more about criminal law and procedure in their jurisdiction than most public defenders or private attorneys. They probably would succeed on the street as a criminal lawyer or paralegal. They allow others to query them for answers to reference problems and do so generally without the insufferable braggadocio of an intellectual elitist. Writ-Writers comprise, unfortunately, less than 2% of the inmates using the law library, so they are a rare find. But, if invited, some Writ-Writers will attend the research course as a CourseGiver's aide. Most importantly, they will encourage Loop-Holers to participate, as well as the most needy group of law library users--the Lost Souls.

Lost Souls

Lost Souls are the very reason for law libraries in American prisons. They embody the very essence of Judge Blackstone's oft-quoted epigram, "It is better that 10 guilty men escape than one innocent suffer." Lost Souls are in critical need of legal assistance for the following reason(s). They may be:

Illiterate ★ Indigent
Wrongly Accused ★ Lacking Research Skills
Non-English Speaking ★ Unjustly Convicted
Some combination thereof

Subjective, conservative estimates place Lost Souls at approximately 30% of the total inmate population: of that number, less than 1% are law library users! Lost Souls are the quickest to be victimized by predatory jailhouse lawyers like Hustlers and Narcissists. Lost Souls are the quintessential marks, because they know the least about what they need. Generally speaking, Lost Souls don't know enough to realize that they are deficient in legal research skills. Rather than work to develop a research style, most become their own worst enemy by opting for the apparent path of least resistance: they yoke their appellate hopes on the avaricious advice of any number of sleazy cons who charge other inmates for legal research. Virtually every prison law library collection is in English, but court mandates provide for effective and meaningful court access for *all* indigent inmates. Your CourseGiver must make a special effort to actively encourage Lost Souls for whom English is a second language to participate in the Course, because they are the inmates who have the most to lose if they do not. Luckily, your CourseGiver doesn't need to be Albert Einstein--or even related to him--to figure out who's who. Just listen to the types of legal questions these inmates ask (e.g., "What is Shepard's?" or "How do I use a digest?"). Your CourseGiver will be able to ferret them out in no time.

Also, here's a way the CourseGiver can use Hustlers and Narcissists in probably the only situation where they actually serve a constructive purpose: casually observe who these inmates are "helping." The odds are excellent to astronomical that it's a Lost Soul.

Jailhouse Joe Sez: "Lost Souls are the very reason for prison law libraries! They have the most strikes against them and need help the most! Use your librarian to identify them and get them in the Course!"



In Review

- ▶ **25% of the total inmate population** uses the law library at least occasionally
- ▶ Of this percentage, 45%--**Narcissists** and **Hustlers**--are disruptive and will not participate in structured research
- ▶ **Loop-Holers**, making up another 25% of library users, can be persuaded to better themselves through research training
- ▶ **Writ-Writers**--an unfortunate 1%--are intelligent, informed, and cooperative
- ▶ **Lost Souls**--the remaining 30%--are clueless, hapless, & hopeless.

***Loop-Holers and Lost Souls--55% of a prison's population--
are the inmates you can help!***



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Attitude Is Everything

Although unimpeded access to the courts as a concept is relatively new--when compared to, for example, how long library collections have existed in prisons--it is here, and it's here to stay. The reality of corrections at the dawn of the third millennium dictates that part of our jobs as correctional professionals is to ensure that inmates have a way of filing meaningful and timely criminal appeals or civil complaints. The following section attempts to elucidate the importance of the Administrator's attitude toward this important responsibility.



Resistance

You cannot use their existence for carbon-dating purposes, but law libraries or their functional equivalent *have* been a part of prison routine for over 30 years. In the span of 3 decades, therefore, you'd think that the generation of correctional staff in 2000 would have accepted the collection as a fact of their professional life. Oddly enough, this is not so.

A thick, liquid current of unbridled bitterness courses through the veins of some prison employees regarding the law collection--and, by extension, the librarian--as necessary evil, a nuisance that is judicially required and so is grudgingly tolerated.

In many instances, because of the design of the library, many prison librarians have to supervise the orderly running, growth and maintenance of *both* library collections. Some resent the fact that law collections receive funding consistently while the general collection often goes begging. They resent law library users, *the very reason for their jobs*. Some invariably ignore the law library, or --to use prison parlance--treat it "like a red-headed stepchild."

Censorship? Or Common Sense?

Continuing this line of reasoning, any decisions by the institution to regulate library services--from censorship of titles and denying program proposals to denying certain program material--is considered by these employees to be a blatant attempt to curtail their right to exercise professional judgement. They also genuinely believe that this scrutiny rises to an infringement of the inmates' 1st Amendment right to read. This unprofessional "librarian-as-victim" attitude hurts the inmates who the librarian purports to serve and, ultimately, your institution.



Word to the Wise ③

Prison CourseGivers who discover that they cannot deal with the "oppressive" working environment of a prison have no business teaching in prisons. They will become a danger to themselves and to fellow staff.

Administrative Styles

The effectiveness of a staff-taught legal research course correlates directly with the attitudes of both Administrative sponsorship and the CourseGiver presenting it. The more solidly accepted the concept of the incarcerated's fundamental right to unimpeded and meaningful access to the courts, the more rewarding a professional experience it will be for both CourseGiver and administrator. The following are general attitudes espoused by some Administrators regarding their law libraries, and the pitfalls to avoid.

"Throw Away the Key!"

Employees with this attitude fosters the feeling that inmates deserve to lose all liberties once incarcerated. These employees see no logical need to afford inmates access to the courts, believe that every appeal and civil suit is completely without merit and a burden on the court system, cannot comprehend the amount of money encumbered and spent on law library collections, think that all litigious inmates using the law library know what they're doing, and consider inmates with access to law libraries or to jailhouse lawyers a threat to the security of their jobs. This attitude ultimately results in a basic dislike for inmates as a group. Employees who come to work with a vendetta or chip on their shoulders just make working conditions harder for everyone, and invariably create disruptions that wouldn't otherwise exist.

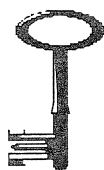
Necessary Evil

This attitude is nurtured in employees who know that inmates retain some rights, but do not understand why. They are probably aware of a constitutional right of access to the courts, but still believe it unfair that criminals can pursue appeals and overturn cases on "loopholes" in the law. CourseGivers with these feelings foster the "Sue Nation" concept of the law library: that inmates are busily litigating every waking moment, either trying to overturn a conviction on procedural grounds or suing members of the staff. This attitude nurtures a profound distrust for inmates identified as jailhouse lawyers.

The Realist

The Realist understands that the criminal justice system is fallible and accepts the concept of appellate and post-conviction relief for the indigent, wrongly accused, and unjustly convicted. These employees cultivate a sense of fairness regarding the law and of institution policies in general, believing that if we take the time to make policy, we should abide by them. The Realist may despise inmates who abuse the system, but accepts them as a correctional fact of life, and recognizes the need to limit their nonsense by offering training to potential law clerks in the proper use of their law libraries.

It is critical that all employees come to the understanding of the Realist. Given the nature of our work, it is psychological suicide to accept anything less from yourself. CourseGivers wishing to put into practice a legal research program like the one described in this book will increase their chances for success if their correctional philosophy stems from this reasoning.



to the understanding of the Realist. Given to accept anything less from yourself. research program like the one described in this their correctional philosophy stems from this

As Department of Corrections employees and, for our professional self-preservation, we should educate ourselves by seeking out current information about the criminal justice system to find out about its inner workings. Read books such as *Corrections and Prisoner's Rights*. Take the correspondence course called *Legal Issues for Correctional Officers* published by the American Correctional Association (A.C.A). These books explain in concise and vivid detail precisely why we need to be aware of inmate's

rights and why they have rights to begin with. Read standards by the American Bar Association, and the triple-joint committee of the American Library Association, ACA, and the American Association of Law Libraries. The knowledge you'll gain will be invaluable. Also, to glean a better understanding of what we mean by "the American way of justice," I strongly recommend a book by attorney James S. Kunen called *'How Can You Defend Those People?' The Making of a Criminal Lawyer*. (Please see **Bibliography**).

"Should we really teach them how to sue us?"

Interestingly--and, in a way, unfortunately--a majority of prisoners don't use their newly-acquired skills anyway.

Probably less than 40% of the inmates who successfully complete a legal research course actually put their newly acquired legal research skills to work.

There are several reasons for this, and most of these reasons probably help to explain why certain inmates ended up in prison. Generally speaking, many inmates do not have:

★ **Study skills**

★ **Tenacity**

★ **Formal education**

★ **Priorities in order**

Setting priorities is probably the biggest obstacle for getting inmates to overcome sloth. Many would just as soon play horseshoes, or watch football on their speaker-less televisions. At a maximum-security prison, an inmate once told me "In prison, basketballs are instruments of the devil." His meaning is clear: given the path of least resistance, inmates are just as lax as the rest of us when it comes to self-discipline and helping ourselves. As you know, ignorance and miscommunication are deadly foes of a well-run institution; never miss an opportunity to educate your peers about what goes on in these classes. Your CourseGiver, especially, will gain respect of the staff *and* quell their suspicions and fears at the same time.

Jailhouse Joe Sez:

"Let's be up front: some inmates are gonna sue the Administration whether or not you offer a legal research program! But the truth is, very few jailhouse lawyers sue out of spite! Don't let the morons who do defeat your spirit! Be there for the ones that wanna *learn* something!"



What This Course is Not

More importantly, prison Administrators are understandably wary of staff wanting to teach inmates how to use a law library. The easiest way to dispel this concern is by defining the Course. **CONSentrating on the Law**® is not:

☆ **A legal clinic**

☆ **A jailhouse lawyer school**

☆ **"Story Time"**

☆ **A legal writing workshop**

In fact, your CourseGiver will guarantee that every inmate understand this by giving each of them the 2-page "Course Rules" pamphlet (found in *Appendix A*), which summarizes the following several paragraphs. (This identical language also can be found on the "A Word to the Reader" page preceding Chapter One).

This Course is not a state-sponsored **legal clinic**, where the expectations of the students are that their personal civil and criminal legal problems will be solved either by the participants or by the instructor. When inmates start to interject their own problems into the lecture, CourseGivers in this book are instructed to quickly nip this in the bud, and take the time to explain why these comments cannot be tolerated:

- ▶ **They blur the focus of the class**
- ▶ **They interfere with the lesson plan**
- ▶ **No one really cares**

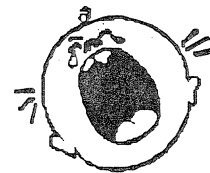
The Course is also not a **jailhouse lawyer school**, designed to show vindictive inmates how to give our beleaguered Department of Corrections legal staffs more migraines than they already have. Besides, most inmates who complete the Course do so because they have legitimate and important criminal appeals or civil suits pending or waiting to be filed. Also, as already discussed, the type of inmate who sets themselves up in a prison community as Hustlers or Narcissists wouldn't be caught dead participating in such a Course. These inmates tend to find their own trouble, and need absolutely no help from prison staff!

One of the goals of the Course is to move more inmates away from cons who charge for legal work; teaching inmates to be self-reliant can cut into the illegal activity of inmates providing legal research for a fee. For example, the Massachusetts Department of Correction has developed a disciplinary charge that can be levied against any inmate found to be charging other inmates for legal assistance. Offering a Course in self-directed legal research helps inmates to help themselves and limits the incidents of inmates taking advantage of those less sophisticated in research technique.

Jailhouse Joe Sez:

"Many law library users love to whine! It's a wasted day if they haven't found something about their cases to complain about! DO NOT let them get away with it in class!

"Stamp Out Whining!"



This Course is not “**StoryTime**,” a forum for inmates to decry the Machiavellian ways of judges, lawyers, police officers, correctional officers, and superintendents. Your CourseGiver will focus on the research: they will not permit the classroom dynamic to slip into the quagmire of gripe sessions and research strategy-swapping. Inmates have plenty of time for that during regular library hours, when they're in the Units, or in the yard. *There's no time for this during the lectures and class assignments.* CourseGivers should never hesitate to remind disruptive inmates that the Administration is doing them the service of offering the Course in the first place!

Probably the most important point to emphasize here is that **CONSentrating on the Law®** is not a **legal writing workshop**.

Legal writing is the application of legal research. Inmates learn legal writing *after* their mastery of research. They find out how to apply what they've learned in your Course *on their own*.

As for an “advanced” legal writing workshop, I don't agree with staff teaching legal writing. Staff are not compelled to help inmates formulate civil lawsuits or criminal appeals. Experience has shown that inmates with both research knowledge and teaching skills invariably find their way to your office, asking you to support their giving a legal writing course. The application of the research--the actual writing of the appeal or pleading--should be the responsibility of each inmate.

If, however, you support the idea, the law library should play host to the course 1 night a week. The librarian should make sure that the inmate knows how to teach by requiring him to submit a syllabus of what will be covered, as well as copies of assignments, readings, quizzes, homework, and anything else he will be using. Finally, require him to take attendance and submit these rosters to the librarian at the end of each class.

“Can my CourseGiver get in trouble for interpreting law?”

Yes!

If they apply the advice in this book, your CourseGiver will never allow themselves to get trapped into interpreting a statute, case opinion, or anything having the force of law. State laws prohibit the practice of law without a license. Because the vast majority of prison CourseGivers are not attorneys, that makes them incompetent to interpret any substantive or procedural law, which includes virtually everything in the law collection. CourseGivers will know never put themselves in a situation where they agree to help guide research or explain a statute. They know to watch out for manipulative questions like: “What do you think this means? I'm just asking your opinion.” They also will not acquiesce to drafting a brief motion because the insistent inmate cannot write and “It's only a couple sentences!”

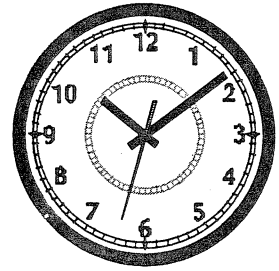


Word to the Wise ④

Legal research and legal writing are separate skills.

CONSentrating on the Law is a research skills course ONLY.

Even if a prison employee has the letters "J.D." tacked to the end of their name, s/he is still forbidden to give legal advice to inmates. Prison administrators have uncovered, for example, scams between jailhouse lawyers and unscrupulous attorneys profiting from retainers secured through the persuasive powers of these inmates soliciting business for them..



Your CourseGiver was hired by you to show inmates where the books are and, should they begin a research course, how certain of the books are used. Beyond that, they're there to ensure that the law library is being used as a research room, and that the collection is being kept current and accessible. *That's it!*

Learning legal writing is the challenge and responsibility of each litigious inmate. As we say in the Big House--"That's on *them*."

Who Benefits From The Course

It's remarkable (that is to say, "worthy of remark") when you pause to reflect on the different ways in which a legal research course benefits the institution. As previously mentioned, teaching legal research skills to prisoners may seem, at first glance, counter-productive. "Why create problems for yourself?" is the popular argument against research training. Actually, any prison administration allowing a legal research course to be taught in their prison benefits from this courageous decision in four important ways:

- ▶ **Your Administration**
- ▶ **Your Law Library**
- ▶ **The Courts**
- ▶ **The Inmates**

This Course provides good public relations for your Administration by demonstrating to the court system a "**good faith**" effort on the part of your prison to satisfy the constitutional mandate of *Bounds v. Smith*. It shows that the Administration is willing to do more than simply toss some inmates and books in a room, lock the door, yell "Knock yourselves out!" and walk away. Inmates are more likely to regard prison officials with less suspicion and perhaps offer a little more cooperation and respect for having the guts and foresight to offer such a program. During class one evening a student said to his fellows, "I couldn't believe this place would let staff teach us how to do research. I credit them for doing *something* good for us."

"Idle hands are the Devil's workshop" never proved truer than in prison. This Course can potentially effect a positive impact on the good order of the institution.

In the words of a Pennsylvania Corrections administrator, "It's a **reliable management tool**." The Course offers the more studious and tenacious inmates a constructive use of their time. It is generally conceded that, for most inmates, learning is not its own reward: those motivated to seek out education programs do so because, like most adults, they have a use for the skill being sought. If the CourseGiver can demonstrate the benefit of the Course in its early stages, inmates will participate actively. Inmates who

persevere will be concerned with improving themselves and not with breaking prison rules. Inmates who are studying have less time to cause problems.

Your Course provides good PR for **the law library**. Inmates who previously tried using the library as a meeting place or hang-out will get the message that your administration considers your library a place for serious study. Once inmates realize that the information you're offering is useful, they begin to regard you with a more respectful air. The "Us v. Them" barrier is knocked down a few millimeters as a result. Many inmates will appreciate the effort you put into the program. You also send a message to all that you care that the law collection is used to its proper advantage, and that you will tolerate no inmate shenanigans in your law library.

Before petitioning the courts with certain complaints, inmates must exhaust all administrative remedies to their problem.. The state and federal Court systems are helped by the Course, because inmates are taught the proper method of **exhausting administrative remedies** before filing a formal complaint. Some jurisdictions do not have in-house grievance procedures; if yours does, the Course can teach inmates how to write and submit an administrative grievance in an accurate and timely manner.

The grievance module is emphasized heavily and early, because it gives astute inmates a model that will help **identify meritorious issues** that probably do not merit court action but which can be solved "inside." The Course can also potentially aid courts in reducing the number of nuisance civil suits clogging state and federal dockets each year. Too fantastic to expect such results? Perhaps but, in theory: if an inmate is taught how to determine whether his

claim has legal standing, then he can decide not to litigate a non-meritorious issue, saving everyone time and effort. Also, for inmates who present actionable issues that are clearly grounded in good law, the training helps them discover the correct form of a reply brief, how to determine jurisdiction and venue, what time constraints they're under, etc. By **following court rules** inmates avoid wasting court time with the re-directing of claims, motions for time extensions, etc.

For those willing to learn, the experience of a legal research course can teach inmates **faith in the criminal justice system** by demonstrating that the system does occasionally mete out justice. This experience provides a new and accurate model of criminal justice to inmates who decided long ago that its administrators are not to be trusted. By filing a successful grievance, adhering to court rules, and prevailing on meritorious claims, inmates can change their jaded outlook on justice, and begin to understand the need for order and discipline.

From a cognitive learning view, the Course offers inmates **conflict resolution skills** which help



Word to the Wise ⑤

Teaching **CONSen**trating on the Law® helps the CourseGiver to:

- ▶ Reinforce what you know about legal research
- ▶ Learn how law books work together
- ▶ Establish a better rapport with the inmate population
- ▶ Better understand the psyche of inmate law library users
- ▶ Appreciate the American system of justice

them solve life's problems in a socially acceptable manner (in this case, bringing grievances to a court of law). Instead of acting out of rage, inmates discover a peaceful and effective means of resolving problems. They also learn that they have a certain degree of control over the conditions of their confinement. The argument can therefore be made that, from a behavioral perspective, a legal research program is rehabilitative in scope.

Your Course also offers inmates a potential **job skill**. Beyond the immediate application of legal research skills to criminal appeals and civil suits, some inmates elect to pursue a legal education or career once their time is served. Although the majority of these inmates choose a paralegal career, certain states will admit ex-felons to their Bar. It is not unusual, therefore, to discover that an ex-felon who's taken the research Course has started work toward a law degree after his release. In addition, some inmates pursue careers as legal assistants. Several states have active education departments which confer undergraduate and/or master's degrees on inmates who pursue programs with nearby universities. Many of these schools offer credited courses in both paralegal study and legal writing. Inmates who complete these courses make themselves marketable and increase their chances of securing these positions once they are discharged into the Cold, Cruel World, *a cruel world which they helped create*.

Joe Sez:

"While doing time, some inmates are permitted to perform legal research services for private attorneys! They are sometimes able to secure employment as paralegals with firms after they wrap up. Knowing that they have received formal research training gives employers confidence in their abilities."



To the CourseGiver: Writing the Startup Proposal

Whether you're a seasoned corrections professional or outside volunteer, the first step you must take before starting any prison program is that you must write a proposal describing what you want to do and then submit it to the appropriate authority for approval. On the following pages are "Checklists" you might follow to help guide you through the proposal writing process.

Program Mission Statement

You need to convey the purpose of this Course as concisely as possible to your administration. Fortunately, the mission of **CONSentrating on the Law**[®] is simple: to teach adult inmates a proven method of self-directed legal research. *Nothing more!*



Mission Statement Summary

When you meet with your supervisor to present this proposal, you must emphasize the positive aspects of the Course. At the same time, you must give assurances that they have nothing to fear from sponsoring a staff-taught legal research course.

Program Approval Path

On the next page is a "Mission Statement Checklist" you can use to organize your thoughts before striding confidently into your supervisor's office and knocking her/his socks off about the benefits of this program.

Because this Course involves inmate's constitutional rights, it is critical to obtain all permissions before implementing any program dealing with the law library. Actually, the selling of the program to your Administration can be the hardest aspect of the Course! For even if you've got it made and all concerned encourage programming, you still need to secure approval at various administrative levels, as illustrated by the Program Approval Path text box on the following page.

You begin, of course, with your supervisor. The most important hurdle you will probably face is the attitude that you are, in essence, asking permission to help inmates sue the Department! Explain why this is not so by pointing out that although some inmates have used their new-found skills vindictively, inmates who are graduated from this Course will not. On the following page is two juxtaposed articles, one championing meritorious prisoner suits, the other proclaiming their meaninglessness³. Use this page to your advantage by:

- 1 **Accentuating the legitimate, useful suits in the 1st article, and;**
- 2 **Explaining how a structured research program could serve to limit the number of unnecessary and frivolous legal claims like those in the 2nd.**

³ "Top 10 Frivolous Inmate Lawsuits," Boston *Herald*, February 14, 1997, p. 26; "Top 10 'Non-Frivolous' Inmate Lawsuits," *Massachusetts Lawyer's Weekly*, March 31, 1997, p. 10 (25 M.L.W. 1564)

The Top 10 'Non-Frivolous' Inmate Lawsuits

To the Editor:

I am writing in response to the article on prisoner litigation ("The Revoked Bars Bar," Feb. 17). The portrayal of frivolous cases presented in the article, complete with numerous illustrations and catchy titles, glosses over the need to take most prisoners' concerns seriously. An analysis of the small number of truly frivolous cases would reveal that many are the result of misunderstandings of law by uneducated persons, and of the high concentration in our prisons of persons with untreated mental health issues, circumstances which will not be remedied by punitive legislation. More importantly, it would be as easy matter for the author to extend the "analysis" to suits filed by non-prisoner citizens generally who cannot afford lawyers.

A system of legal advocates to assist inmates as soon as they file, as suggested in the article by both Superior Court Judge Patrick J. King and the Department of Corrections, would be a meaningful approach to ensure that legitimate claims by prisoners receive appropriate attention by the courts. It is important to keep in mind that the vast majority of prisoner litigation addresses very serious, often life-threatening deprivations that occur in prison, such as inadequate medical care and dangerously overcrowded conditions of confinement.

The experience of Massachusetts Correctional Legal Services is that 99.8 percent of the approximately 1,500 problems brought to our attention each year can be resolved without litigation.

Listed below are examples of non-frivolous inmate lawsuits that have been filed

in Massachusetts that point a different picture of the deprivations and injuries for which prisoners seek redress from the courts.

Abreu v. Mass. Suffolk 93-04618. Lack of easy toilets at Southwestern Correctional Center. On appeal, the court ordered the parties to negotiate a resolution. Modifications are presently underway to install toilets.

Aguiar v. Dubois. Suffolk 95-06115. Female prisoners were dragged out of bed in the middle of the night and strip-searched by unidentifiable male and female officers dressed in black night style outfits, including black ski masks. Many female prisoners had previously suffered sexual abuse by masked assailants. The operation was essentially a drill. Defendants have agreed not to repeat such exercises.

Boudreau v. Arnes. USDC Mass. 94-12345. Female prisoner who was forcibly strip-searched by male correctional officers, despite rule that female officers conduct such searches, availability of female officers to do so, and lack of any emergency since prisoner was confined to isolation cell. The prisoner received a substantial monetary settlement.

Cohen v. Depaulo. Suffolk 95-01314. Unlawful conditions at MCI-Concord, including inadequate sanitation, bedding, heat, toilet, water and wash facilities. Court has ordered most of the challenged violations, and has appointed a special master to oversee improvement of the conditions of confinement.

Conners v. Dubois. Suffolk 95-5522. Inadequate medical diets and medical care to prisoners who require special diets, such as for diabetic and heart conditions. The

Department of Corrections has agreed to extensive regulations governing dietary care.

DeMartis v. Worcester County. Worcester 94-33458. Otherwise healthy 80-year-old prisoner died of pneumonia as a result of being denied medical care, despite repeated requests from himself and other prisoners for two weeks during which his health visibly deteriorated.

Haffer v. Fair. SJC 88-31. Irrational procedures for putting prisoners in segregation cells, the most expensive form of confinement in the Commonwealth. Court ordered the Department of Corrections to implement thorough regulations governing the use of segregation.

LeLievre v. J. J. J. Suffolk 93-0330. Guard assault resulting in rupture of prisoner's testicle, followed by a cover-up by correctional officers. The Department of Corrections agreed to a substantial monetary settlement.

Parsons v. Fair. USDC Mass. 91-1275. Prison guards and supervisors forced beds for inmate assault on prisoners who were locked in their cells.

Tucker v. Fredericks. Suffolk 95-00680. Unlawful conditions at Barnstable County Jail and House of Correction, including inadequate sanitation, bedding, heat, toilet, water and wash facilities. Court has enjoined most of the challenged violations, and has appointed a special master to oversee improvement of the conditions of confinement.

Barry Barkow

Boston

The author is the executive director for the Massachusetts Correctional Legal Services.

Top 10 frivolous inmate lawsuits

1. The rude awakening

A convicted murderer who was denied parole claims prison guards woke him up too early and caused him to be grouchy during parole hearing.

2. Nickel and dime justice

An inmate sued after being denied a 5-cent return on a bottle deposit.

3. It's dangerous out there

An inmate sued for \$250 a day for being placed in protective custody to protect him from the general prison population.



4. Buckle up, it's the law

A prisoner sued for \$15,000 for not being able to use a seat belt in the prisoner truck during a trip from Boston to Concord.

5. Preparation H

An inmate seeks \$5 million for hemorrhoids.

6. Bunk bed syndrome

An inmate seeks money for slipping and falling from the top bunk in his cell.

7. Meat head

An inmate sues after being hit on the head with a large slab of meat while on work detail.

8. I am not a crook

An inmate claimed a guard slandered him by calling him a criminal.

9. In search of a cure

An inmate sued to have his medications brought to his cell in pill form.

10. The last laugh

An inmate claims denial of his civil rights after a cartoon was removed from his cell.

Proposal Checklist

- ☐ **Develop a program mission statement**
by: ____/____/____
- ☐ **Put it in writing by:** ____/____/____
- ☐ **Submit to supervisor by:** ____/____/____
- ☐ **Discuss with supervisor by:**
____/____/____
- ☐ **Earned good conduct credits**
(if applicable) approved on: ____/____/____
- ☐ **Course approved / denied on:**
____/____/____

PROPOSAL APPROVAL PATH

- [] ***Supervisor***
- [] ***Deputy Superintendent for Programs***
- [] ***Superintendent***
- [] ***Commissioner of Correction***
 - [] ***Department Attorney***
 - [] ***Department Library Coordinator***

Also explain how, in the context of a classroom, you will be able to identify those participants with a vindictive personality, and will take them aside to educate them about using research skills wisely. Emphasize that the Course is a useful management tool, a way of helping inmates make constructive use of their time. Finally, suggest that the Course can act as a bridge of goodwill between the Administration and its inmates.

Once your Supervisor approves the idea, the proposal will probably be sent to your Deputy Superintendent for review and signature. When approved at this level, it will be sent on to your Superintendent, who will approve the Deputy's recommendation, and then forward it to the Commissioner of Correction. The Commissioner will have the proposal reviewed by several subject experts, including staff attorneys and the Department library coordinator, before signing approval.

This procedure can take several months to complete! You *must* be patient and willing to work with any staff who voice legitimate concerns about the contents of the proposal. While waiting for approval, I suggest reviewing Chapter Two, ***Pre-Course Prep***, so that you'll be prepared to begin the pre-Course preparation the day you get the green light.

"Good Time"

Most inmates subscribe to the jailhouse epigram, "You give to get." When you tell inmates that they must do something, even if it's in their own best interests, a common attitude is: "What's in it for me?" Strangers to self-motivation & discipline, many inmates require a swift kick in their sedentary, institutionalized buttocks to get them to do the right thing for themselves.

Programming is no different. Whenever inmates become aware that a new program will soon be offered, one of the first questions they ask is: "Do I get good time for that?"

Not every state has determinate sentencing. Some states have passed laws providing for the accumulation of earned good conduct credits (a.k.a. "good time") for all rehabilitative programming an inmate successfully completes. If your state awards "good time," this is the perfect time to write a proposal to your supervisor requesting permission to have this Course authorized to offer these credits to participants.

Mission Statement Checklist

CONSentrating on the Law®

- ☐ Teaches inmates a method of self-directed legal research

CONSentrating on the Law® is not

- ☐ A “jailhouse lawyer” school
- ☐ A legal clinic
- ☐ A “war stories” forum
- ☐ A legal writing workshop

How the Institution Benefits

- ☐ Guarantees a core of competent legal reference clerks
- ☐ Teaches an acceptable, non-violent method of problem-solving
- ☐ Learning experience for CourseGiver
- ☐ Encourages correct use of grievance procedures
- ☐ Helps inmates keep away from predatory jailhouse lawyers

2

Pre-Course Prep

After you've persuaded your administration that **CONSentrating on the Law®** is the best thing to happen to corrections since 4-point restraint, you now must concentrate on all aspects of pre-course preparation. If you want to avoid repeating the same stupid mistakes a certain author has made over the past 10 years--and you do--I urge you to take some time to review this section before starting the Course; you'll thank yourself later. On the following pages you'll find a **Pre-Course Preparation Checklist** to help you get started.

CourseGiver Material

Syllabus

The Course syllabus (see following page) shows at a glance the subjects covered, class exercises, quizzes, and CellWork. Handouts are listed on a separate *Handout Key* (later in this chapter). Insist that your students keep it and bring it with them to each class. Always make a point to refer to the syllabus at the end of each class so that everyone is aware of the following week's topic to be discussed.

Competencies

The following Modules are the foundation upon which the Course is based. Because this is a course on legal research techniques, the information you will present is fairly fundamental. Obviously, you are free to include any topics that you deem essential to the research method you are teaching. To be effective, however, your Course must include *at a minimum* the 10 competencies listed below:

- | | | | |
|---|-----------------------------------|---|------------------------------|
| ★ | Administrative Remedies | ★ | Law Library Structure |
| ★ | Case Briefing | ★ | Secondary Material |
| ★ | Court Hierarchy | ★ | Shepard's Citations |
| ★ | Framing the Legal Question | ★ | Statutes |
| ★ | Key Number Digests | ★ | Updating/PreTest |

Material From Your Jurisdiction

Take the time to "customize" the material presented in this book. Using familiar cases, statutes, administrative regulations, and articles/amendments from your state constitution will hold the attention of your students, and make the skills being taught a lot less abstract. Plus, it'll give you a chance to become more familiar with decisions in your own jurisdiction.

MODULE	SUBJECT	QUIZ	EXERCISE	CELLWORK
Opening Night	"GROUND RULES"	Jump Street!	Library Terms	Research Material
1	LAW LIBRARY STRUCTURE	NONE	Finding Primary Sources	Grievance Regulation
2	ADMINISTRATIVE REMEDIES	Law Library Structure	Time Limit Worksheet	Court Rules
3	COURT HIERARCHY	Administrative Remedies	Matching Sources to Court Hierarchy	Framing the Question
4 Week One 4 Week Two 4 Week Three	FRAMING THE QUESTION	Court Hierarchy NONE NONE	Research Jargon Primary Sources Statsky Cartwheel	"FTQ" Pathfinder Statsky Cartwheel Statutes
5	STATUTES	Framing the Question	Statutes & Case Law Updating Statutes	<i>Stare Decisis</i>
6 Week One 6 Week Two 6 Week Three	CASE BRIEFING	Statutes NONE NONE	<i>Blake v. Commissioner</i> Briefing a Case Doctrine	Briefing a Case Doctrine*Dicta Topical*Known Case Approach
7 Week One 7 Week Two	KEY NUMBER DIGESTS	Case Law Briefing NONE	Topical*Known Case Approach Descriptive Word Index Table of Cases/Words*Phrases	Digest Finding Aids <i>How to Shepardize</i> (pp. 5-7)
8 Week One 8 Week Two 8 Week Three	SHEPARDIZING	Key Number Digests NONE NONE	Shepard's State Citations History*Treatment Abbreviations Federal/U.S. Citations	<i>How to Shepardize</i> (pp. 8-13) Shepard's Supplements Secondary Material
9	SECONDARY MATERIAL	Shepardizing	Secondary Material	Updating Primary Sources
10	UPDATING / REVIEW	Secondary Material Wrappin' Up! (Optional)	NONE	Study for Final!!!
Final Examination			CourseGiver Evaluation Form	

Pre-Course Preparation Checklist

☐ "CourseGiver FAQ's," Chapter 2, read by:

___/___/___

☐ Research Refresher completed by:

___/___/___

☐ Course Material prepared by:

___/___/___

☐ Advertising completed by: ___/___/___

For example: if you know that there is a well-known case in your jurisdiction that establishes law libraries in your segregation unit, then try to incorporate that case into your presentation on case briefing. Also, if you know that the statute on drug sentencing has recently been changed, use this as an example when you talk about statutes and updating research material. Using material with which inmates may have at least a passing familiarity will help you to hold their interest (and also give you a chance to become more familiar with decisions that directly affect your library services).

Try to find a subject that lends itself to using all of the major techniques you'll be covering in the course. Keeping to one subject, case or statute gives your presentation some continuity, and more closely mirrors research problems that your students will be trying to solve. Find a topic that will let you:

- ▶ **Frame the question**
- ▶ **Use the statute index to locate a controlling local law**
- ▶ **Use the state digests to find cases construing the statute**
- ▶ **Brief the case**
- ▶ **Shepardize the case and statute to learn its treatment and history**

Modules

“Module” as used here means each subject competency taken together with its corresponding support material like lesson plans, exercises, handouts, etc. Chapter Three discusses the 10 competency modules in detail, including the approximate length of time it will take to cover each. Each Module begins with a discussion of the same components. These components are followed by explanatory text which dissects the lesson plan, telling you what you need to be saying and doing for each segment of the class. (For a sample lesson plan, please turn to “*Opening Night*” later in this chapter).

- ▶ **Time**--Tells you 1) How many weeks it will take to cover the material; 2) Approximately how much time to allow yourself for Pre-Class preparation; and 3) suggests how long to spend on each part of the lesson plan. *Please note:* the times shown assume a class length of one hour. If you're fortunate to have more than that, you'll have to take a few minutes to adjust these figures.
- ▶ **Preparation**--Tells you which Course Material to have, if it is to be photocopied, and if you need to bring in some Show N Tell material.
- ▶ **Quiz**--Reminds you to give the quiz for the current week, and also to review the quiz you graded for this week.
- ▶ **Show N Tell**--Tells you which legal material from your shelves you need to set aside beforehand to be used later in a demonstration.
- ▶ **Handout(s)**--Tells you which ones to copy beforehand, and when and in what order to introduce them during the lesson.
- ▶ **Class/Group Exercise(s)**--Tells you 1) which kind of exercise to do, 2) how many exercises for that evening, 3) when to introduce them, and 4) how to review them.
- ▶ **CellWork**--Reminds you what CellWork to copy and distribute at the end of class.

Time

I have found that 2 hours is the ideal length for a research class. The rule of thumb is to allow 15 minutes of quality teaching time for every half-hour because of inmates showing up late, any breaks given during class (10 minutes for every hour), and time at the end to clean up. If your 2-hour request is denied, ask for 1½ hours. Don't accept anything less than 1 hour, because it's utterly pointless teaching research in half-hour or 45-minute segments. (Years ago, I was allowed 45 minutes of quality teaching time per week, and it was a disaster; if only 1 student had a legitimate question about the material, stopping to answer that question was enough to throw off my lesson plan for the night! Once I had a full two hours, it felt like I'd died & gone to CourseGiver Heaven!) It's true: the more time you have to lecture, demonstrate various techniques--and to occasionally stray off the beaten path--the better. If you discover that extending the number of weeks the Course runs is not an option and you must drop a Module, I recommend reducing the digest Module from three weeks to two. You can do this because you will be teaching students about digest topics and Key Numbers during the Module on Case Briefing. Another "expendable" Module is part one of Module 10, "*Updating*." I say "expendable" because by the last Module of the Course you've already demonstrated pocket parts, paper supplements, and loose-leaf services. I put this at the Course's end simply to refresh inmate's memory about this critical research stage. Still, if you decide to eliminate 10, be sure to add a stronger emphasis on updating earlier in the Course. Another option is eliminating Module Two, "*Administrative Remedies*," in states whose Departments have no "in-house" grievance procedure.

Lesson Plans

Ready-made lesson plans are included within their corresponding Module, and each has a section of explanatory text in Chapter Three, **Course Modules**. The remainder of the Module components--handouts, exercises, etc.--are found in Chapter Four, **Course Material**. If not satisfied with these "canned" lesson plans, I encourage you to adapt them to fit your jurisdiction and your student's academic ability. Develop one lesson plan for each subject listed in the syllabus. This does not have to be more than a skeletal outline highlighting the main topics to be discussed in each class. Also, it's wise to leave a healthy margin in which to include instructor's notes to remind you when to do certain things, like:

- **Holding up a demonstration volume**
- **Illustrating a point through flipcharts or transparencies**
- **Showing on the shelves where a certain set is found**
- **Allowing time to ask questions**
- **Reminding yourself when it's break time**

Handouts

Finding it difficult to accept most concepts on faith, inmates insist on being shown, not told. Many legal research techniques are forbidding, arcane, and esoteric (*merci*, Monsieur Roget); and so you must increase your students' understanding by bombarding them with as many useful photocopies as you can. Please make sure that the information is disseminated in a palatable form, i.e., illustrations, charts, graphics, etc. This keeps their attention and helps to explain certain techniques. For example, I do not now nor have ever believed that it's possible to explain Shepardizing case citations without using pages from the appropriate Shepard's citator.

(To see every handout at a glance--and to make your copying duties a little less hectic--please refer to the "Handout Key" (next page). To review the handouts for each Module, see Chapter Four, "Handouts").

To find appropriate handouts for each of the competency topics, consider making direct copies from the material you're talking about. For example, copy the "Abbreviations-Analysis page directly from the front of any Shepard's volume; the Bill of Rights section from the U.S. Constitution; or 42 United States Code section §1983 from your federal statute set. Also, use copies from a West Group freebie called "Sample Pages." Existing "Fair Use" statutes will cover you for duplicating virtually all material in the library which is used to teach legal research. When in doubt, mail or fax a simple request for permission to copy to the appropriate publisher.

CellWork

"CellWork" is homework in a prison (inmates will tell you, "I'm not home, I'm *here*."). CellWork is important. Because the Course is structured so that each week's module is built upon the previous Module, it is imperative that you give CellWork at the end of each class. CellWork helps prepare students for subsequent topics, and provides much-needed continuity especially if classes are held once weekly. Take a few minutes to explain how the CellWork will prepare them for the next class. Usually this work consists of reading assignments, but the type of material you want them to cover is your call. Just make sure to tailor it to the abilities of the participants. Finally, CellWork presents inmates with a constructive way to spend their time outside of class, and helps keep their attention focused on the Course goal of self-directed legal research. (Chapter Four, "CellWork").

Class/Group Exercises

Here's a little prison classroom truism: *inmates don't like to sit quietly*. You gotta give 'em something to do. Also, like most adult learners, inmates are more likely to retain newly-acquired skills if they are offered a means to apply the new information. And no better way exists to learn legal research than to try out newly-acquired skills in a working law library. Therefore, give *lots* of exercises. Spend a significant amount of preparation time on this critical part of your lesson plan. Use the assignments verbatim from this book, or use them as a model from which you create assignments tailor-made to your own jurisdiction. (Chapter Four, "Exercises").

Also, this book contains two kinds of class activity--group exercises and class exercises. Group exercises are the predominant form of exercise included in Chapter Four. The group exercises presume a class size large enough to be divided into three groups. Encourage the more knowledgeable inmates to help the novices: this is a valid and effective learning technique.

Some tangible ways that you benefit from class exercises are that they give you the time to:

- ▶ **Prepare for the next segment of the class**
- ▶ **Answer questions; and**
- ▶ **Drink some water/give your voice a break**

When the exercises are completed (usually give them ½-hour to find the information), have them stay put and elect a spokesman for each group. Require them to take notes during this section

CONcentrating on the Law[©]

Handout Key

MODULE	HANDOUTS
Opening Night	1 Legal Research Path § 2 Definitions § 3 Library Terms
Module ①	4 3 Branches of Government § 5 Authority Origins § 6 Categories of Research Material § 7 Primary Sources § 8 Constitution Sample 9 Regulation Sample § 10 Statute Sample § 11 Case Law Sample
Module ②	12 42 USCS §1997e § 13 <i>Grayson v. Eisenstadt</i> 14 Grievance Sample 15 Sample Grievance Response
Module ③	16 State Court System § 17 State Map § 18 U.S. Court System 19 13 Federal Circuits § 20 Matching Sources to Court Hierarchy
Module ④	21 2 Most Important Legal Research Questions § 22 Understanding Research Jargon § 23 "I was a law library junkie!" § 24 Statsky 9-Step Method
Module ⑤	25 <i>Acts</i> sample § 26 <i>Acts</i> Citation Form § 27 State Statute Sample 28 State Statute Citation Form § 29 Federal Statute Sample 30 Federal Statute Citation Form § 31 Finding Statutes 32 Statute/Case Relationship
Module ⑥	33 How To Brief a Case (3 pp.) § 34 Case Briefing Terms 35 8 Steps To Case Understanding & Spiritual Enlightenment (NOT)
Module ⑦	36 Key Number Digests--Topical Approach (7 pp.) 37 Key Number Digests--Known-Source Approach (3 pp.)
Module ⑧	38 misCONSeptions § 39 Shepardizing § 40 Understanding Shepard's Citations § 41 § How To Read Shepard's History/Treatment Symbols 42 How to Use Syllabi § 43 Using Shepard's Supplements
Module ⑨	44 Why Use Secondary Material?
Module ⑩	45 Primary Source Updating Chart § 46 Importance of Being Current PreTest (<i>Appendix D, Graduation</i>)
Exam Night	Final Examination (<i>App. D</i>) § Course Evaluation Survey (<i>App. B</i>)
Graduation	Certificate § 3 Virtues of a Competent Researcher (<i>App. B</i>)

so that they can learn from their mistakes. Then, have the spokesman explain how each answer was arrived at. Do this for each group. Explain why some groups went wrong and some groups did better. Make this standard procedure for each class exercise you give.

Quizzes

Quizzes are essential. Even if you do not assign grades, quizzes give you a barometer by which to judge the progress of each student. Give at least one quiz for each Module. Try to make it the first thing you do as a group after taking attendance.

On Opening Night, administer the Assessment Survey called "Front-Street," (Chapter Four, "*Quizzes*"). Each inmate brings to the Course a different level of experience with the law library and its collection: determining the extent of this experience is crucial to gearing your pace for presenting the information over the next several weeks. Collect the assessment surveys and put them aside. *Remember to tell your students that these will not be graded.* And don't be surprised if the majority of the answers on each survey is left blank: this simply tells you that you've got the right people in the Course. Quizzes should be comprised of 5 or 6 multiple-choice, matching, or completion questions (avoid essay questions!) The majority of the material lends itself to completion questions, because the information is so basic as to render a matching or multiple-choice question an insult to the intelligence of the students.

Quiz procedure is standard. To discourage cheating, make sure they're sitting 1 chair apart. Then move into Quiz Mode. I say the same thing each time:

**"All talking has stopped except for me.
Take everything off of the desk except what you brought to write with.
Don't cheat yourself.
If you have a question, bring yourself and your paper to me.
When you're done, bring your quiz up front.
You have 10 minutes."**

After you've collected the quizzes, put them aside and go on to the lesson plan for the evening. After class is over, take time to correct and grade each quiz and record the scores on a Quiz Grade Sheet (Appendix A, "*Pre-Course Preparation*"). The following week, pass out the quizzes and review them with the class, answering any concerns they have about the answers, the way the questions were worded, what questions were asked, etc. Take this time to jot down any good suggestions participants come up with about making the quiz better. Afterward, collect each quiz and, in front of the students, rip them up into teeny tiny pieces and toss them.

It's interesting to hold onto these assessments until the end of the course. If you have time, give the survey again, only this time it's called "Wrappin' Up!" (Chapter Four). After they're done, I quickly grade them and return them *along with the original survey* to each participant. In this way you give students a psychological boost before the Final Exam. It's heartening for inmates to see proof of their improvement. After that's done, collect both surveys from each individual and rip them up in teeny tiny pieces.

Cumulative Final Examination

Your Course is over, and you've all survived both the rigors of a research regimen, and each other. How do you now find out what your charges have learned? Give a cumulative final examination. (See Appendix C, "*Answer Keys/Final Exam*").

The Final Exam is not offered as an "open notebook" test. The Final must be cumulative, and simply consists of a logical arrangement of all the quizzes you've given your students throughout the

Course. To keep it interesting, offer a section of bonus questions on information taken from the lectures.

Depending on the number of inmates remaining in the Course by Finals Night, and depending on the amount of energy you're willing to put into the testing, you can forego the written exam for a "hands-on" test, whereby each inmate is asked to demonstrate all the skills learned in the 20-or-so weeks. I have never been able to comfortably work out the logistics of supervising 8 to 12 inmates as they show me *en masse* what they've learned, but don't let me discourage you from discovering your own system.

Whatever method you choose, it's usually helpful to review the Final on the week prior to giving it, using a class exercise format. Before you do anything else, you will read the Riot Act forbidding them from taking notes during this review! Let them know a week ahead of time not to bring anything to write with. If they do bring something, confiscate it. ***You must preserve the integrity of the Final Exam.*** Divide the exam into 6 subject areas. Then, divide the class into small groups and assign each group a different section of the exam to complete. Allow them to roam freely in the law library and to use the collection to discover the answers. After each group completes its section, the groups move on to complete the next section, and so on, until each group has responded to the entire test. Pace the class so that you have at least 20 minutes at the end to review the answers with your students and answer any questions they may have.

Course Evaluation Survey

In order to improve your Course, you must be open-minded to learning new things each time the Course is offered. Wise teachers learn from their students. One way of picking up new ideas for your Modules is by having students complete a Course Evaluation Survey (See Appendix B, *Graduation*).

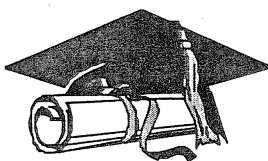
Inmate feedback regarding class length, effectiveness of quizzes, CellWork and Class Exercises, as well as suggestions for additional topics of discussion, are vital to keeping the Course information appropriate, current, and interesting. For example, this Course has been improved over the years by 3 important inmate suggestions:

- **Adding the "Framing the Legal Question" Module**
- **Adding the "Statutes" Module**
- **Reminding students that no research book tells you "Now it's time to go Shepardize"**

Have each student fill out the Survey after they completed the Final Exam on exam night. Encourage them to answer each question honestly and completely, and ask them to list any praises or constructive criticisms of the Course. Have them bring them to you after they've completed the Survey. Set them aside to review later. When you meet for Graduation, review some of the better suggestions with the group and take a few minutes to discuss the appropriateness of incorporating these suggestions into the Course.

Graduation

If time permits, you should encourage a few who have sufficient in legal research passage does not have to be



hold a small graduation ceremony for the weathered the program and are now self-techniques. This rite of elaborate, in fact, the simpler the better. But

it seems to mean something to the inmates if you can get them together to discuss their Final Exam, and to talk about where to go from here.

Send written or faxed invitations to all appropriate administrators. For me, this would be: the Superintendent; the Deputy Superintendent for Programs; the Director of Treatment; the Department Manager of Library Services; and the School Principal. Then, send written invites to your students. Take care to use their correct units, and be sure that you mail the invites at least 2 weeks prior to graduation. R.S.V.P. everyone so you know who's attending. (Appendix B).

If your institution has a print shop, or if you can persuade your supervisor to buy some, provide your graduates with a paper certificate commemorating their completion of the Course. Inmates thrive on having certificates to keep in their institution folders, to show the Parole Board

that they've been doing something constructive with their time, and to send home to family and friends. And only because they're going to ask you to do this, you may as well have it done ahead of time--make 2 copies of each certificate. Like grade-school children, inmates enjoy mailing these home to show off their grades. The certificates should be signed by you and one other member of the administration, either your supervisor or the Superintendent. (Ask your Superintendent to sign it; this way he sees how many people you've graduated, and have evidence of a successful program).

On Graduation Day, make sure to review the final exams question by question, so that students have a chance to find out what they missed and why. Also, review the Instructor Evaluation Forms and discuss the better of the suggestions which might improve the Course. You don't need to say who suggested what--they can remain anonymous. Discussing these suggestions gives you the opportunity to show the inmates that you take their constructive criticisms seriously and are willing to incorporate changes into the Course. At the end of the ceremony, give a brief, sincere speech about your experience with this group in the 20 (or so) weeks since the Course began. Encourage them to continue learning about legal research and to use the law library as often as possible (Appendix B).

CourseGiver FAQ's

This section attempts to anticipate frequently-asked questions about the Course. There is also advice on preparing a lesson book.

"What material should I have with me?" At a minimum, you need to have the following materials with you for each class:

- ▶ CourseGiver's LessonBook
- ▶ At-Home Course Binder
- ▶ LeftOver Binder
- ▶ Student Folders
- ▶ Supply Envelope containing:
 - ▶ White lined paper
 - ▶ Pencils
 - ▶ PostClass Review sheets



Word to the Wise ⑥

The better organized you are, the more sustained enthusiasm you'll have for teaching the Course.

Don't allow Course material to overwhelm you; a little organization in the beginning will reward you many times over. Take time to organize things NOW.

The **CourseGiver's Lesson Book** contains only the essential materials for the particular Module you're currently teaching. Buy a small binder with 3 metal posts for securing 3-hole punched sheets. Then, buy a few 100-count boxes of 3-hole transparent plastic covers. Photocopy all Course material for a particular evening--lesson plan, handouts, CellWork, class exercises, quiz, etc.--and place them each in a plastic cover. Finally, secure each sheet in the binder.

If you have a computer, create a file for your Course roster. The day of the class, print out the roster a few hours ahead of time. Insert your roster into a plastic cover and clip it to the back of your binder. It's up to you whether you want to personally take attendance or have each inmate either initial or check off his name as he arrives....You will also help yourself by taping a copy of the Course syllabus on the inside front cover of the binder so it's around when you need it. Also, a good idea is to tape the Quiz Grades sheet on the inside back cover of your binder.

Your **At-Home Course Binder** includes everything you cover in the Course. Buy a 3-inch "D-ring" 3-ring binder. Into this binder will go all covered Course material that you remove from your Lesson Book (see above) at the end of each Module. At the end of the Course, you'll have one master copy of everything you need to give the Course. *This way, you can keep this text at home, which is where it belongs.* You don't need an inmate stealing the text and copying all quizzes, assignments, and the final exam! If this were to happen, the Course would be kaput. Keep exercises, quizzes, and lesson plans in this binder.

By now you're saying, "Well, what the blue blazes *can* I keep at work?" You can keep your **LeftOver Binder**. This is a separate binder like the others, only into this will be kept the handouts, class/group exercises, and CellWork that you have left over from a particular class. Almost weekly, an inmate who missed last weeks' class will be bugging you for copies of that lessons' material. This binder helps you organize this stuff. Your LeftOver Binder will pay for itself many times over the level of organization it will bring to your life (You will *always* have stuff leftover, too).

Copious handouts will be distributed during the Course. If you have time and the supplies, make Student Folders for each name on your roster. Get some manila folders, on the cover of which you'll tape the title page to this book. Fill each folder with 3 sheets of lined writing paper. Then pass these out on Opening Night with instructions for students to keep all notes and handouts in these, and to bring them to each class. Inmates like these folders, because Inmates Like To Get Things.

Your **Supply Envelope** is self-explanatory (but, in keeping with my penchant for hyper-elucidation, I'm gonna explain it anyway). Get a big 10" x 13" manila envelope and label it "Supplies." Into this put items like writing paper, a box of small golf scorecard pencils, and a few photocopied PostClass Review sheets. Keep this envelope on your desk during each class. Some inmates will steal from it if they get the chance, so make sure you've only got things in there that you won't mind getting beat for if they do come up missing.

"Where should I hold the Course?" The answer is the law library. And I am not being facetious! I have worked in institutions in which the administration insisted that I give the Course in the general library so that the law library could remain open....

If researchers are scientists, then the law library is to them "all that the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical gardens to the botanists."¹ A research class outside of the law library is like the clichéd fish out of water. If you heed any advice in this book, please take it as truth that the worst thing you can do is to hold this Course

¹4 C. C. Langdell, "The Harvard Law School," 3 *Law Q. Rev.* 123, 124 (1887).

somewhere other than the library; you must be able to use the law collection! Fight tooth and nail with your supervisors should they decide that you can be just as effective teaching in a program unit, classroom, or even the general library.

You need to secure permission in writing to close the law library at least one evening per week, and should notify all pertinent security staff about the program and provide them with an updated class roster, if required. Notices should be posted inside and outside of the law library informing inmates of the deadline to sign up for the Course (see *"How do I let inmates know about the Course?"* below). Notices explaining the purpose of the law library's weekly closings must be posted in conspicuous places at least 2 weeks before the night of the first class (see Appendix A).

"When should I give the class?" The Course should be offered in the evening when law library usage is lowest. This dictates that you must work an evening shift (12-8PM or 1-9PM). Then, you can make last-minute adjustments to your lesson plan over your dinner break.

Please try not to teach during the day: I've found it to be too hectic, and you're just setting yourself up for aggravation that nobody in our line of work needs. If you feel that you must teach in the day, prepare yourself for a myriad of interruptions, like phone calls, inmates banging on your door to ask if the library's closed, students having to leave early because of jobs or other institution commitments, etc. Don't allow the aggravations to outweigh the benefits of the Course. Keep the nonsense to a minimum.

"How frequently should I teach?" depends on the demands placed on you by your administration and the nature of your population. The Course should be offered at least once a week. Twice weekly is better, because continuity is better preserved. In a teaching situation, inmates in general seem to possess a short memory and attention span; therefore, if classes are given only weekly, remember to set aside the first 5 minutes of each class to review what you covered the previous week. However, you will probably find that it's almost impossible to secure permission to close down for 2 consecutive nights for 20 weeks, so don't feign surprise when your supervisor shoots down this request! Also, you must consider the energy drain that preparing for 2 weekly classes exacts on you, especially if you're a novice to teaching.

"How many students should I begin with?" is a real puzzler, especially if this is your first time in the classroom. I recommend beginning the Course with between 25-30 inmates. (If you find yourself shrieking, "What is this guy, nuts?" not only have you been paying attention, but you're correct to be daunted by the prospect of dealing with the logistics of 30 prisoners [a goodly number of them card-carrying psychopaths]). Thirty cons at once is ludicrous, but a funny thing happens around the 2nd or 3rd week--the class size quickly dwindles to between 10 and 15 students. I've never been quite sure why this happens, except to say that once the gaffers and the good-timers figure out that you're not playing and are quite prepared to work them to death, they tend to bail out on you. Which is fortunate for all, because you end up with a small group willing to apply themselves. It's funny: you're swamped with about 50 requests to join the Course, as if you're giving out *The Key to the Street*. Once they find out the work they must do, it's like watching lemmings plummet off a cliff.

"Should I have an inmate helper?" can be a touchy question, depending on how closely inmates and staff are allowed to work together. First things first: find out from your supervisor if staff/inmate presentations are permitted. If so, persuade a knowledgeable clerk to take the Course or to sit in on it. Pick his or her brains about experiences with legal research. Depending on the person, this input can be both instructive to the class and helpful to you.

You're only as good as the people around you; knowledgeable clerks can be invaluable in showing students what is possible if they develop the patience and tenacity it takes to learn what goes on in those books. Plus, clerks invariably think of things that you'd never have thought of to say. In this way, you'll keep an open mind and learn new things each time you offer the Course.

"How do I let inmates know about the Course?" Advertise. This is the Much Ado About Something part of the Course, when sign-up sheets have to be made, the Course has to be advertised, your supervisor and officers have to be informed of every move, and you have to prevent yourself from goin' out of your ever-lovin' gourd....Fear not. It's really easy to advertise in a prison, because you never have to worry if your demographic population will get the message. Inmates hunger for anything new to read, hear, see, smell, and touch. If it's there, they'll see it.

Study the Heads-Up Checklist (see **next page**) to see which/what/when how people should be notified. Please note: if there are additional considerations about postings that your institution needs you to adhere to, then alter the Checklist to include this information.

Please don't take the attitude that such a checklist is superfluous or busy work. Experience shows that if it's something you have to remember, then that means it's important; it also means that it's something you run the risk of forgetting. Don't take the chance; use the checklist to help you. Also, understand that it takes time to complete this Checklist. Moving from "Posting in Housing Units" to "Print CourseGiver copy of roster" takes approximately three weeks. Be patient, and make sure not to skip steps; in the end, you will have communicated with everyone who needs to know what's going on. The more people know about the Course, the better chance you give yourself that class nights will run relatively painlessly.

Therefore, take advantage of your captive population by making posters, signs, and postings for the housing units, and letting your clerks know about the program so that they may help you advertise through word-of-mouth. Have your clerks design and construct colorful posters with eye-catching fonts and graphics, and post them in the library. If permitted, photocopy your postings and personally post them in each Housing Unit. Also ask permission from your supervisor to hang postings in conspicuous places: hallways, in the School, in the Orientation Unit, in the gym, *anywhere* where inmates are likely to notice them.

If your institution offers an Orientation Program--and if you do not already participate--ask permission to give a 5-minute spiel on library services. Mention that you regularly offer a Course on legal research instruction, and tell them when the next cycle begins.

Word-of-mouth is the lifeblood of any prison; therefore, make your clerks aware when you're about to begin the next cycle of the program. They will get the word out for you. They'll soon be asking to sign up friends and acquaintances who they feel may benefit from the Course.

It's up to you how you want to display the sign-up sheet. I record their names in a word processing file called "Rosters" then add and delete names on the fly. If this is not an option, you will probably want to keep this sheet in your desk, or perhaps taped to the top of your desk. (In my zeal & naivete, I've tried taping it to a wall in the law library, only to have it ripped down before the

Heads-Up Checklist

- [] **Post notices in Housing Units**
- [] **Post notices in conspicuous areas of the prison**
- [] **Post Sign-Up Sheet in libraries**
- [] **Mention course in Orientation Day presentation
(if applicable)**
- [] **Finalize course roster**
- [] **Complete/mail course invitations**
- [] **Submit course roster to appropriate officer posts**
- [] **Print out CourseGiver copy of roster**

afternoon was over). Some sage advice--don't give this sheet to a clerk. You are the one that must control the sign-up procedure, if only to meet the inmates who potentially will be your students. And while you're introducing yourself, you can hand them their mini-syllabus (discussed below).

Here's a little secret--advise that by itself is worth the purchase price-- guaranteed to preserve your Pre-Course sanity. Because the inmates will bombard you with the same questions about the program, this is what you must do: get the Course syllabus, take it to your photocopier, and reduce it by $\frac{1}{3}$. Next, arrange as many of these on one side of a sheet of copy paper as can comfortably fit; then, copy this new sheet approximately 20 times. Finally, get a clerk to cut out each "mini-syllabus" and put them neatly in a manila folder. Now when potential students start in with the who/what/when/where/why/how litany, simply hand them a syllabus, saying, "This will tell you about the Course. Keep it." If they insist in engaging you in conversation anyway, hold up your hand and say, "It's all on that paper. Have a nice day." (See, you have to be cruel to be kind....)

Allow three weeks for the sign-up process. I've experimented by giving them one week for this: it doesn't work. Also, remind inmates when they sign up that they're responsible for giving you any Unit assignment changes when they move to a new Housing Unit between now and the start of the Course. When the time comes to do so, you don't need the confusion caused by sending Course invitations to the wrong Units.

When the three weeks is up, take the list of inmate names & double-check the information with the staff member in charge of producing the daily Change Sheet. You must make sure that these inmates have not been transferred to another institution, lugged to Segregation, in the Hospital Unit, on Awaiting Action status, or otherwise MIA. As mentioned above, the most common type of move is a cell reassignment from one Unit to another. If your roster is lengthy, you should take it to the staff's office and offer to check this information yourself. If the roster, on the other hand, has between 6-10 names, a phone call to this staff person is probably appropriate.

Once you've determine who's still in the prison, it's time to print up the invitations. You can use the ready-made one included with this book (Appendix A), or make up your own. Just make sure that the information you put on each invite is accurate.

Some sage advise about invitations: it's difficult to know exactly when and how to send them. Strange things happen to jail mail. Even though you hand-delivered Joe Blow's invitation to his Unit 2 weeks ago, Mr. Blow will appear in your library the day after Opening Nite insisting that he never receive it. You know your institution & inmate population best, so discretion is called for. Just make sure you give yourself a few weeks' lead time.

"How Should I review for each Module?" The way you choose to answer this directly corresponds to how prepared you are when class night comes around. Even if you already have a solid background in basic research techniques, you should review your knowledge and skills before starting the Course. The easiest way I've found to prepare is to give yourself the Final Exam. Whatever you answer correctly you must be able to explain; if you can't, read that corresponding section in Chapter Three until you can. The questions you get wrong you must correct by going to the books and

INVITATION

discovering the right answers. *Resist the temptation of looking at the Answer Key until after you've searched for the answer.*

Although you're preparing for Opening Night, you should be comfortable with at least the first 2 lesson plans. The best way to prepare yourself is to create a few research problems and walk yourself slowly through every research step until you've reviewed all 10 competencies.

Do yourself a favor and don't procrastinate on this review. Make it a part of your pre-Course routine. It doesn't take long, and the investment pays off on the very first night. You want to convince the inmates from the start that you know what you're talking about! More importantly, you need to have a strong sense of confidence in yourself, especially if it's your first time out.

“How do I improve my lecture style?” By this time, all pre-Course preparations have been completed, invitations have been mailed and received, adds/drops to the roster have been adjusted, officers on the shift have been notified of the program, refreshments have been prepared in advance. Last but not least, you have (I trust) taken my advice about reviewing the Modules. You now feel the utmost confidence coursing through your veins, while titanic plumes of adrenaline rhythmically spout out of your ears and other orifices too vulgar to mention here. You're ready!

Except for one thing. As you move into the classroom, you must deal with what folks in Show Biz refer to understatedly as “stage fright.” **Stage fright** is a natural feeling people get when they *care* about what they're doing. If you care about the information you're presenting, you'll be plenty scared.

Once upon a time, I thought I'd never have the guts to offer this Course. If you had told me 13 years ago that someday I'd be writing a manual on how to teach legal research to convicted felons, I'd have asked you what kind of mind-altering drug you had ingested! For years I was so shy that if I was a few minutes late for a class or training session, I couldn't bring myself to walk in the classroom. If I managed to show up on time, I cowered in my seat, petrified that the instructor would call on me to give an answer, demonstrate a technique, or otherwise call attention to me. My heart would pound out a Gene Krupa solo during the class. I was a text-book example of a self-conscious wimp. *Now*, of course, I am an egomaniacal show-off with delusions of grandeur.

You'll succeed in overcoming debilitating stage fright if you can nurture the “ham” in you that most of us have lying dormant just below the surface of our natural shyness. If you can allow that facet of your personality to develop on its own, you'll be fine, just fine. How do you do this? Relax. *Enjoy the experience.*

There is, of course, nothing of which to be frightened. *Absolutely nothing.* If you feel performance anxiety, keep in mind that you are teaching convicted felons, some of whom have been in the criminal justice system all of their lives. One thing you don't need to waste energy on is the idea that you have to put on a display of academic pyrotechnics, or intellectually strong-arm the inmates. Experience teaches that the type of inmate who is attracted to a legal research Course responds better to a less formal teaching style. Although they are impressed by a superior intellect, they can be intimidated if you come on too fired up. More to the point, they can spot a phony a million miles away. Always remember--*the inmates who attend the Course do so because they want to be there.* Once you set a relaxed, informal tone, they quickly follow your lead.

I realize that this is all easier said than done. But if you persevere, I guarantee you that your pre-Course jitters will dissipate to the point where you actually look forward to each class. That's the point you want to reach, and if you stick with it, it *will* happen.

The presentation of self to Total Strangers is, apart from facing death, the one fear shared by all Mankind. Thankfully, there are ways of dealing with the oppressive little bugger. They are:

- ▶ **Humor**
- ▶ **Relaxation**
- ▶ **Repetition**

Humor: The CourseGiver's Savior

I cannot over stress the importance of humor in your presentations.

Legal research can be an exacting, exhausting, and--alas--boring endeavor. Feel free to share a laugh with your students. **Be adventurous! Wake them up!** Remember, these are adult inmates, many of whom have done, said, heard and seen it all. To use one of their favorite admonishments, "This is *jail*, not *Yale*!" Even the "intellectually challenged" among your students will appreciate the effort and respond better to your presentation. Who knows--there may be a few people who actually understand one of your jokes! Best of all, humor tends to diffuse some of the tension or awkwardness you can feel up in front of a large group of seasoned cons.

Humor is one of the most subjective experiences in this universe we share: the best advice I can give is don't hesitate to inject some of your own sense of the bizarre into the material. For those so inclined, be a little risqué. This is my preferred style of humor which, over time, has inspired my students to saddle me with the tell-tale moniker "the Vulgarian Librarian." Obscenity is a touchstone of prison existence, and many inmates use vulgarity as freely as their bodies extract oxygen from the air. If this is what you're comfortable with and your students recognize it as humor, *use it*. Print off-color jokes in the margins of quizzes, handouts, CellWork, etc. Example:

- Q. Did you hear about the 2 gay judges?**
A. They *tried* each other....

Try using obscene similes in lectures, e.g., "Gentlemen, Shepardizing[®] is like masturbating--once you learn how, you never forget!" Or, a multiple choice non-sequitur can read something like:

How are the state and federal digests arranged?

- a Alphabetically**
- b Numerically**
- c Alpha-numerically**
- d None of the above**
- e Who gives a ****?!**


One fact of prison existence is that male inmates generally tend to watch their behavior and language around female staff, and so the junior-high gym room references tend to disappear. In any case, if obscenity's not for you, try working time-honored jailhouse slang in your presentations. For example, title the assessment survey "Front Street," or the final exam "Wrapping Up." Or, for those students who invariably forget to write their names on quizzes or homework, hand them a card electing them to the "Legal-Beagle Hall of Shame."

And because the legal profession isn't exactly revered in a prison, include a few lawyer jokes in the margins of handouts to keep it lively (if you know any prison law library jokes, use those!) I've brought in legal joke books and cartoon collections to read aloud during breaks, after quizzes, before and after class, or to just have them available for students to browse through.

You really don't have to go out of your way to find humorous material to use because--let's face it--*the law itself is funny!* An enjoyable part of my work routine is reading random case law to discover passages from opinions whose situations, language, or attitude of the opinion writer is, in my view, too funny to be believed. I've discovered quotes from Shakespeare, lyrics from popular songs, original poetry, name-calling, invective against everyone from plaintiffs & defendants to their attorneys (even against other judges), funny transcript testimony, etc.

For example, a First Circuit Court of Appeals judge once authored an indictment against what he perceived to be the repeated frivolous filings of a certain prisoner, explaining that "he has whiled away [his] time by concocting a parade of horrors, dressing his creations in the garb of successive applications for

post-conviction relief, and loosing them upon a variety of courts." The judge characterized the prisoner's actions as "tomfoolery" and his legal argument as "a profligate waste [of] both judicial resources and tax dollars." The judge ended his statement by reiterating why unhampered access to the courts preserves liberty:



Word to the Wise ⑦

Focus on your lesson plan.
Your class must never degenerate into:

- 1 A jailhouse lawyer school
- 2 A legal clinic
- 3 "Story Time"

"[even though] one may deplore the Alice-in-Wonderland quality of a system which is open to such abuse. There is a stiff price to be paid for the constitutional protections which are endemic to our democracy, and misarchists such as [the appellant] exact that price to the fullest...yet one must continually harken back to the precious liberties which would, in meritorious cases, be at risk where even [people like the appellant]...denied their day in court."

I keep a file of amusing case law language, inexplicable statutes, and prison-related cartoons from magazines & newspapers: I then look for ways to incorporate this stuff into my presentations. A humorous teaching style is one of the best methods for commanding your student's interest.

One last reminder--make sure you have copied several of both the "Jailhouse Joe CONSentration Award" and "Go Directly To Jail" (see following pages). Use the "Jail" one sparingly; use the others as often as humanly possible. Inmates get a kick out of receiving them, and you'll have fun filling them out. It gives you a chance to reward good work; it also allows you to vilify, chastise, and tease those who want to deprive themselves and/or others of a positive learning experience. Be sure to personalize each Award by using inmates' nicknames, or a running classroom joke, things like that. For example, during one recent cycle of this Course, Bill Smith (not his real name) was refused admittance to our building two weeks running because his clothes failed to meet the dress code. When he returned, I handed him a "GDTJ"

Award addressed to “Bill ‘I Don’t Have a *Thing* To Wear!’ Smith.” Sophomoric? *You bet!* Still, inmates accept these in the good-fun spirit in which they are offered. I’ve never had an inmate offended or otherwise put off by these slips.

And, frankly, humor helps *you*, in many ways. Here are a few ways humor can make a difference:

- | | | | |
|---|--|---|---------------------------------|
| ★ | Keeps you focused on the material | ★ | Helps you relax |
| ★ | Makes you eager to invest time in class preparation | ★ | Helps you enjoy teaching |

Relaxation Techniques

Any program that trains people to train other people admonishes the trainer-in-training to do some standard relaxation techniques about 1 hour before class time. I relax using two skills called *positive imaging* and *calming breaths*.² Don’t tell yourself there isn’t time for this--make the time. Five minutes of relaxation can only help, not harm. Forget what you haven’t got done. If it’s not done by now, you’ll pick it up the next time.

In the quietest surrounding you can find, sit in a comfortable chair, back straight, feet flat on the floor, arms hanging limply at your sides. With you eyes closed, take a slow, deep breath through your nose, and then slowly exhale through your mouth. Take ten of these Calming Breaths. While breathing, notice your muscles becoming loose and warm.

While you’re doing this, work on your positive imaging. Think of the most serene and peaceful scene that you can, and contemplate that image as you slowly inhale and exhale. Alternately, imagine yourself in front of the class with everything going as planned. There’s a smile on the face of every inmate as they hang onto your every word. The entire class transmogrifies into proverbial putty in your hands.

It takes practice to combine the correct breathing procedure with the imaging, but the mental coordination will develop in time. If you can only do one thing for right now, then concentrate on

²5 R. Reid Wilson, *Don’t Panic: Taking Control of Anxiety Attacks*. Harper & Row, 1986

“Jailhouse Joe” CONSentration Award!

TO :

FOR :

CONgratulations! If you
CONTinue to
CONSentrate, you'll
CONtrdict the
CONviction that
CONvicts must be
CONSIDered
mOroNiC!



“Go Directly To Jail” Award

TO: _____

FOR: _____



the calming breaths. Once these have become automatic, then incorporate the positive imaging. Take it easy. You'll be fine. Remember--you are experiencing the classroom dynamic in action. Every class has an instructor and several participants. Every person in that room experiences some anxiety based on Mankind's omnipresent companion, the Fear Of The Unknown. The inmates will be as nervous as you. Your job is to use this nervous energy to your best advantage. Don't fight it--use it!

The best Opening Night advice I can give is to quote an admonishment from Douglas Adams' first of his mind-bogglingly successful trilogy of five books (don't ask) entitled *The Hitchhiker's Guide to the Galaxy*, to wit:

DON'T PANIC

...because nothing ever goes
as planned. We who exist on

this sterile promontory called Earth know this. Don't waste your time worrying about things running smoothly: they can't. *Even if they wanted to, they can't.*

"Well," you say, with no small amount of incredulity in your quavering voice, "What am I supposed to do?" *Concentrate on the things that you do know.* Below is a ready-made free-verse poem to guide you. Repeating this before class works on the nervous system like a soothing mantra,³ helping you to keep things in perspective.

Why I Ain't Panicking *by (Insert your name here)*

**I know how large the class is & who's gonna be there
I've dispensed with Opening Night hurly-burly
I know inmates crave research instruction
I know the material
I've told my officers what's going on
The worst that can happen?
I will have to eat
my own
words
!**

Repetition

Another useful technique I have incorporated into my lecture style is repetition. Try to teach to the lowest common denominator. This is where those assessment surveys will come in handy: responses will help guide your pacing of each module. Even at the risk of boring the more intellectually gifted students, make certain that the slower ones grasp the material before moving on to the next concept. Some of the most positive comments on the Course have come from inmates who I considered to be academically slow, because they appreciated the comfortable pacing of the lectures. Always ask the group if they have any questions before continuing with new material. Or, ask one or more of them to demonstrate to the class the task you were just describing, and have them explain each step as they go.

³

³⁵ Unsubstantiated clap-trap.--Ed.

“What should I tell the C.O.’s about the Course?” The most important advice to anyone starting a prison program is: *don't take your security staff for granted*. The success of your prison program is directly related to the amount of support from the officers in your area. Those well-trained ladies & gentlemen in uniform allow you to focus on what you need to get done: without their cooperation, anything you do will be doomed.



Keep Them Informed

Too many civilian staff regard officers as hindrances, nuisances, or outright saboteurs, and alienate themselves from the very people who can ensure the smooth operation of their work. Don't make this tragic mistake. It's easy to avoid! Here's how:

- **Keep your officers informed about every aspect of the Course**
- **Educate them about why it is constitutionally mandated to have law libraries in prisons**
- **Provide them with weekly roster changes**
- **For those officers who are curious, show them copies of your lesson plans so that they can see exactly what is being taught**
- **Teach officers at Department training academies**

Anticipate Resentment

Few topics generate as much controversy among prison staff as inmates' use of law libraries. Officers have both a right and a need to know why inmates are being taught by staff how to do legal research. Be diplomatic when officers voice their distaste for the whole process: in fact, *you'd better anticipate this reaction*, because it will rear its ugly prejudiced head more than once along the way. Many officers are bitter and angry that inmates can sue them. Naturally, they will choose you as the focus of that bitterness, because you offer a legal research course. This is human nature!

Here's a way to make peace: ask an embittered officer to imagine his work environment if The Powers That Be--judges, legislators, lawyers, Commissioners of Correction--couldn't care less if the indigent, wrongfully accused and unjustly convicted had absolutely no recourse to justice. Ask him to consider American prison history and the violent turn it takes when the incarcerated are impotent to affect meaningful change in their lives. Ask him what often happens when men--many of them social retards--no longer have reason to hope. Then ask him if prison law libraries aren't an excellent investment in climate control and prison management.

Keep in mind that you're not trying to persuade people to accept the Course, although that would be ideal. What you'll try to do is enlighten the ignorant.



Word to the Wise 8

If you teach at your Academy, keep in mind that you'll probably not be able to train as many officers as you'd like to, because of the difficulty officers sometimes experience with the logistics of securing a day off from their regular tour of duty.

This illustrates why you must educate them "in-house" at every opportunity.

And not “ignorant” in the pejorative sense; it is used here only to mean folks who don’t have all the information they need.

You Need Them

Here’s a fact of prison life: you need those officers more than those inmates need you! Talk to officers, establish working relationships with as many of them as you can, and tell them what you’re up to and why. The correlation is this: informed officers are helpful officers. If you make a sincere effort to keep lines of communication open, chances are good to excellent that you’ll avoid the vindictiveness and spite that can sometimes develop between officers and staff who are sometimes perceived as advocating for inmates or “coddling criminals,” both inside and outside of the library.

“Is there much photocopying to do?” Oh my word, yes! Consider that this book contains over 60 pages of ready-made handouts; 10 quizzes; over 60 pages of exercises; 17 pages of CellWork assignments; the Pre-Course Preparation material; and Graduation Day stuff...then, multiply all this by the number of students. Hyperventilating yet? You soon will be.

Photocopying is the bane of any CourseGiver’s teaching experience. Copiers always break down on class night—it’s an unwritten law of teaching. You’ll have to make last-minute arrangements to use copiers outside of the library, requiring a measured amount of begging, cajoling, empty promises and ingratiating smooth-talking. To avoid this, please allow yourself two hours of copy time for each class. If you don’t, you’ll pay for this poor planning in the form of messy handouts, incomplete class exercises, handwritten quizzes, *ad infinitum*. ***Photocopy all class material well in advance.***

“Will audiovisual aids help my presentation?” Yes. Put yourself in the place of the person being trained. When we are the trainee, we like seeing the trainer using A/V material. Why? Because it breaks up the dryness of a straight lecture format. In addition, adults seem to learn the material better when it’s presented in visual form. I strongly urge you to use them. Audiovisual aids described here include:

- ▶ **Transparencies**
- ▶ **Colorful Handouts**
- ▶ **Clip Art**
- ▶ **Research Videos**

If you have a computer and laser printer, you can make **transparencies** using your word processing program. Most office supply places carry overhead transparencies for laser printers. Please make sure before you buy them, however, that your printer supports the use of transparencies, because not every one of them does (check your printer’s user manual for details). Another easy way to create transparencies is by using a photocopier. The trick here is that you have to have the image you need to be transferred to the transparency. Also, be very careful when buying these, because they’re very expensive (close to \$20 for a box of 50). Most office supply or computer stores will not accept an open box for return, so make sure you’re getting the right size, color, and compatibility.

What type of material makes a good transparency? Anything with a picture: charts, computer graphics, tables, worksheets, symbols, fancy fonts, etc. Transparencies liven up any part of your lecture that needs a

creative, visual boost. Be brave and elect a student to be your transparency turner. This then becomes his special job each night that transparencies are used. He gets to feel needed, your lectures are more lucid, hardly anyone's falling asleep--everybody's happy.

Colorful laser printer paper adds a splash of color to any information you need to present. **Color** is a small but effective way to keep an inmate's attention; this is because color is not in abundance in a prison setting. Presenting your Course material in this way tends to make the inmates believe that the information is somehow more important than if provided on standard sheets of white copy paper. And, if you have a **color printer**, you can add color to the actual illustrations as well as creating them on colored paper.

If you have access to a computer with a laser printer, use appropriate and eye-catching **clip-art** in your Course material. There are several commercially-available libraries of clip art carried by computer superstores, office supply stores, computer specialty stores, and mail-order companies. Use a laser printer because the image is noticeably sharper than other printing methods.

Now the tricky part: **research videos**. My answer to the question "Should I, or Shouldn't I?" You shouldn't. Why? Primarily because of security reasons. How do you maintain control of the class when the lights are off and people start talking among themselves (or worse)?

Another thing to consider is that, in prison, TV monitors are equated with entertainment. How much "TV" is too much? This question must be answered if the taped information is to have any meaning for the instructor as well as students.

It's up to you, obviously, but I warn you--do not lean too heavily on this technology. The temptation is to pop a cassette in, turn on the tube, turn up the sound, turn off the lights, and let the video do the teaching. ***Don't fall into this trap!*** Information on video should supplement, not supplant, your lectures. Novices tend to overuse videos. I suppose this is so because the novice believes that the person on the tape can present the information much better. If you do decide to incorporate research videos in your presentations, here's my 2¢: As you gain confidence in your ability and knowledge, start to 'wean' yourself away from the tape. Start to rely more on your experience, lectures, and wit to carry the day. Having cautioned you against leaning too heavily on video, I must add that there are 2 excellent research videos, both published by Nolo Press and "starring" the irrepressible research video maven Bob Berring (see **Bibliography**).

"What can I do to improve the Course?" There are several strategies you can take to keep the Course both fresh and evolving for yourself and your students. Once you've taught a few times and are comfortable

with the material and the dynamics of presentation, try some of these suggestions:

- ▶ **Learn from your students**
- ▶ **Invite a paralegal**
- ▶ **Invite a law student**
- ▶ **Offer Course material in other languages**
- ▶ **Send for research aids from publishers**

If you're new to legal research, one thing you must do is refuse to become intimidated by clerks and other inmates whose knowledge of the art dwarfs your own. You can ***learn from your students!*** Instead of feeling humiliated or embarrassed, *use their knowledge*. For example, if Know-It-Alls in your class gloat audibly that they have a better method of Shepardizing®, tell them to wait until after the class is over and submit it to you on paper. If the gloating continues, toss 'em out. *You must not and will not be intimidated.*

I guarantee that you will meet students with a better understanding of certain research techniques. *Don't let this throw you off your lesson plan!* Learn from these individuals, and then move on. Write notes on your PostClass Review form, reminding yourself to include the new information in a revised lesson plan for the next cycle. Remember--no one has ever learned all there is to know about legal research. You'll forever be revising and picking up something new. But it is this process of discovery which augments the joy of teaching. And that's neat.

Invite a Paralegal

Once I conceived the idea to ***invite a paralegal*** to talk with my students about what they do, I asked my current class if they felt a speaker would be of any benefit. Without missing a beat, a young lifer spoke for them all: "Is she pretty?" Sexism aside, you should try to invite someone in to talk to the class about working in the paralegal field. Having a working paralegal makes the information presented in the research course less abstract; inmates can see directly how they can benefit from their skills once they reach the streets. Obviously, the information these people can give about what they do is better than you lecturing about it--it's first-hand stuff. Plus, inmates always lend more credence to words spoken by an "outsider" than they do to someone they see and work with every day. Make sure, however, that your students understand that it's not going to be Open Season On The Paralegal, that the focus of the visit will be necessarily narrow. Keep in mind that no one knows the classroom dynamic of this group of inmates better than you. So, if you know beyond question that this class is not capable of refraining from trying to turn the lecture into an impromptu clinic on criminal law, then don't invite anyone in.

It's fairly easy to find a paralegal. Query your local paralegal association, Bar Association, or prisoner's rights organization for an experienced paralegal interested and courageous enough to come inside a prison and talk shop with bloodthirsty murderers, unrepentant rapists, enthusiastic devil worshipers, and sundry other Prison Folk.

Usually it's not difficult to convince someone to agree to do this. As with other aspects of prison life, communication is the key. Explain to the potential speaker about the Course and its goal of self-directed legal research and how you'd like their talk and Q&A session to fit into this program. Make sure to send them an itinerary of what you'd like them to cover in order to allay any concerns they may have.

Keep the talk down to an hour, and limit the Q & A time to ½ hour. If the speaker's used to public speaking & feels comfortable taking more questions than this, then allow the speaker to dictate the pace. Make sure that the focus is on what exactly paralegals do all day, if they have to specialize in one area of law or if they have to cover all genres, and what it's like working for an attorney who either does or does not particularly know a lot about legal research. Also, questions should be directed toward the person's certification (What did they have to do to get it? Does it matter from which school you receive certification? Are correspondence courses

recommended?). If you want to keep the affair formal, you can require that students take notes on the speaker's answers to certain questions. Tell them beforehand to ask certain questions and write down the answers to be studied for a quiz on the lecture the following week. In the alternative, treat the experience as something new & exciting, giving the students a break from academics and yourself a rest from a presentation. It's up to you.

Invite Law Students to Lecture

There is an excellent article regarding the training of **law students** to provide legal research instruction for inmates. The article, "Improving the Use of Prison Law Libraries: A Modest Proposal,"⁶⁶ outlines the procedure to use when the prison librarian decides that they'd like to leave the teaching to others.

My experiences at the State Correctional Institution, Pittsburgh, & the Massachusetts Correctional Institution, Cedar Junction at Walpole, have demonstrated that as long as there is a solid agreement between the institution and a law school for the responsibilities, duties and limitations under which the students will be teaching, this program is usually well-received by both administration and inmates alike. Of course, the librarian must be the liaison for this procedure.

Query Law Clerks

I also recommend that you **query law clerks**. Even though this is considered a cardinal sin by many who have worked in the field, experience shows that using inmates knowledgeable in research techniques as human resources to improve the Course has merit. Some clerks have been studying criminal law and procedure for two decades or more and have a vast and reliable fount of research knowledge from which to draw.

HAVING SAID THIS, I caution you to not make this too frequent or obvious. Discretion is called for; your professional credibility is at stake, especially when you are new to corrections. Do not pretend to know something you don't just because you feel compelled to respond immediately to an inmate query. Always take whatever time you need to research the question yourself.



Word to the Wise ⑨

Not everyone feels comfortable speaking in front of an audience. Moreover, many people are leery about being inside a prison, or uncomfortable simply with the thought of entering one.

You may have to contact several people before getting someone to agree to come in. Be understanding & patient.

⁶⁶ Christopher E. Smith, *Law Library Journal*, Vol. 79:227 (1987)

Course Material in Other Languages

Offer **course material in other languages** in order to attract non-native English-speaking inmates who may feel shut out of programs because of their limitations with the language. Unless you are conversant in many languages, the only effort you can make to reach out to this group is to offer the course material in Spanish, for example, and then advertise that you offer this service. I can't say a lot of inmates take advantage of this, but enough do that it's worth the effort of translating your course material. It's just one way of trying to interest a segment of the population that might otherwise pass on the opportunity of learning legal research.

There are several different ways of going about the translation. If you know the language, then translate the stuff yourself. If you don't then the next best thing is to solicit the help of a bilingual staff member (preferably from within your institution, but someone working in another prison will do just fine).

The last recommendation--and it is a legitimate one--is to assign the translation project to a bilingual inmate clerk. I have had tremendous success with this. You have to make sure that the inmate doing the translating is actually conversant in the language. Sometimes you may think an inmate is speaking a foreign language fluently, only to discover (usually by their own admission) that they speak only a bastardized street-brand of the tongue. The most critical part of having a inmate do the translation comes when it's time to have the work checked by someone who speaks the language. Again, if you're bilingual, then the responsibility is yours. For those who aren't, assistance must be solicited by a staff member or someone whose abilities you trust.

Research Aids

As pointed out earlier, legal research can be a deadly dull proposition. CourseGivers must look for ways to inject some life into the game, to keep it from becoming a chore. One way is by sending away for "free" research aids and promotional items. Another is to purchase at nominal cost some excellent prison-specific research texts. (See Appendix E, "*Where to Get Stuff*") Listed below is information inmates should know about so that they sustain their interest in research. Some of this stuff is free or available to inmates at a reduced cost. (If it is easier, provide the following as a one-page bibliography).

- § The American Civil Liberties Union publishes a small handbook called the *Rights of Prisoners*. The handbook gives a general overview of the substantive rights of the incarcerated. This booklet is provided at a cost of \$5.
- § The West Group publishes a paperback edition of *Black's Law Dictionary*, which is substantially less expensive than the hardbound version.
- § Oceana Publications publishes 2 excellent books aimed specifically for the litigious prisoner: the *Prisoner's Self-Help Litigation Manual*, and *Post-Conviction Remedies*, both by Daniel Manville. The one drawback to these texts is their bland, academic style. They weren't written with the average inmate intellect in mind. Many inmates cannot use these books simply because they can't understand them. Caution your students about this.

- § One legal research book I highly recommend without reservation is *Legal Research: How to Find and Understand the Law* by Stephen Elias and Susan Levinkind. This book is easy to read and understand, with simple-to-follow explanations of various research techniques written in an informal and humorous style. Encourage those with means to purchase their own copy. Your law library should have several copies of these helpful books.
- § Depending on where you live, some Secretary of State offices publish an unannotated version of their state constitution and distribute it free or for a nominal cost. Also, updated directories of state representatives and congressmen can be helpful. In Massachusetts, inmates can purchase a directory of their state congressmen for \$1.00 from an agency called the Massachusetts Taxpayer's Foundation. There are probably corresponding agencies in your state where this information can be had.
- § Inmates like to get things. You could provide them with a brief bibliography of research "freebies" which can be obtained through representatives of certain legal publishers. Traditionally, the companies providing these items have been West Group, Lawyer's Cooperative Publishing Company, and Shepard's/McGraw-Hill. Books include sample pages to case law reporters; informative advertisement fliers on how to use certain research sets; brief legal research texts; and booklets on Shepardizing®. For example, West has two research booklets available free of charge: a 147-page booklet called *Winning Research Skills*, and a perennial favorite, *Sample Pages: Illustrations of Organization and Research Techniques in West's Legal Publications*. Shepard's distributes an outstanding freebie called *How to Shepardize: Your Guide to Complete Legal Research*. This one has an accompanying test booklet, *Questions & Answers*. Both are easy to understand, and can be had by calling your local Shep Rep.
- § Promotional items such as notepads, pens & pencils, bookmarks, calendars, and address booklets were at one time available by request around the holiday season by calling your West or Lawyer's Co-Op regional representative.

“How can I keep up with changes in the law?” A relatively easy way to acquire basic knowledge about legal research is by studying the aforementioned *Legal Research: How to Find and Understand the Law*. This book offers an informative, painless, and even entertaining way to learn about using your law collection. Daniel Manville's *Prisoner's Self-Help Litigation Manual* (3d ed, 1995) has a helpful chapter on legal research and prisoners' substantive and procedural rights. And don't forget Dr. Berring's videos (*See Appendix E*).

Due to the logistics of their surroundings, prison librarians traditionally haven't always been able to secure permission to attend training classes outside of their institution. This has held especially true for the one-person library. The current trend in corrections, thankfully, is to emphasize a set number of annual training hours for all employees. Beyond degree programs and certification, librarians should avail themselves of local **continuing education classes** in legal research, preferably those offered by a university law librarian or professor. Many states have coordinators or managers of prison library services, either within the Department of Correction or at the state library level, who organize annual legal research refresher workshops for Department librarians. These classes are excellent opportunities for librarians to acquire a basic understanding of how to find the law. Also, many library managers will, when requested, make on-site visits to give individualized research instruction. Additionally, legal research training is occasionally offered through state library associations.

Many prison librarians feel isolated from the library world outside of corrections. Consequently, they sometimes fail to consider and benefit from a variety of human resources. Public library reference librarians, state library legal reference librarians, and county & trial court law librarians are eminently qualified, and genuinely pleased, to answer phone queries about legal research techniques and legal reference sources. Generally speaking, trial court law libraries are accessible to the public. Call these librarians to schedule an afternoon of cross-training, or pay a visit to their library if only to see what research texts and videos are available. Also, some trial court law librarians are gracious enough to let DOC librarians come out for a day to fill legal inmate interlibrary loan requests. Visiting these libraries gives the librarian an excellent opportunity for hands-on research experience with an extensive legal collection; quite often, too, it is a chance to use research technologies lacking in many prison law libraries.



The best way to become a self-sufficient in legal research is to go out into your law library and answer inmate reference questions.

Another way to acquire legal research skills is to give yourself hypothetical legal problems to discover, and then use all available finding tools, texts, and primary sources to ferret out the answer. Use this technique once a week to track down new developments in federal and state case law pertaining to prison law libraries, access to the courts, and opportunity for legal work. If your library has West's state or federal digest, use the digest topic "Prisons" with the key number 4(13), also, use the digest topic "Constitutional Law" with key number 328. In addition, each West case law reporter has a brief Key Number Digest in the back showing whether there are cases in that volume relating to prison libraries.



Opening

Night!

Question “What can **CON**Sentrating on the Law® teach me?”

Objectives

- ▶ To explain what the Course teaches and to establish the classroom routine
- ▶ To identify the inmates who actually need to take the Course

Skills Learned

- ▶ Ability to identify 6 library terms pertaining to research material

Preparation

- ▶ **Student** Paper/pencil
- ▶ **CourseGiver** See **CourseGiver Preparation** above

Activities

- ▶ Explain the “ground rules” for the Course
- ▶ Distribute the Course Syllabus
- ▶ Demonstrate various library terms in **Show N Tell**
- ▶ Conduct group exercise, *Library Terms*
- ▶ Quiz, *Assessment Survey*

CellWork Reading: *Research Material*

CourseGiver Preparation

Quiz Make copies of the assessment survey *Jump Street!*

Show N Tell Make copies of the Course Syllabus (Chapter Two, *CourseGiver's Guide*). Set aside 3 volumes for Exercise One: *Federal Practice Digest 3d*, vol. 81; volume 19 of your state's *West's Key Number Digest*; and *West's Federal Criminal Code & Rules*. (If your library does not contain these volumes, please make substitutions).

Handouts Make copies of *Legal Research Path*; *Definitions*; *Library Terms*; and the 2-page “Course Rules” (*Appendix A*). Duplex to make a brochure.

Exercise Copy Exercise 1A-1C, *Library Terms*. Note that these are labeled *Group One*, *Group Two*, and *Group Three*.

CellWork Make copies of *CellWork One*, *Research Material*. As this is two pages, duplex them (copy them back-to-back) so that you use only one page.

“Opening Night” Lesson Plan

Opening Night is essentially time for you to meet everyone and to explain the ground rules for the Course. And--whether you're nervous novice or seasoned pro--it's an opportunity to get your feet wet! The “Preparation” section above helps you organize your photocopying duties. The best way to approach Opening Night is by following your lesson plan (**next page**). Below is a section-by-section elaboration of the “Opening Night” lesson plan. These sections include:

Explaining *Course Rules*
What to discuss during “*Show N Tell*”
When/how to give the *Quiz*
When/how to discuss the *Handouts*
When/how to conduct the *Class Exercise*
A reminder to distribute *CellWork*

Section I: Show N Tell Introduce yourself to the class and, if you prefer, have everyone introduce themselves as well. You will now discuss the *Course rules*, which include:

- | | | | |
|---|---------------------------|---|-----------------------------|
| ★ | Course focus/”Hustlers” | ★ | Logistics/”Good Time” |
| ★ | Syllabus/Modules | ★ | Exercises |
| ★ | CellWork | ★ | Student expectations of you |
| ★ | Your expectations of them | | |

Tell the class that the ***Course focus*** is to teach a method of *self-directed legal research*. “Self-directed” is the operative word here. Make them understand that you’re teaching them to rely on themselves to do the research. In prison, the path of least resistance is to find another inmate already conversant in research techniques and pay him to do the work; the lazy inmate then goes outside to play handball. The focus of the Course will be to give each inmate the skills and confidence required to walk into a law library and feel sure about what he’s doing. It’s appropriate at this time to speak about the inmates to whom I referred earlier, *Hustlers*, inmates with superficial research skills who prey upon cons who know nothing about research. Tell them that by participating in this Course, they can learn much which will thwart the efforts of these leeches. Also, admonish them not to use the research training to *become* Hustlers, because disciplinary rules exist to discourage such behavior.

Amazing as it may seem, some inmates actually aren’t aware that jailhouse lawyers cannot insist on being paid to do their research! I will never forget when, one night after class, an inmate took me aside after the others had left the law library and said: “Since I’ve never had to have anyone do legal work for me before, I wanted to ask you: is \$200 too much to pay for a Motion to Dismiss?” At first I thought he was kidding, but as the conversation continued I could see that the question was

Opening Night

Preparation (4 hrs.)

Photocopy (45 min.)

- ☐ Roster
- ☐ Course Rules (2 pp.)
- ☐ Assessment Survey
- ☐ Syllabus
- ☐ Handouts 1-3
- ☐ Exercise 1A-1C
- ☐ CellWork 1 (2 pp.)

Show N Tell

Retrieve: (15 min.)

*Federal Practice Digest, 3d (vol. 81); State digest
vol. with topic "Prisons;" West's Criminal Code and Rules
Chapter 2, CourseGiver's Guide; Chapter 3, "Opening
Night"*

Review: (3 hours)

§1 Show N Tell
(20 min.)

Course Rules (pamphlet)
Focus / "Hustlers"
Logistics / "Good Time"
Syllabus/Modules
Exercises
CellWork
Student's expectations of CourseGiver
Expectations of students

§2 Quiz
(5 min.)

"Assessment Survey"

§3 Show N Tell
(10 min.)

Legal Research Path
Definitions
Library Terms

§4 Exercise
(25 min.)

Library Terms

§5 CellWork

Research Material

genuine. (Notice that he wasn't questioning the *payment*, but the *amount* of the payment!) After I told him that not only were inmates prohibited to charge others for legal assistance but that doing so was illegal, he became embarrassed, then angry. Then he told me that attending this course was the best decision he could've made for himself at that point in his life, and thanked me for my honesty. So don't be afraid to speak about Hustlers; it just might help an inmate do the right thing.

Next, tell them about the *logistics* of the Course:

- ▶ How often class will meet, where it will meet, and what time it meets
- ▶ They will be given a cumulative final examination at the end of the Course. and reassure them that questions will be taken from the 10 quizzes they will see during the Course.
- ▶ If your Department grants them--and if this Course is approved to offer them-- speak on *earned good conduct credits*, commonly known as "good time." Tell them how many days they can expect to receive, and when the deductions will be taken.
- ▶ Emphasize that *every research skill learned can be used in any law library*, whether in or outside of prison. Although this may seem like overkill, it is not. There is the occasional inmate who will believe that what he's learning can only be used in prison law libraries. Also--more for their information once they're released--inform them that most larger public libraries have a collection of legal material representative of your jurisdiction: legal dictionaries, a complete set of state statutes, and state agency regulations (e.g., *Code of Massachusetts Regulations*). Many states have a trial court law library system, and these libraries are open to the public.
- ▶ If a *graduation ceremony* is permitted, announce the date now (see Chapter Two, *Graduation*).

Next, distribute the *syllabus* to everyone and cover it in detail. Point out that each class is based upon the previous one, so everyone is required to be there. (In Massachusetts, inmates are disqualified from receiving "good time" for the Course if they miss more than two classes). Explain that the Course is comprised of 10 **Modules**, each representing a different aspect of legal research. Also point out that legal research *per se* does not begin to be covered until the 4th Module of the course. Actual research begins with the 3-week Module called "Framing the Question." This is so for several reasons:

- ▶ General library concepts must be covered
- ▶ A model for understanding legal collections must be introduced
- ▶ Grievance procedures must be explained
- ▶ State/federal court hierarchy must be examined (inmates need a model for understanding where the result of their research will end)

Be sure to point out that 3 Modules consist of three classes each, and a fourth consists of two. The 3-week Modules are: ❶, *Framing the Question*; ❷, *Case Briefing*; and ❸, *Shepard's Citations*. The 2-week Module is ❹, *Digests*. These Modules are longer primarily to reserve time for students to complete the class/group exercises. This makes for a total Course length of 20 weeks. This does not include variables such as vacation, sick time, holidays, an institution lockdown, and other unforeseeables. Because Stuff Happens, the Course can (and always does) run a little longer.

Since the only way to learn legal research is by getting into the books, microfiche, CD-ROM, and/or online services and using them, students next need to be told that *class and group exercises* are a vital part of this Course. (Exercises *do not* appear on the Syllabus: they are listed on a separate *Handout Key* in Chapter Two). Without exercises, the Course is pointless. *Each class must include hands-on experience for the students.* Otherwise, the information will become too abstract, arcane, esoteric, and other big words my pocket thesaurus doesn't have. Teaching legal research without hands-on experience is like teaching desert nomads how to swim. *It don't work.*

And be sure that everyone understands whatever technique you're teaching before rolling out the exercises. A teacher once told me "You can't give too many exercises!" *Bullfeathers!* Without adequate explanation and demonstration, all the hands-on opportunity in the world isn't going to help anyone. The rule of a thumb is 45 minutes of lecture for every 1 exercise given. In this way, you guarantee that the application experience will be meaningful.

CellWork prepares the students for the following Module; this can be seen by studying the Course syllabus (**Chapter Two**). Most CellWork are reading assignments, but there are a few exercises that require students to use the law library. *Please add more CellWork assignments if you deem it appropriate.* Consider, however, that some of your inmates are enrolled in institution and college-level classes and are required to complete substantial amounts of homework each week. If this is the situation in your prison, then allow for this by giving appropriate but fairly brief assignments to complete.

Now it's time to talk about *students' expectations of you*. You must make it clear to all that *this Course is not a legal clinic*. You have not assembled to research inmates' legal problems. Whether or not you are an attorney or paralegal is irrelevant to the presentation of this Course. Frankly, you have no business discovering the personal legal problems of inmates, especially if you're not an employee of your state's Department of Correction. You gently-but-firmly remind students what they're learning--to become self-reliant in legal research. You have also not assembled to hold "Story Time," those special warm 'n' fuzzy moments in prison law libraries when inmates console each other with tales of wrongdoing levied against them by judges, attorneys, snitches, juries, prison administrators, and God. The moment this begins, *you will stop it*. Storytellers waste valuable class time, so their behavior cannot be tolerated.



Word to the Wise ⑩

Generally speaking, inmates can be a fairly undisciplined bunch. In order for the Course to go smoothly, this is what you **MUST** insist from your students:

- 1 **Legitimate Absences**
- 2 **Class Participation**
- 3 **Arrive Prepared**
- 4 **Note-Taking**
- 5 **Adult Behavior**
- 6 **Completed CellWork**

Now tell them about ***your expectations of the students***. *Two legitimate absences are permitted, and no more.* "Legitimate" means an unscheduled visit, sickness, or hospital trip. Make-up classes are impossible. You won't have time to prepare for your next class if you're running around trying to give makeup classes the other days of the week. Make it the students' responsibility to see you to get any handouts that they missed. Instruct them to copy notes from a fellow student so that they benefit in some way from the lecture.

Because *make-up quizzes* are difficult and time-consuming (When do you give them? Where?), they won't be given.

Tell them to *come prepared* with something to write with and paper to write on. These are mandatory tools of the Course. Tell them that you'll supply writing paper from week to week. Give pencils if you have them. Supply pens only when the inmate can exchange it for the spent one he claims to have. (If you allow it, inmates can gaff you out of a month's supply of pens in less than a day, so stick to this rule).

One thing you must remember about the quizzes and final exam: *don't let your students keep them!* Your research class is as basic as you can make it: should inmates decide to photocopy these documents, there's no way to change the information so that no one can cheat in a future Course. Instead, insist that *everyone takes notes*. When you break this news, you will hear loud, insistent, baleful protestations. To Hell with them! Your responsibility is to protect the integrity of the Course.

The most common argument will be: "How do you expect us to study if you won't let us keep the quizzes?" At this point, you reach into your back pocket, take out your weathered copy of the Riot Act, and read verbatim:

"People, you will take notes. You will take lots of notes. You will take so many notes you will think you are a sheet of Mozart's manuscript paper! I want to see pencil points breaking and erasers crumbling under the strain! I want to see reams of paper written on, erased, and crumpled up in frustration! I want to hear cries of pain and sighs of exasperation! You will be some eraser-rubbing, pencil-pushing, note-taking recidivists!"

One way of encouraging note-taking is to provide lined writing paper and pencils for those students who need them. Also, if you have them, give out a manila folder in which students can keep all of their notes and Course handouts. Tell them that they'll increase their chances of success in the Course by taking notes, because people remember things better if they write it down. Finally, it requires them to be busy during the lecture part of the class, so that they're less inclined to be talking to their neighbor, sleeping, disrupting your rhythm, or staring off into space.

You are now ready to talk about every prison CourseGiver's favorite topic--*inmate behavior*. As the CourseGiver, it is your duty during each class to welcome *relevant questions*. Warn the class, however, about *irrelevant questions*. For reasons beyond the scope of this book, there exists an intellectual quirk endemic to the average inmates' mind which compels them to dwell on a hypothetical example and follow it through to its logical absurdity. To illustrate, suppose you're using the subject "Search & Seizure" as a topic of discussion, and you're showing the class how to properly brief a case dealing with this issue. When you happen to mention a specific issue of the case--a warrantless search, drugs found under a car seat, people frisked without probable cause--this is some inmates' cue to wax eloquent on what

happened to them regarding this same issue. "The cops're all crooks!" might be the interjection, shouted with the fury and fervor of televangelists spitting fire & brimstone from the safety of a cathode ray. If left unchecked, a "Story Time" will emerge. I give the following counsel at the risk of insulting your intelligence, BUT--*don't let this happen in your classroom!* Remind this type of person that they are hypothetical examples only,

nothing more. Be rude, insolent, sarcastic or sardonic, but shut these inmates up as soon as possible. People like this waste precious class time and--unfortunately for everyone--there's always one in every bunch (I promise you). Just don't let that One take over the class. *It's your class!* Generally, inmates who participate in legal research courses possess above-average intelligence when compared to the rest of your population. They are more articulate, educated, witty, reliable. Partly because of these traits, they are also prone to more classroom shenanigans than the average inmate! The biggest transgression is *talking to others while you're talking*. This behavior is simply a standard part of prison classroom dynamics. Come down hard the very first time--tell them they risk expulsion from the Course should they disrupt your class in any way. Finally, inmates tend to *ridicule or humiliate fellow classmates* who ask fairly inane questions, or questions for which the answer has already been given. Remind them that they're all in the same boat, otherwise they wouldn't be sitting there trying to learn what they don't yet know. Even though the classroom atmosphere is very informal, anarchy does not reign. I've set clearly defined limits, and one of these is that no one can ridicule another.

Section II: Quiz You now need to give a small quiz called an *Assessment Survey* (see Chapter Four, "*Quizzes*"). Inmate's responses to this survey will allow you to determine which inmates need to be there, and which have knowledge of legal research beyond the scope of the Course. Also, this is the perfect time to introduce to the class the standard quiz-taking procedure I call *quiz mode* (Chapter Two, *CourseGiver's Guide*). If possible, make them sit in every other chair so a chair separates them. Tell them that all talking has stopped except for you, and if there are questions they are to bring themselves and their paper to where you are sitting. *Assure them that this survey will not be graded!* Give them 5 minutes to complete the survey (the Survey contains questions that are so basic that if they aren't finished inside 47 seconds, you can safely bet that everyone in the room needs the Course). After 5 minutes, tell them to put their pencils down and then personally collect each survey. Paperclip them and file in your Supply Envelope. Review each survey after you've dismissed the class.



Word to the Wise 11

If time is a problem, skip the text on library terms; just use Handout Three for this part of the presentation. It's better, though, to work in some of the information presented here, so try to use this material!

Section III: Handouts After you've collected the Assessment Surveys, it's time to distribute Handout 1, *Legal Research Path (Chapter Four, "Handouts")*. The intention is to show inmates a graphical representation of the research process they're about to learn, from beginning to end. It serves as a pictorial way of understanding the Course syllabus.

Next, distribute Handout 2, *Definitions*. These legal terms crop up repeatedly as the researcher stumbles through the law library maze, so it's wise to define these terms now so that everyone shares a common reference. Simply read each term and its definition. If you have time, (5 minutes), demonstrate some of the terms such as numbers 1-3, 9, and 10.

You now need to teach the group some essential *library terminology*, so distribute Handout 3, *Library Terms*. Illustrate these terms by using the books you've set aside for the Class Exercise, and by following the text below.

The annoying thing about library terminology is that much of it is so bloody basic and common sense that it's a shame that it has to be mentioned at all! Still, like everything else in this Course, don't hesitate to explain even the most 'self-evident' word or skill. Chances are, quite a few inmates are learning these things for the first time. What's more, they cannot afford *not* to know these terms. This demonstration shouldn't take long, but is critical to the students' basic understanding of how to determine What's In Them Thar Books.

Arrangement is simply the way in which a particular book's information is organized. Every book has a certain order to help the user locate information as efficiently as possible. Many law books arrange their information first in a general way by chapter, then more specifically by section (e.g., *Mass. General Laws Annotated*, Ch. 94C, §32H). Some law books, like the federal statutory codes, are arranged first by title number, then section (e.g., 42 *United States Code* §1983). The Key Number Digests, arrange their information first by digest topic, then by Key Number (e.g., *Prisons*, Key 4(13)).

The **Contents Page** tells you what kind of information may be found in the book. It's important to tell inmates about the contents page because, like some librarians, most of them do not think to use them when discovering the contents of an unfamiliar book. Contents pages can be found in law books in weird, nontraditional places. Usually found with the beginning matter, some companies, like West, actually print their contents on the back cover of the book (e.g., the paper bound state or federal court rules). Other companies, like the Lawyer's Diary and Manual, publish their contents as an index, which is inserted in the front pages of the book and used as a table of contents. The digests, too, have an unorthodox way of telling you what's inside. Their contents can be found in the front matter on a page called "Topics in This Volume." The point? It isn't always easy to determine at a glance what a book has inside, because not every book is organized the same. The researcher has to be aware of these subtle changes in arrangement. otherwise all is lost.

The **Edition Statement** tells you when the book was published. Usually the edition statement is found opposite the title page on a page called the *title page verso*. A quick glance through the cataloguing and classification data on this page will tell you in what year this particular edition was brought to the world. Knowing the edition statement in law books is always vital, for researchers need to know if the information they're about to use is seriously out-of-date. If so, they need to use a different source for the problem they're researching.

We are admonished throughout life that we cannot judge a book by its cover. Fair enough. But for legal researchers racing against the clock to find the most accurate, up-to-date information, there *is* an honest way of assessing a book's utility. Nowhere in any book--legal or otherwise--is there a more important finding tool than that magnificent and (usually) efficient invention which condenses all important topics and buzzwords of a work in an organized, logical fashion. This finding tool is the book's *Index*. You will insist, on pain of death (or, at the very least, on threat of being beaten and lugged to segregation) that students learn the proper way of using indexes. You will demonstrate in class how they are to be used. Let's face it--every legal digest is nothing but a gargantuan index of terms, and how successful researchers are with these finding tools correlates directly to how well they can handle any index. Nothing in this life is easy; *using legal indexes is a shining reminder of this existential truth*. Not every indexer had in mind what you have in mind when you put your trust in the index to get you where you need to be. Some indexers forget that their role is to make a researcher's life easier, and throw in esoteric terminology when referring to the simplest legal idea. For example, you may discover that in your state statute index you cannot locate any material under the index heading "Prisoners." That's because there is no such index heading! The indexer has chosen to include all prison-related information under the index heading "Correctional Institutions." This may sound fairly straight-forward, but then you realize that you must sift through a myriad of index subheadings like "Correctional Officers," "Administrators," and "Prisons," until you locate a subheading relating to convicted felons. Another example is the concept of "Divorce."

Many times indexers will include references to divorce under such headings or subheadings as "Family Law," or "Domestic Relations." You'll also need to emphasize basic index terminology, e.g., *Index Headings*, *Subheadings*, *See* and *See Also* references, *Supra*, *Infra*, and the infamous & mind-bogglingly unhelpful *Generally*, *This Index*.

Law books receive frequent updates. Some are updated annually, quarterly, monthly, weekly, and--in the case of many online legal databases--daily. One of the more traditional and popular methods of updating print material is through a *Pocket Part*. A pocket part is a small thin paper booklet on the back of which is stapled a rectangular piece of fairly sturdy cardboard. This pocket part is anchored to the main volume of the book by this cardboard, which fits snugly into a slot or "pocket" located on the inside back cover of the volume. Pocket parts are usually published annually. A pocket part contains changes in the law which correspond to the chapters and sections of the hardbound volume it updates. Pocket parts are a convenient and relatively inexpensive way to keep a volume or multi-volume set current. Discovering additions or deletions to language in statutes, case law, administrative regulations, or to some part of the state or federal Constitutions is one of the most important aspects of research. Students need to understand the necessity of making pocket part reference a routine step in their research. Exactly when to check the pocket part is dictated by what the researcher is looking for. Example: if researchers need the latest information on a state statute, then once they discover the chapter and section numbers, all they need do is locate the corresponding volume and check the pocket part to see if it has new information recorded for the cite. If, on the other hand, they are researching the legislative history of the statute, they must start with the material in the main volume, and then go into the pocket part to see what changes have been made to the original language.

The *Preface Page* is a nifty idea that so many library users refuse to make part of their research routine, and to their academic peril! Preface pages tell the uninitiated exactly what they will expect to find

in a single volume or multi-volume set. The preface page also introduces another tidbit of library lingo: the term **Scope**. What makes a preface page useful to legal researchers becomes apparent when for the first time they are faced with the daunting task of using a multi-volume set.

The preface page tells them which subjects, chapters, and sections they can find, and in what volume. For example, when using West's Federal Practice Digest, it is important that researchers know the year of a particular case they are referencing, because there are currently 4 series to this set. The year of the case dictates which series of the Digest they will use. The preface page to any volume of any one of the 4 series will tell them if they are using the correct set to find their case. But unless and until they confirm this for themselves in the preface page, they can easily waste a half-hour or more trying to use a book to find information which the book doesn't contain.

Some of the more sadistic of your charges actually perk up with interest to learn that a book has a **Spine**, especially when you admonish them to take care not to break them while in use (some of these people have been in that business, you see). The spine is the side of the book that faces you when it is resting on a shelf. The important thing to remember about law book spines is that they give an incredible amount of information about a book even before you take it off of the shelf. For example, if you're using Shepard's Citations and you want to update a United States District Court case, the first obstacle to hurdle is deciding in which set you can find *Federal Supplement* citations. Just by reading the information on the spine of any Shepard's volume gives you the guidance you need, telling you which case law set to which it corresponds, which volumes of the set for which it provides citations, the year it was published, the volume number and so on. The spine is the best example of a common library tool which is taken for granted in the research process. Make sure your students don't make this mistake.

The **Title Page** is the page in the front matter that includes the title of the book, subtitle (if any), author(s), and publisher name. The title page is particularly important when using multi-volume sets, because frequently there will be information about what is contained in a particular chapter or section of the volume that will not appear on its spine. Furthermore, students need to know about the title page because they also need to find the title page verso (the page opposite the title page) for the year in which the work was published.

These are examples of library terminology that I've found to be invaluable when offering this Course. If there are other terms which you feel are equally as relevant, please include them in your lesson plans.



Word to the Wise 12

The method used here for monitoring exercises is the one you'll use for the rest of the Course:

- 1 Divide class into groups**
- 2 Give instructions**
- 3 Distribute exercise sheets**
- 4 Distribute other material**
- 5 Designate a Group Leader**
- 6 Allow Group Leaders to demonstrate how answers were found**
- 7 Answer relevant questions**

Section IV: Exercise You'll be using Exercise One, *Library Terms* (Chapter Four, "Exercises"). Divide the class into three groups. Explain that each group must answer 5 library terminology questions for the material they'll be given. Next, distribute the Exercises, one per group. Then, distribute the corresponding law books. Designate one inmate per group as Group Leader: to him goes the responsibility of recording the groups answers on the exercise sheet, and of explaining to the class why the group answered as it did. Give each group 25 minutes to complete the exercise. When time is up, have the Group Leaders give their answers, holding the book and demonstrating each term as they go. After answering relevant questions, collect the exercise sheets and place in your Supply Envelope. Later, briefly review the answers, & then toss'em out.

Section V: CellWork Before dismissing the class, distribute CellWork One, *Research Material* (Chapter 4, "CellWork"). Explain that the reading will prepare them for the next Module, "Law Library Structure." Remind them to bring it to the next class.

★ ★ ★

Well, You did it! Opening Night is over! Does this mean your job is done? *Of course not!* I have discovered that it's most helpful if you set aside a few minutes immediately following class to jot down your impressions--what went very well and what went not-so-very-well. Use the **PostClass Review form** (see following page) for recording these impressions. Writing your positive and negative experiences NOW virtually guarantees that you'll remember to make necessary changes to your lesson plan and presentation. When you teach this component the next time, you won't repeat the same mistakes. Make this Review a regular part of class night: you'll thank yourself for it later.

PostClass Review

Module ____ Week ____ of ____

► **Show N Tell**

► **Quiz**

► **Handouts**

► **Exercises (Class/Group)**

► **CellWork**

MODULE ①

Law Library Basics

Question “I never did legal research before--where do I start?”

Objectives

- § To learn that the material in all law libraries can be divided into three basic categories
- § To learn that one category--Primary Sources--can be further divided into four distinct types
- § To learn the resources explaining what the law is; how to find it; and how to better understand it

Skills Learned

- § Ability to identify three research categories of legal material
- § Ability to identify four types of Primary Sources
- § Ability to identify four governmental entities which create Primary Sources

Preparation

- § **Student** Reading: *Research Material*
- § **CourseGiver** See CourseGiver Preparation below

Activities

- § Whole class discussion of CellWork assignment, *Research Material*
- § Define Secondary Sources by demonstrating specific volumes in Show N Tell
- § Conduct class exercise, *Finding Primary Sources*

CellWork Copy of institution grievance regulation

CourseGiver Preparation

Handouts	Photocopy <i>Handouts 4-11</i> . If your copier duplexes, back 4 with 5, 6 with 7....
Exercise	Copy <i>Exercise Two</i> . You'll divide the class into small groups, so the number of copies you need depends on the number of inmates you've invited to attend. Try to keep the groups even: 25 students, 5 groups; 16, 4 groups, etc.
CellWork	<i>CellWork 2</i> is a copy of the pertinent sections of your Department or institution Grievance policy. You need to cover the following sections: Informal Grievance Processing; Formal Grievance Procedure; Appeals; Time Limits.
Show N Tell	For Handout 6, set aside one example for each of the primary sources mentioned; 1 administrative regulation, 1 case opinion, 1 statute, and the unannotated federal Constitution in the back of Black's Law Dictionary. Next, for examples of finding tools set aside a volume of your state Shepard's set, and a volume from your state digest. Finally, for secondary material, use one of the following: a legal dictionary, an encyclopedia volume, a legal textbook, a legal newspaper, or a legal directory.

Law Library Basics

Preparation (2.5 hrs.)

- ▶ *Photocopy (1 hour)*
 - ☐ Roster
 - ☐ Handouts 4-11
 - ☐ Exercise 2
 - ☐ CellWork 2
- ▶ *Show N Tell (½-hour)*
Retrieve: One each -- Administrative regulation; case opinion; statute (state & federal); United States Constitution (Appendix to Black's Law Dictionary); Shepard's Citations; State digest; legal dictionary; legal encyclopedia volume; legal textbook; legal newspaper
- ▶ *Review (1 hour)* Chapter 3, Module 1

- §1 **Review** CellWork One, *Research Material*
(10 min.)
- §2 **Show N Tell** 3 Branches of Government
(15 min.) "Where do primary sources come from?"
Categories of Research Material
- §3 **Show N Tell** Primary Sources
(10 min.) Sample U.S. Constitution
Sample Administrative Regulation
Sample Statute
Sample Case Law
- §4 **Exercise** Finding Primary Sources
(25 min.)
- §5 **CellWork** *Grievance Regulation*

Lesson Plan ①

Section I: Review Tell the class to take out the reading assignment from last week. Read the assignment verbatim, and answer all relevant questions. Make sure that they understand this stuff, because the remainder of the Course is based upon this material.

Section II: Show N Tell

- 1 *Three Branches of Government* Distribute. Emphasize that these branches are the same on both state and federal levels.
- 2 *Authority Origins* This helps inmates match governmental branch with the type of law it creates. Inmates seem to understand law material better once this concept is given.
- 3 *Categories of Research Material* Read from the handout, holding up the various material as they are mentioned. Answer relevant questions.
- 4 *Primary Sources* Emphasize that all 4 Primary Sources have the force of law. Explain that Primary Sources is the stuff legal researchers are looking for. The following four handouts are examples of Primary Sources.
- 5 *Constitution Sample* Stress that all constitutions are comprised of articles and amendments. Mention that each state has its own constitution.
- 6 *Regulation Sample* Photocopy the front cover of a popular institution regulation. Emphasize that only regulations promulgated by state agencies have the force of law; institution-specific and Department-wide regulations do not.
- 7 *Statutes* Mention that case law interprets statutes.
- 8 *Case Law Sample* Mention here that case law has powerful jurisdictional authority.



Word to the Wise ①③

For Handouts 8-11, use material appropriate to your jurisdiction.

If you're teaching in a Minnesota prison, use examples of state primary sources; if teaching in a federal prison, use federal-specific material.

Section III: Exercise You'll be using Exercise Two, *Finding Primary Sources*. Students are to search in the law library for at least 1 example for each of the 4 Primary Sources of law. **Note: they cannot use examples given in their handouts!** You want them to find:

- An administrative regulation (state or federal), either the name of the regulation ("Disciplinary Proceedings") or its citation (103 C.M.R. 430)
- A case (state/federal), either the party names (*Bounds v. Smith*) or its citation (430 U.S. 817)
- A part of the state or federal constitution, either an article (U.S. Const. Art. 2), or one of its amendments (U.S. Const. Amend. 21); and
- A statute (state/federal), either the statute popular name ("Brady Gun Law"), or its citation (18 U.S.C. §4556).

Section IV: CellWork IMPORTANT! If your Department has not established a mechanism for the in-house resolution of inmate grievances, then skip Module 2 & instead distribute CellWork Three, *Framing the Question*. If you *do* have an inmate grievance procedure, there's probably an administrative regulation governing the procedure. Photocopy this regulation and distribute it as CellWork Two. Tell them to read it & bring it for next week. Also, remind them to study for their first Quiz, "Law Library Structure," by studying the handouts plus notes they've taken.

MODULE 2

Administrative Remedies

Question “Why is it important for researchers to use the grievance process?”

Objectives

- § To learn that state and federal courts refuse to be burdened by inmate complaints that should rightfully be resolved at institution level
- § To learn that researchers are required to exhaust all available administrative remedies before filing a claim in court
- § To learn how the grievance process works & how long it takes, from date of incident to final disposition

Skills Learned

- § Ability to recognize a legitimate grievance
- § Ability to correctly fill out and file an institution grievance in a timely manner

Preparation

- § Student None
- § CourseGiver See CourseGiver Preparation above

Activities

- § Demonstrate importance of exhausting administrative remedies in Show N Tell
- § Demonstrate how to properly submit a written grievance in Show N Tell
- § Conduct group exercise, *Time Limit Worksheet*
- § Quiz, *Law Library Structure*

CellWork *Matching Primaries to Court Hierarchy*

CourseGiver Preparation

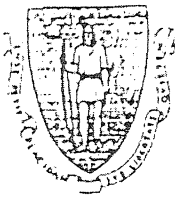
Quiz	Copy Quiz One, “Law Library Basics.”
Handouts	Copy handouts 12-15. Duplex if possible.
Exercise	You’ll be using Exercise 3, <i>Time Limit Worksheet</i> . Because this worksheet uses time limits from the current Massachusetts grievance regulation, you must revise this sheet using information from your Department regulation. Also, this presentation works best when you use an overhead projector; this way you can fill in the blanks as you explain, with the students following your lead at their seats. Use some colored water-soluble transparency pens. (If you must use a blackboard, make sure to use brightly colored chalk instead of white!)
CellWork	CellWork 2 is a copy of the pertinent sections of your Department or institution grievance policy. At a minimum, you need to provide students with the following sections: Informal Grievance Processing; Formal Grievance Procedure; Grievance Officer Duties; Appeals; and Time Limits.

Administrative Remedies

Preparation (2.5 hrs.)

- ▶ *Photocopy (1-hour)*
 - ☐ Roster
 - ☐ Quiz 1
 - ☐ Handouts 12-15
 - ☐ Exercise 3
 - ☐ CellWork 3
- ▶ *Show N Tell (½-hour)*
Retrieve: Department of Correction *Inmate Grievance* regulation
- ▶ *Review (1 hour)* Chapter 2 , Module 2

- | | | |
|-----------|---------------------------------|---|
| §1 | Quiz
(5 min.) | “Law Library Structure” |
| §2 | Show N Tell
(20 min.) | 42 UCS 1997e
<i>Grayson v Eisenstadt</i>
Sample Inmate Grievance
Sample Institution Grievance Response |
| §3 | Review
(10 min.) | CellWork 2, <i>Inmate Grievances</i> |
| §4 | Exercise
(25 min.) | Grievance Resolution Worksheet |
| §5 | CellWork | <i>Court Rules</i> |



The Commonwealth of Massachusetts
Executive Office of Public Safety
Department of Correction
Severett Dalton Hall Building, Government Center
100 Cambridge Street, Boston, Ma

TO: All Superintendents
Unit Directors

FROM: Operations and Security

DATE: October 8, 1987

RE: Revised 103 DOC 491

Please be informed that 103 DOC 491, Inmate Grievances, (attached) has been reviewed and revised. The effect of this revised policy has been to delete the position of the Department Grievance Coordinator. The reviewing appellate authority will now be the Superintendent, where the grievance allegedly occurred. Settlements exceeding \$500.00 are to be forwarded to the Legal Office for review.

Thank you.

**COURSEGIVER'S
COPY**

Lesson Plan ②

Section 1: Quiz If you feel it is necessary, before distributing Quiz 1, review each of the quiz questions as a class. Put class in Quiz Mode (see Chapter 4, “Quizzes”) Give the class 5 minutes to finish. When time’s up, collect each quiz & place in your Supply Envelope.

Section 2: “In-House” Remedies In a wave of reform that continues unabated, courts refuse to entertain inmate complaints of lost/broken/confiscated property, cold eggs, and the like. Courts now insist that correctional administrators develop in-house administrative remedies--grievance procedures--for the resolution of prison management problems. Just as Alternative Dispute Resolution services help clear dockets, courts shift dispute resolutions onto individual Departments of Correction.



Word to the Wise ①①

Make a “CourseGiver’s copy” of your institution’s grievance regulation. Even though you probably won’t copy the entire regulation for each inmate, make sure that your regulation is complete. Invariably, inmates will ask you questions about the regulation for which you’ll need all available information.

- § Distribute Handout 12, *42 U.S.C. 1997e*. Grievance procedures aren’t some legal obstacle concocted by corrections administrators; they’re required by statute. This handout shows inmates that there is a federal statute on the books that requires them to exhaust the “plain, speedy, and effective administrative remedies as are available.”
- § Next, distribute Handout 13, *Grayson v. Eisenstadt (300 F.Supp. 979)*. This handout serves the same purpose as handout 12 above, only this example is from a judicial opinion, a.k.a. case law. Both Headnotes 1 and 2 emphasize the “requirement that state defendant exhaust state remedies.”
- § Distribute Handouts 14 and 15, *Sample Inmate Grievance* and *Sample Institution Grievance Response*. These demonstrate to inmates that they are responsible for observing the clearly-defined prison administrative hierarchy when resolving problems. It also emphasizes common sense--why would inmates write to an official in a faraway city to get personal hygiene items that their Housing Officer can provide onsite and in a matter of minutes?!

Section 3: CellWork Review Have students take out CellWork 2. Reading from your corresponding “CourseGiver’s Copy” (see previous page), cover the sections listed below:

- § *Table of Contents*. Even regular law library users rarely think to use the table of contents to find information in a legal source, so stress the importance of this valuable tool. Also, tell them that all administrative regulations have certain information in common, and this can be seen from the *Table of Contents*. (As many state’s agency regulations are arranged differently, you know best how to demonstrate this point!)

- § ***Informal Grievance Procedure.*** Many Departments require inmates to resolve institution problems informally. An informal resolution of a grievance means that inmates go to the staff person supervising the area giving concern, inform s/he of the problem & ask the staff person to resolve it. In this way, inmates are empowered to work with staff to resolve the problem at its source, saving everyone involved both time and aggravation. Even though this step is considered informal, many Departments require that inmates present the staff person with a written description of the problem and how they'd like the staff person to respond. If all goes well, the problem is contained, corrected, and everybody's happy.
- § ***Formal Grievance Procedure*** If, however, supervising staff cannot solve the problem, inmates must now initiate the formal grievance procedure. Read these steps verbatim from your grievance regulation. Answer relevant questions.
- § ***Responsibilities of Institution Grievance Coordinator*** Inmates should be told the name of the Institution Grievance Coordinator (or whatever title this officer holds in your institution), and how to reach this person. Read these responsibilities verbatim from the regulation. Answer relevant questions.
- § ***Appeals*** Most Department grievance procedures allow for inmates to appeal from an adverse grievance decision. There usually is a "grievance appeal form" onto which inmates record why they feel the decision was not made in good faith. Read this procedure verbatim. Answer relevant questions.
- § ***Time Limits*** For many inmates, *time limits* are the most talked-about and carefully scrutinized aspect of the grievance procedure. Time limits apply to virtually every step of the informal, formal, and appeals processes. These time limits are set out in the sections covering each grievance step. When taken together, the time limits set forth from the date the problem was discovered to the final disposition on appeal add up to several months! This is where the following class exercise comes in handy.

Section 4: Class Exercise: Time Period Worksheet By now you've adapted the Worksheet to include information from your own grievance regulation. Using either the blackboard or transparency, read each of the five time limits and go to the appropriate part of the regulation to find each answer. Once found, write the time limit on the corresponding Worksheet line. Do this for each questions until all blanks have been filled in. Add these figures and put the result at the bottom of the Worksheet. This figure is the total time the inmates can expect to wait for final resolution of a grievance. Answer relevant questions.

Section 5: CellWork Distribute CellWork 3, "Court Rules." Encourage student to complete this as it will be collected and graded. Also, remind them to study for Quiz 2, "Administrative Remedies."

MODULE 3

Court Hierarchy

Question “Where are court rules & the correct jurisdiction for my civil/criminal claims?”

Objectives

- § To learn the basic court hierarchy--entry-level courts; appellate courts; and courts of last recourse
- § To learn which court has the legal authority to hear complaints & appeals
- § To learn that each court generates its own Primary Sources, & has its own rules to follow

Skills Learned

- § Ability to locate corresponding Primary Sources and court rules for each court level
- § Ability to identify each court at both state and federal levels

Preparation

- § *Student* CellWork 3, *Court Rules*
- § *CourseGiver* See CourseGiver Preparation above

Activities

- § Whole class discussion of CellWork assignment, *Court Rules*
- § Demonstrate specific volumes in Show N Tell
- § Conduct group exercise
- § Quiz, “Administrative Remedies”

CellWork Reading, *Framing the Question*

CourseGiver Preparation

Quiz	Photocopy Quiz Two, “ <i>Administrative Remedies</i> .”
Handouts	Locate a state and federal court directory (e.g., BNA’s Directory of State Courts and Judges) & copy your state’s organizational chart. Next, find a representative chart of your state’s entry-level court system (organized by county, districts, circuits, and so on). Duplex these handouts. (See the MA-specific handouts 16-19 in Chapter 4 for a model of the material you need). The Federal circuits are included in this book.
Class Exercise	Copy Class Exercise 4, <i>Source Matching</i> . This Exercise is important for the students to get a clear understanding of how court hierarchy is related to the primary sources in their law library.
CellWork	Copy CellWork 4, <i>Framing the Question</i>
Show N Tell	If you’re using transparencies, make one for each of the above handouts. This can be done easily by purchasing a box of transparency film for use in plain paper copiers. All you do is place the transparency film in your Bypass tray, place your original on the glass, and press the “Start” button (see <i>Word to the Wise 15</i>). This technique is particularly helpful for CourseGivers without access to scanners and laser printers. Also, set aside the court rules volumes from your state statute set; any West trade paper court rules volumes; and any loose-leaf rules material. (Substitute as required).

Court Hierarchy

Preparation (2.5 hrs.)

- ▶ *Photocopy (1-hour)*
 - ☐ Roster
 - ☐ Quiz 2
 - ☐ Handouts 16-20
 - ☐ Exercise 4
 - ☐ CellWork 4
- ▶ *Show N Tell (½-hour)*
Retrieve: State court rules (state statute set); West paper bound court rules (state/federal)
- ▶ *Review (1 hour) Chapter 3, Module ③*

- | | | |
|-----------|---------------------------------|--|
| §1 | Quiz
(5 min.) | “Administrative Remedies” |
| §2 | Show N Tell
(10 min.) | State Court Chart
State Court Organization
Federal Court Chart
Federal Court Organization |
| §3 | Review
(5 min.) | CellWork 3, “Court Rules” |
| §4 | Show N Tell
(10 min.) | Court Rules |
| §5 | Exercise
(30 min.) | Source Matching (Chart)
Matching Sources to Court Hierarchy (handout) |
| §6 | CellWork | <i>Framing the Question</i> |

Lesson Plan ③

Section 1: QuizMode Distribute “Administrative Remedies;” 5 minutes to complete. Collect, put in Envelope.

Section 2: Show N Tell--Court Hierarchy Distribute Handouts 16-19 & demonstrate the following: how state courts are divided into three distinct levels (Handout 16); how the entry-level state courts are organized (Handout 17); how the federal courts are divided into three distinct levels (Handout 18); and the 13 federal circuits of the Appeals Court (Handout 19). When talking about the 13 circuits of the U.S. Courts of Appeal, be careful when explaining the circuit called the “Federal Circuit,” which hears cases where the defendant is the United States of America.

Section 3: CellWork Review Have students take out CellWork Three, “Court Rules.” Review before Show N Tell. Collect CellWork, place in Envelope for grading later.

Section 4: Show N Tell--Court Rules Many inmates are surprised to learn that there are different rules for each court level in the hierarchy. This Module is the perfect time to teach them this, and about the various sources they can use to find both state and federal court rules. In Massachusetts, there are several sources an inmate can use to find rules for Massachusetts courts. Take time to demonstrate each set described below that your library contains.

§ Statute Sets. Statute sets are the obvious source for both state & federal court rules, in which rules are printed in dedicated volumes of their own.

§ Trade paper volumes. A second source for state court rules are three trade paper volumes published annually by West. The two for all federal court rules are called *Federal Civil Judicial Procedure & Rules* and the *Federal Criminal Code and Rules*. For Massachusetts, West publishes state rules in two volumes, the first called *Massachusetts Rules of Court: State*, and a much slimmer companion volume called *Massachusetts Rules of Court: Federal*, giving you all of the rules for the local Federal District Court. There are corresponding West trade paper volumes for all 50 states.



Word to the Wise ①⑤

For transparencies, I've used the 3M brand & have no complaints. But you must shop carefully:

Match your copier's make & model to the correct transparency film;

Be careful not to buy a dark color of film (read the package carefully);

This material is not cheap—expect to pay around \$30 for a box of 50.

§ Loose-leaf Services. A third source for state court rules is a loose-leaf set called, quite appropriately, *The Rules*. This service is published by the Lawyer's Weekly Publishing Company and gives you the same text as the previous two sources BUT with the added convenience of updated pages whenever rules are changed. With this set, you don't have to wait until the new statute pocket parts are published or until the new trade paper volumes are sent; generally, you receive superseding pages within a few weeks of promulgation.

Section 5: Exercise: Source Matching First, define for the class the term "source matching." It's simple: each court level has corresponding court rules and primary sources. The trick is to match the primaries and rules to the correct court system and court level! For this Class Exercise, divide the class into even groups. Distribute Exercise Four: have each group answer the questions by using the law library collection to fill in the chart. If time is on your side, give them an hour to complete this; if not, ½ -hour at minimum. Reserve at least 10 minutes before class is dismissed to review answers & field questions. *After this review*, distribute Handout 20, which gives them the answers to the chart.

Section 6: CellWork CellWork 4, "Framing the Question," is a reading assignment preparing students for the following three-week Module. Remind them to study for Quiz 3, *Court Hierarchy*.

MODULE 4

Framing the Question

Question “How do I know when I have a legitimate legal problem?”

Objectives

- § To learn how to determine whether a problem is frivolous or has legal standing
- § To learn how to convert a common English statement into legal terminology
- § To learn that framing the legal question is a continuing process

Skills Learned

- § Ability to determine which relevant Primary Sources to research through quizzing
- § Ability to find digest topics and index terms through the Statsky Cartwheel
- § Ability to interpret research jargon through dictionaries, encyclopedias, and other sources

Preparation

- § **Student** Week One: Reading, *Framing the Question*
Week Two: Reading, “FTQ” Pathfinder; Week Three: *Statsky Cartwheel*
- § **CourseGiver** See **CourseGiver Preparation** boxes

Activities

- § Whole class discussion of **CellWork**, *Framing the Question* & “FTQ” Pathfinder
- § Demonstrate how to use the Statsky Cartwheel in Show N Tell
- § Conduct group exercise, Research Jargon
- § Conduct group exercise, Primary Sources
- § Conduct group exercise, *Statsky Cartwheel*
- § Quiz, “Court Hierarchy”

CellWork Week One: “FTQ” Pathfinder; Week Two: *Statsky Cartwheel*; Week Three: *Statutes*

Preparation--Week One

Quiz	Copy Quiz 3, <i>Court Hierarchy</i>
Handouts	Copy Handout 21, <i>2 Most Important Questions in Legal Research</i> and Handout 22, <i>Understanding Research Jargon</i>
Show N Tell	You’ll need the index to your state statute set (usually 3 or 4 paper volumes)
Exercises	Copy Exercises 5A-5C, <i>Jargon</i> .
CellWork	Copy CellWork 5, <i>Framing the Question (FTQ) Pathfinder</i>

Framing the Question

Preparation: Week One (2.5 hrs.)

- ▶ *Photocopy (1-hour)*
 - ☐ Roster
 - ☐ Quiz 3
 - ☐ Handouts 21- 22
 - ☐ Exercises 5A-5C
 - ☐ CellWork 5
- ▶ *Show N Tell (½-hour) Retrieve: Paper index to your state statute set*
- ▶ *Review (1 hour) Chapter 3, Module 4*

§1	Quiz	(5 min.)	"Court Hierarchy"
§2	Review	(10 min.)	CellWork 4: Framing the Question
§3	Show N Tell	(20 min.)	2 Most Important Questions in Legal Research Understanding Research Jargon
§4	Exercise	(25 min.)	Jargon
§5	CellWork		"FTQ" Pathfinder

Preparation: Week Two (2 hrs.)

- ▶ *Photocopy (1-hour)*
 - ☐ Roster
 - ☐ Handout 23
 - ☐ Exercises 6A-6C
 - ☐ CellWork 6 and 7
- ▶ *Review (1 hour) Chapter 3, Module 4, Week Two*

§1	Review	(15 min.)	CellWork 5
§2	Show N Tell	(10 min.)	"I was a law library junkie!"
§3	Exercise	(35 min.)	Primary Sources
§4	CellWork		Statsky Cartwheel

Preparation: Week Three (2 hrs.)

- ▶ *Photocopy (1-hour)*
 - ☐ Roster
 - ☐ Handout 24
 - ☐ Exercises 7A-7C
 - ☐ CellWork 8
- ▶ *Review (1 hour) (Chapter 3, Module 4, Week Three)*

§1	Review	(15 min.)	CellWork 6
§2	Show N Tell	(10 min.)	Statsky "9-Step Method"
§3	Exercise	(35 min.)	Statsky Cartwheel
§4	CellWork		Statutes

Lesson Plan 4

Section 1: QuizMode Distribute Quiz 3, "Court Hierarchy." 5 minutes. Collect; put in Envelope.

Section 2: Review Distribute Handout 22, *2 Most Important Questions In Legal Research*. Because of their low education level, prisoners are probably least prepared to distinguish frivolous from non-frivolous claims; ironically, they more than other societal group have a larger responsibility--to themselves, to the courts, and to the Department--to tell when a problem is a legitimate legal concern. Impress on students that, if performed conscientiously, the technique of Framing the Question greatly aid in answering these questions for them.. Have students take out CellWork 4, *Framing the Question*. Read verbatim, answer relevant questions. If you have time, spend up to ½-hour on this; if limited, 15 minutes.

Section 3: Understanding Research Jargon Use Handout 23 to illustrate the research terms needed for students to complete the Class Exercise. Have a volume of your state statute index handy. Simply read from the handout, illustrating each term by using the hypothetical example "Correctional Institutions." Make sure your example(s) contains at least one of the 5 index terms.

Section 4: Class Exercise-- Black's Law Dictionary Legal dictionaries need to be used early in the Framing process; use these Exercises to illustrate their importance. Divide into 3 groups.

Section 5: CellWork Distribute CellWork 4, "FTQ Pathfinder." Read for next week. **NO QUIZ!**

Preparation--Week Two

Quiz	No Quiz!
Handouts	Copy Handout 23, "I was a law library junkie!"
Show N Tell	If applicable, make transparencies to illustrate the process on Handout 23.
Exercise	Copy Exercises 6A-6C, Primary Sources.
CellWork	Copy CellWork 6 & 7, Statsky Cartwheel. DO NOT DUPLEX!

Week Two

Section 1: Review CellWork 4, "FTQ' Pathfinder," represents the blueprint detailing each step to be taken in order to correctly frame a legal question. Read verbatim. Note that although tools like digests, indexes, and the Statsky Cartwheel are mentioned in this handout, you haven't yet covered this material in the Course! But it's important to mention these now, and to assure the students that each subject will be dealt with in the coming weeks. Technology note: unless you're paying for LEXIS or WESTLAW, or use CD-ROM, you'll just be mentioning these research tools here. If you *do* have one of these services--and it's available for use by the inmates--now is the time to demonstrate its searching capabilities.

Section 2: “I was a law library junkie!” Use Handout 23 to remind researchers that they must steer clear of the “Kitchen Sink” mentality which many inmate researchers develop when just starting out. These inmates believe that MORE IS BETTER, because to them MORE means “important,” professional,” and “impressive-looking.” You must break them of this thinking! Tell them that they’ll be lucky to find one item for *half* of the Primary Sources listed on Handout 23! Inmates must learn that *in legal research, moderation is key.*



Word to the Wise 16

Inmates who are taught how to frame a legal question & identify meritorious issues of law are far less likely to abuse the legal system than inmates unskilled in this technique.

They are also less likely to burden the prison administration with nonsense civil suits!

Section 3: Exercise--Primary Sources

Now that inmates know that there are four different Primary Sources and where they originate, they need to know how to limit the scope of their search. Tell them it’s the rare legal issue which requires all four Primaries; it’s more usual to find that only one or two is needed.

Exercise 7, *Primary Sources*, teaches researchers the four questions to ask themselves to help decide which Primaries are needed. Divide into 3 groups, one exercise to each group. Give 25 minutes for completion. Reserve 10 minutes at the end of class to review answers. Collect exercises; place in Envelope (grade them if you wish: review & destroy later).

Section 4: CellWork CellWork 6 & 7, *Statsky Cartwheel*. Read/bring it next time. No Quiz!

Week Three

Section 1: Review Have students take out CellWork 6 & 7. Some inmates get lost with this procedure, so make the following clear: the Cartwheel is just a way of finding the best digest topic or index heading for their legal issue. If they’ve already identified an index heading on their own, then they don’t need to do a Cartwheel. Read verbatim from sheets. Answer relevant questions.

Section 2: Statsky 9-Step Method Handout 24 is an elaboration on Figure 2 of CellWork 7. This tells researchers how to correctly fill in all spokes of the Cartwheel. Emphasize the admonishment at the bottom of the sheet.

CourseGiver Preparation--Week Three

Quiz	<i>No Quiz!</i>
Review	CellWorks 6 & 7
Handout	Copy Handout 24, <i>Statsky 9-Step Method</i>
Exercise	Copy 7A-7C, <i>Statsky Cartwheel</i>
CellWork	Copy CellWork 8, <i>Statutes</i>

Section 3: Exercise--Statsky Cartwheel Inmates get some “hands-on” class time to fill in the research Cartwheel. Take a moment here to explain that the answers each group comes up with is secondary to *each student actively participating*. The *raison d’etre* of exercises is to Get Inmates Using Them Books! Divide into groups, one exercise per group. Give 25 minutes for completion. Review the Exercise before dismissal.

Section 4: CellWork Distribute CellWork 8, *Statutes*. Read/bring next week.

MODULE 5

Statutes

Question “How can I find a controlling statute for the issue I’m researching?”

Objectives

- § To learn how to discover a controlling statute that speaks precisely to an issue
- § To learn that statutes often have stronger persuasiveness if they have corresponding opinions interpreting them for particular supporting facts and in a particular jurisdiction
- § To learn that statutes are Primary Sources which describe all aspects of criminal and civil behavior

Skills Learned

- § Ability to use statute indexes
- § Ability to understand the relationship between statutes and interpretive case law
- § Ability to update statutory language

Preparation

- § **Student** To have read CellWork 8, *Statutes*
- § **CourseGiver** See **CourseGiver Preparation** below

Activities

- § Whole class discussion of CellWork assignment, *Statutes*
- § Demonstrate how to find statutes in **Show N Tell**
- § Show distinctions between “official,” state, and federal statutes
- § Conduct group exercise, *Statutes and Case Law*
- § Conduct class exercise, *Updating Statutes*

CellWork *Stare Decisis*

CourseGiver Preparation

Quiz

Framing the Question

Handouts

Copy handouts 25-32. Duplex 25-30 if possible.

Show N Tell

Because statute codification differs in arrangement from state to state, you need to create a sample citation page to show exactly how statutory information is cited in your jurisdiction. Most states codify their laws. You will need to do the same thing for your commercial federal statute set. Also, copy Handout 31, *Finding Statutes (Topical Approach)* and Handout 32, *Statute/Case Relationship*. Have a sample volume from all of your state & federal statute sets at your desk, along with a sample index volume from each. Be able to demonstrate how each set is arranged (e.g., title, chapter, section), and be sure to point out the case law annotations etc. in the annotated sets. Briefly review how the statute indexes work.

Exercises

Copy Exercises 8A-8C, and 9. Remember to have paper on hand, because groups need to frame the question in each Exercise before they can locate the statute.

CellWork

Copy CellWork 9, *Stare Decisis*.

Statutes

Preparation (2.5 hrs.)

- ▶ *Photocopy (1-hour)*
 - ☐ Roster
 - ☐ Quiz 4
 - ☐ Handouts 25-32
 - ☐ Exercises 8A-8C / 9
 - ☐ CellWork 9
- ▶ *Show N Tell (½-hour) Retrieve: Federal, State & "Official volumes" (if any)*
- ▶ *Review (1 hour) Chapter 3, Module 6*

§I Quiz
(5 min.)

Framing the Question

§II Show N Tell

Sample Pages: "Official" set/Citation Form *(if applicable)* (25 min.)

Sample Pages: "Unofficial" state set/Citation Form

Sample Pages: Federal set (USCS)/Citation Form

Finding Statutes

Statute/Case Law Relationship

§III Exercises
(35 min.)

Group--Statutes & Case law

Class--Updating Statutes

§IV CellWork

Stare Decisis

Lesson Plan ⑤

Section 1: QuizMode 5 minutes to complete; Collect, place in Envelope.

Section 2: Show N Tell--Statutes (IMPORTANT! The number of handouts for this Module depends on how your state statutes are published. In Massachusetts, there is a set called the *Acts & Resolves of Massachusetts*. This is where all newly promulgated statutes and temporary resolves are published in the order that they're passed by the legislature. Commercial publishers like West then take this information and codify it in an annotated subject arrangement to make them easier to find and understand. If your state has an "official" statute set similar to the *Acts & Resolves*, you need to copy a sample page from a recent volume demonstrating the arrangement of the information and its proper citation form. If not, just concern yourself with state and federal citation form).

Here you demonstrate how the various statutes are arranged and cited (If you're using transparencies, this is the perfect time to bring them out). Handouts 25, 27, and 29 show "official," state, and federal statute language. Handouts 26, 28, and 30 demonstrate the proper citation form for each. Regarding federal statute arrangement--mention to students that the federal Code is divided into 50 topics, or "titles." These titles are found in the front matter of any federal statute volume. (You should copy this "Titles" page & distribute if you feel your students require a visual aid for remembering this).



Word to the Wise ①⑦

Transparencies are very helpful when illustrating information in this Module. It's much easier to point to a transparency when illustrating a book's arrangement than it is to traipse around the classroom holding a cumbersome volume.

Please use transparencies whenever possible!

Section 2: Finding Statutes Read Handout 31 verbatim. These five steps describe the proper method of locating statutes relevant to the researcher's legal issues. You'll be introducing students to the "topical approach" to statute finding. This technique will be used in the Module on Key Number Digests, so make them aware that the topical approach will soon crop up again in the Course.

Section 3: Statute/Case Law Relationship Read Handout 32 verbatim. Many inmates somehow get it in their heads that case law is more important than other primary sources. Perhaps this is because there are more volumes of case law reporters than anything else; to many inmates, if there's MORE, that means they carry more authoritative weight. *Pussy willow & poppycock!* Your job is to explain that a controlling statute is often stronger authority when coupled with opinions construing the statute. And the verse is vice-a: case law becomes more usable to the researcher if read along with the statutes they're interpreting. (Tell them the "Happy Face" in the handout is a self-portrait of the author....☺)

Section 4: Exercises There are two exercises for this Module; *Statutes & Case Law*, and *Updating Statutes*. Start with Exercises 8A-8C. Divide into groups; give each group two copies Give 25 minutes for completion. Reserve 5 minutes to review. After review, collect and place in Envelope. Next, distribute Exercise 9, *Updating Statutes*. This is a Class Exercise, but keep students in groups and distribute one copy to each group. Then, walk the class through each row and column, having random inmates not only retrieve demonstration volumes but also showing the class the various kinds of updating material. Give 10 minutes for this, then review. Collect, place in Envelope.

Section 5: CellWork Distribute CellWork 9, *Stare Decisis*. Study for Quiz 5, *Statutes*.

MODULE 6

Case Briefing

Question “How can I find in a case only the language my research requires?”

Objectives

- § To learn how to divide a case into its component parts
- § To learn how to “zero in” only on the language of the opinion that is needed
- § To learn how to locate the pertinent facts of the case & compare them to the facts in the researcher’s case

Skills Learned

- § Ability to divide any case into its component parts
- § Ability to concentrate only on the section of the case pertaining to the research through Headnotes, Digest Topics, and Key Numbers
- § Ability to use Digest Topics/Key Numbers of Headnote to find other cases with same issue(s)

Preparation

- § **Student** Week One: To have read CellWork 8, *Stare Decisis*. Week Two: *Briefing a Case*, Week Three: *Topical/Known-Case Approach*
- § **CourseGiver** Week One: See **CourseGiver Preparation** above (see Weeks 2 & 3 below)

Activities

- § Whole class discussion of CellWork assignment, *Stare Decisis*
- § Demonstrate case briefing mechanics by briefing a case in **Show N Tell**
- § Conduct class exercise, *Blake v. Commissioner* (or a case from your own jurisdiction)
- § Conduct group exercise, *Briefing a Case*
- § Conduct group exercise, *Doctrine*
- § Quiz, *Statutes*

CellWork *How to Shepardize* booklet, pp. 5-7

CourseGiver Preparation—Week One

Quiz	Copy Quiz Five, <i>Statutes</i>
Handouts	Copy Handouts 33 (3 pp.) and 34
Show N Tell	Have on hand a representative case law volume from state and federal jurisdictions. Also, if your state has “official” case law reporters, set aside this material as well.
Exercises	Copy Exercise 10, “Briefing a Case” (<i>Blake v. Commissioner of Correction</i>). <i>Better still</i> : copy a short opinion from your own jurisdiction.
CellWork	Assign to students the responsibility of locating a 1-, 2-, or 3-page case to photocopy and brief for next week, using the handouts as a guide. <i>These will be reviewed in the next class!</i>

Case Briefing

Preparation: Week One (2.5 hrs.)

- ▶ Photocopy (1 hour)
 - ☐ Roster
 - ☐ Quiz 5
 - ☐ Handouts 33-34
 - ☐ Exercise 10
- ▶ Show N Tell (½-hour) Retrieve: Case law reporters for every student
- ▶ Review (1 hour) Chapter 3, Module 6

- | | | |
|----|---------------------------------|--|
| §1 | Quiz
(5 min.) | Statutes |
| §2 | Show N Tell
(20 min.) | Case Terms
How to Brief a Case (3 pp.)
Case Briefing Terms |
| §3 | Exercises
(35 min.) | Briefing a Case
<i>Blake v. Commissioner of Correction</i> |
| §4 | CellWork | Case Briefing |

Preparation: Week Two (2.5 hrs.)

- ▶ Photocopy (1 hour)
 - ☐ Roster
 - ☐ Handout 35
 - ☐ Exercises 11A-11C
 - ☐ CellWork 11 and 12
- ▶ Show N Tell (½-hour) Retrieve: Case dealing with a prison-related issue
- ▶ Review (1 hour) Chapter 4, Module 6

- | | | |
|----|---------------------------------|--|
| §1 | Review
(5 min.) | Quiz; CellWork |
| §2 | Show N Tell
(20 min.) | 8 Steps to Case Law Understanding etc. |
| §3 | Exercise
(35 min.) | Briefing a Case |
| §4 | CellWork | Doctrine/Dicta |

Preparation: Week Three (2 hrs.)

- ▶ Photocopy (1 hour)
 - ☐ Roster
 - ☐ Exercises 12A-12C and 13A-13C
 - ☐ CellWork 13 and 14
- ▶ Review (1 hour) Chapter 4, Module 6

- | | | |
|----|---------------------------------|------------------------------------|
| §1 | Show N Tell
(25 min.) | Doctrine/Dicta |
| §2 | Exercise
(35 min.) | Doctrine / Dicta |
| §3 | CellWork | Topical/Known-Case Approach (2pp.) |

Lesson Plan ⑥

Section One: QuizMode 5 minutes to complete. Collect, place in Envelope. Distribute previous quiz: review/relevant questions. Collect & destroy.

Section Two: Show N Tell

§ **Case Law Volumes** Before you begin, there may be confusion about the phrase “case briefing.” Many inmates relate these words with the act of writing an appellate brief. Please take time to explain that they’re not the same thing. “Briefing a case” in legal writing circles means drafting a complaint based on facts and legal precedent. “Case Briefing” in a legal research context means to divide case language into 14 separate components in order to quickly find words relevant to your research. Once that’s clear, begin your demonstration of case law volumes.

Although this has been covered earlier (Exercise Three, *Matching Sources*), students need to be reintroduced to every case law reporter set you have. Take a representative volume from each set, hold it up and demonstrate the following: the set name; its abbreviation; what cases it contains; and what jurisdiction it represents. For example: if you were demonstrating a volume from West’s *Massachusetts’s Decisions*, you’d hold up the book and say: “This is volume 563 from a case law reporter called *Massachusetts Decisions*. This set contains only Massachusetts case law from their Supreme Judicial Court and Appeals Court. Since *Mass. Decisions* cases are taken from a larger set called the *Northeastern Reporter*, West has retained the citation form from the larger set. So the two sets share identical citation form.”

Most case law reporters are published by West, with the exception of U.S. Supreme Court opinions which can be either West *Supreme Court Reporter* [S.Ct.] Lawyer’s Cooperative (*Lawyer’s Edition* [L.Ed.]) or the “official” unannotated set, the *United States Supreme Court Reports*. Otherwise, West has cornered the market with its *Federal Supplement* (U.S. District Court), the *Federal Reporter* (U.S. Circuit Courts of Appeals), and your state’s supreme court and appeals court cases. State cases appear in one of two forms—they are either included in a set containing cases for a particular region (e.g., *Pacific Reporter*), or culled from that larger set and printed in a reporter of its own (e.g., *Arizona Decisions*).

Most states use the commercial case reporters; there are, however, a handful that have sets of “official” reporters. (If your state doesn’t have official reporters, please skip to *How To Brief A Case* below!) Massachusetts, for example, has two “official” case law reporters: the *Massachusetts Reporter* (state supreme court cases), and *Massachusetts Appeals Court Reports*. The major difference here is that the “official” reporters lack the syllabi, headnotes, Digest Topics and Key Numbers, identification of issues, and other research aids provided by West; the official sets give you only unadorned opinions as they were originally written. The other important difference is that the “unofficial” or commercial reporters publish new cases much more frequently than the “official” sets.

§ **How to Brief a Case** Handout 33 is a three-pager, *City of Gardner v. Bisbee*. Review each section of *Bisbee* with the class, reading verbatim from the margin notes which both list and define each case law component. This is helpful in illustrating where all case law components are to be found. Stress to students that, with the exception of footnotes and dicta, these components are common to all cases. The difference is that some cases are lengthy and have many issues, holdings, and doctrine to support them. Answer relevant questions.

§ **Case Briefing Terms** (*This exercise can take anywhere from 15 minutes to an hour. If you don't have much time, skip to Section 4 below!*) Have students go to the reporters and retrieve a reporter volume. (Important! Have them select from the most recent volumes of the sets). Once at their seats, tell them to turn to the first page of any case. Then, using Handout 34 read each case law component, pausing to ask inmates to identify these sections in the cases before them. For components like issues and holdings, it will be necessary to go around the room and have students show you the section they've found.

Section 4: Exercise--*Blake v. Commissioner of Correction* I've found that this works best as a class exercise. Transparencies of this 2-page case with colored transparency marker is extremely helpful. Distribute *Blake*. In conjunction with handout 33, each group identifies 14 case law components in *Blake* by circling and labeling them as they are discovered. Answer questions. Collect; place in Envelope. Review & grade if you wish.

Section 5: CellWork Each student will be responsible for finding a SHORT (2-5 page) case in any case law reporter, having it copied, and briefing it for next class. These will be collected for credit! **NO QUIZ!**

CourseGiver Preparation--Week Two

Handouts Copy Handout 34, *8 Steps to Case Law Understanding...*

Show N Tell A week before class, choose a small case dealing with a prison-related issue. You'll use this to demonstrate the proper way of using the method detailed in

Handout 34.

Exercise Copy Exercises 11A-11C

CellWork Copy CellWork 10, *Doctrine*, and 11, *Dicta*

Week Two

Section 1: Review Distribute last weeks' Quiz. Review answers/relevant questions. Collect, destroy. Discuss case briefing CellWork. If you do not use transparencies, it is sometimes helpful to take one or two of the more cogent case-briefing assignments to critique. Collect assignment, place in Envelope. Grade if you wish.

Section 2: Show N Tell Distribute Handout 35, *8 Steps to Case Law Understanding AND Spiritual Enlightenment (NOT)*... This is a companion to Handout 33; but whereas 33 gives component names and where they are found, this handout illustrates the *mechanics* of case briefing. Choose a case ahead of time dealing with a prison-related issue. Tell the class the issue you're researching. Then, follow all eight steps, demonstrating the proper way of extracting only the information you need for the issue you are researching. These eight steps teach students how each component relates to the other. This is the time to emphasize the importance of *comparing the facts of a case with the researcher's own situation*. This handout also mentions *doctrine*, which is all the primary source material the author of the opinion used to support the holdings of the majority. (Doctrine will be covered in Week 3). Answer relevant questions.

Section 3: Exercise--Briefing a Case Divide into groups; one exercise per group. The Exercise asks students to pretend that they're a law clerk fielding these questions; it forces them to think on their feet and consider where in the library they'd go to find this information. Give 25 minutes for completion. Reserve time to review; answer relevant questions.

Section 4: CellWork CellWork 11, *Doctrine*, and CellWork 12, *Dicta*. Read, bring both to next class. NO QUIZ!

CourseGiver Preparation--Week Three

Show N Tell	Inmates responsible for bringing CellWorks 11 & 12 from last class
Exercises	Copy Exercises 12A-12C and 13A-13C
CellWork	Copy CellWork 13, <i>Topical Approach</i> , and 14, <i>Known-Source Approach</i>

Week Three

Section 1: Show N Tell Read verbatim from Handout 11, *Doctrine*. Emphasize that doctrine is the legal reason why decisions can be made. Only doctrine is authoritative and binding. Doctrine is based on *stare decisis*, a doctrine allowing judges to decide the same way for one set of facts & laws as they did for a similar case in the same jurisdiction. Without doctrine, opinions could not be written, case law would not have its legal force, and thousands of volumes of the stuff would not be sitting on your shelves! Next, read verbatim from Handout 12, *Dicta*. Tell students that doctrine and dicta look alike on the page; it's important for them to understand how to tell the difference. This example of dictum (singular) is the best I've ever seen, for it concisely illustrates the "If/Then" construction found in the majority of dicta. Teach them to look for this language when uncovering dicta. Answer relevant questions.

Section 2: Exercise Divide into groups. Distribute Exercises 12A-12C, *Doctrine*. Each group is assigned a separate case and is required to differentiate between dicta and doctrine. Give 25 minutes for this. Next, distribute Exercises 13A-13C, *Dicta*. 10 minutes for review. Collect for envelope.

Section 3: CellWork Distribute CellWork 13, *Topical Approach*, and CellWork 14, *Known-Source Approach*. Remind students to study for Quiz 6, *Case Briefing*.

MODULE 7

Key Number Digests

Question “How easy to use are the Key Number Digests & what can they find?” **Objectives**

- § To learn how Key Number Digests find material quickly and logically
- § To learn how Digests Topics and Key Numbers work together

Preparation

- § **Student** Week One: To have read *Known-Source Approach* and *Topical Approach*
Week Two: To have read *Digest Finding Aids*
- § **CourseGiver** Week One: **CourseGiver Preparation** below (Week Two on following pages)

Skills Learned

- § Topical Approach
- § Known-Source Approach
- § Using Key Numbers between state and federal digests & digests of different states
- § Using specialty volumes: *Words & Phrases*; *Descriptive Word Index*; *Table of Cases*; and *Defendant-Plaintiff Table*

Activities

- § Quiz, *Case Law Briefing*
- § Whole class discussion of CellWork assignments *Known-Source/Topical Approach*
- § Demonstrate proper use of digests using Handouts 36 & 37 in **Show N Tell**
- § Group exercises, *Known-Source Approach* and *Topical Approach*
- § Groups, *Words & Phrases*; *Descriptive Words Index*; *Table of Cases*; and *Defendant-Plaintiff Table*

CellWork Week One: *Digest Finding Aids*; Week Two: *How to Shepardize®* booklet

CourseGiver Preparation--Week One

- | | |
|--------------------|--|
| Quiz | Copy Quiz 6, <i>Case Law Briefing</i> |
| Show N Tell | Before class, place your state digest on a book truck & wheel it to the desk where you'll be teaching. You'll be using these to demonstrate various digest attributes. Also, set aside the U.S. Supreme Court case called <i>Bounds v. Smith</i> , 430 U.S. 817 (1977) |
| Handouts | Bring the previous 2 CellWorks (130 & 14) |
| Exercises | Copy Exercises 14A-14C, <i>Key Number Digests</i> |
| CellWork | Copy CellWork 15, <i>Digest Finding Aids</i> |

Key Number Digests

Week One: Preparation (2.5 hrs.)

- ▶ *Photocopy (1 hour)*
 - ☐ Roster
 - ☐ Quiz 6
 - ☐ Handouts 36 (7 pp.) and 37 (3 pp.)
 - ☐ Exercises 14A-14C
 - ☐ CellWork 15
- ▶ *Show N Tell (½-hour)* Retrieve: State Digest set (+ paper supplements)
- ▶ *Review (1 hour)* Chapter 3, Module 7

- | | | |
|----|------------------------------|----------------------------|
| §1 | Quiz (5 min.) | <i>Case Law Briefing</i> |
| §2 | Show N Tell (10 min.) | Topical Approach |
| §3 | Show N Tell (10 min.) | Known-Source Approach |
| §4 | Exercise (35 min.) | Key Number Digests |
| §5 | CellWork | <i>Digest Finding Aids</i> |

Week Two: Preparation (2.5 hrs.)

- ▶ *Photocopy (1 hour)*
 - ☐ Roster
 - ☐ Exercises 15A-C*16A-C*17A-17C*
 - ☐ CellWork 16 & 17
- ▶ *Show N Tell (½-hour)* Retrieve: Finding Tool volumes @the end of state digest set
- ▶ *Review (1 hour)* Chapter 3, Module 7

- | | | |
|----|------------------------------|---|
| §1 | Review (5 min.) | Quiz 6, <i>Case Law Briefing</i> |
| §2 | Show N Tell (20 min.) | Words*Phrases/ Descriptive Word Index/ Table of Cases/
Defendant*Plaintiff Table |
| §3 | Exercises (35 min.) | Descriptive Word Index/Table of Cases/Words & Phrases |
| §4 | CellWork | <i>How to Shepardize®</i> booklets |

Lesson Plan ⑦

Section 1: QuizMode Give Quiz 6, “Case Briefing.” Collect & put away to correct later.

Section 2: Show N Tell You need to give students a working definition of what digests are, and why Key Numbers are important. The following information I usually give in a lecture format, and encourage the inmates to take notes. If you find that this stuff is more easily disseminated through a handout or transparency, please do what makes you comfortable.

- § A *Digest* is a finding tool arranged alphanumerically first by topic and then by Key Number. A digest is a comprehensive topical outline of case law issues. Digests are arranged first alphabetically by digest topic, then numerically by Key Number. There are 414 separate Digest Topics in the set. Those 414 topics are subdivided by Key Numbers to indicate over 100,000 articulable legal issues.
- § *Key numbers* are key symbols followed by a decimal number. This number is assigned by the West editors to a specific point of law under a very general Digest Topic. The Key Number System is West Group’s proprietary finding tool which allows you to trace issues of law from one West set to another, from state to federal jurisdiction, and from state to state.

Section 3: Show n Tell

- § **Handout 36, Topical Approach** For this demonstration, use your old standby issue--*access to the prison law library*. As you demonstrate from your state digest volume containing the digest topic “Prisons,” have each student follow along by reading Handout 35. The Issue is:
“They limit the amount of legal material in my cell—does that impede my access to the courts?”

Page One Begin at the front matter of any state digest volume, turning to the “Digest Topics” pages giving an alphabetical listing of all topics contained in the digest. Study this listing and determine which topic to use. Decide that “Prisons” is the topic that looks most promising.

Page Two Go to the digest volume containing the topic “Prisons.” (In Massachusetts, this volume is volume 19, containing the topics “Paupers to Records”).
Now you’re certain you’re in the correct volume of the set.

Page Three Turning to the “Topics in this Volume” page in the front of the volume, you discover that the digest topic “Prisons” begins on page 466.

Page Four On page 466, you read the “Subjects Included” & “Subjects Excluded & Covered by Other Topics” section. This is to determine whether your subject is classified under this particular digest topic. As it turns out, you cannot make that determination for this example! Not to worry. Scanning the Key Number outline on the same page, you discover that Key Number 4[13] has been assigned to your legal issue. This legal concept is what West calls **“Law books and law libraries, legal materials, and opportunity for legal work.”**

Page Five Turning to the page where the annotations begin for this Key Number (19Mass D 2D 474), you discover several case law annotations for this legal issue. Choose the annotation listing the case *Cepulonis v. Fair*. Using the citation for this case--732 F.2D 1--have a student find it and bring it to you.

Page Six Turning to the first page of *Cepulonis*, skim through the numbered headnotes listed until you discover an issue that deals with access to the law library. In this example, read Headnote 1 to the class.

Page Seven The last page identifies where in *Cepulonis* is found the issue talked about in Headnote 1. Read this section, taking only the language you need.

Mention here that by using this Digest Topic & Key Number, you can find similar cases in each series of the Federal Practice Digest. As an additional use of Key Numbers, West’s state and federal statute sets will also provide you with Digest Topics & Key Numbers in the annotations following each statute. These annotations can refer you to cases, administrative regulations, articles & amendments to state and federal constitutions, and to related statutes.

§ **Handout 37, Known-Source Approach** Starting with a known Primary Source makes using digests so much easier, because you already have a Digest Topic and Key Number for your issue. Also, this is one of the rare instances where Primary Sources can also be used as a Finding Tool. While students follow along in their handouts, demonstrate the Known-Source Approach using the following issue from the case *Cepulonis v. Fair*:

“Did the District Court properly hold that the plans of prison officials should be given deference when considering how best to provide access to the courts for segregation inmates?”

Page One You've read *Cepulonis* and have decided that your issue is contained in Headnote 5 of that case. Headnote 5 is given the Digest Topic **Prisons**, followed immediately by Key Number **4(13)**.

Page Two Find the bold-faced, bracketed numeral five [5] in the text of *Cepulonis*. Read that section. The doctrine given to support the holding is in a case called *Bounds v. Smith*. The neat thing is, the citation given for *Bounds* not only gives you both set name and volume number, but the PAGE on which the information is found! (Make sure your students appreciate the utility of this feature). Now, have someone retrieve *Bounds* for you.

Page Three Turn to page 832 in *Bounds*. Finally, carefully read this page until you find language that is similar to that for your issue in *Cepulonis*.

Section 4: Exercise--Topical Approach Now students get to practice what you've just preached. Divide into groups. Distribute Exercises 14A-14C, *Key Number Digests*. Give 25 minutes.

Section 5: CellWork Distribute CellWork 15, *Digest Finding Aids*. Read for next class.

Week Two

CourseGiver Preparation--Week Two

Quiz	Grade Quiz 6. Place in Envelope.
Show N Tell	Set aside the four specialty volumes at the end of the state digest set: Words & Phrases; Descriptive Words Index; Table of Case Names; and Defendant--Plaintiff Table.
Exercises	Copy 15 A-C; 16 A-C; 17A-C
CellWork	Distribute <i>How to Use Shepard's Citations</i> booklet.

This class is CourseGiver-friendly, because it teaches itself. All you're gonna do after dividing the class into manageable groups is distribute copies of each exercise. After that, sit back & relax as the students do the work. Be available to answer questions as they arise. Reserve time at the end of the class to review each group's work on at least one set of exercise questions.

Section 1: Show N Tell

§ *Words and Phrases* Display the four specialty volumes called Words & Phrases. The Words & Phrases volumes contain the entire Key Number outline, *only without the Key Numbers*.

This volume gives you access to the digest through common legal words or phrases that are more specific in scope than the 414 Digest Topics. This allows you to search the digest by legal concept.

§ *Descriptive Word Index* The Descriptive Word Index gives you important legal words and phrases used in cases specific to your jurisdiction. This volume cites cases which have used the words or phrases you're researching.

§ *Table of Cases* This is a useful service if you don't have a lot of information about a case that you need to find. Entries provide you with names of both parties, the issues involved, and a Digest Topic & Key Number that you can use to find cases dealing with issues raised in that case.

§ *Defendant/Plaintiff Table* This table is probably the least useful of all. This volume will help you find your case if all you know about it are the party names. Unlike the Table of Cases, however, this volume provides only the case law citation and nothing more.

Section 2: Exercises Divide class into three groups. Distribute each group's copies of *Descriptive Word Index*, *Table of Cases*, and *Words & Phrases*. Give at least 30 minutes to complete. Review/relevant questions.

Section 3: CellWork Distribute *How to Shepardize* Booklet. Explain that these are freebies & are theirs to keep. Assign the first few introductory pages to read. This gives them a gentle howdy-do to the wonderful, useful world of Shepardizing®. Students are not required to bring these booklets with them to subsequent classes covering Shepard's Citators.

MODULE 8

Shepardizing®

Question Objectives

“Why is Shepard’s Citations® easy and essential?”

- ▶ To learn that Shepardizing® is one of the easiest skills in the law library to master
- ▶ To learn that Shepard’s Citations is indispensable because it helps researchers check if a source is still good law, if it’s been changed in some way, and *why* it’s been changed
- ▶ To learn the importance of making Shepard’s a routine part of the research process

Skills Learned

- ▶ Ability to locate citations of cases that are on point with research issues
- ▶ Analysis of case law through Shepard’s abbreviations and syllabi

Preparation

- ▶ **Student** Week One: Booklet reading. Week Two: *Shepard’s Supplements*
Week Three: *Secondary Material*
- ▶ **CourseGiver** See **CourseGiver Preparation** below

Activities

- ▶ Whole class discussion of CellWork assignment, *Shepard’s Supplements*
- ▶ Define *Shepardizing®* by demonstrating specific volumes in **Show N Tell**
- ▶ Conduct group exercises, *Shepard’s State Citations*; *Shepard’s Federal Citations*; *Shepard’s United States Citations*; *History/Treatment Symbols*
- ▶ Quiz, *Shepardizing®*

CellWork *How to Shepardize®* booklets

CourseGiver Preparation--Week One

Quiz	Copy Quiz 7, <i>Key Number Digests</i>
Handouts	Copy 38, <i>misCONSeptions ‘bout Shepard’s</i> ; 39, <i>Shepardizing®</i> ; and 40, <i>Understanding Shepard’s Citations</i>
Show N Tell	Put your state Shepard’s Citations set—the hardbound volumes, paper supplements and Case Name Citator (if any)—on a book truck and place beside your teacher’s desk. Also, decide whether to use the ready-made handout 38, <i>Shepardizing®</i> , or instead to choose a small (2-3 pages) case from your own jurisdiction. Whichever you decide, set aside at your desk the case law volume containing the case, and photocopy the case for each student.
Exercises	You have the same option with the Exercise—use the ready-made exercises 18A-18C, or use them as a model to create new exercises for your state’s Shepard’s Citations set.
CellWork	Reading from <i>How to Shepardize</i> booklet

Shepardizing

Preparation: Week One (2.5 hrs.)

- ▶ Photocopy (1 hour)
 - ☐ Roster
 - ☐ Quiz 7
 - ☐ Handouts 38-40
 - ☐ Exercises 18A-C
 - ☐ CellWork Booklet
- ▶ Show N Tell (½-hour) Retrieve: State set of *Shepard's Citations* (volumes and supps.)
- ▶ Review (1 hour) Chapter 3, Module 8—Week One

- §1 Quiz (15 min.) “Key Number Digests”
- §2 Show N Tell (15 min.) misCONSeptions ‘bout Shepard’s
Shepardizing®
Understanding Shepard’s Citations
- §3 Exercise (40 min.) Shepard’s State Citations
- §4 CellWork *How to Shepardize®*, booklet, pp.1-7

Preparation: Week Two (2.5 hrs.)

- ▶ Photocopy (1 hour)
 - ☐ Roster
 - ☐ Handout 41-43
 - ☐ Exercises 19A-C
 - ☐ CellWork 18
- ▶ Show N Tell (½-hour) Retrieve: State set of *Shepard's Citations* (volumes and supps.)
- ▶ Review (1 hour) Chapter 3, Module 8—Week Two

- §1 Show N Tell (15 min.) HT Read Shepard’s History/Treatment Symbols*How to Use Syllabi
- §2 Exercise (25 min.) History & Treatment Symbols
- §3 Show N Tell (20 min.) Using Shepard’s Supplements
- §4 CellWork Shepard’s Supplements

Preparation: Week Three (2.5 hrs.)

- ▶ Photocopy (1 hour)
 - ☐ Roster
 - ☐ Exercises 20A-C/21A-C
 - ☐ CellWork 19C
- ▶ Show N Tell (½-hour) Retrieve: State set of *Shepard's Citations* (volumes and supps.)
- ▶ Review (1 hour) Chapter 3, Module 8—Week Three

- §1 Exercise (30 min.) Federal Citations
- §2 Exercise (30 min.) United States Citations
- §3 CellWork *Secondary Material*

Lesson Plan ⑧

Section 1: QuizMode Distribute Quiz 7, *Key Number Digests*. 5 minutes; collect.

Section 2: Show N Tell Shepard's Citations is classified as a *finding tool*. Shepard's helps researchers locate and update issues which are on point with their research problem. Shepard's also helps locate judicial opinions within local jurisdictions. The scope of Shepard's Citations is broad, but it can be safely said that *most inmates use the Citators as a case-finding tool*.

Apart from cases, Shepard's helps locate and update statutes, articles & amendments to constitutions, administrative agencies, court rules, city ordinances, and treatises. Like the "Known-Source" approach used with digests, researchers must begin with a primary source of some kind in order to use Shepard's Citators.



Word to the Wise ①⑧

This Module begs to be explained through transparencies...If you're using them, make one of every handout, using the copier transparencies mentioned in Chapter Four, *CourseGiver's Guide*.

There are many simple but complicated-sounding concepts about Shepard's, so it is better to give to the class a graphic illustration of each step. Transparencies allows the class to follow you through the lecture. This "Everyone-On-The-Same-Page" approach is what is needed when explaining the Citations sets.

When Shepard's uses the word "citation," they mean a case which was printed sometime after your case and which mentions your case in some way. Also, each case law reporter in the law library has a corresponding Shepard's Citations set. Students must be cautioned about the *Federal Supplement* and *Federal Reporter* Shepard's Citations sets. For reasons inexplicable, Shepard's gives the same name--*Shepard's Federal Citations*--to both sets! It's only after you look carefully on either the spine or the front cover of the hardcover volumes that you find the smaller-type words "Federal Supplement" or "Federal Reporter." Still another hazard of Shepard's--researchers must take care to be in the correct *edition*. Shepard's divides each set into Statute/Court Rules Editions and Case Law Editions. For example, if you're Shepardizing a statute, *make sure you're using the Statute Edition and not the Case Edition volumes by mistake!*

- ▶ ***misCONSeptions 'bout Shepard's...*** Handout 38 will clear up preconceptions inmates have about Shepard's. As most of these myths were perpetuated by fellow inmates, your job is to help students un-learn all they've "learned." Read verbatim each of the 5 questions and answers. Make sure students understand what Shepard's means by 'citation.' And stress the utility of this finding tool through the "Shepard's Citators Help You To..." section.

- ▶ **Shepardizing**®....Handout 39 gives inmates the necessary mechanics they need to properly Shepardize® case law. Here you must decide whether to use the case in the handout--*Mass. V. Blinn* [503 N.E. 2d 25]--or a small case from your jurisdiction; whatever your preference, photocopy the case for the class. Next, set aside both the Reporter volume containing the above-mentioned case AND the corresponding Shepard's volume containing your cases' citation. Read verbatim from Handout 39, demonstrating each step using the two volumes. Students will follow along using their photocopied case. Answer relevant questions.
- ▶ **Understanding Shepard's Citations** Distribute Handout 40, *Understanding Shepard's Citations*. This handout divides a typical Shepard's citation into its component parts. Read verbatim; relevant questions.

Section 3: Exercise--Shepard's State Citations This exercise gives students their first hands-on experience with Shepard's Citations. If your library has the *Northeastern Reporter, Second Series*, then please use the three ready-made Exercises included in this book. If it does not, you will need to substitute citations for cases in your own state. Divide the class into manageable groups, giving each group a different state case to Shepardize®. Allow 25 minutes to complete the exercise. Review each group's work; answer relevant questions.

Section 4: CellWork Distribute the booklet *How to Shepardize*®. Assign the introductory chapter to be read for next time. This reading will not be reviewed, nor will the booklet be required at the next class; it's just something for inmates to have and to hold.

Week Two

CourseGiver Preparation--Week Two	
Show N Tell	Place on a book truck one each of the gold, red, blue, and black & white supplements, all from the same set.
Handouts	Copy 41, <i>How to Read Shepard's History/Treatment Symbols</i> , 42, <i>How to Use Syllabi</i> , & 43, <i>Using Shepard's Supplements</i> .
Exercises	Copy 20A-20C, <i>History/Treatment Symbols</i> .
CellWork	Copy 18, <i>Shepard's Supplements</i>

Section 1: Show N Tell In this section, students will learn how to use the "syllabi" and how to interpret the symbols from the "History & Treatment Abbreviations."

- ▶ **How To Read Shepard's History/Treatment Symbols** Handout 41 is simply a copy of the "History & Treatment Abbreviations" page contained in the front matter of each volume of Shepard's Citations; in fact, show them exactly where in the book they can find this table. Next, read Handout 41 verbatim....The key here is not to get overwhelmed; although you will mention all abbreviations listed, it is appropriate and safe to tell your class

that the symbols most often used are: a, s, d, f, j, and p. Answer relevant questions.

- ▶ **How To Use Syllabi** Handout 41 shows students how to use the ^{superscript} numbers found in many Shepard's citations. *This feature is extremely helpful, so be sure that everyone understands this before moving on.* Read verbatim from the handout; then, demonstrate this technique using your case law volume mentioned above, the Shepard's volume containing your case citation, AND the case law volume containing the citing case. Relevant questions.

Section 2: Exercise Divide into groups. Distribute exercise 18A-C, *History/Treatment Symbols*. Allow 20 minutes for completion. Have group leaders explain their answers.

Section 3: Show N Tell Next, you'll show students the proper way of updating Shepard's Citations. As you read verbatim from this handout, demonstrate each supplement. (CellWork 17 will give students hands-on experience with the supplements).

- ▶ **Using Shepard's Supplements** Handout 42 gives students the necessary mechanics they need to properly update Shepard's Citations. Also, point out here that Shepard's helps researchers determine what hardbound Citations volumes and softbound supplements your library should contain. This section is called--amazingly!--"What Your Library Should Contain," and is printed on the cover of each paper supplement. Relevant questions.

Section 3: CellWork Distribute CellWork 17, *Shepard's Supplements*. This must be completed and handed in by next class.

CourseGiver Preparation--Week Three

Show N Tell Review CellWork 17, *Shepard's Supplements*. Allow 10 minutes for review

Exercises Copy Exercises 19A-C, & 20A-C

CellWork Copy CellWork 18, *Secondary Material*

Week Three

Section 1: Exercises Through these exercises, students learn to determine the correct set to be in when Shepardizing cases from the U. S. District Court, the U.S. Circuit Courts of Appeals, and the U.S. Supreme Court. Point out that each exercise sheet contains *two* case law citations to use. Divide the class into manageable groups. Allow 20 minutes for the first exercise. Then come together as a class for

discussion/questions. Repeat this procedure for the U.S. Citations.

- ▶ ***Federal Citations*** Exercise 20 gives students hands-on Shepardizing experience with two major case law reporters-- the *Federal Supplement* and *Federal Reporter, 2d Series*.
- ▶ ***United States Citations*** Exercise 21 introduces students to the Shepard's Citations set for Supreme Court opinions.

Section 2: CellWork Distribute CellWork 19, *Secondary Material*. Tell students this must be completed and turned in at the beginning of the next class.

MODULE 9

Secondary Material

Question Objectives “Why is Secondary Material a critical part of legal research?”

- ▶ To learn that Secondary Material carries persuasive authority
- ▶ To learn that Secondary Material helps researchers frame their legal problems in legal terms
- ▶ To learn that Secondary Material explains how Primary Sources of law have been interpreted in various jurisdictions

Skills Learned

- ▶ Ability to locate Secondary Sources in a law library
- ▶ Analysis of Primary Sources through the use of Secondary Material

Preparation

- ▶ **Student** To have completed CellWork 19, *Secondary Material*
- ▶ **CourseGiver** See **CourseGiver Preparation** above

Activities

- ▶ Whole class discussion of CellWork assignment, *Secondary Material*
- ▶ Demonstrating specific Secondary Material in **Show N Tell**
- ▶ Conduct group exercise, *Secondary Material*
- ▶ Quiz, *Shepardizing*

CellWork *Updating Primary Sources*

CourseGiver Preparation

Quiz	Copy Quiz 8, <i>Shepardizing</i>
Handout	Copy Handout 44, <i>Why Use Secondary Material?</i>
Show N Tell	Put your state Lawyer's Directory, Local Court Rules volume, a local legal newspaper, your library's legal dictionary, and any important state-specific texts on a book truck and place beside your teacher's desk. OPTIONAL--have at the ready CellWork 4, <i>FTQ Pathfinder</i>
Exercises	Copy Exercises 22A-22C, <i>Secondary Material</i>
CellWork	Copy CellWork 20, <i>Updating Primary Sources</i>

Secondary Material

Preparation (2.5 hrs.)

- ▶ *Photocopy (1 hour)*
 - ☐ Roster
 - ☐ Quiz 8
 - ☐ Handout 44
 - ☐ Exercise 22A-C
 - ☐ CellWork 20
- ▶ *Show N Tell (½-hour)*
Retrieve: Black's Law Dictionary; Regional Lawyer's Directory; Local Court Rules;
Legal Newspaper; State-Specific Texts
- ▶ *Review (1 hour)* Chapter 3, Module 9

- | | | |
|-----------|---------------------------------|---|
| §1 | Quiz
(5 min.) | <i>Shepardizing</i> |
| §2 | Review
(10 min.) | <i>CellWork 19, Secondary Material</i> |
| §3 | Show N Tell
(10 min.) | <i>Handout: Why Use Secondary Material?</i>
Definition
Sample Volumes |
| §4 | Exercise
(35 min.) | <i>Secondary Material</i> |
| §5 | CellWork | <i>Updating Primary Sources</i> |

Lesson Plan 9

Section 1: QuizMode Distribute Quiz 8, *Shepardizing*. 5 minutes. Collect, place in Envelope.

Section 2: Review The definition for Secondary Material is in Handout 2. Have them retrieve this handout; read the definition verbatim.

Section 3: Show N Tell Distribute Handout 44, *Why Use Secondary Material?* Read the 1st line of the handout. (OPTIONAL: Illustrate this by reviewing CellWork 4, *FTQ Pathfinder*). Next, read the remaining two statements of handout 44. Use your **Show N Tell** volumes that you set aside earlier to demonstrate the following:

□ *Certain Secondaries have strong persuasive authority.* For example, a text on search and seizure will carry more influence in a legal document when written by a respected judge, lawyer, law professor, or Attorney General. This persuasiveness is what gives Secondary Material its importance.

□ *Secondaries explain how primary sources have been interpreted in a particular jurisdiction.* Subject-specific texts are national or federal in scope. This is done for practical reasons; to discuss the ramifications of a U.S. Supreme Court case at the state level would require 50 separate versions of a text! This is not to say, however, that there are not state-specific texts concentrating on a single subject. The *Handbook on Massachusetts Evidence, 6th Edition*, by the eminent and Honorable Paul J. Liacos is an example of state-specific secondary material. Researchers must look in their libraries for an explanation of how primary sources of law have been interpreted in their state or circuit. The more state- or circuit-specific researchers can be, the stronger their argument to the court!



Word to the Wise 19

Secondary Material represents approximately 15-30% of the average prison law library collection. Once you've adequately explained this material, inmates will be familiar with every type of material in their law library.

Secondary material is also the most misunderstood of the collection. Inmates tend to feel that once they've used Finding Tools to discover the Primary Sources they need, they don't have to use Secondary Material for clarification. Please shatter this myth a.s.a.p.

Secondary Material is indispensable!

Section 4: Exercise 21--Secondary Material Divide class into three groups. Distribute one exercise per group. Read directions for each (If you don't have these volumes, please substitute items found in your collection). Give 15 min. for completion/15 min. for review.

Section 5: CellWork Distribute CellWork 20, *Updating Primary Sources*. Explain that for each of the four Primary Sources at left, students are to locate at least one of the eight updating methods represented by the eight column headings. Also, point out that each column is subdivided into a "state" and "federal" side; this is because much of the Secondary Material in law libraries are both federal and state-specific in scope. Demonstrate the proper way of completing the Chart, using the example "Case Law." Place a "YES" in the "Supplements" column for both state and federal subdivisions; next, place a "YES" in the federal side of the *Criminal Law Reporter* (C.L.R.); next place a "YES" in the Periodicals column; finally, place a "YES" in both subdivisions of the *Shepard's Citations* column. Tell students this must be completed and turned in next time.

MODULE 10

Updating & PreTest

Question “Why must researchers find the most updated material ?”

Objectives

- ▶ To learn that updating is a critical part of the research process
- ▶ To learn that relying on out-dated Primary Sources is the Kiss Of Death to a legal pleading
- ▶ To learn that legal publishers provide several different ways of keeping Primary Sources current

Skills Learned

- ▶ Ability to recognize the various types of updating media in the law library
- ▶ Ability to update any Primary Source

Preparation

- ▶ **Student** To have completed CellWork 20, *Updating Primary Sources*
- ▶ **CourseGiver** See **CourseGiver Preparation** above

Activities

- ▶ Whole class discussion of CellWork 20, *Updating Primary Sources*
- ▶ Demonstration of specific updating media in **Show N Tell**
- ▶ Quiz, *Secondary Material*
- ▶ Quiz, *Wrappin' Up!* (OPTIONAL)
- ▶ Conduct *PreTest* exercise

CellWork

None

CourseGiver Preparation

Quiz

Copy Quiz 9, *Secondary Material* (Quiz 10, *Wrappin' Up!*, is optional, but should be given if time permits)

Handout

Copy Handouts 45, *The Importance of Being Current* and 46, *Updating Primary Sources*

Show N Tell

Retrieve one example each of the following: loose-leaf service; advance sheet (case law); paper supplement (case law); monthly paper supplement (statute); pocket-part (statute/digest); a legal newspaper (local in scope); CD-ROM disk (if applicable); and an administrative regulation (with a recent effective date). Place on CourseGiver's desk.

Exercises

Make three copies each of the 12 pages comprising the Final Exam (See **Appendix D, Final Examination**). The pages are formatted so that a booklet can be made of the test. Duplex these pages in sequential order Then, using a different-colored hi-liter or marker, mark each page of the first set “G1” the second set “G2;” the third G3.

CellWork

None

Updating/PreTest

Preparation (2.5 hrs.)

- ▶ *Photocopy (1 hour)*
 - ☐ Roster
 - ☐ Quizzes 9/10
 - ☐ Handouts 45-46
 - ☐ PreTest (*Appendix D*, 12 pages [3 sets])
- ▶ *Show N Tell (½-hour)*
One each: Pocket part; Paper supplement; Advance sheet; CD-ROM; Shepard's® advance sheet; Loose-leaf service; Department of Correction regulation
- ▶ *Review Chapter 3, Module 10*
(1 hour)

- | | | |
|----|--------------------------------|---|
| §1 | Quiz
(5 min.) | <i>Secondary Material</i> |
| §2 | Show N Tell
(8 min.) | Updating Primary Sources
Importance of Being Current |
| §3 | Quiz
(2 min.) | <i>Wrappin' Up! (OPTIONAL)</i> |
| §4 | Review
(45 min.) | PreTest |

Lesson Plan 10



Section 1: QuizMode Distribute Quiz 9, *Secondary Material*. 5 minutes. Collect, place in Envelope. If time permits, give “Wrappin’ Up!” after **Show N Tell**.

Section 2: Show N Tell To save time for the PreTest, distribute Handout 45, *Updating Primary Sources* with a correctly filled-in Chart. Allow 10 minutes to review answers and to have researchers compare their CellWork answers to the Chart. Relevant questions. Use this Chart to segue into your demonstration of each type of updating media you’ve previously set aside.

Distribute Handout 46, *The Importance of Being Current*. Demonstrate each updating media as it appears on this handout. Stress that researchers must make the updating process part of the research routine. Criminal appeals are affirmed and civil suits lost because researchers do not present the most up-to-date information in their pleading.

Because inmates are aware of online legal database services (e.g., WESTLAW®), it is wise to speak about them at this time. For reasons of cost, security and logistics, no prison law library as of this writing gives prisoners access to online databases. If this holds true for you, you need to give your students a Reality Check. Explain that the touchstone of meaningful and effective access to the courts remains whether that access is left unimpeded by corrections officials. Print media have kept those in the legal profession current for generations, and continue to do so. Until case law or court decree mandates online access for prisoners, students must continue to use whatever updating methods available. Most important, *they must make updating a routine part of their research technique.*

Section 3: PreTest Procedure First things first—

 *Students are not allowed to take notes during the PreTest!* 

Students should be given at least 45 minutes to complete the PreTest. If time is not an issue, 1½ hours is ideal. For this procedure, all students are allowed to use the law collection to answer all sections of the PreTest. Please follow the procedural steps outlined below:

- A Divide class into 3 groups. Have each group elect a leader. The leader will be responsible for recording all answers on each sheet; he will also be responsible for turning in all completed sheets to the CourseGiver.
- B Each group answers a different section



Word to the Wise 20

The PreTest procedure is the result of a decade of hard-won wisdom. This must be administered carefully!

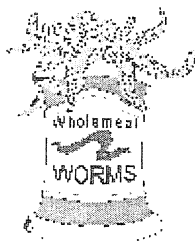
Please follow the instructions on this page. The integrity of your Course depends on it!

of the PreTest; no two groups have the same section at any time (see below)! Each number below represents the corresponding page of the PreTest. *Do not* give out new sheets until all previous sections of the PreTest have been turned in!

G1 =	①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩
G2 =	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩	①
G3 =	③	④	⑤	⑥	⑦	⑧	⑨	⑩	①	②

- C Give each group approx. 5 minutes per sheet; if you have more time, give 10 minutes per sheet. For each sheet returned to you, cross out the corresponding number for that group. (e.g., when group 2 turns in page 7, cross out the number 7 on the G2 line).
- D With the remaining time--at least 5-10 minutes--give correct answers orally for each page. *Students are NOT permitted to take notes during this review!*

Remember:



Collect All PreTest Sheets Before Class Is Dismissed!!!

4

Course Material

The initial objective when starting a new course is to *make you comfortable in the teaching environment*. Another biggie is to *keep confusion to a minimum*. It was, therefore, a difficult decision whether to include all course material under each Module, or organize it in a separate chapter. We decided on the latter arrangement, keeping the pre-course preparation as concise and uncomplicated as possible. (If you prefer grouping Module material together, then review how to prepare your lesson book and At-Home Course Binder in Chapter Two's "CourseGiver FAQ's").

Below are the four sections of material, the number at right indicating how many of each is provided:

1	Quizzes	11
2	Handouts	46
3	CellWork	20
4	Group/Class Exercises	22

Here's what's been done to help you key material to the correct Module:

HANDOUTS are marked by Module and handout number:

→ **Module ④, Handout 21**

QUIZZES are sequential and indicated by a numbered watermark:

→ **Quiz One**

The same goes for CELLWORK:

→ **CellWork ①③**

EXERCISES have a Module number and Group number in the upper left-hand corner...

→ **Module ⑥**
Group _____

...and a graphic and watermark in the upper right.



Exercise ①②B

Assuming that classes will be divided into three groups, the majority of exercises have three separate research issues.

Please use the syllabus and Handout Key from chapter three, **Pre-Course Prep**; in fact, photocopy both and keep them handy when putting together Module material. Also, for your convenience, please use the "Opening Night" section of Chapter Three as the model for all subsequent Module preparation. Finally, material on the Final Exam and Graduation can be found in Appendices E & C, respectively.

Remember—Adapt course material to your jurisdiction (See Chapter Two)!

Jump Street!

This is an Assessment Survey.

***It tells the CourseGiver how much you already know about research.
This will not be graded! If you do not know the answer, please leave it blank.***

- 1** **What is a "pocket part?"**

- 2** **What do the letters "U.S.C.A." stand for?**

- 3** **Define the term "case law," and give an example of a case law citation:**

- 4** **In what book do you find the definitions to legal terms?**

- 5** **Name one source you can use to find rules to local and federal courts:**

- 6** **Define "Shepardizing™.":**

- 7** **What is the citation for your institution grievance regulation?**

- 8** **In what set can you find state statutes?**

- 9** **Define "finding tools," and give 1 example:**

Law Library Basics

- 1 The material in any law library can be divided into 3 main categories. Name these categories:

A _____
B _____
C _____

- 2 **MATCHING:** Match the term to the definition at right by putting the correct letter on the corresponding line.

A	Primary Sources	_____ Have persuasive authority
B	Finding Tools	_____ Have the force of law
C	Secondary Material	_____ Help you locate other sources of law

- 3 **Primary Sources** of law can be further classified into 4 important categories. Name these categories:

A _____
B _____
C _____
D _____

Administrative Remedies

1 What is meant by an “informal” grievance?

- A Verbal
- B Written
- C Both A and B

2 Every grievance must contain 6 types of information. List this information:

- A _____
- B _____
- C _____
- D _____
- E _____
- F _____

3 In your grievance regulation, what do the letters *I.G.C.* stand for?

4 How many working days *after* an incident occurs may you file a grievance?

5 Whom do you file a grievance appeal with? _____

6 Ordinarily, how many days can you reasonably expect to wait for an answer to your grievance, from the date of occurrence to the Superintendent’s answer to your appeal? _____

Court Hierarchy

1 Name the highest court in this state:

2 Name the second-highest court in this state:

3 What are the entry-level state courts called?

4 The state entry-level court system is divided into separate

- A Circuits
- B Counties
- C Districts

5 The U.S. Court of Appeals is divided into 13 separate

- A Circuits
- B Counties
- C Districts

6 You can find state court rules in

- A The state statute set
- B A West paperback
- C Both A & B
- D Neither A or B

7 When legal researchers speak of "Source matching," they're referring to:

- A Finding Tools
- B Relating Primary Sources of law to court structure
- C Neither A or B

8 What types of cases are decided in the Federal Circuit of the U.S. Courts of Appeal?

- A Cases where appellants are suing the United States
- B Cases where appellants are suing another country

Framing the Question

- 1** Before you can begin your research, you must first analyze the facts of your problem and determine in legal terms what your issue is. This process is called

- 2** A research technique developed by William Statsky in which words are placed in a circle to help you determine which index headings and digest terms to use is called the

- 3** There are 4 questions to ask yourself when deciding which Primary Sources to research. List these 4 questions:

A _____

B _____

C _____

D _____

Statutes

1 Laws created by state and federal legislatures and arranged into codes and general laws are called:

2 A statute which you determine to be exactly “on point” with your legal issue is said to be a _____ statute.

3 When statutes are cited, the symbol § is used. What word does this symbol represent?

_____. When there are two like this §§, what does it mean?

4 If you know that the statute you need is section 32H from chapter 94C of the Massachusetts General Laws Annotated, how would you put this information in the correct citation form?

5 If you know that the statute you are looking for is section 1983 from title 42, “Public Welfare” of the United States Code Service, how would you put this information in the correct citation form?

6 What is the relationship between a controlling statute and interpretive cases called? (HINT: ☺)

7 What do the acronyms U.S.C.S. and M.G.L.A. stand for?

U.S.C.S. = _____

M.G.L.A. = _____

CaseLaw Briefing

1 Name the component of a case that lists all of the relevant facts:

2 Name the component of a case that gives you the court's overall decision:

3 Name the component of a case that gives you the reasoning the court used to make a decision for each issue in the case:

4 Name **ONE** of the two case law component which you cannot cite because it is not legal authority:

5 Name the two components that occur together in the opinion – sometimes in the same sentence:
The first component tells you the problem; the second tell you the judge's answer:

6 Name the component which is made up of hypothetical "If/Then" statements that help researchers distinguish holdings in one case from holdings in a similar case:

Key Number Digests

Name _____

Topical Approach

Imagine that your issue is that the prison law library is closed too often.
Below are 8 steps you would take if you were using the Topical Approach to the digest.
Put these eight steps in the correct numerical order.

- _____ In volume 19, examine the "Topics in this Volume" page; turn to the page where your digest topic "Prisons" begins (page 466).
- _____ Go to the volume of the Massachusetts Digest 2d Series containing the digest topic "Prisons" (volume 19)
- _____ Begin by examining the alphabetical Topic Index found in the front matter of any digest volume. From the 414 digest Topics listed in the Index, assign your problem the digest topic "Prisons"
- _____ On page 466, examine the Key Number Outline for "Prisons;" carefully choose the right key number for your issue [4(13)].
- _____ Under "Prisons 4(13)", read the case law annotations and choose the case most similar to yours (732 F2d 1)
- _____ Using 732 F2d 1, locate the cited case (*Cepulonis v. Fair*)
- _____ In *Cepulonis*, Locate the Headnote containing your issue (Headnote 1)
- _____ Finally, locate the page of *Cepulonis* containing the bold-faced bracketed [1]; this is where your issue is discussed

How are Key Number Digests arranged?

- A Alphabetically
- B Numerically
- C Alpha-numerically
- D None of the above

Shepardizing

1 Of the 3 types of law library material, what is *Shepard's Citations* considered?

- A Finding Tool
- B Secondary Material
- C Primary Source

2 **EXERCISE:** Imagine that you are studying *503 N.E.2d 25*. Below are steps you would take to Shepardize® the case. Put these steps in the correct numerical order.

- _____ Under volume 503, find page 25
- _____ Decide that *503 N.E. 2d 25* is a state case
- _____ Locate the page which lists volume 503
- _____ Find the "Case Edition" volume containing N.E.2d citations
- _____ Find the Shepard's set called *Massachusetts Shepard's Citations*
- _____ Use the ^{superscript} numbers
- _____ Use the lower-case letters

3 What do you use to figure out the meaning of the symbols (numbers and letters) contained in many *Shepard's Citations*?

4 Where do you look to determine which hardbound volumes and paper supplements of *Shepard's Citations* your library should contain?

5 Give one reason why it is important for researchers to use *Shepard's Citations* (Use back of sheet if necessary):

Secondary Material

- 1 In what source would you find definitions of legal terms?

- 2 For civil and criminal rules of state courts, look in the latest edition of

- 3 What manual would you use to find an alphabetical listing of attorneys practicing in this state?

- 4 Name one weekly legal newspaper for this state:

- 5 What source would you use to find addresses and phone numbers to state courts?

- 6 In what multi-volume set can you find lengthy articles on virtually all topics of the law?

- 7 **TRUE OR FALSE?** Secondary material does not have the force of law: **T** **F**

Wrappin' Up!

- 1 **What is a "pocket part?"** _____
- 2 **Name one primary source:** _____
- 3 **What branch of government makes case law?** _____
- 4 **What book do you use to find the definitions of legal terms?** _____
- 5 **In what book do you find names & addresses to attorneys?** _____
- 6 **What is a "cite?" Give one example:** _____
- 7 **What is "Shepardizing?"** _____
- 8 **When using state agency regulations, what is the numerical designation for the Department of Correction?** _____
- 9 **In what set would you find state statutes?** _____
- 10 **Give at least one example of a "finding tool:"** _____

Legal Research Path

Statement of Your Legal Problem



①

Law Library Structure
Administrative Remedies
Framing the Question



②

Primary Sources
Statute/Case Law Relationship
Case Briefing



③

Key-Number Digests
Shepard's Citations



④

Updating/ Final Exam

Definitions

You need to learn the terms below ASAP because you'll be using them a heckuvalot during the Course. Study them, memorize them, use them correctly!

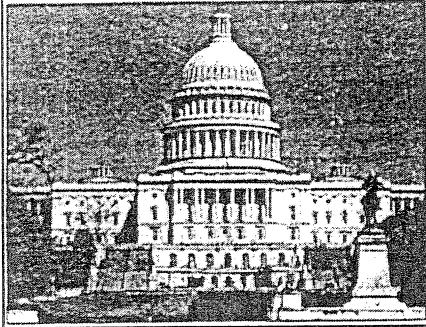
- 1 **Primary Sources** Material having the force of law (e.g., Administrative Regulations, Case Law, Constitutional Law, and Statutory Law).
- 2 **Secondary Material** Material having persuasive authority (e.g., law journal articles). Secondary Sources do not have the force of law.
- 3 **Finding Tools** Material which helps you find primary sources and secondary material. Finding Tools do not have the force of law.
- 4 **Civil Law** Laws protecting your individual rights to life, liberty, and property.
- 5 **Criminal Law** Laws protecting society from the individual.
- 6 **Substantive Law** Laws which create, define, and regulate rights & responsibilities of both the individual and society.
- 7 **Procedural Law** Any rule of a federal, state, or municipal court.
- 8 **Case Briefing** Dividing case law into its component parts in order to isolate only the issues relevant to your research.
- 9 **Pocket Part** A slim paper supplement inserted in the inside back cover of a hardbound volume in a cardboard "pocket." Pocket parts are published once a year and update the information contained in the bound volume.
- 10 **Advance Sheets** Case law opinions for both state and federal courts, published weekly and received in advance of their appearing in a hardbound volume.

Library Terms

- 1 **Spine** The part of the book which shows when it is sitting on a shelf. The spines of law books give you important information about what you can find in them.
- 2 **Table of Contents**
Found at the beginning of all books. Tells you generally what each chapter of the book contains.
- 3 **Arrangement**
Tells how the information in each chapter of the volume or set is organized. Law books are usually arranged by chapter and section, or alphabetically by topic, or sequentially by decision date.
- 4 **Scope** Tells you exactly what information you can find in a volume or set. This information is usually found on the "Preface page" to the volume. The preface page is always found in the front of the book.
- 5 **Index** Indexes help the researcher locate information quickly and efficiently. Indexes are an alphabetical outline of key words called "index headings" which help you to locate important words or phrases. Indexes are commonly found either in the back of a single volume; or printed separately in one or more paper bound volumes.
- 6 **Index Headings**
Words or phrases arranged alphabetically and representing general legal topics. Index headings are always in **bold-face print** and found at the top-left and top-right of each page of the index you're using.
- 7 **Edition Statement - version of book**

The 3 Branches of Government

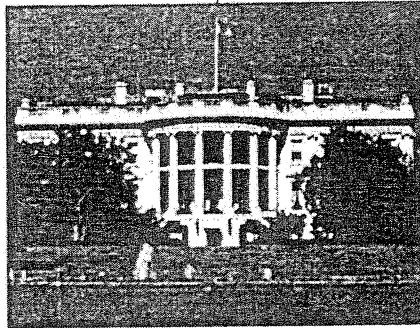
THE CONSTITUTION OF THE UNITED STATES



THE LEGISLATIVE BRANCH

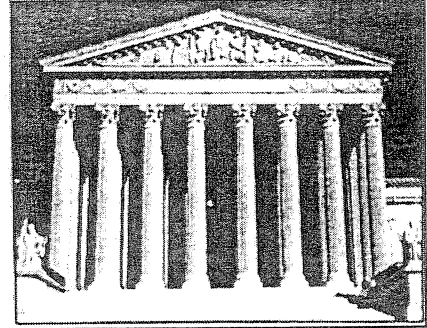
The House of
Representatives

The Senate



THE EXECUTIVE BRANCH

The President

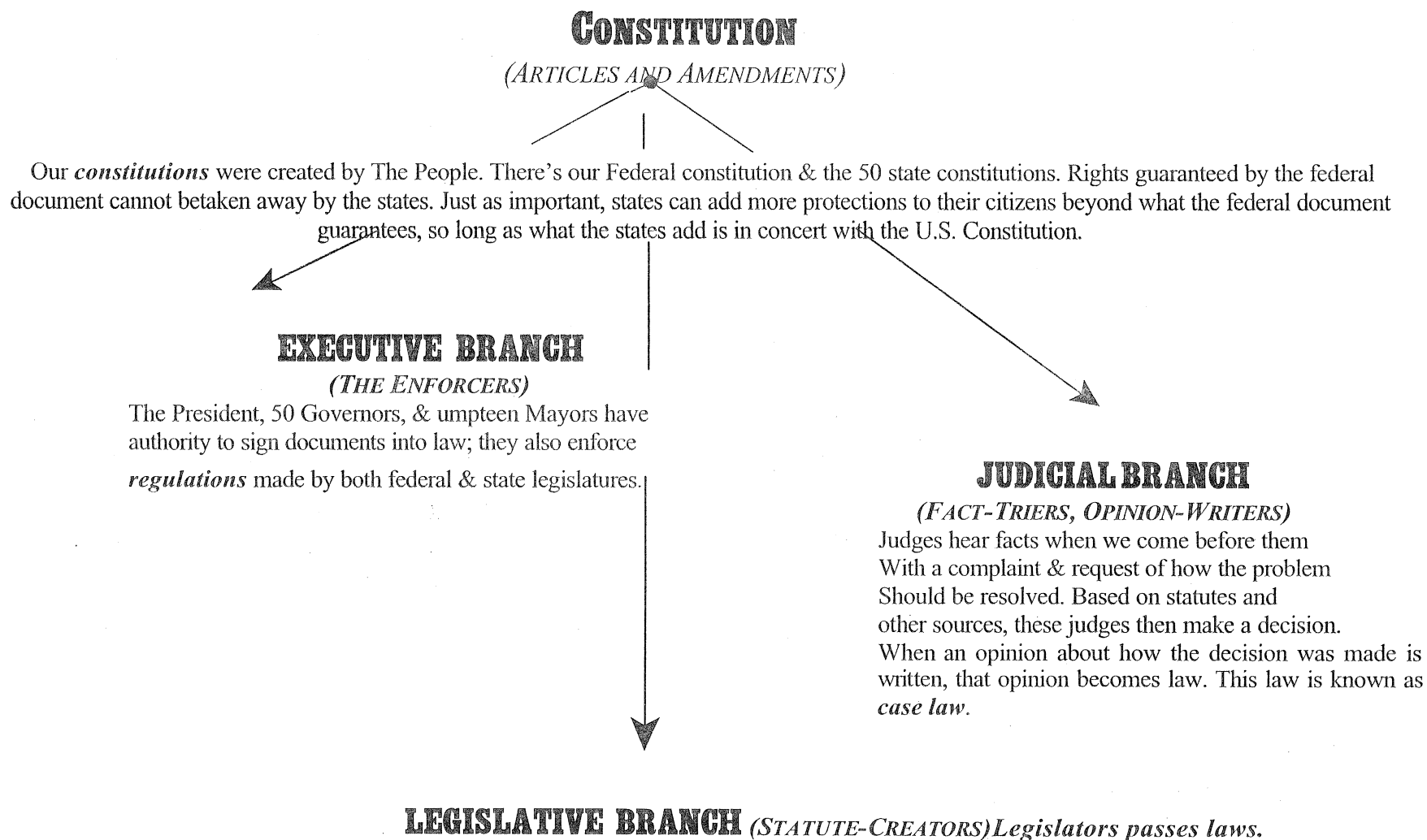


THE JUDICIAL BRANCH

The Supreme
Court

“Mommy, where do Primary Sources come from?”

“Well, dear, first there was the Massachusetts Constitution. Then, the US Constitution was modeled after it. The US Constitution had 49 children, the state constitutions. All these Constitutions had 3 branches of government. Together, our Constitutions and three government branches help make the laws we have, for our country AND for our 50 autonomous states! Now, finish your carrots and I’ll tell you about executive privilege....”



Categories of Research Material

The material in every law library can be divided into 3 separate categories: **Primary Sources**, **Secondary Material**, and **Finding Tools**. Once you master what each category contains and what that material is good for, you're on your way to becoming a self-directed legal researcher....

I Primary Sources *Material having the force of law.*

Examples

- 1 Administrative Regulations
- 2 Case Law
- 3 Constitutional Law
- 4 Statutory Law

II Finding Tools *Material which helps you find Primary Sources. Does not have the force of law.*

Examples

- 1 Digests
- 2 Shepard's Citations®

III Secondary Material *Material which explains how primary sources are applied. Does not have the force of law.*

Examples

- 1 Black's Law Dictionary
- 2 Prisoner's Self-Help Litigation Manual

Primary Sources

I Administrative Regulations (Executive Branch)

Definition

Rules & regulations governing all aspects of behavior for any Department or agency of both state and federal government.

Examples *Code of Massachusetts Regulations* (CMR)
 Code of Federal Regulations (CFR)

II Case Law (Judicial Branch)

Definition

The opinions of a justice of a court, based on the facts of a case and how current statutes and other primary sources were applied to those facts. Published in both "official" and "unofficial" reporters.

Examples *Mass. Reports/Mass. Appellate Court Reports* (Official)
 Northeastern Reporter, Second Series (Unofficial)
 Federal Reporter, Third Series

III Constitutional Law (U.S. & State Constitutions)

Definition

Creates & empowers the Executive, Judicial, and Legislative branches of both state and federal government. Also defines criminal behavior and guarantees civil rights.

Examples *Constitution of the Commonwealth of Massachusetts*
 Constitution of the United States of America

IV Statutory Law (Legislative Branch)

Definition

All laws duly enacted by the Congress of federal/state/town governments. These laws govern all aspects of our behavior as citizens of our town, state and country.

The Constitution of the United States

Thumb-Nail Sketches of the Articles & Amendments of the Great American Experiment

ARTICLES

Article One

The Congress, Legislative Power, House of Representatives, The Senate, Control of Federal Elections, Congressional Rules & Privileges, How a Bill Becomes Law, Enumerated Powers of Congress, Congressional Prohibitions, State Prohibitions

Article Two

The Presidency, The President, Presidential Powers & Duties, Impeachment

Article Three

Judicial Review, Structure & Jurisdiction of Federal Courts; Establishment of the Supreme Court, Judicial Power, Treason

Article Four

Interstate Relations, Full-Faith-and-Credit Clause, Privileges-and-Immunities Clause, Extradition, Admission of New States, Federal Guarantees to States

Article Five

Amending the Constitution

Article Six

Supremacy Clause, Oaths to Support the Constitution

Article Seven

Ratification of the Constitution

AMENDMENTS

(1st 10 called the "Bill of Rights")

Amendment One

Freedom of Religion, Speech, Press, Assembly, Right to Petition

Amendment Two

Right to Bear Arms

Amendment Three

Quartering of Soldiers

Amendment Four

Unreasonable Search & Seizure, Arrest, Search During Arrest, Search Warrants

Amendment Five

Rights in Criminal Courts, Grand Jury Indictment, Military Authority, Double Jeopardy, Self-Incrimination, Due Process, Eminent Domain

Amendment Six

Procedural Rights in Criminal Courts, Speedy & Public Trial, Trial by Jury, Venue, Information, Confrontation, Compulsory Process, Counsel, Juvenile Courts

Amendment Seven

Juries in Federal Civil Cases

Amendment Eight

Bail, Cruel & Unusual Punishment

Amendment Nine

Natural Rights

Amendment Ten

Rights Reserved to States

Amendment Eleven

Suits Against States

Amendment Twelve

Electoral College

Amendment Thirteen

Abolition of Slavery, Peonage, & Involuntary Servitude

Amendment Fourteen

Privileges & Duties of Citizens, Due

Process, Equal Protections of the Laws, Authorization for Legislation

Amendment Fifteen

Voting, Authorization for Legislation

Amendment Sixteen

Income Taxes

Amendment Seventeen

Direct Election of Senators

Amendment Eighteen

Prohibition

Amendment Nineteen

Woman Suffrage

Amendment Twenty

Lame-Duck

Amendment Twenty-One

Repeal of Prohibition

Amendment Twenty-Two

Limitations of Presidential Terms

Amendment Twenty-Three

D.C. Electoral Votes

Amendment Twenty-Four

Abolition of the Poll Tax in Federal Elections

Amendment Twenty-Five

Presidential Succession

Amendment Twenty-Six

Voting for 18 Year-Olds

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

103 DOC 491

INMATE GRIEVANCES

TABLE OF CONTENTS

4 1. 1	Purpose
4 1. 2	Authorization
4 1. 3	Cancellation
4 1. 4	Applicability
4 1. 5	Access to Policy
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4 1. 7	Policy Statement
4 1. 8	Informal Processing of Inmate Grievances
4 1. 9	Formal Processing of Inmate Grievances
4 1. 0	Duties and Responsibilities of the IGC
4 1. 1	Appeals to Institution Grievance Coordinator
4 1. 2	Settlements
4 1. 3	Inmate Transfers
4 1. 4	Grievance Withdrawals and IGC Resolutions
4 1. 5	Extension of Time Periods
4 1. 6	Exceptions
4 1. 7	Inmate Notification
4 1. 8	Responsible Staff
4 1. 9	Review Date
4 1. 0	Severability Clause
4 1. 1	Effective Date

491.01 Purpose

The purpose of this policy is to establish a Department Inmate Grievance procedure which will provide all inmates access to an administrative remedy for redress of legitimate complaints.

491.02 Authorization

This policy is issued pursuant to Massachusetts General Laws, Chapter 258, Section 1 (c), (i) and (q).

Sample Contents page, administrative regulation 103 DOC 491, courtesy of the Massachusetts Department of Correction. Used with permission.

PRIVILEGES

127 § 90A

to the restrictions and regulations of the commissioner, maintain schools of instruction for the prisoners at such times, except on Sunday, as he, with the approval of the commissioner, may determine, and for such purpose may expend, from the appropriation made for the

support of the prison, not more than two thousand dollars annually."

St.1957, c. 777, § 29, approved Sept. 24, 1957, in the first and second sentences, substituted "superintendent" for "principal officer".

Library References

Prisons 4-4(14),
WESTLAW Topic No. 310.

C.J.S. Prisons and Rights of Prisoners §§ 91
to 95, 114.

§ 90. Appropriations for religious instruction and services

The department or officers having charge of any prison or other place of confinement shall include as a separate item in their annual requests for appropriations such sums of money as they deem proper to carry out the two preceding sections and section forty of chapter one hundred and nineteen, relating to the religious instruction and free exercise of their religious beliefs by inmates of all the correctional institutions of the commonwealth. The amounts appropriated and spent for said purposes shall appear as a separate item in the reports of said department or officers.

Amended by St.1955, c. 770, § 53.

Historical and Statutory Notes

St.1912, c. 562.

St.1919, c. 350, § 82.

St.1955, c. 770, § 53, an emergency act, approved Sept. 12, 1955, and by § 123 made effective Oct. 20, 1955, in the first sentence, deleted "or public charitable or reformatory institution" following "confinement", inserted

"religious instruction and" and substituted "all the correctional institutions of the commonwealth" for "such institutions and to the religious instruction of inmates of the state prison".

§ 90A. Temporary release of committed offenders

The commissioner may extend the limits of the place of confinement of a committed offender at any state correctional facility by authorizing such committed offender under prescribed conditions to be away from such correctional facility but within the commonwealth for a specified period of time, not to exceed fourteen days during any twelve month period nor more than seven days at any one time; provided, however, that no committed offender who is serving a life sentence or a sentence in a state correctional facility for violation of section thirteen, thirteen B, fourteen, fifteen, fifteen A, fifteen B, sixteen, seventeen, eighteen, eighteen A, nineteen, twenty, twenty-one, twenty-two, twenty-two A, twenty-three, twenty-four, twenty-four B, twenty-five or section twenty-six of chapter two hundred and sixty-five, or section seventeen, thirty-four, thirty-five, or section thirty-five A of chapter two hundred and seventy-two, or for an attempt to commit any crime referred to in said sections shall be eligible for temporary release under the provisions of this section except on the recommendation of the superintendent on behalf of a particular committed offender and upon the approval of the

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Module ①/Handout 11

COM. v. BLINN
 Cite as 503 N.E.2d 25 (Mass. 1987)

Mass. 25

ed against that sentence, rather than against the waiting period established by the six-month law. Accordingly, we affirm the judgment of the Superior Court.

So ordered.



399 Mass. 126

112 COMMONWEALTH

v.

Brian P. BLINN.

Supreme Judicial Court of Massachusetts,
 Essex.

Argued Nov. 5, 1986.

Decided Jan. 22, 1987.

Defendant was convicted in the District Court, Salem Division, Joseph A. Furnari, J., of violating statute by refusing to produce motel register when requested to do so by state trooper. On grant of request for direct appellate review, the Supreme Judicial Court, Nolan, J., held that: (1) defendant had no reasonable expectation of privacy in motel's guest register; (2) request to view register did not have to meet standards applicable to administrative search; and (3) defendant was not protected from having to produce register by claim trooper was conducting criminal investigation under guise of administrative search.

Affirmed.

1. Criminal Law ⇐1030(2)

Defendant who did not claim at trial that statute he was convicted of violating, by refusing to produce motel register when requested to do so by state trooper, violated state constitutional law could not raise that claim for first time on appeal.

2. Searches and Seizures ⇐26

Fourth Amendment does not prohibit all searches per se, but does bar police intrusions into areas in which defendant has legitimate expectation of privacy in the particular circumstances. U.S.C.A. Const. Amend. 4.

3. Searches and Seizures ⇐26

Test for determining whether particular defendant has reasonable expectation of privacy for Fourth Amendment purposes is essentially objective one: whether expectation is one that society is prepared to recognize as reasonable. U.S.C.A. Const. Amend. 4.

4. Searches and Seizures ⇐26

Defendant had no reasonable expectation of privacy in motel's guest register entitling him to claim Fourth Amendment protection in prosecution in which he was found guilty of violating statute by refusing to produce motel register when requested to do so by state trooper; person enjoys lower expectation of privacy in business premises than in home, guest register was required to be kept by statute and defendant was thereby placed on notice that register was subject to police inspection, and defendant was not target of criminal investigation by state police. M.G.L.A. c. 140, § 27; U.S.C.A. Const. Amend. 4.

5. Searches and Seizures ⇐26

Fact that statute gives advance notice of warrantless inspections, though not determinative of whether Fourth Amendment protection applies, is factor to be considered in determining whether defendant's expectation of privacy is legitimate. U.S. C.A. Const. Amend. 4.

6. Innkeepers ⇐15

Claim that defendant could withhold register to protect privacy of his guests did not provide defense to prosecution for violating statute by refusing to produce motel register when requested to do so by state trooper; motel guests were presumed to be aware defendant was required by law to keep accurate register, because laws regarding register are required to be posted, and guests had no legitimate expectation

42 USCS § 1997e

CIVIL RIGHTS

- (c) Procedure for review and certification of systems for resolution of grievances of confined adults for determination of compliance with minimum standards; suspension or withdrawal of certification for non-compliance; development, etc. by Attorney General. (1) The Attorney General shall develop a procedure for the prompt review and certification of systems for the resolution of grievances of adults confined in any jail, prison, or other correctional facility, or pretrial detention facility, to determine if such systems, as voluntarily submitted by the various States and political subdivisions, are in substantial compliance with the minimum standards promulgated under subsection (b).
- (2) The Attorney General may suspend or withdraw the certification under paragraph (1) at any time that he has reasonable cause to believe that the grievance procedure is no longer in substantial compliance with the minimum standards promulgated under subsection (b).
- (d) Failure of State to adopt or adhere to administrative grievance procedure. The failure of a State to adopt or adhere to an administrative grievance procedure consistent with this section shall not constitute the basis for an action under section 3 or 5 of this Act [42 USCS §§ 1997a or 1997c].
- (May 23, 1980, P. L. 96-247, § 7, 94 Stat 352.)

GRAYSON v. EISENSTADT

Cite as 300 F.Supp. 979 (1969)

979

amendment rights in *Miranda*, is more pervasive. It is not linked solely to the protection of fifth amendment rights but applies in every "critical" stage of the proceedings. *United States v. Wade*, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967). Certainly a request to produce evidence that is central to the prosecution's case is a critical stage of the proceedings against the accused. The presence of counsel is an effective check on the unknowing relinquishment of fourth amendment rights just as it is an effective check on the unknowing waiver of fifth amendment rights. Therefore, production of evidence by an accused without the assistance of counsel or without waiver of counsel where, as in *Miranda*, the defendant is under arrest, cannot be considered a knowing and intelligent act.

Accordingly, because of the failure of the arresting officers in this case to inform the defendant of his right to counsel prior to requesting the revolver and the absence of any mitigating circumstances, the motion to suppress must be granted.



Glen GRAYSON, by his next friend, John Grayson, Plaintiff,

v.

Samuel EISENSTADT, Elwood S. McKenney, Charles L. Taylor, and Philip A. Tracy, Justices of the Roxbury District Court; Kessler Montgomery, Clerk of the Roxbury District Court; and Julius Goldstein, Assistant Clerk of the Roxbury District Court, Defendants.

Civ. A. No. 68-1098.

United States District Court
D. Massachusetts.
June 17, 1969.

Action by state probationer for declaration that certain alleged actions by

officers of state court unconstitutionally coerced him into withdrawing his appeals to higher state court. The District Court, Julian, J., held that status of probationer who sought declaration under Civil Rights Act of 1871 was in fact that of a state prisoner seeking to challenge legality of his custody by resort to the federal courts and action could not be maintained in absence of exhaustion of state remedies.

Complaint dismissed.

1. Habeas Corpus — 45.3(1)

State probationer, who sought declaration under Civil Rights Act of 1871 that certain alleged actions by officers of state court unconstitutionally coerced him into withdrawing his appeals to court wherein he could obtain jury trial, was in fact that of a state prisoner seeking to challenge legality of his custody by resort to the federal habeas corpus and action could not be maintained in absence of exhaustion of state remedies. 28 U.S.C.A. §§ 1343(3), 2201; 42 U.S.C.A. § 1983; U.S.C.A. Const. Amendments. 5, 6, 8, 14; M.G.L.A. c. 278 § 2.

2. Habeas Corpus — 3, 45.3(1)

Neither Civil Rights Act of 1871 nor Federal Declaratory Judgment Act may be used as substitute for habeas corpus so as to circumvent requirement that state defendant exhaust state remedies. 28 U.S.C.A. §§ 2201, 2254, 2255; 42 U.S.C.A. § 1983.

OPINION

Michael L. Altman, Boston, Mass., for plaintiff.

Office of Atty. Gen., Bruce G. McNeill, Asst. Atty. Gen., Boston, Mass., for defendant.

JULIAN, District Judge.

This is a civil action in which plaintiff, having been convicted in the Municipal Court of the Roxbury District of three criminal offenses, seeks a declaratory judgment, 28 U.S.C. § 2201, that certain alleged actions by officers of

INMATE GRIEVANCE FORM

NAME Robert M INSTITUTION _____
NUMBER _____ HOUSING J-5 DATE OF INCIDENT _____
COMPLAINT * No toilet paper. Been asking for toilet paper for 3 days
REMEDY REQUESTED: toilet paper

SIGNATURE Robert M STAFF RECIPIENT _____

*USE REVERSE SIDE IF NECESSARY

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

DATE RECEIVED 5/3 SIGNATURE _____
DATE RECEIVED _____ SUPERVISOR'S DECISION Complaint
REASONS: see attached

SIGNATURE _____

DATE 5.3

INMATE GRIEVANCE RECEIPT

INMATE'S NAME _____ INSTITUTION _____
NUMBER _____ DATE REC'D _____
SIGNATURE _____ TITLE _____

Sample

Dear Mr. M:

This is in response to the grievance you filed regarding receiving toilet paper.

Please be advised that the Departmental Grievance Policy requires an inmate to attempt to resolve a complaint by informal means before he/ she may file a formal grievance. If you are having a problem with your housing unit you should direct your concern to the office of the Director of Security. He is responsible for overseeing the operation of this area.

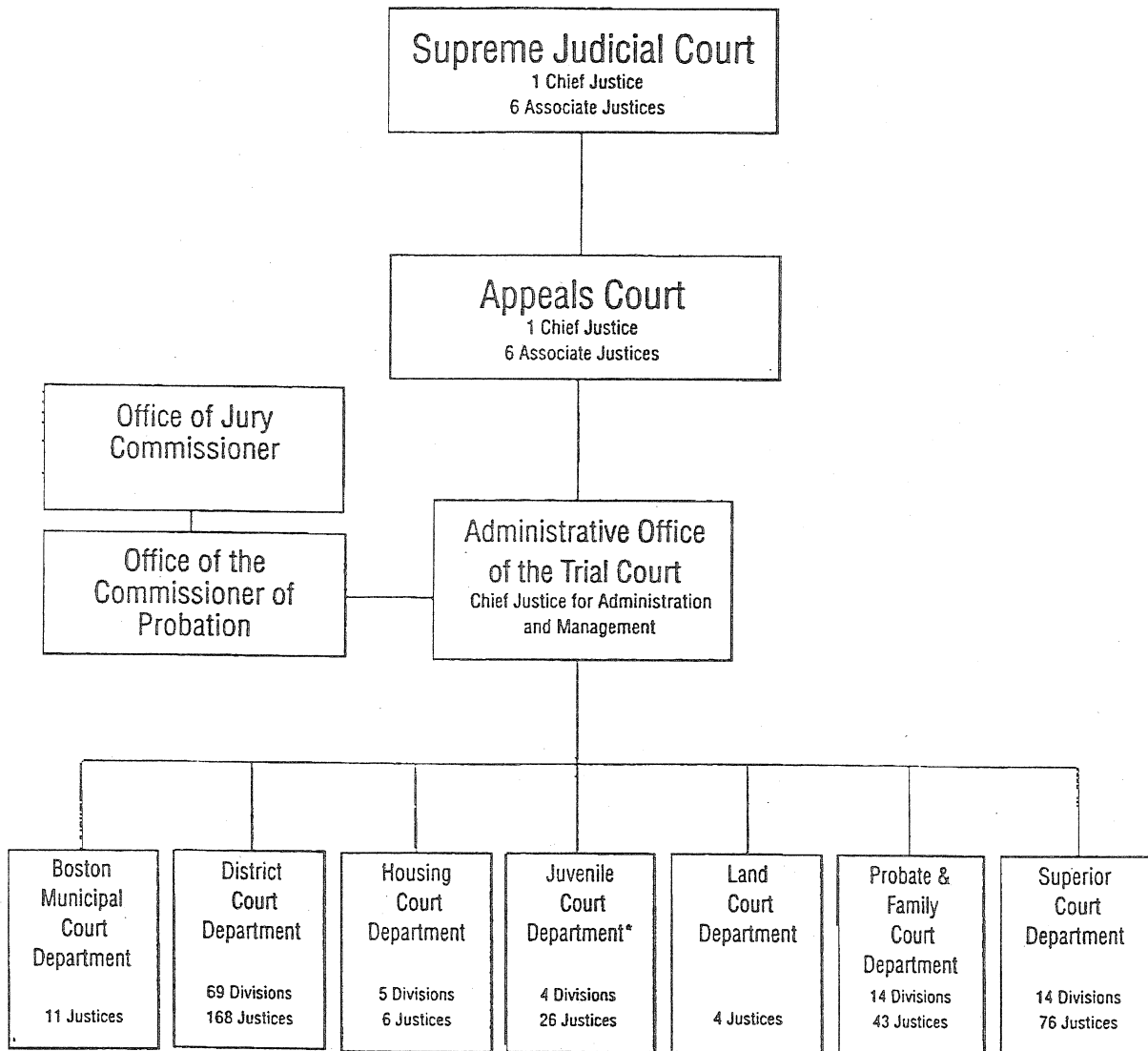
If you receive a response from his office that you feel is unsatisfactory then you may file a formal complaint via the grievance process.

I hope you will find this of assistance.

Sincerely,

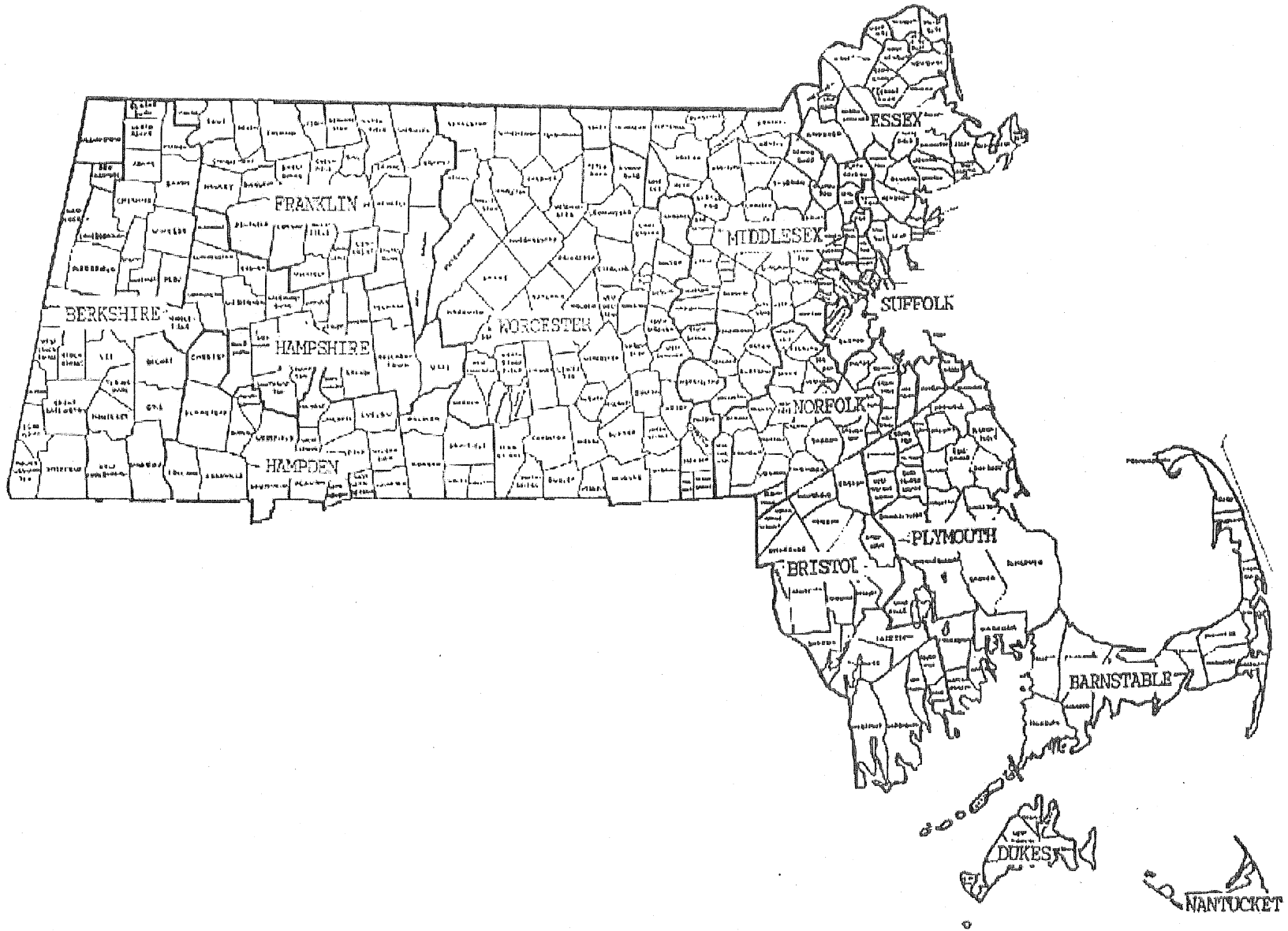
Response

The Massachusetts Court System

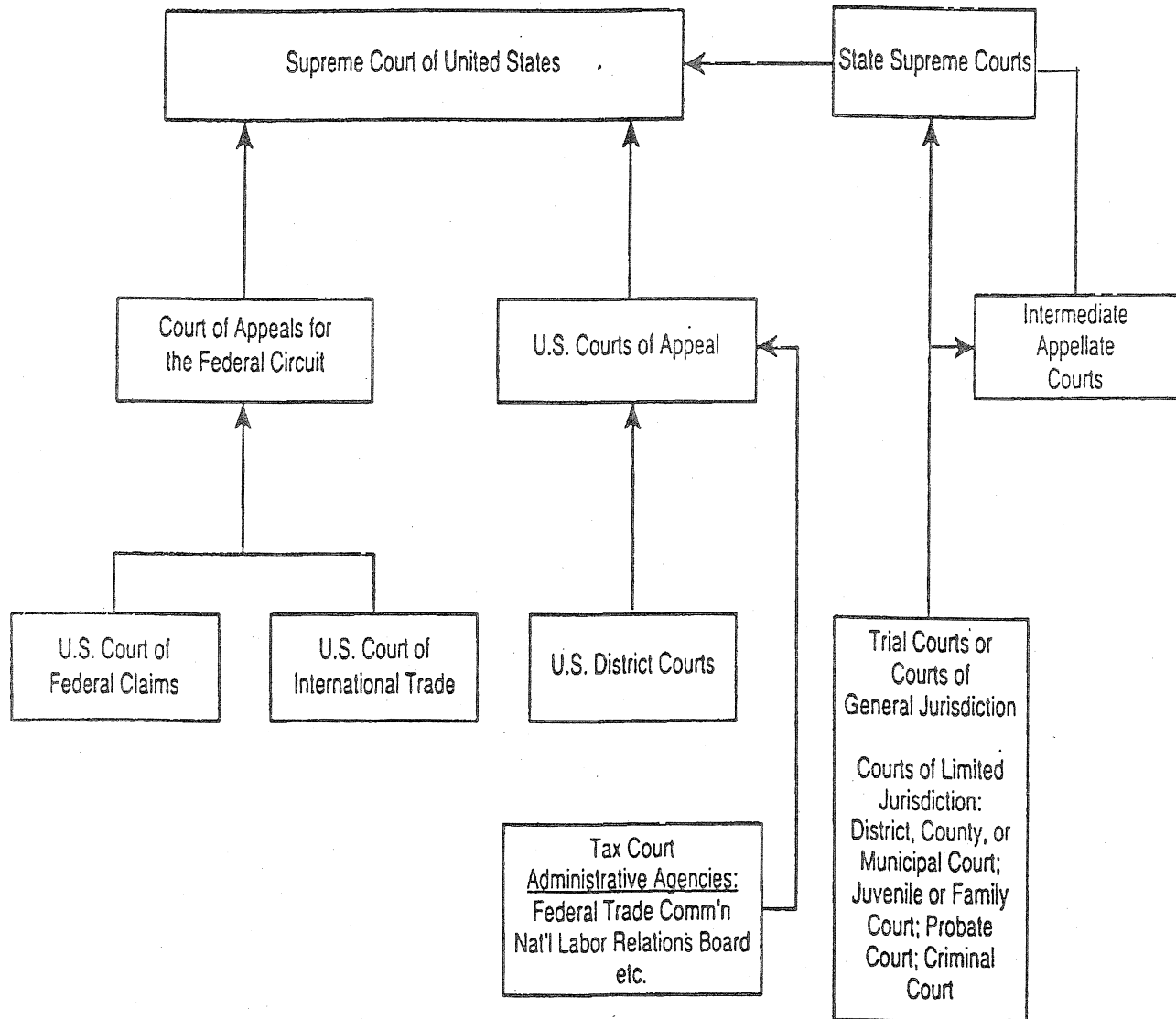


Note: The number of Justices in each Trial Court department is the maximum number authorized by statute. The actual number of judges varies depending on judicial vacancies.

* According to St. 1992, Ch. 379, the court reform legislation, the Juvenile Court will be expanding statewide in phases and will have a total of 33 justices in counties throughout the state.



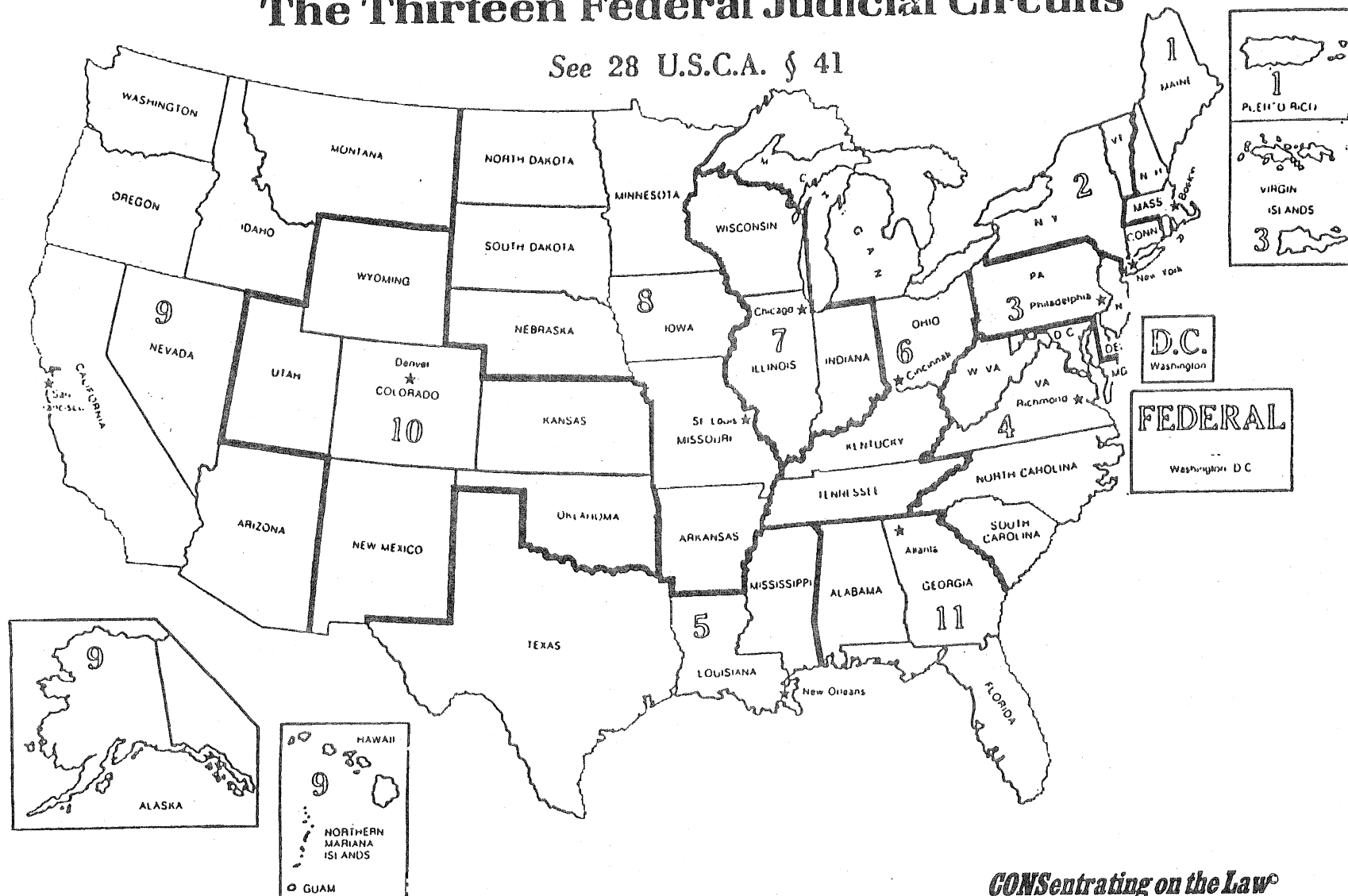
BASIC STRUCTURE OF UNITED STATES COURT SYSTEM



Extracted from Want's Federal-State Court Directory, 1995.
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The Thirteen Federal Judicial Circuits

See 28 U.S.C.A. § 41



Matching Sources to Court Hierarchy

ADMINISTRATIVE REGS

ALL FEDERAL COURTS

- ▼ (C)ode of (F)ederal (R)egulations

ALL STATE COURTS

- ▼ (C)ode of (M)ass. (R)egulations

CONSTITUTIONS (CONT'D)

STATE

- ▼ State statute set
- ▼ Secretary of State's office (booklet)

CASE LAW

FEDERAL

United States Supreme Court

- ▼ Supreme Court Reporter(S.Ct.)
- ▼ Lawyer's Edition (L.Ed.)
- ▼ U.S. Supreme Court Reports(U.S.)

U.S. Circuit Court of Appeals

- ▼ Federal Reporter(F.)
- ▼ Federal Reporter, 2nd Series(F2d)
- ▼ Federal Reporter, 3rd Series(F3d)

U.S. District Court

- ▼ Federal Supplement (FSupp)
- ▼ Federal Supplement, 2d Series (FSupp 2d)

STATE

Supreme Judicial Court of MA

- ▼ MA Reports (Mass.)
- ▼ MA Decisions (N.E.2d)

Appeals Court of Massachusetts

- ▼ MA Appeals Court Reports (Mass. App.)
- ▼ MA Decisions (N.E.2d)

Superior Courts of MA

- ▼ (M)A (L)aw (R)eporter

COURT RULES

FEDERAL

U.S. Supreme Court

- ▼ Supreme Court Practice
- ▼ Federal Criminal Code/Rules
- ▼ Fed. Civ. Judicial Proc. & Rules

U.S. Circuit Court of Appeals

- ▼ Federal Criminal Code & Rules
- ▼ Federal Civil Judicial Procedure & Rules

U.S. District Courts

- ▼ Same as #2 above
- ▼ Federal statute set (e.g., USCA; USCS)

STATE

- ▼ State statute set
- ▼ West's annual paper rules service (e.g., MA Rules of Court, State & Federal)

CONSTITUTIONS

FEDERAL

- ▼ Federal/State statute sets
- ▼ Unabridged English dictionary
- ▼ Black's Law Dictionary
- ▼ Encyclopedia

STATUTES

FEDERAL

- ▼ United States Code Annotated (U.S.C.A.)
- ▼ United States Code Service (U.S.C.S.)
- ▼ United States Code (U.S.C.)

STATE

- ▼ MA General Laws Annotated
- ▼ Annotated Laws of MA
- ▼ Acts and Resolves of MA

The **2 Most Important Questions** **In Legal Research**

*“Do I have a legitimate
legal problem?”*

and

*“IF I DO,
how do I present the problem
in legal terms?”*



Understanding Research Jargon

Jargon is any highly technical or specialized words or phrases used by a profession or group. As you've discovered by now, the legal profession is amuck with technical terms and Latin phrases that nobody else on the planet knows about except the legal profession. Unfortunately for researchers, this gobbledygook spills over into our legal research technique and can't be ignored!

Indexes, legal dictionaries, and other material use jargon that may be quite confusing if you're not used to it. Here are some definitions of the more commonly used research terms:

- ▼ **Generally, this index** When an index term is followed by the phrase "Generally, this index," the indexers are telling you that they've used your term as a main entry in its alphabetical place in the index. For example, if under the index heading "Prisons & Prisoners" you find the subheading "Correctional Institutions" followed by "Generally, this index," they're telling you to go to the "C" portion of your index and look up the index heading "Correctional Institutions." Simple.
- ▼ **See** This means that the information you are seeking will be found directly under the term they've printed which follows the word "See," and not under the term you're currently using.
- ▼ **See Also** The terms following the words "See Also" may give you related subjects or terms to go to.
- ▼ **Infra** Another dad-blamed Latin term! It means "below." When you see "infra," they're telling you that your word can be found under the term you're using, but further down the page alphabetically. (Some indexes use the term post to mean the same thing).
- ▼ **Supra** Godfrey Daniels! More Latin!? Supra means "above," & it's the opposite of "infra." When you see "supra," they're telling you that your word is found under the same index heading, just further up the page alphabetically. (Some indexes use ante; same thing).

"I was a law library junkie!"

"How many Primary Sources do I need?"

Since time immemorial, Mankind has sought the solution to this quirky question. We now know the answer! The answer is.....

It Depends!

There is one thing you can do—Give yourself the "Junkie Test."

As a general rule:

*If you've found more Primaries for each of your issues than what's recommended below,
your arguments COULD O.D. on Way Too Much Junk....*

<i>Controlling Statute for each issue (if applicable!)</i>	<i>1</i>
<i>Local OR Multi-jurisdictional Case for each issue (If applicable!)</i>	<i>1</i>
<i>Administrative Regulation for each issue (if applicable!)</i>	<i>1</i>
<i>Article or Amendment of U.S. OR State Constitutions (if applicable!)</i>	<i>1</i>

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Module 4/Handout 24



The Cartwheel method has 9 steps to help you get the best use from indexes or digests. If you exercise patience with this method, you virtually guarantee yourself that you'll eventually come up with the correct index terms.

- 1 Identify all the major words from the facts of the research problem that you've already written down on a sheet of paper. Place each of these **Keywords** one at a time in the center of the Cartwheel. Now, look up these words.
- 2 Identify the **Broader Words** associated with these keywords & write 'em down on the Cartwheel. Look up these words.
- 3 I.D. the **Narrower Words** associated with your keywords; write 'em down; Look 'em up.
- 4 I.D. the **Synonyms** for your Keywords; write 'em down; look 'em up.
- 5 I.D. the **Antonyms** for your Keywords; write 'em down; look 'em up.
- 6 I.D. the **Closely Related Words**; write 'em down; look 'em up.
- 7 I.D. the **Procedural Terms**; write 'em down; look 'em up.
- 8 I.D. the **Agencies** associated with your Keywords; write 'em down; look 'em up.
- 9 I.D. the **Long Shots** for your Keywords; write 'em down; look 'em up.

Remember!!!

Don't fill in the whole Cartwheel if you don't need to!

The point of the Cartwheel is not to see if you can fill in all the spokes with index terms!

950 Acts, 1977. — Chaps. 776, 777, 778.

Chap. 776. AN ACT RELATIVE TO LUMP SUM PAYMENTS UNDER THE WORKMEN'S COMPENSATION LAW.

Be it enacted, etc., as follows:

SECTION 1. Section 48 of chapter 152 of the General Laws, as amended by section 6 of chapter 314 of the acts of 1953, is hereby further amended by adding the following paragraph:-

Whenever a lump sum agreement or payment has been approved by the division in accordance with the terms of this section, such agreement or payment shall affect only the insurer and employee who are parties to such lump sum agreement and shall not affect any other action or proceeding arising out of a separate and distinct injury resulting in an incapacity whether said injury precedes or arises subsequent to the date of settlement.

SECTION 2. This act shall apply to injuries arising on and after its effective date.

Approved November 29, 1977.

EMERGENCY LETTER January 3, 1978 @ 9:28 A.M.

Chap. 777. AN ACT FURTHER REGULATING THE ADMISSIBILITY OF CERTAIN MEDICAL REPORTS IN WORKMEN'S COMPENSATION CASES.

Be it enacted, etc., as follows:

Chapter 152 of the General Laws is hereby amended by striking out section 20B, inserted by chapter 598 of the acts of 1974, and inserting in place thereof the following section:-

Section 20B. In proceedings before the industrial accident board, the medical report of an incapacitated, disabled or deceased physician who attended or examined the employee, including expressions of medical opinion, shall, at the discretion of the member, be admissible as evidence if the member finds that such medical report was made as the result of such physician's attendance or examination of the employee.

Approved November 29, 1977.

Chap. 778. AN ACT CREATING THE ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION OF LYNN.

Be it enacted, etc., as follows:

SECTION 1. Definitions. In this act, unless a contrary intention clearly appears, the following words shall have the following

St. 1977

Ch. 776

§1

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Legislative Session

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Chapter

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Section

PRIVILEGES

127 § 90A

to the restrictions and regulations of the commissioner, maintain schools of instruction for the prisoners at such times, except on Sunday, as he, with the approval of the commissioner, may determine, and for such purpose may expend, from the appropriation made for the

support of the prison, not more than two thousand dollars annually."

St.1957, c. 777, § 29, approved Sept. 24, 1957, in the first and second sentences, substituted "superintendent" for "principal officer".

Library References

Prisons ⇐4(14).
WESTLAW Topic No. 310.

C.J.S. Prisons and Rights of Prisoners §§ 91 to 95, 114.

§ 90. Appropriations for religious instruction and services

The department or officers having charge of any prison or other place of confinement shall include as a separate item in their annual requests for appropriations such sums of money as they deem proper to carry out the two preceding sections and section forty of chapter one hundred and nineteen, relating to the religious instruction and free exercise of their religious beliefs by inmates of all the correctional institutions of the commonwealth. The amounts appropriated and spent for said purposes shall appear as a separate item in the reports of said department or officers.

Amended by St.1955, c. 770, § 53.

Historical and Statutory Notes

St.1912, c. 562.
St.1919, c. 350, § 82.

St.1955, c. 770, § 53, an emergency act, approved Sept. 12, 1955, and by § 123 made effective Oct. 20, 1955, in the first sentence, deleted "or public charitable or reformatory institution" following "confinement", inserted

"religious instruction and" and substituted "all the correctional institutions of the commonwealth" for "such institutions and to the religious instruction of inmates of the state prison".

§ 90A. Temporary release of committed offenders

The commissioner may extend the limits of the place of confinement of a committed offender at any state correctional facility by authorizing such committed offender under prescribed conditions to be away from such correctional facility but within the commonwealth for a specified period of time, not to exceed fourteen days during any twelve month period nor more than seven days at any one time; provided, however, that no committed offender who is serving a life sentence or a sentence in a state correctional facility for violation of section thirteen, thirteen B, fourteen, fifteen, fifteen A, fifteen B, sixteen, seventeen, eighteen, eighteen A, nineteen, twenty, twenty-one, twenty-two, twenty-two A, twenty-three, twenty-four, twenty-four B, twenty-five or section twenty-six of chapter two hundred and sixty-five, or section seventeen, thirty-four, thirty-five, or section thirty-five A of chapter two hundred and seventy-two, or for an attempt to commit any crime referred to in said sections shall be eligible for temporary release under the provisions of this section except on the recommendation of the superintendent on behalf of a particular committed offender and upon the approval of the

M.G.L.

Ch. 127 § 90

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Chapter Abbreviation

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Section

**THE CODE OF THE LAWS
OF THE
UNITED STATES OF AMERICA
TITLE 42 — THE PUBLIC HEALTH AND WELFARE**

CHAPTER 21. CIVIL RIGHTS

Section

[§§1981 & 1982 appear in the preceding volume]
1983. Civil action for deprivation of rights

[§§ 1984–2000h-6 appear in succeeding volumes]

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R. S. § 1979; Dec. 29, 1979, P. L. 96-170, § 1, 93 Stat. 1284.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 42 U.S.C. § 43.

R.S. § 1979 was derived from Act Apr. 20, 1871, ch 22, § 1, 17 Stat. 13.

42

U.S.C.

§1983



Title



Set Abbreviation



Section

Finding Statutes

“Topical Approach”

The topical approach to finding statutes is helpful when all you know is the subject matter of the statute you need (e.g., searches, murder, sentencing, etc.) This technique will also be useful when learning to use Digests.

1

Frame the question using Keywords

2

Use statute Index Headings/Subheadings

3

Locate statute by Chapter/Section; read!

4

Using “Notes of Decisions,” choose case on point

5

Read page of case where your statute is mentioned



How to Brief a Case

1. PARTIES

This is all the information at the exact beginning of a case, including: names of the people involved; jurisdiction; the date it was argued; and the date it was decided.

2. SYNOPSIS

An unofficial summary of the case, written by an editor of the publishing company. Tells you if one of more of your issues is discussed in the case. Do **NOT** cite!

3. HEADNOTE

Short, numbered paragraphs immediately following the synopsis including Digest Topics and Key Numbers. Bold-faced phrase is the Digest Topic. The key symbol followed by a number is called the

CITY OF GARDNER v. BISBEE
Cite as 619 N.E.2d 403 (Mass.App.Ct. 1993)
Mass. 603
judgment is to enter for Prime dismissing
Sylvester's counterclaim.
So ordered.



34 Mass.App.Ct. 721
CITY OF GARDNER & another
v.
Sandra M. BISBEE & another.
No. 92-P-323.
Appeals Court of Massachusetts,
Worcester.
Argued May 3, 1993.
Decided July 7, 1993.

Police sergeant brought proceeding before Civil Service Commission, seeking restoration to previous position of director of operations of municipal police department. Commission ordered reinstatement and city and its Commissioner of Public Safety brought action in nature of certiorari seeking review. The Superior Court, Worcester County, John P. Forte, J., upheld Commission's decision. Further appeal was taken. The Appeals Court, Brown, J., held that evidence supported the conclusion that demotion had not been for cause.
Affirmed.

1. Officers and Public Employees ¶72-50, 71, 53(2)
On action in nature of certiorari, to review decision of Civil Service Commission, issue before Appeals Court is whether Commission's decision is legally tenable and supported by substantial evidence on record as a whole.

1. Commissioner of public safety of the city of Gardner.

2. Officers and Public Employees ¶69.7
In attempting to show just cause for demotion of tenured civil service employee, appointing authority may rely only on reasons for demotion given to employee in writing. M.G.L.A. c. 31, § 41.

1. Municipal Corporations ¶180(3)
City mayor was precluded from claiming that he had in effect demoted director of operations of police department by declining to fund position, on grounds that director performed same duties as captain and that city's goal should be to put more officers on street rather than in office; mayor was restricted to reason given in letter of notification to director, lack of funding. M.G.L.A. c. 31, § 41.

1. Municipal Corporations ¶180(3)
Evidence supported return of police sergeant to her previous position of director of operations, despite attempt of mayor to withhold funding for position on grounds of lack of money; there was no evidence that municipality had money problem, mayor lacked authority to designate which positions would be eliminated for financial reasons, and mayor had taken active steps to terminate arrangement under which eliminated position had previously been funded.

C. Deborah Phillips, City Sol., for plaintiff.
Peter Sacka, Asst. Atty. Gen., for Civil Service Com'n.
Edward R. Lamba, Holliston, for Sandra M. Bisbee.

Before BROWN, KASS and LAURENCE, JJ.

BROWN, Judge.
This is an appeal from a judgment of the Superior Court upholding a decision of the Civil Service Commission (commission) ordering the commissioner of public safety and supported by substantial evidence on record as a whole.

2. Civil Service Commission.

4. KEY NUMBER

This is a key symbol followed by a number. A Key Number is assigned to a specific legal issue corresponding to the Digest Topic it accompanies. Key Numbers & Digests Topics work together to help you trace an issue from one West publication to another, and from one jurisdiction to another.

5. ATTORNEYS

This information follows immediately after the headnotes, and lists the attorneys for both plaintiff & defendant.

6. DECIDING JUSTICES

Lists the names of the judges who heard the case and decided on it.

7. AUTHOR OF OPINION

Gives the name of the judge who wrote the opinion for the majority.

8. FACTUAL HISTORY

This information immediately follows the "Author" section. The judge writing the opinion tells you the relevant facts of the case which were considered when making a decision.

8. FACTUAL HISTORY (continued)

604 Mass. 615 NORTH EASTERN REPORTER, 2d SERIES

director of operations of the Gardner police department. Sergeant Bisbee is a tenured civil service employee. In July, 1988, she was promoted by the commissioner, over the mayor's veto and with the approval of the city council, to the position of director of operations. On several occasions prior to her appointment, the mayor voiced his objections to the creation of the position and refused to fund it. Subsequent to Bisbee's elevation to director, the mayor entered into a collective bargaining agreement which guaranteed six sergeant positions and prohibited the use of any money from the sergeants' budgeted appropriation to fund other positions. Because Bisbee's salary as a director previously had been paid from the sergeants' budget, the commissioner reluctantly notified Bisbee that "because Mayor John Deveau ... failed to provide the necessary funding for the position and ... signed agreements with the Superior Officers Union which restrict[ed] [his] ability to transfer funds within the Personnel Services Accounts," she was being demoted to her former rank—sergeant.

[1] After a hearing, an administrative magistrate recommended that Bisbee be returned to her position as director of operations. The commission adopted the findings and recommendation of the magistrate. The city and the commissioner brought an action to the nature of certiorari pursuant to G.L. c. 219, § 4, for review of the commission's decision. A judge of the Superior Court upheld the decision of the commission. The issue before this court is whether the commission's decision is "legally tenable and supported by substantial evidence on the record as a whole." *Commissioner of Health & Hosps. of Boston v. Civil Serv. Commn.*, 23 Mass.App. Ct. 410, 411, 502 N.E.2d 956 (1987). See *Buntz v. Mayor of Boston*, 361 Mass. 71, 74, 278 N.E.2d 709 (1972).

3. At the time that Sergeant Bisbee was promoted to director of operations, there was also a director of administration in the police department.

4. Of course, the mayor's task of balancing competing demands for city funds based upon the

[2] A tenured civil service employee cannot be demoted except for "just cause." G.L. c. 31, § 41, as appearing in St.1978, c. 393, § 11. In attempting to show just cause, the appointing authority may only rely on the reasons for demotion that it gave to the employee in writing, in this case, lack of funding. *Gloucester v. Civil Serv. Commn.*, 408 Mass. 292, 297, 557 N.E.2d 1141 (1990). "Lack of money can constitute just cause." *Id.* at 298, 557 N.E.2d 1141, citing *Debnam v. Belmont*, 388 Mass. 632, 634, 447 N.E.2d 1237 (1983).

[3] The mayor testified that he refused to fund the director of operations position, for three reasons: (1) the city was unable to afford two director positions in the police department²; (2) he believed that the director performed the same duties as the captain; and (3) he believed that the city's goal should be to put more officers on the street rather than in the office. However, the only reason given to Sergeant Bisbee for her demotion was lack of funding. Based upon the testimony presented, the administrative magistrate who presided over the hearing concluded that the mayor's actions "did not result in a savings of police department funds, his actions with regard to Ms. Bisbee's position were not undertaken for a justifiable reason, and he did not act in good faith."

[4] Other than the mayor's task of balancing competing demands for city funds, the record is devoid of any evidence that the city was experiencing a shortfall or revenue which might justify the need for a reduction of police department personnel.⁴ In fact, the evidence showed that Bisbee's promotion to director of operations actually saved police department funds because her salary as a director was less than her salary as a sergeant.⁵ (The sergeant's position that she vacated was not filled.) Even if such a fiscal crisis had existed, by ordinance only the commissioner is vested with

city's policy objectives may alone be sufficient to justify his refusal to fund the position of director of operations if there is no bad faith. See *Whelan v. Holyoke*, 13 Mass.App.Ct. 446, 434, 434 N.E.2d 650 (1982).

9. ISSUES

Issues are the points of law discussed in a case, found in the numbered paragraphs immediately following the Factual History. The number corresponds to a numbered headnote at the beginning of the case.

12. DICTUM

Dictum can be thought of as "If/Then" statements. They are hypothetical examples in the opinion which help the reader understand why the judges used the reasoning that they did. Do **NOT** cite

10. HOLDINGS

A holding tells you what the judges decided for a particular point of law on appeal. Holdings can be found in each of the numbered paragraphs. For each issue, there *must* be a holding!

11. DOCTRINE

Doctrine is any primary source a judge uses to support his reasoning when making a holding for each issue on appeal. You must be able to separate doctrine from the rest of the information in a case so you can use these primary sources of law to support your own legal argument.

CITY OF GARDNER v. BISBEE

Cite as 615 N.E.2d 605 (Mass.App.Ct. 1993)

Mass. 605

the authority to appoint and remove personnel within the department of public safety of Gardner.¹ Although the mayor

may limit budget appropriations to an amount sufficient to pay only a certain number of employees, he is not authorized to determine which employee is to be demoted or dismissed.² See *Sherriff v. Mayor of Revere*, 355 Mass. 133, 137, 243 N.E.2d 186 (1969); *Whalen v. Holyoke*, 13 Mass. App.Ct. 448, 454, 434 N.E.2d 650 (1982).

Here the mayor did more than limit budget appropriations. After his initial refusal to fund the position was overridden by vote of the city council, he undermined the efforts of the council and the commissioner to reestablish the position by entering into the supplemental agreement with the union which locked in the salaries for six sergeants. Those actions eliminated the source from which Bisbee's position had been and would likely have been funded in the future. That the mayor failed to consult with the commissioner regarding the terms of the supplemental agreement with the union is further evidence that the mayor's actions were aimed at ensuring Bisbee's termination as director of operations. It was improper for the mayor to attempt to usurp the appointing authority of the commissioner indirectly through his budget

appropriations recommendations or the terms of collective bargaining agreements.³ Finally, the evidence in the record does not support the mayor's claim that the director of operations merely duplicated the duties of the captain. Bisbee was solely responsible for the detectives, the drug task force, and the direct administration of officer discipline. Furthermore, the commissioner testified that after Bisbee's demotion, her duties as director needed to be performed and were divided between the director of administration, the captain, and the commissioner.

appropriations recommendations or the terms of collective bargaining agreements.³

Finally, the evidence in the record does not support the mayor's claim that the director of operations merely duplicated the duties of the captain. Bisbee was solely responsible for the detectives, the drug task force, and the direct administration of officer discipline. Furthermore, the commissioner testified that after Bisbee's demotion, her duties as director needed to be performed and were divided between the director of administration, the captain, and the commissioner.

The commission's decision ordering that Bisbee be restored to her position as director of operations was supported by substantial evidence on the record, as there was ample evidence before the administrative magistrate to support her findings which, in turn, justified her conclusion.

Judgment affirmed.



1. The Commissioner shall appoint on merit and fitness alone and have the power to remove all personnel of said departments ... subject to prevailing General Laws and ordinances. Section 1(4) of the Gardner Ordinance Creating a Department of Public Safety for the City of Gardner, as amended, November 13, 1987.

2. The director of operations position was originally created by a 1986 city ordinance. However, that ordinance was later amended in 1989 to require only the director of administration position and any subordinate positions that the

commissioner and the city council deemed necessary. In accordance with the amended ordinance, the commissioner later petitioned the city council to reestablish the second director position.

3. We have held that civil service laws cannot be ignored in favor of collective bargaining agreements. *Fall River v. Teamsters Union, Local 574*, 27 Mass.App.Ct. 649, 651, 541 N.E.2d 1015 (1989).

13. FOOTNOTES

These are sentences, paragraphs, or a series of paragraphs printed in smaller type & placed at the bottom or "foot" of the page. Footnotes tell you more about particular points made in the opinion. A superscripted number in the main text tells you to look at the "foot" of that page for information assigned to that corresponding number. You may cite footnotes.

14. DISPOSITION

The disposition is the overall decision the judges made on the case. The disposition tells you if the judges found for or against the defendant. It is the last section of information you find in every case.

Case Briefing Terms

- 1 Paries** Information at the exact beginning of a case, including: names of the people involved; jurisdiction; the date it was argued; and the date it was decided.
- 2 Synopsis** An unofficial summary of the case, written by an editor of the publishing company.
- 3 Headnote** Short numbered paragraphs following synopsis; includes Digest Topics & Key Numbers.
- 4 Key Number** This is a key symbol followed by a decimal number. A Key Number is assigned to a specific area of law corresponding to the Digest Topic it accompanies, and help trace an issue from one West publication to another, and from one jurisdiction to another.
- 5 Attorneys** Follows after the Headnotes; lists the attorneys for both plaintiff and defendant.
- 6 Deciding Justices** Lists the names of the judges who heard argument & decided on the case.
- 7 Author of Opinion** Gives the name of the judge who wrote the opinion for the majority.
- 8 Factual History** Follows the Author section. Provides relevant facts considered when making the decision.
- 9 Issue** Issues are the points of law discussed in the case, located in the numbered paragraphs immediately following the Facts. The number corresponds to a numbered headnote at the beginning of a case.
- 10 Holding** Holdings tell you what Appeals judges decided for a particular issue. Holdings can be found in each of the numbered paragraphs of the opinion.
- 11 Doctrine** Doctrine is any primary source an author of an opinion uses to support his reasoning when making a holding for any issue of the case. These are the Administrative regulations, cases, constitutional articles or amendments, and statutes cited as a legal basis for the decision.
- 12 Dicta** Dicta can be thought of as "If/Then" statements. They are hypothetical examples in the opinion which help to distinguish the reasoning of the court in this opinion from reasoning in other opinions with similar Facts and Issues. Not present in ALL case law opinions.
- 13 Footnote** This is a sentence, paragraph, or a series of paragraphs printed in much smaller type & placed at the bottom or "foot" of the page. Footnotes tell you more about particular points made in the opinion. A superscript number in the main text signals you to look at the "foot" of that page for information assigned to that corresponding number. Footnotes are considered an official part of the opinion—so you to cite the information they contain.
- 14 Disposition** The last sentence or small paragraph of information found in every case. The disposition tells you for whom the judges decided in favor—the party bringing suit, or the defendants.

Case Briefing Terms

- 1 Parties** *Information at the exact beginning of a case, including: names of the people involved; jurisdiction; the date it was argued; and the date it was decided.*
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- 6 Deciding Justices** *Lists the names of the judges who heard argument & decided on the case.*
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- 13 Footnote** *This is a sentence, paragraph, or a series of paragraphs printed in much smaller type & placed at the bottom or "foot" of the page. Footnotes tell you more about particular points made in the opinion. A superscript number in the main text signals you to look at the "foot" of that page for information assigned to that corresponding number. Footnotes are considered an official part of the opinion—so you to cite the information they contain.*
- 14 Disposition** *The last sentence or small paragraph of information found in every case. The disposition*

Key Number Digests

Topical Approach

Partnership	Registers of Deeds	Supersedeas
Party Walls	Release	Taxation
Patents	Religious Societies	Telecommunications
Papers	Reminders	Tenancy in Common
Payment	Removal of Cases	Tender
Penalties	Replevin	Territories
Pensions	Reports	Theaters and Shows
Perjury	Rescue	Time
Perpetuities	Reversions	Torts
Physicians and Surgeons	Review	Towage
Pilots	Rewards	Towns
Piracy	Riot	Trade Regulation
Pleading	Robbery	Treason
Pledges	Sales	Treaties
Poisons	Salvage	Trespass
Possessory Warrant	Schools	Trespass to Try Title
Post Office	Seire Facias	Trial
Power	Seals	Trover and Conversion
Pretrial Procedure	Seamen	Trusts
Principal and Agent	Searches and Seizures	Tumpikes and Toll Roads
Principal and Surety	Secured Transactions	Undertakings
Prisons	Securities Regulation	United States
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Price Fixing	Sequestration	United States Marshals
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Public Utilities	Specific Performance	Warehousemen
Quieting Title	Spendthrifts	Waste
Quo Warranto	States	Waters and Water Courses
Railroads	Statute	Weapons
Rape	Stream	Weights and Measures
Real Actions	Stipulations	Wharves
Receivers	Submission of Controversy	Wills
Receiving Stolen Goods	Subrogation	Witnesses
Recognizances	Subscriptions	Woods and Forests
Records	Suicide	Workers' Compensation
Reference	Sunday	Zoning and Planning
Reformation of Instruments		

①...Carefully choose the right Digest Topic for your issue!

WEST'S
MASSACHUSETTS
DIGEST 2d

Volume 19

PAUPERS — RECORDS



②... Make
sure
you're in
the right
volume!



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③... Turn to the page
where your
Digest Topic begins!



PRISONS

SUBJECTS INCLUDED

Public buildings for confinement of persons held in judicial custody, in either civil or criminal proceedings, and either to secure their production as parties or witnesses in further proceedings, or as punishment by imprisonment, with or without hard labor, whether such buildings be designated as prisons or as jails, penitentiaries, houses of correction, or otherwise

Establishment, maintenance, regulation, and management of such places

Rights, powers, duties and liabilities of wardens, jailers, keepers, and other officers

Custody, care, and maintenance of prisoners in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arrest and discharge from arrest, jail limits, prison bounds, poor debtors, etc., see **ARREST, BAIL, EXECUTION**

Convicts, regulation of and their labor, see **CONVICTS**

Jail breaking, prison breach, etc., see **ESCAPE**

Reformatory institutions, see **INFANTS**

Sentences to imprisonment as punishment, see **CRIMINAL LAW**

For detailed references to other topics, see **Descriptive-Word Index**

Analysis

- ⇒ 1. Establishment and maintenance.
2. Use by United States of state prison or county jail.
3. Use by city of county jail.
4. Regulation and supervision.
 - (1). In general.
 - (2). Judicial supervision in general.
 - (3). — State prisons.
 - (4). Persons held pending trial or on detainer.
 - (5). Particular rights, privileges, and restrictions.
 - (6). Communications, visitors, privacy, and censorship in general.
 - (7). Personal grooming and effects; contraband and searches.
 - (8). Access to reading matter.
 - (9). Access to mails for correspondence.
 - (10). Access to courts.
 - (11). — Access to counsel; paralegal counsel and inmate assistance.
 - (12). — Communication with courts, officers, or counsel.
 - (13). — Law books and law libraries, legal materials, and opportunity for legal work.
 - (14). Religious practices and materials.
5. Officers.
6. — In general.

**④... Carefully choose
the right Key
Number for your
issue!**

5

CONcentrating on the Law; Module 7/Handout 36

4(11) PRISONS

19 Mass D 2d—474

For later cases see same Topic and Key Number in Pocket Part

completed application, substantial delay could result before inmate received visit from staff, and not all inmates requesting assistance received it.

Blake v. Berman, 625 F.Supp. 1523.

When prison officials choose to rely solely on trained legal assistance to fulfill constitutional mandates that inmates be given adequate access to courts, aid must be available in preparation of initial pleadings in habeas corpus and civil rights suits; thus, those providing legal assistance cannot interpose screening process between inmate and courts.

Blake v. Berman, 625 F.Supp. 1523.

D.C.Mass. 1983. Prison would be ordered to establish, within 60 days, a satellite law library for use by inmates of certain cell block to be available for use 56 hours per week in installments of one, two, or three hours as per inmate's request and as might be practicable and would be ordered to allow those inmates to request from the main law library materials unavailable in the satellite law library and/or photocopies of those materials; furthermore, prison would be ordered to allow those inmates to keep legal materials in reasonable quantities in their cells and to enter into arrangement with local law school pursuant to which second or third-year law students, working under supervision of a member of the bar, would be available to assist inmates for at least five hours per week.

Cepulonis v. Fair, 563 F.Supp. 659, affirmed in part, vacated in part 732 F.2d 1.

Mass. 1986. Determination of whether orders allowing special visitation rights for representatives of Correctional Legal Services to inmates confined in segregation unit intruded into authority of Commissioner of Correction depended on whether without such orders, inmates were being denied their right of access to courts. M.G.L.A. Const. Pt. 1, Art. 30.

Hoffer v. Commissioner of Correction, 490 N.E.2d 417.

4(12). — Communication with courts, officers, or counsel.

C.A.Mass. 1970. That prison inmates do not have all constitutional rights of citizens in society—and may hold some constitutional rights in diluted form—does not permit prison officials to frustrate vindication of those rights which are enjoyed by inmates, or to be sole judge—by refusal to mail letters to counsel—to determine which letters assert constitutional rights. 42 U.S.C.A. § 1983.

Nolan v. Scafati, 430 F.2d 548.

D.C.Mass. 1971. State prisoner has right to communicate freely with federal court and with his counsel, and it is beyond power of

prison officials to refuse him privilege of sending and receiving mail.

Tyree v. Fitzpatrick, 325 F.Supp. 554.

D.C.Mass. 1971. Where possibility was minimal that uncensored correspondence between prison inmate and his attorney of record in pending case would in any way jeopardize prison administration, security or discipline, court would grant preliminary injunction against opening and reading correspondence with attorney but in so doing would impose safeguards, to which inmate agreed, which would permit prison authorities to examine correspondence with fluoroscope or metal-detecting device and manually manipulate envelopes to determine if contraband was enclosed and which would restrain inmate and his attorney of record from communicating in writing about subjects other than litigation and from communicating in writing in any fashion but in letters in envelopes. 28 U.S.C.A. § 1915(d).

Marsh v. Moore, 325 F.Supp. 392.

4(13). — Law books and law libraries, legal materials, and opportunity for legal work.

C.A.1 (Mass.) 1986. Inmate legal assistance program in jail without law library provided sufficient "meaningful access" to courts, even though program attorneys were only able to consult with inmates a few hours per week and did not do substantial outside research, where attorneys arranged to be available for a minimum of three hours per week, assisted inmates in sorting out potentially meritorious claims from those without foundation, helped inmates marshal facts necessary for presentation in a petition or complaint and provided assistance with legal forms and procedures.

Carter v. Fair, 786 F.2d 433.

C.A.Mass. 1984. In action brought by prison inmates who alleged that prison officials had failed to provide an adequate law library, district court did not commit clear error in failing to give greater weight to research opportunities outside of the prison library, in view of evidence suggesting that the system for obtaining photocopies was haphazard and that there were restrictions on the amount of legal materials which could be kept in the cells.

Cepulonis v. Fair, 732 F.2d 1.

In class action brought by prison inmates who alleged that prison officials had failed to provide an adequate law library, trial court's finding that inmates suffered actual prejudice as a result of prison officials' alleged breach was not clearly erroneous.

Cepulonis v. Fair, 732 F.2d 1.

In class action brought by prison inmates who alleged that prison officials had failed to

6... Read the Caselaw Annotations; choose the case most similar to yours!



⑥

CONSentrating on the Law; Module 7/ Handout 36

CEPULONIS v. FAIR

Cite as 732 F.2d 1 (1984)

1

⑥... Using the citation from the Digest, locate the cited case!

Richard CEPULONIS. et al.,
Plaintiffs. Appellees.

v.

Michael V. FAIR. et al., Defendants.
Appellants.

No. 83-1480.

United States Court of Appeals,
First Circuit.

Argued Dec. 5, 1983.

Decided March 29, 1984.

Prison inmates brought action against prison officials alleging that officials defaulted in their constitutional obligation to assist inmates in the preparation and filing of meaningful legal papers by providing an adequate law library. The United States District Court for the District of Massachusetts, Rya W. Zobel, J., 563 F.Supp. 659, ordered prison officials to establish a satellite law library, and prison officials appealed. The Court of Appeals, Levin H. Campbell, Chief Judge, held that: (1) district court did not abuse its discretion in ordering that a satellite library be established, in view of fact that prison officials themselves had suggested the creation of such facility; (2) district court did not abuse its discretion in its determination of which volumes were to be placed in the library; and (3) district court erred in ordering prison officials to provide, in addition to a satellite law library, at least five hours a week of assistance by second or third year law students working under a lawyer's supervision, in absence of either an explanation or opportunity for prison officials to suggest their own modifications for their proposal to permit inmates to use the main law library with an inmate legal clerk to assist them.

Affirmed in part and vacated in part and remanded.

to provide an adequate law library, district court did not commit clear error in failing to give greater weight to research opportunities outside of the prison library, in view of evidence suggesting that the system for obtaining photocopies was haphazard and that there were restrictions on the amount of legal materials which could be kept in the cells.

2. Prisons ⇐4(13)

In class action brought by prison inmates who alleged that prison officials had failed to provide an adequate law library, trial court's finding that inmates suffered actual prejudice as a result of prison officials' alleged breach was not clearly erroneous.

3. Federal Courts ⇐613

Prison officials who failed to allege during trial of prisoners' suit challenging adequacy of law library their claim that trial court's findings failed to specify whether the prejudicial claims involved constitutional issues could not raise that complaint for first time on appeal.

4. Prisons ⇐4(13)

In class action brought by prison inmates who alleged that prison officials had failed to provide an adequate law library, evidence sustained finding that prison officials had defaulted in their constitutional obligation to assist inmates in the preparation and filing of meaningful legal papers by providing an adequate law library.

5. Prisons ⇐4(13)

After determining that prison officials had defaulted in their constitutional obligation to assist inmates in the preparation and filing of meaningful legal papers by providing an adequate law library, district court did not abuse its discretion in ordering that a satellite library be established, in view of fact that prison officials themselves had suggested the creation of such facility.

6. Prisons ⇐4(13)

After determining that prison officials had defaulted in their constitutional obligation

1. Prisons ⇐4(13)

In action brought by prison inmates who alleged that prison officials had failed

⑥...Next, locate the Headnote containing your issue!

CONSentrating on the Law, Module 7/Handout 36

732 FEDERAL REPORTER, 2d SERIES

Enter into an arrangement with a local law school pursuant to which second or third year law students, working under the supervision of a member of the bar, shall be available to assist [DSU] inmates for at least five hours per week.

II.

Defendants accuse the district court of taking the *Bounds* requirement of meaningful access to the courts "out of context" and expanding it "beyond recognition." They attack the court's analysis as borrowing excessively from *Cruz v. Hauck*, 627 F.2d 710, 720 (5th Cir.1980), a case where the adequacy of library time was measured in terms of whether it allowed inmates to engage in "meaningful legal research." That standard, however, was the very standard articulated by defendants themselves in their post-trial memorandum; and, in any case, we find nothing in the district court's action which requires us to accept or reject the particular gloss placed on *Bounds* in *Cruz v. Hauck*. It is *Bounds* itself that requires authorities to provide "adequate law libraries," unless, as an alternative, prisoners receive "adequate assistance from persons trained in the law." 430 U.S. at 828, 97 S.Ct. at 1498. Similarly without merit is defendants' claim that the district court erred in "assum[ing] that inmates are capable of performing any meaningful legal research." That argument was expressly rejected by the Supreme Court in *Bounds*, 430 U.S. at 826, 97 S.Ct. at 1497.

In a similar vein, defendants contend that because of valid security concerns, the court was wrong to suppose that the DSU inmates have a right to library access. The district court, however, expressly recognized that the inmates had "no absolute right" to library access as such, since "disciplinary and security considerations may weigh against ... [their] use of library facilities or contact with fellow inmates." See *Williams v. Leeke*, 584 F.2d 1336, 1339 (4th Cir.1978) (Haynsworth, J.) ("Reasonable steps to preserve prison security during 'library time' ... justified in the case of maximum security prisoners"); *Lovell v.*

Brennan, 566 F.Supp. 672, 696-97 (D.Me. 1983) (no library access required in such circumstances), *aff'd on other grounds*, 728 F.2d 560 (1st Cir.1984). The district court's position was merely that when a state chooses to fulfill its *Bounds* obligation, even to DSU inmates, solely or primarily by providing access to a law library, such access cannot be so attenuated as to be meaningless.

In applying this standard the district court considered both the time allowed in the library and the opportunity to conduct research once there. Standing alone, the time limits presented here—at most three hours per month per inmate seeking to conduct research—invite scrutiny. See *Cruz v. Hauck*, 627 F.2d 710 (5th Cir.1980) (questioning the adequacy of three hours per week); *Williams*, 584 F.2d at 1341 (three 45-minute library sessions per week, absent staff assistance, too limited "to be meaningful"); *Nadeau v. Helgemoe*, 561 F.2d 411 (1st Cir.1977) (rejecting one hour per week even where limited staff assistance present).

The requirement that inmates identify the specific volumes they wish to use prior to entering the library is also suspect, particularly where, as here, it appeared there was no help present, at the time most DSU inmates were in the library, to retrieve an additional book. As Judge Haynsworth stated in *Williams*, 584 F.2d at 1339, "It is unrealistic to expect a prisoner to know in advance exactly what materials he needs to consult."

[1] Defendants contend that the court gave inadequate weight to the availability of legal materials provided to plaintiffs in their cells. This, like other aspects just discussed, was largely a factual question on which we give considerable deference to the district court. While the provision of photocopies may ameliorate restrictions on library access, the evidence here suggested that the system for obtaining copies was haphazard. Restrictions on the amount of legal materials which could be kept in the cell—one of defendants' witnesses said two shoeboxes full—also limited the usefulness

③... Locate the page of the new case where your issue is discussed!



Key Number Digests

Known-Source Approach

CERULONIS v. FAIR
Citation 732 F.2d 1 (1984)

1

Richard CERULONIS, et al.,
Plaintiffs, Appellees,
v.

Michael V. FAIR, et al., Defendants,
Appellants.
No. 83-1480.

United States Court of Appeals,
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Argued Dec. 5, 1983.

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Affirmed in part and vacated in part and remanded.

1. Prisons — 4(13)

In action brought by prison inmates who alleged that prison officials had failed

to provide an adequate law library, district court did not commit clear error in failing to give greater weight to research opportunities outside of the prison library, in view of evidence suggesting that the system for obtaining photocopies was haphazard and that there were restrictions on the amount of legal materials which could be kept in the cells.

2. Prisons — 4(13)

In class action brought by prison inmates who alleged that prison officials had failed to provide an adequate law library, trial court's finding that inmates suffered actual prejudice as a result of prison officials' alleged breach was not clearly erroneous.

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Prison officials who failed to allege during trial of prisoners' suit challenging adequacy of law library their claim that trial court's findings failed to specify whether the prejudicial claims involved constitutional issues could not raise that complaint for first time on appeal.

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In class action brought by prison inmates who alleged that prison officials had failed to provide an adequate law library, evidence sustained finding that prison officials had defaulted in their constitutional obligation to assist inmates in the preparation and filing of meaningful legal papers by providing an adequate law library.

5. Prisons — 4(13)

After determining that prison officials had defaulted in their constitutional obligation to assist inmates in the preparation and filing of meaningful legal papers by providing an adequate law library, district court did not abuse its discretion in ordering that a satellite library be established, in view of fact that prison officials themselves had suggested the creation of such facility.

6. Prisons — 4(13)

After determining that prison officials had defaulted in their constitutional obligation

 From the case you're starting from, read the Headnotes; choose Headnote 5 as your research issue.



CEPULONIS v. FAIR

Cite as 113 F.2d 1 (1941)

5

of research outside the library. Plaintiffs' affidavits stated that excess property, including legal materials, was subject to confiscation. And, while prisoners were allowed to keep several books in their cells, the affidavits suggested that they tended to deteriorate rapidly after their hard covers were removed, as required by prison regulation. We cannot say the district court committed clear error in not giving greater weight to the research opportunities outside the library. Fed.R.Civ.P. 52(a).

[2] Defendants claim that plaintiffs failed to establish actual prejudice to any inmate case resulting from defendants' alleged breach. Defendants assert such prejudice is a necessary element in establishing a case under *Bounds*. See, e.g., *Twynian v. Craig*, 584 F.2d 352, 357-58 (10th Cir. 1978); *Bock v. Coughlin*, 508 F.2d 303, 308 (7th Cir. 1974); *Isaac v. Jones*, 529 F.Supp. 175, 179 (N.D.Ill.1982). The district court, however, found prejudice in the instant case. Assuming without deciding that a showing of prejudice is required, we cannot say that the court's finding in this regard was clearly erroneous. Fed.R.Civ.P. 52(a). While the finding was derived from prisoners' affidavits, the affidavits were admitted without objection and we cannot say they provided an insufficient basis for this finding.

[3] Defendants also complain that the court's findings were inadequate as they failed to specify whether the prejudicial claims involved constitutional issues. It is too late, however, for defendants to raise this issue. They did not make it below in their post-trial memorandum, nor did they file a motion under Fed.R.Civ.P. 59 asking the district court to modify its findings. See *Welch & Corr Construction Corp. v. Wheeler*, 470 F.2d 140, 141 (1st Cir.1972) (the district court was entitled to be told of any afterthoughts regarding errors in its handling of the case so that it could correct them if appropriate).

[4] Defendants claim that the court erred in concluding that they had failed to rebut plaintiffs' prima facie case as re-

quired by *Rick v. Zittney*, 644 F.2d 41. They assert that they conclusively showed that plaintiffs in fact had adequate access to the court, pointing to 66 suits maintained by DSU prisoners at the time of trial, including seven belonging to the named plaintiff, Richard Cepulonis. The district court, however, could properly discount this evidence since defendants have not indicated how many of the cases were begun when the inmates were in the DSU. From the record it appears that only three of the 66 suits were initiated during a DSU incarceration and of these three, two were begun by Cepulonis who was trained as an inmate law clerk.

The district court properly evaluated the steps taken by defendants to meet their *Bounds* obligation "as a whole." 430 U.S. at 832, 97 S.Ct. at 1500. We find no reversible error.

III.

We turn next to the validity of the court-ordered remedy. Defendants say the district court's remedial order was an abuse of discretion in three respects: it ordered a satellite law library; it required specific volumes which defendants label as "needless and excessive resources"; and it required that defendants provide law student assistance. As administrators of the prison, defendants contend they were entitled to greater deference in selecting a remedy.

See *Procunier v. Martinez*, 416 U.S. 396, 404-05, 94 S.Ct. 1800, 1807, 40 L.Ed.2d 224 (1974).

[5] Except in one respect, we find no merit in these contentions. Concerning the satellite law library, the district court "scrupulously respected the limits of [its] role," ordering the creation of this facility only after the defendants, like the petitioners in *Bounds*, suggested it. 430 U.S. at 832-83. While there is a variance between the number of hours of access to the satellite library suggested by defendants ("at least 40 hours per week") and the number ultimately ordered (66 hours per week), defendants do not now complain of this increase, but report they have voluntarily

2 Find issue 5 in the text of your case. Read it!

3 Note the doctrine given: use the citation to go directly to the page where your issue is!

416 U.S. 698

FROQUINER v. MARTINEZ
Civ. 1004 N.D. 1000 (1974)

1807

ulate censorship of personal correspondence. It only preserves the right of inmates to receive "newspapers, periodicals, and books" and authorizes prison officials to exclude "obscene publications or writings, and mail containing information concerning where, how, or from whom such matter may be obtained" (emphasis added). And the plain meaning of the language is reinforced by recent legislative history. In 1972, a bill was introduced in the California Legislature to restrict censorship of personal correspondence by adding an entirely new subsection to § 2600. The legislature passed the bill, but it was vetoed by Governor Reagan. In light of this history, we think it plain that no reasonable interpretation of § 2600(4) would avoid or modify the federal constitutional question decided below. Moreover, we are mindful of the high cost of obstruction when the federal constitutional challenge concerns racial repugnance to the First Amendment. *Zwickler v. Koota*, 389 U.S. 241, 282, 88 S.Ct. 591, 597, 18 L.Ed.2d 444 (1967); *Burgess v. Elliott*, 377 U.S. at 379, 84 S.Ct. at 1328. We therefore proceed to the merits.

attitude springs from complementary perceptions about the nature of the problems and the efficacy of judicial intervention. Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of these reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.² Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.

[4,5] Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration. In part this policy is the product of various limitations on the scope of federal review of conditions in state penal institutions.³ More fundamentally, this

But a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their

1. See Note, *Due Process and Fairness: An Emerging Judicial Role in Prison Reform*, 87 Va.L.Rev. 541, 553-556 (1971).

2. They are also ill suited to act as the front-line agencies for the consideration and resolution of the infinite variety of prisoners' complaints. Moreover, the capacity of our criminal justice system to deal fairly and fully with legitimate claims will be impaired by a burgeoning increase of frivolous prisoner complaints. As one source of alleviating this problem, The Chief Justice has suggested that federal and state authorities explore the possibility of instituting internal administrative procedures for disposition of inmates

grievances. 20 Ed.A.J. 1128, 1129 (1973). At the Third Circuit Judicial Conference meeting of October 18, 1972, at which the problem was addressed, suggestions also included (i) attention where appropriate to avoid needless reconsideration of federal constitutional issues; and (ii) the use of federal magistrates who could be sent into penal institutions to conduct hearings and make findings of fact. We emphasize that we express no view as to the merit or validity of any particular proposal, but we do think it appropriate to indicate the necessity of prompt and thoughtful reconsideration by respectively federal and state authorities of this worrisome situation.

Carefully read the page to find language that is similar to your issue in the initial case!

misCONSeptions 'bout Shepard's ^B

Below are several key ways researchers confuse themselves about Shepard's® Citations.
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A. Shepardizing® is the lazy way of saying "I'm using one of the Shepard's Citation sets." The legal profession has used Shepard's since the Ascent of Man (alright, 126 years) to locate and update primary sources. Shepard's Citations is a finding tool. In prison law libraries, Shepard's is primarily a case finding tool. What a shame, because Shepard's does a lot more.

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- ▼ Update court rules
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Q. Why is it called 'Shepard's'?

A. It's named after its inventor, a Chicagoan named Frank Shepard. Frank hit upon the idea of printing citations to Illinois cases on gummed stickers in order to offer the local legal research community subject access to their case law.

Q. How does Shepard's use the term 'citation'?

A. Ordinarily, when legal researchers hear the word "citation," they're trained to think of an alphanumeric reference to a case or statute, like 503 N.E.2d 25 or M.G.L. ch. 94C, §32H. These are known as the citations for this information. This type of citation is an address to the material you're trying to find. A Shepard's citation is something different.

A Shepard's citation is a reference in a more recent case to an earlier case appearing before it.

The older case--the case you begin with--is called the CITED case.

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So, for example: every volume of Shepard's Citations, Case Edition, is crammed full of pages of cases mentioning earlier cases.

Q. If I find 57 case cites listed for my cited case, do I have to read or photocopy all 57 cases?

A. **HELL NO!** Use the syllabi and History/Treatment symbols to narrow your choices to ONLY cases that deal with your issue.

Q. Are there any books in the law library that tell you "Now go Shepardize® this case"?

A. No, because it's not necessary. The moment you have a primary source, you can begin Shepardizing®.



Vol. 503

1.....Start with a case: for example, *Massachusetts v. Blinn*
503 N.E.2d 25

2.....Locate the correct Shepard's set for the Northeastern
Reporter,
Second Series (usually kept near the Reporter)

3.....Locate the correct Shepard's volume containing cites for
vol. 503 of N.E.2d (read the spine)

4.....Turn to the page displaying the boldfaced volume #

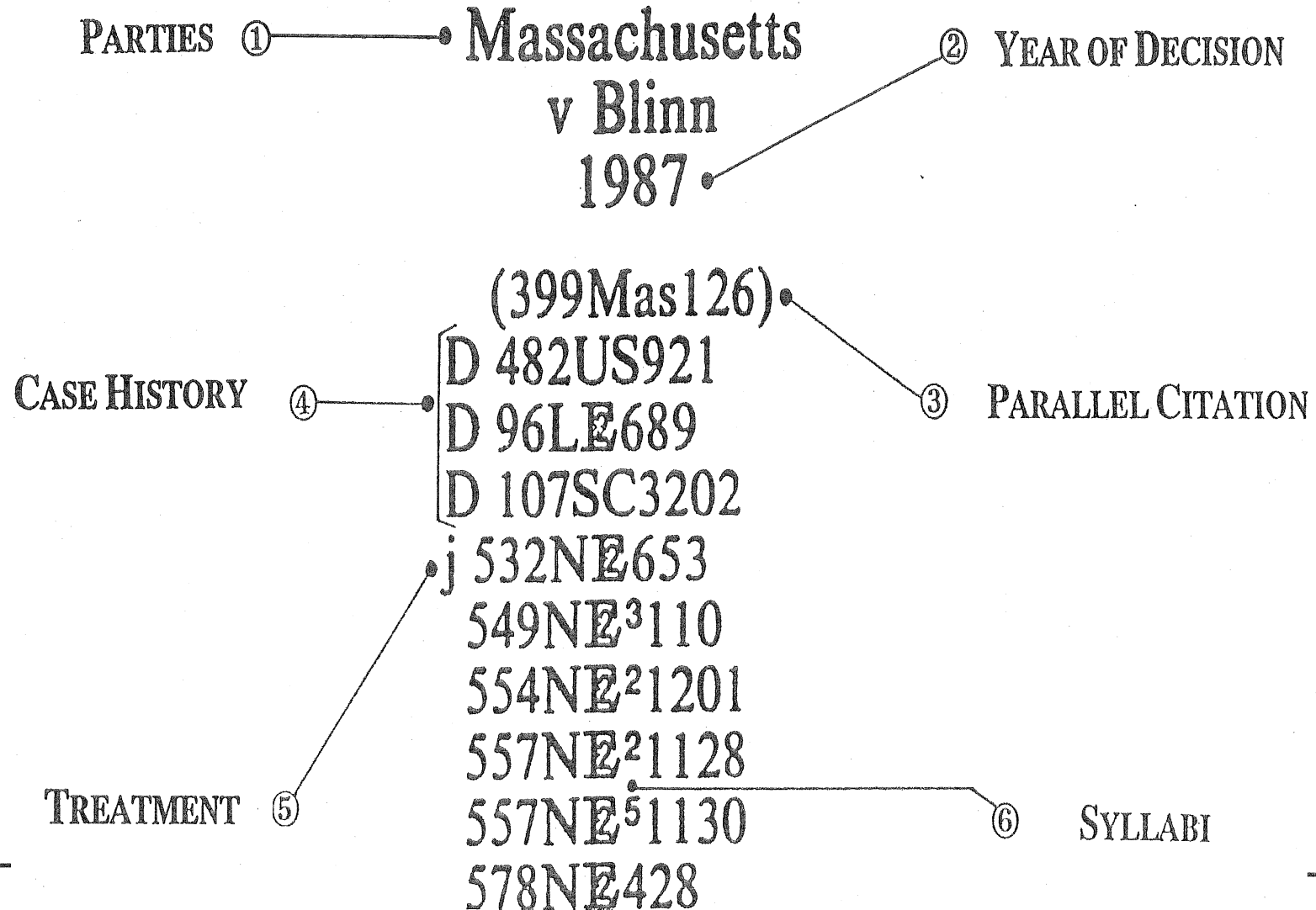
5.....Locate the Page # under the boldfaced volume number

6.....Use the Superscript Numbers to find which of the cites deals with
our case

7.....Analyze any cases preceded by Lower-case letters

Understanding Shepard's Citations

This is an isolated case citation in Shepard's Massachusetts Citations, 1993 Case Edition, showing
① Parties; ② Year of Decision; ③ Parallel Citation; ④ Case History; ⑤ Treatment; and ⑥ Syllabi.



How to Read Shepard's History & Treatment Symbols

HISTORY AND TREATMENT ABBREVIATIONS

Abbreviations have been assigned, where applicable, to each citing case to indicate the effect the citing case had on the case you are Shepardizing. The resulting "history" (affirmed, reversed, modified, etc.) or "treatment" (followed, criticized, explained, etc.) of the case you are Shepardizing is indicated by abbreviations preceding the citing case reference. For example, the reference "1434123872" means that there is language on page 872 of volume 434 of the *Federal Reporter*, Second Series, that indicates the court is "following" the case you are Shepardizing. Instances in which the citing reference occurs in a dissenting opinion are indicated in the same manner. The abbreviations used to reflect both history and treatment are as follows.

History of Case

a	(affirmed)	The decision in the case you are Shepardizing was affirmed or adhered to on appeal.
cc	(connected case)	Identifies a different case from the case you are Shepardizing, but one arising out of the same subject matter or in some manner intimately connected therewith.
d	(dismissed)	An appeal from the case you are Shepardizing was dismissed.
m	(modified)	The decision in the case you are Shepardizing was changed in some way.
p	(parallel)	The citing case is substantially alike or on all fours, either in law or facts, with the case you are Shepardizing.
	(reversed)	The decision in the case you are Shepardizing was reversed on appeal.
	(same case)	The case you are Shepardizing involves the same litigation as the citing case, although at a different stage in the proceedings.
s	(superseded)	The citing case decision has been substituted for the decision in the case you are Shepardizing.
US	cert den	Certiorari was denied by the U.S. Supreme Court.
US	cert dis	Certiorari was dismissed by the U.S. Supreme Court.
US	cert gran	Certiorari was granted by the U.S. Supreme Court.
US	reh den	Rehearing was denied by the U.S. Supreme Court.
US	reh dis	Rehearing was dismissed by the U.S. Supreme Court.
v	(vacated)	The decision in the case you are Shepardizing has been vacated.

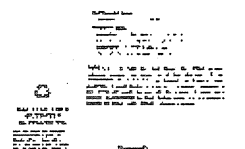
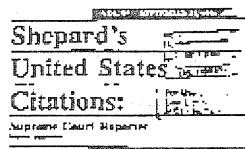
Treatment of Case

c	(criticized)	The citing case disagrees with the reasoning/decision of the case you are Shepardizing.
d	(distinguished)	The citing case is different either in law or fact, for reasons given, from the case you are Shepardizing.
e	(explained)	The case you are Shepardizing is interpreted in some significant way. Not merely a restatement of facts.
Ex	(Examiner's decision)	The case you are Shepardizing was cited in an Administrative Agency Examiner's Decision.
f	(followed)	The citing case refers to the case you are Shepardizing as controlling authority.
h	(harmonized)	An apparent inconsistency between the citing case and the case you are Shepardizing is explained and shown not to exist.
	(dissenting opinion)	The case is cited in a dissenting opinion.
L	(limited)	The citing case refuses to extend the holding of the case you are Shepardizing beyond the precise issues involved.
o	(overruled)	The ruling in the case you are Shepardizing is expressly overruled.
	(questioned)	The citing case questions the continuing validity or precedential value of the case you are Shepardizing.

Using Shepard's Supplements

①

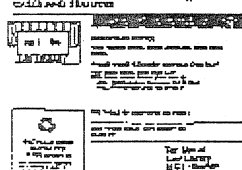
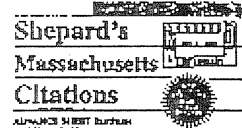
EXPRESS CITATIONS (Blue)



This is the first supplement that the library receives. When Shepardizing from latest to oldest citation, you start with this one.

②

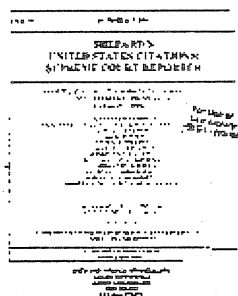
ADVANCE SHEETS (Black & White)



This is the second supplement the library receives. These are published every other week and are kept until the Monthly cumulative supplement is received.

③

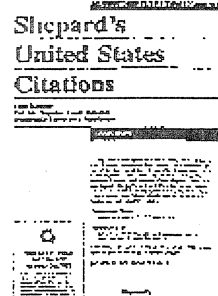
CUMULATIVE SUPPLEMENTS (Red)



These red supplements are received monthly. They are "cumulative," meaning that the information previously found in Express and Advance Sheets has been included here.

④

SEMI-ANNUAL CUMULATIVE SUPPLEMENTS (Gold)



It's important to pay close attention to the "What Your Library Should Contain" instructions on the front cover of these, because they're shelved a lot longer than the others.

Why Use Secondary Material?

BECAUSE IT HELPS YOU--

Get a general overview of your research area

so that you can efficiently frame the question

Discover persuasive authority

written by judges, Attorneys General, esteemed lawyers, & law professors

Understand how Primary Sources have been interpreted

in your own and in other jurisdictions

The Importance of Being Current...

For legal researchers, discovering the most current information for legal pleadings is critical to submitting a relevant and persuasive argument in the courts. There are several ways in which legal publishers keep information as current as possible. Many of these methods have been used for generations; others have only recently made a mark in the legal publishing world. Below are the most common updating methods, given hierarchically by frequency of publication.

- ▼ **Online Databases** *Daily* By far the most current legal research updating product available. Many databases such as LEXIS and WESTLAW update information daily. As of publication, this method was unavailable to inmates for reasons of cost, logistics, and security.
- ▼ **Advance Sheets** *Weekly* For decades, advance sheets were the quickest way to receive law material. Advance sheets update case law (in this form called *slip opinions*), statutes, court rules, and the articles & amendments of the federal constitution.
- ▼ **Loose-leaf Services** *Weekly* This updating method is popular with researchers because of its frequency of publication, wealth of material, and ease of use. Arriving with pre-punched seams, they are easily inserted into a three-ring binder. An example is a prison law library stalwart, the *Criminal Law Reporter*, published by the Bureau of National Affairs.
- ▼ **Paper Supplements** *Usu. Weekly* Supplements update case law sets and Shepard's Citations sets. Used less frequently to update certain volumes to digests, statute sets, and treatises.
- ▼ **CD-ROM** *Quarterly* This is one computer-based updating product that is being embraced by prison administrations nationwide for reasons of cost, savings in shelf space, ease of use, and material available on the medium. What material? Virtually everything; all Primary Sources for most states, as well as Shepard's Citations & other Finding Tools. Publishers remain understandably cautious about what Secondary Material to distribute on CD. Currently updated through paper supplements.
- ▼ **Periodicals** *Varies* Periodicals--law journals and newspapers generally--can be received weekly, bi-weekly, monthly, bi-monthly, and quarterly. An example of a weekly periodical in Massachusetts is the *Massachusetts Lawyer's Weekly*.
- ▼ **Pocket Parts** *Annually* A popular product for updating statutes, digests, certain treatises, state practice sets, & legal encyclopedias. The drawback? Distributed once a year.
- ▼ **Administrative Regulations** *Annually* Generally, administrative regulations are reviewed annually. When using administrative regulations, it's important to check the *effective date* the regulation was signed into law. This is found on the last page of the regulation. *Make sure you use the one currently in effect!*

	ADMINISTRATIVE RULES & REGULATIONS [EXECUTIVE]	CASE LAW [JUDICIAL]	CONSTITUTIONAL CHANGES	STATUTORY LAW [LEGISLATIVE]	
POCKET PARTS				YES	FEDERAL STATE
SUPPLEMENTS		YES	YES		FEDERAL STATE
SHEPARD'S CITATIONS	YES	YES	YES	YES	FEDERAL STATE
CRIMINAL LAW REPORTER (FEDERAL)	YES	YES	YES	YES	FEDERAL STATE
LAWYER'S WEEKLY	YES	YES	YES	YES	FEDERAL STATE
CODE OF MASS. REGULATIONS (CMR) & CFR	YES	YES			FEDERAL STATE
WEST'S LEGISLATIVE SERVICE				YES	FEDERAL STATE

Research Material

*Adapted from Legal Research in a Nutshell, Chapter One, "Introduction," pp. 1-8, by Morris Cohen.
Copyright © West Publishing Company, 1985. Used with Permission).*

It's easier to understand law library material once you know where each type of law comes from.

Constitutions = Executive Branch = Judicial Branch = Legislative Branch

- ▼ **Constitutions** are the rules of government which were created by the People. Constitutions create & empower the Executive, Judicial, and Legislative branches.
- ▼ The **Executive Branch** (Mayor/Governor/President) creates executive orders and causes state/federal agency regulations to be promulgated
- ▼ The **Judicial Branch** of government is comprised of entry-level courts, intermediate appellate courts, and supreme courts of last recourse. They create case law by interpreting statutes in a given jurisdiction based on the facts brought before them. They also consider whether certain laws are unconstitutional.
- ▼ The **Legislative Branch** of both state/federal government create statutes; they also empower the various federal/state agencies to create, implement, & enforce their own rules & regulations

Legal research becomes easier once you have a simple model by which to group or categorize every item of legal material that you encounter. There are three broad categories into which all legal material in any law library--not just prisons--can be logically grouped. These categories are:

Primary Sources = Secondary Material = Finding Tools

Primary Sources....Primary sources are those materials that give you the actual law itself. This stuff is not a restatement of the law; it's not an opinion of the law; it's not the tools that help you locate other items in the library--it is the law as it was written. Specifically--and for the purposes of jailhouse research--we're talking about:

- 1 Articles and amendments of the **U.S. States Constitution** and of the 50 autonomous **State Constitutions**;
- 2 **Administrative Regulations** promulgated and enforced by a state or federal agency of the *Executive branch*;
- 3 **Statutes** passed by the state or federal *Legislative branch*; and
- 4 **Case law** issued by the *Judicial branch* interpreting state & federal statutes

Finding Tools.... Finding Tools are material that help you locate the primary sources. They are not legal authority themselves, nor do they attempt to explain primary sources. In most prison law libraries, there are three powerful finding tools:

- ▼ **Shepard's Citations®....** There's a Shepard's set for each case reporter set in your library. Shepard's helps you find cases that mention one or more issues of the case you're currently reading. It also allows you to bring statutory language and court rules up-to-date. Shepard's also analyzes what they call the *history* and *treatment* of each case, two concepts which we will delve into more thoroughly as the Course progresses.
- ▼ **Indexes....** Every legal encyclopedia, statute set, and subject-specific multiple-volume set has one or more volumes comprising the index. Indexes (or *indices*, depending on which side of the tracks you're from) are the key to opening up the information contained in law books. The better indexes use a *natural language* approach--meaning they've decided to use terms in plain English instead of legal jargon (jargon being amusing but always confusing). The better you are at using indexes, the better you'll be at legal research.
- ▼ **Key Number Digests....** Apart from the card catalog, a digest is the second-biggest index in the world. What does a digest *digest*? Primarily case law, but digests will also send an astute researcher to administrative regulations, statutes, and to articles and amendments of the various constitutions. Each state has its own digest. All state digests use the West Group's ingenious Key Number System, a legal research tool that we'll go into depth further on down the road. As with indexes, once you learn to master the digests, there will be little that you cannot find on your own.

Secondary Material.... Secondary Material is the last but not least of the 3 categories of law library material. Secondary Material does not have the force of law, nor does it purport to be a finding tool (although that's open for intense debate between legal research gurus, law librarians, and other obsessive-compulsives). Secondary Material explain the law to you. Whether it's a state practice manual walking you step-by-precarious-step through the filing of a Motion to Dismiss, or a 3-volume tome by a high-profile lawyer providing every criminal law form you'll never ever need, to the state Attorney General offering for public inspection his hardbound opinion on esoteric points of law, the *modus operandi* is the same; someone of note takes some aspect of the law and says to us all-- "*This is what I think this means.*" Most important, this expert opinion can have what is known as *persuasive authority*.

SUMMARY

All material in every law library can be classified under one of three important groups. They are:

- 1 Primary Sources
- 2 Finding Tools
- 3 Secondary Material

There are 3 branches & 51 documents embodying rules of our government that create law. They are:

- 1 Executive Branch
- 2 Legislative Branch
- 3 Judicial Branch
- 4 U.S. constitution & 50 state constitutions

**Each of the above branches--plus the constitutions--create a Primary Source of law.
This law is categorized into four distinct groups:**

- 1 Administrative Law
- 2 Statutes
- 3 Case Law
- 4 Constitutions

Grievance Regulation

1...Locate your institution grievance regulation

2...Photocopy it

3...Read it

4...Bring to next class

Court Rules

*Use your law library collection to find at least two (2) sources
for each of the following types of court rules.*

Federal Court Rules for:

- 1** United States Supreme Court

- 2** United States Circuit Court of Appeals

- 3** United States District Court

State Court Rules for:

- 1** State Supreme Court

- 2** State Appeals Court

- 3** Entry-Level Courts (County/District/Municipal/Etc.)

Framing the Question

(Adapted from *How to Find and Understand the Law*, Ch. 18, pp. 590-608, West PubCo, 1981. Used with Permission.)

The key to effective legal research is knowing *how to recognize a legitimate legal problem*. The best way to do this is to:

- 1 Analyze all facts surrounding the problem
- 2 Choose only the relevant facts necessary to pose a legal question
- 3 Use correct legal theory & jargon to express the problem in legal terms

When you've applied these three steps to your problem, we say that you have *framed the legal question*. This means you've started with a simple English sentence and converted it into an articulate legal question containing terms that will help solve your problem. Below is an excellent example of *framing the question*:

Mr. Smith visited his lawyer and told him: "My neighbor, Mr. Jones, built a fence across the road leading to my farmhouse. I don't want this fence on my property! But Mr. Jones refuses to take it down."

Now, Mr. Smith's lawyer cannot simply go to any law book, look up the word "Fences" and discover the answer. Smith's question must first be translated into a legal issue that will tell the lawyer if Smith owns the road or if Jones is legally allowed to obstruct it. Smith's lawyer will need to find out what legal theories pertaining to the problem are available, and what facts are needed to support those theories. After extensive research, the lawyer determines that Mr. Smith's problem can be classified as "prescriptive easement." Here is the original question:

"My neighbor built a fence across my driveway and won't take it down."

And here is the same question after the lawyer framed it using legal terminology:

"Is open use of an estate presumed to be adverse for the purposes of establishing a prescriptive easement?"

Damn! That's a heck of a change from the original statement of the problem! Now you see why framing the question is so hard! Exercises in framing your problem in legal terms teach you that

- ▼ *Answers to legal research questions are never waiting to leap off a page at you.*
- ▼ *Framing the question is a process. You must be patient, tenacious and, above all, flexible enough to re-frame your question if you get nowhere the first time.*

When research leads to a dead-end:

Re-frame your question!

“FTQ”

Pathfinder

Review the General Area of Law

Determine Logistics

* Civil or Criminal?

* State or Federal?

* Procedural or Substantive?

Learn Legal Terminology

Use a legal dictionary

Read legal encyclopedias

Use digests and indexes

Use the Statsky Cartwheel

Read Subject-specific Legal Textbooks

Decide which Primary Sources to use

“Does my problem raise constitutional questions?”

“Are there any statutes controlling this area of law?”

“Are there any local cases supporting these statutes?”

“Is this within the scope of an administrative regulation?”

Use Finding Tools

Indexes

Shepard's Citations

West's Key Number Digests

Topical Approach

Known-Source Approach

Update Primary Sources

Source

Frequency

Legal Online Services.....	Daily
Advance Sheets.....	Weekly
Loose-leaf Services.....	Weekly
Paper Supplements.....	Weekly
Periodicals.....	Weekly/Monthly
CD-ROM.....	Quarterly
Pocket Parts.....	Yearly



The Statsky Approach uses a diagram called a “cartwheel” (Fig. 1 below) which prompts the researcher for different categories of words. It is, in essence, a word-association game which becomes easier with use.

For example, suppose that the research problem involves who is authorized to perform a wedding and what ceremony, if any, need be conducted. The structure of the cartwheel is shown below. The first step is to examine your legal problem and then decide which broad terms in the sentence can be placed in the center of the wheel as a keyword--in this case, the word “wedding.” Then, take that word and look it up in your index or digest. If that gets you nowhere, the next step is to fill the “spokes” of the wheel with as many words as you can, using the terms at the end of each spoke as guides (see Fig. 2, next page). Now you’ve written down several words and phrases, giving you still more terms with to examine your index. The next page shows you the result of the 9-step technique as applied to the word “wedding” (see Fig. 3, next page).

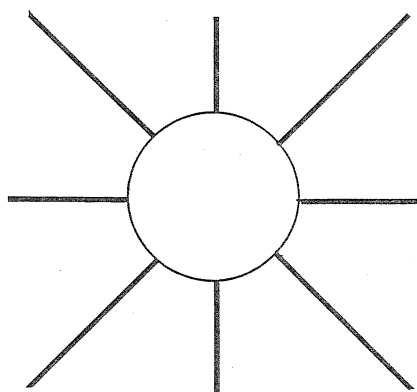


Figure 1 -- The Statsky Cartwheel.

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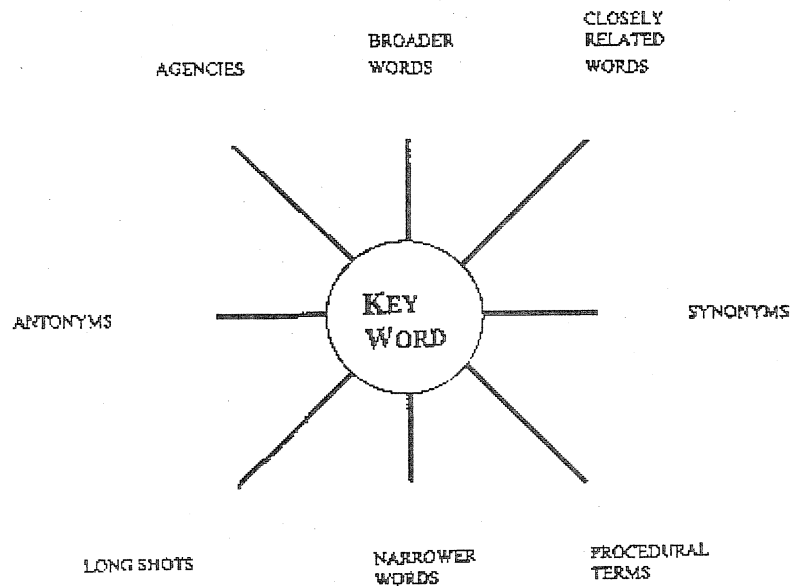


Figure 1 -- Cartwheel with guide words.

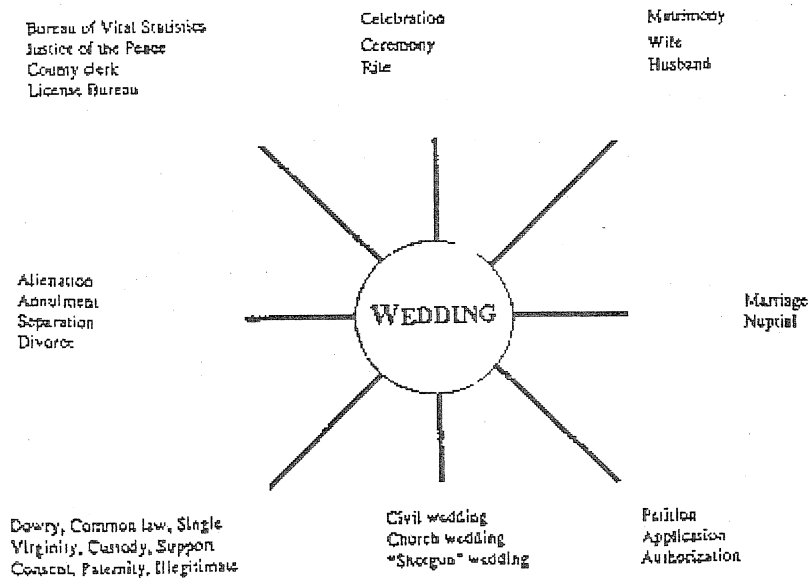


Figure 3 --A "Filled-in" Cartwheel.

Statutes

(Adapted from *Legal Research in a Nutshell*, Chapter 4 "Statutes," pp. 104-111 by Morris Cohen. West Publishing Company, 1985. Used with permission)

Statutes come in two flavors--*official* and *unofficial* editions. The unofficial texts usually provide additional research aids which make them more useful than the official edition. For example, most of the *annotated codes* are published unofficially by commercial publishers. These provide faster and more convenient supplementation in the form of annual pocket parts and monthly paper supplements; fuller editorial notes; historical comments; analyses of statutes; and cross-references to other relevant legal material. The *United States Code* is the official edition of all federal statutes. There are also two unofficial editions--the *U.S. Code Annotated* published by West Group, and the *U.S. Code Service* published by Lexis. Both of these sets contain the additional research aids mentioned above, thus making them more useful to researchers.

There are two unofficial annotated statute sets for Massachusetts, the *Massachusetts General Laws Annotated* by West, and the *Annotated Laws of Massachusetts* by Lexis. Both sets are cited by using the abbreviation of the set, followed by chapter number, followed by the section number (e.g., *M.G.L. A.*, ch. 94C, §32H; *A.L.M.*, ch.94C, §32H).

You also must know that legislation not only originates from traditional legislative bodies like the Congress and state legislatures, but also from other legislative units. These lawmaking bodies--*which get their authority to create laws directly from the legislature*--include: administrative agencies; executive departments; courts issuing their own rules, and towns.

This is how the Department of Corrections create their own regulations which have passed the legislative and constitutional muster of the state have the force of law; why an executive order becomes law when your Governor signs it; and why court rules also have the force of law.

Finally, a few words on *legislative intent*. Statutes are often written using vague or imprecise wording, making their interpretation by lawyers & laymen difficult. What the researcher does is try to figure out what the legislators had in mind when they passed the statute. In other words: *why did they make the law?* You must trace the history of the statute back to the year in which it was first enacted, then read the changes to the law from that time up to now. This is where the annotated statute sets are valuable, because they give you these citations in a section called *historical notes*.

A word to the wise: *you are not a lawyer*. You lack training in determining what a statute means. Keep that in mind when using either federal or state statutes.

STARE

DECISIS

(pronounced “star-RAY dee-SIGH-sis”)

There is a legal principle explaining why we have so much case law in the law libraries of the nation, and why a case that was decided 200 years ago can still be used by a legal researcher today. That doctrine is described by two Latin words--*stare decisis* -- meaning “to adhere to decided cases.” What makes this so important? *Stare decisis* allows our legal system a way of being consistent, certain, and fair when making laws, decisions, or rules in our particular jurisdiction.

For example, suppose you were the subject of a warrant-less search in New York. You believe that the search was illegal, and you want to find material in your local law library that will support your claim. Now, because American law has a 200+ year history, chances are good to excellent that you can find in your law library language in your New York cases, statutes or constitution dealing with searches and the manner in which they are to be carried out. Once you locate these primary sources, your search focuses on the legality of searches performed without a warrant. You’ll look to see if the New York state legislature ever promulgated a statute on this subject. If they have, you’ll next look to discover whether any New York state courts have ever been asked to interpret these statutes based on a constitutional claim of an illegal warrant-less search. Then you Shepardize your citations to make sure they are still good law.

If you’re fortunate to find such a case--and go on to determine that its principles are still in use today (why Shepardizing is so important)--then you can use the language in that case to support your claim.

Stare decisis works like this: if a New York court on behalf of a New York citizen based on certain facts and certain primary sources found in the New York jurisdiction rules in favor of that person, then *the next New York citizen who comes before a New York court with very similar facts based on the same statutes and in the same jurisdiction should receive the same ruling*. This is how the concept of justice is perpetuated in our legal system. *Stare decisis* gives us a way of relying on the past to ensure equal treatment when similar situations crop up in the future.

Stare Decisis: It’s As Close As The Law Gets To Being Fair.

Case Briefing

**1...Find a 2-5 page case
(any jurisdiction)**

2...Photocopy it

3...Brief it (14 components)

4...Bring to next class

Doctrine

430 US 817

G.L. 94C, ch 321A

When a judge writes an opinion, he is telling the world that certain decisions were made for issues of a case. Just as important, the judge is explaining WHY these decisions were made. This reasoning a judge uses to support his holdings for legal issues is called

US Const. Amend. 14

doctrine.

MA Rules Crim Proc 9A

Doctrine is the primary sources, court rules, and legal principles relied upon when making a judicial decision.

Without doctrine, a system of justice based on legal precedent could not stand.

Without doctrine, no one could respect the law.

28 CFR 543.11

DOCTRINE....Supports judicial decisions

...Establishes precedent

...Relies on existing primary sources

....Gives the law objectivity

DICTA

The defendant makes one claim of the ineffectiveness of his trial counsel that falls into a category different from his other claims discussed above. He complains that his trial counsel failed to bring out an inconsistency between the grand jury testimony and the trial testimony of one of the Springfield police officers who interviewed him in Delaware. The word “inconsistency” overstates the difference. At trial, Captain Stelzer testified that the defendant had said that he would tell the officers what happened if they would show him the statements they had. Before the grand jury, Captain Stelzer’s testimony was in narrative form and was less complete. He did not testify that the defendant said he would tell what happened if he saw the statements the police had. The difference is not without possible significance in measuring Captain Stelzer’s credibility, but because the defendant testified to what happened as he saw it, we see no meaningful harm to the defendant’s case from the failure of counsel to bring out the difference.⁵

⁵ If the defendant had denied any association at all with the victim on the night of the murder, an admission by him that something had happened could have been incriminating, and the failure to cross-examine on the differences in Captain Stelzer’s two statements might then have been significant.

Note the wording contained in Footnote Five: “If the defendant had denied any association...an admission that something had happened *could have been* incriminating, and the failure to cross-examine...*might then have been* significant.” These “If/Then” statements are useful to you in explaining through hypothetical example the reasoning distinguishing this issue in the present case from similar cases already published. Dictum is a particularly helpful case law component.

TOPICAL APPROACH

The **Topical Approach** is the more difficult way to use Key Number Digests.
This technique is used when you know the subject--or **topic**--of your issue,
but you don't have a Primary Source to start from,
not to mention a Digest Topic & Key Number!

The Topical Approach can also be used to locate terms in other digests.

Here's the basic formula to follow:

Your Issue
+
"Topics in This Volume"
+
Key Number Outline

Primary Sources!

KNOWN-SOURCE APPROACH

The ***Known-Source Approach*** is used when you already have a primary source on point with your legal issue.

This technique is easier because you're *beginning* with a primary source *instead of* trying to locate one!

The Known-Source Approach is also an example of when a primary source can be used as a finding tool!

Here's the basic formula to follow:

Primary Source (Digest Topic/Key Number) = Other Relevant Sources!

Digest Finding Aids

Digest Finding Aids are the several volumes of both state and federal digests placed numerically at the end of each set, and marked by a red-colored band on the spine. Using these valuable volumes help researchers locate needed digest information as quickly and logically as possible.

I Descriptive Word Index

In the *Massachusetts Digest, 2nd Series*, the *Descriptive Word Index* is a 4-volume index (in the *Federal Practice Digest, 4th Series*, it's 3 volumes) which allows the researcher to discover both Digest Topic & Key Number for the issue he is researching. Using this index saves the researcher valuable time in the law library. The definition of "descriptive word" is:

- 1 The PLACES where the facts arose, including the Objects or Things involved;
- 2 The LEGAL ISSUES forming the basis for the research;
- 3 The DEFENSE to the issue; and
- 4 The RELIEF sought

II Table of Cases

The *Table of Cases* is a one-volume index listing in alphabetical order the title of each case; the volume and page of the reporter in which each case is published; the subsequent case history; and the Digest Topic & Key Number for each separate issue. This is a real time-saver.

III Defendant-Plaintiff Table

The *Defendant-Plaintiff Table* gives a complete listing of all cases reported in the Digest, arranged alphabetically by defendant name. (This index is helpful if the only information you have about your case is the defendant's name).

IV Words and Phrases

Words and Phrases gives an alphabetical listing of specific legal words or phrases which have been defined in judicial opinions, and provides the titles and citations of the cases which define these words. This is a very useful research aid.

HOW TO SHEPARDIZE®

YOUR GUIDE TO COMPLETE LEGAL RESEARCH
THROUGH SHEPARD'S CITATIONS

Cir. 1
901F2d1192
712FS2
Cir.
873F2d
—41—
Cir.
719FS
Cir.
707FS
707FS
Al
349Sd2

73FCR293

Cir. 6
724FS535

Cir. 6
3863F2d1291

Cir. 8
714FS11544

803—
Ore
rel36
ed922
Tex
889
Stah
ed17
ed655
Wash
sh2d150
sh2d547

—423—
Cir. 2
870F2d815

—489—
Cir. 3
715FS1229

D C
563A2d1084

80JRP307n

761P2d602
782P2d1028

—427—
Cir. 3
710FS
730FS1501

—494—
Cir. D
862F2d924

—608—
Cir. 5
835F2d1940

—674—
Cir. 5
1833F2d414

—807—
Cir. 3
882F1804
4TC4.01

D C
558A2d307

Cir. 1
862F2d924

—608—
Cir. 3
116FRD378

—717—
Cir. 7
716FS362

—859—
Cir. 1
860F2d601

—429—
Cir. 2
878F2d
698FS

—494—
Cir. 4
862F2d924

—608—
Cir. 9
722FS622

—677—
Cir. 7
716FS362

—859—
Cir. 1
860F2d601

706FS1100
709FS449
709FS1299

—494—
Cir. 11
901F2d1062

—608—
Cir. 11
861F1115/3

—717—
Cir. 7
716FS362

—859—
Cir. 1
860F2d601

712FS301
730FS1255
735FS473

—494—
Cir. Fed.
857F2d1452

—608—
Cir. 11
861F1115/3

—717—
Cir. 7
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860F2d601

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Cir. Fed.
857F2d1452

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Cir. 11
861F1115/3

—717—
Cir. 7
716FS362

—859—
Cir. 1
860F2d601

194CA3d
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—494—
Cir. Fed.
857F2d1452

—608—
Cir. 11
861F1115/3

—717—
Cir. 7
716FS362

—859—
Cir. 1
860F2d601

—434—
Cir. 2
715FS1559

—494—
Cir. Fed.
857F2d1452

—608—
Cir. 11
861F1115/3

—717—
Cir. 7
716FS362

—859—
Cir. 1
860F2d601

Cir. 3

Cir. 7

Cir. 7

—731—
Cir. 9
701FS1481

—894—
Cir. DC
890F2d1225

SHEPARD'S

CellWork 18

Shepard's Supplements

Using the case reporter names at left, locate the corresponding Shepard's Citations sets in your library. Check for the four kinds of paper supplements for each, making a ☐ in each column. Also, determine both color and frequency of publication for all supplements, and record this information on the lines provided. Be sure to record the names of both state and regional reporters (if any). *Make using supplements a consistent part of your research!*

Type/Frequency				
Reporter Name	"EXPRESS"	"ADVANCE SHEET"	"CUMULATIVE SUPPLEMENT"	"Semi-Annual Cumulative Supplement"
	Frequency _____ Color: _____	Frequency _____ Color: _____	Frequency _____ Color: _____	Frequency _____ Color: _____
(State Reporter)				
(Regional Reporter)				
Federal Supplement				
Federal Reporter				
U. S. Supreme Court Reporter				
Case Name Citator				

Secondary Material

*Using material found in your law library,
name one example for each of the various Secondary Material listed below.*

1 Legal dictionary _____

2 Legal encyclopedia _____

3 Legal newspaper _____

4 Legal textbook _____

5 State court rules _____

6 Federal court rules _____

7 Legal almanac _____

8 Directory of state lawyers _____

9 Self-help treatise for prisoners _____

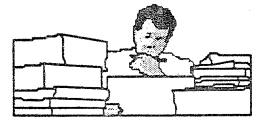
10 Directory of state AND federal courts _____

CONSentrating on the Law[®]
Module ①

CellWork 20

UPDATING PRIMARY SOURCES

POCKET PARTS					FEDERAL
					STATE
SUPPLEMENTS					FEDERAL
					STATE
SHEPARD'S CITATIONS					FEDERAL
					STATE
CRIMINAL LAW REPORTER (FEDERAL)					FEDERAL
					STATE
LAWYER WEEKLY					FEDERAL
					STATE
CODE OF MASS. REGULATIONS (CMR) & CFR					FEDERAL
					STATE
WEST'S LEGISLATIVE SERVICE					FEDERAL
					STATE
ADMINISTRATIVE RULES & REGULATIONS [EXECUTIVE]					
CASE LAW [JUDICIAL]					
CONSTITUTIONAL CHANGES					
STATUTORY LAW [LEGISLATIVE]					



Exercise ①A

Library Terms

Answer each of these questions for the material listed below:

- 1** **What is on the spine of the volume?**
- 2** **On what page is the Table of Contents found?**
- 3** **How is the volume/set arranged?**
- 4** **Is there a Preface page? If yes, what is the scope of the volume?**
- 5** **Does the volume/set have an index? If yes, where?**

 ***Federal Practice Digest, 4th Series ("Prisons" volumes)***

1	<hr/> <hr/>
2	<hr/> <hr/>
3	<hr/> <hr/>
4	<hr/> <hr/>
5	<hr/> <hr/>



Exercise 1B

Library Terms

Answer each of these questions for the material listed below:

- 1** **What is on the spine of the volume?**
- 2** **On what page is the Table of Contents found?**
- 3** **How is the volume/set arranged?**
- 4** **Is there a Preface page? If yes, what is the scope of the volume?**
- 5** **Does the volume/set have an index? If yes, where?**

 ***State Key Number Digest ("Prisons" volume)***

1

2

3

4

5



Exercise ①c

Library Terms

Answer each of these questions for the material listed below:

- 1** **What is on the spine of the volume?**
- 2** **On what page is the Table of Contents found?**
- 3** **How is the volume/set arranged?**
- 4** **Is there a Preface page? If yes, what is the scope of the volume?**
- 5** **Does the volume/set have an index? If yes, where?**

 **Federal Criminal Code & Rules, _____**
Year

1	<hr/> <hr/>
2	<hr/> <hr/> <hr/>
3	<hr/> <hr/> <hr/> <hr/>
4	<hr/> <hr/> <hr/>
5	<hr/> <hr/>



Finding Primary Sources

Give one federal and one state example for each of the following types of Primary Source material.

1 Administrative Regulations

Federal

Citation _____

State

Citation _____

2 Case Law

Federal

Citation _____

State

Citation _____

3 Constitutional Law

Federal

Article _____

Amendment _____

State

Article _____

Amendment _____

4 Statutory Law

Federal

Citation _____

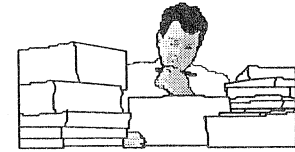
State

Citation _____



Time Limit Worksheet

- | | | |
|---|---|-------|
| 1 | Number of days to file formal grievance from the date the incident occurred: | _____ |
| | | + |
| 2 | Number of days I.G.C. has to respond to formal grievance: | _____ |
| | | + |
| 3 | Number of days inmate has to file Appeal after receipt of Institutional Grievance Coordinator decision: | _____ |
| | | + |
| 4 | Number of days Superintendent has to respond to Appeal: | _____ |
| | | + |
| 5 | Add extensions of time limits (if applicable): | _____ |
| | | = |
| | Total Time for Resolution of Inmate Grievance | _____ |



Indicate the correct Primary Sources for each state and federal court level by writing the material name in the appropriate row:

Source Matching						
	<i>U.S. Supreme Court</i>	<i>U.S. Circuit Court of Appeals</i>	<i>U.S. District Court</i>	<i>State Supreme Court</i>	<i>State Appeals Court</i>	<i>State Entry-level Courts</i>
<i>Case Law</i>						
<i>Constitutional Law</i>						
<i>Court Rules</i>						
<i>Administrative Regulations</i>						
<i>Statutes</i>						



Jargon

***“Jargon” is any technical speech peculiar to a particular line of work.
West’s Black’s Law Dictionary is chock-full of the stuff.***



Jargon=Prescriptive Easement

- 1 What is the first definition given for this term?

- 2 Under “prescriptive easement,” what term does the “See Also” reference refer you to?

- 3 Now, go to the term you just used to answer Question 2. Under this new term, what is the case citation given for “...nonpermissive use which is actual, open, notorious, and adverse for the statutorily prescribed period?”

- 4 What is the case citation given for “intent of occupant to claim and hold real property in opposition to all the world?”

- 5 List the “See Also” references to the term you used to answer question 2:



Exercise ⑤B

Jargon

**“Jargon” is any technical speech peculiar to a particular line of work.
West’s *Black’s Law Dictionary* is chock-full of the stuff.**

 **Jargon = Habeas Corpus**

- 1 What is the English translation for the 2 Latin words *habeas corpus*?

- 2 Whenever these words are used alone, to which type of writ are they usually referring?

- 3 Now, go to the term that you just used to answer Question 2:
 - a What is the definition for this type of writ?

 - b True or False: This type of writ is the most common form of habeas corpus:

 - c What article of the U.S. Constitution guarantees citizens the protections of this writ?

 - d What is the definition of “writ?”

- 4 Under the term *habeas corpus*, how many different kinds of writs are listed? _____



Exercise ⑤c

Jargon

***“Jargon” is any technical speech peculiar to a particular line of work.
West’s Black’s Law Dictionary is chock-full of the stuff.***

👉 **Jargon = Negligence**

- 1 Give the definition for *jargon*.

- 2 To what case does the dictionary send you to illustrate how the term *jargon* is used in the context of a judicial opinion (write down the citation)?


- 3 How many “See Also” reference are listed for *jargon*?

- 4 Turn in the dictionary to the term *Palsgraf Rule*; what is the definition for this term?

- 5 How many different kinds of negligence actions are defined under *Palsgraf Rule*? _____

Primary Sources

For the legal issue below, examine relevant library material; then, answer each Primary Source question.

 ***“I was lugged & did 15 days ‘Ice’ time, then they dismissed the ticket! Can they do that?”***

- ▶ Is this question covered by an **Administrative Regulation** ? _____

If yes, give the citation (e.g., 103CMR750): _____

What **section** of the regulation governs this question? (e.g., 103CMR750.06) _____

- ▶ Are there **Constitutional** issues involved? _____

If yes, cite the article or amendment (e.g., U.S. Const.Amend.14) _____

- ▶ Is there a controlling **Statute** for this question? _____

If yes, give the citation (e.g., M.G.L. ch. 94C, ? 32H) _____

- ▶ Does any **Case Law** exist interpreting the above statute?

If yes, write down the citation(s) (e.g., 456 N.E. 2d 100) _____

Exercise 6B



Primary Sources

*For the legal issue below, examine relevant library material;
then, answer each Primary Source question.*

☞ “My Unit Manager opened my legal mail in front of me! Can he do that?”

- Is this question covered by an **Administrative Regulation**? _____

If yes, give the citation (e.g., 103CMR430): _____

What *section* of the regulation governs this question? (e.g., 103CMR430.06) _____

- Are there **Constitutional** issues involved? _____

If yes, cite the article or amendment (e.g., U.S. Const. Amend. 14) _____

- Is there a controlling **Statute** for this question? _____

If yes, give the citation (e.g., M.G.L. ch. 94C, ? 32H) _____

- Does any **Case Law** exist interpreting the above statute?

If yes, write down the citation(s) (e.g., 456 N.E. 2d 100) _____



Exercise ⑥c

Primary Sources

For the legal issue below, examine relevant library material; then, answer each Primary Source question.

👁️ “They lugged me to an out-of-state prison without a Classification hearing!
Isn’t that illegal?”

- ▶ Is this question covered by an **Administrative Regulation**? _____

If yes, give the citation (e.g., 103CMR430): _____

What **section** of the regulation governs this question? (e.g., 103CMR430.06) _____

- ▶ Are there **Constitutional** issues involved? _____

If yes, cite the article or amendment (e.g., U.S. Const. Amend. 14) _____

- ▶ Is there a controlling **Statute** for this question? _____

If yes, give the citation (e.g., M.G.L. ch. 94C, ? 32H) _____

Does any **Case Law** exist interpreting the above statute?

If yes, write down the citation(s) (e.g., 456 N.E. 2d 100) _____

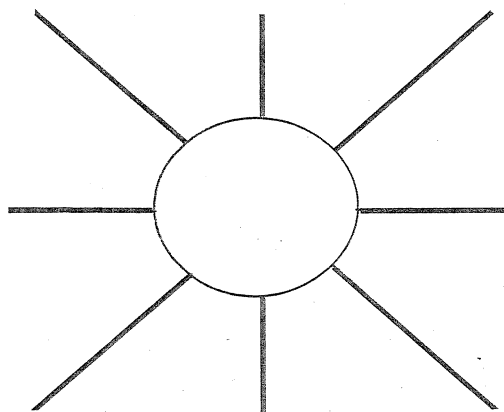


Exercise ⑦A

Statsky Cartwheel

“Is a prisoner free to exercise his religious beliefs?”

- 1 Decide which Keywords from the question above to use.
- 2 Put that word in the center of the cartwheel (**HINT!** Try “Religion”)
- 3 Fill in the “spokes” with related words and concepts.
- 4 Look in various indexes to see if these terms are used as index headings or subheadings.
- 5 Record below any Primary Sources you find using these index headings/subheadings.



Primary Sources Found: _____



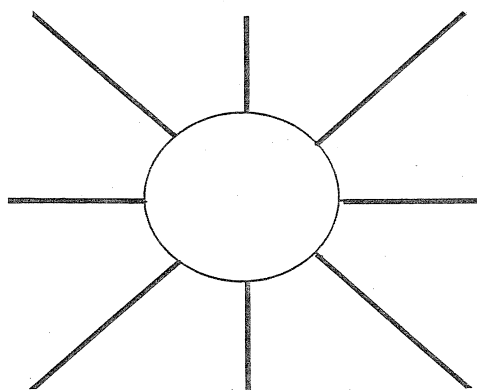
Exercise ⑦B

Statsky Cartwheel



“Does a prisoner have a right to contact visitation privileges?”

- 1** Decide which Keywords from the question above to use
- 2** Put that word in the center of the cartwheel (**HINT!** Try “Privacy”)
- 3** Fill in the “spokes” with related words and concepts
- 4** Look in various indexes to see if these terms are used as index headings or subheadings
- 5** Record below any Primary Sources you find using these index headings/subheadings



Primary Sources Found: _____

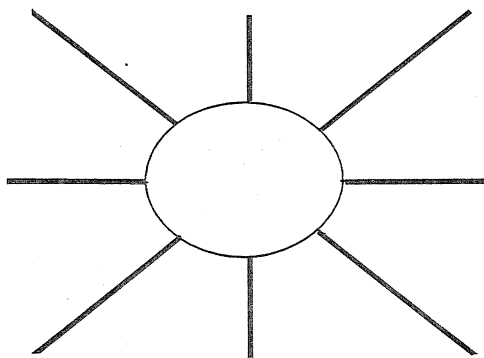


Exercise ⑦c

Statsky Cartwheel

 ***“Do prisoners have a right to unimpeded access to the courts?”***

- 1 Decide which Keywords from the question above to use
- 2 Put that word in the center of the cartwheel (**HINT!** Try “Prisoners”)
- 3 Fill in the “spokes” with related words and concepts
- 4 Look in various indexes to see if these terms are used as index headings or subheadings
- 5 Record below any Primary Sources you find using these index headings/subheadings



Primary Sources Found: _____



Exercise 8A

Statutes & CaseLaw

Imagine that you are a law clerk on a busy afternoon in the law library.

An inmate comes to you and asks the following question...

 “How do I find the state statutory definition of ‘stalking?’”

Take the following steps below to find the answer

- 1 Write down the inmate’s question. From these words, choose keywords to be researched as index headings & subheadings (*Use Statsky’s Cartwheel on a separate paper*)
- 2 From the Cartwheel, list all index headings and subheadings (if any) found

- 3 Search the federal statute index until you locate one of these terms; follow the instructions given in the index (e.g., *See, See Also, Ante, Supra, Generally, This Index*, etc.)

- 4 When you’ve found the statute, record the citation (e.g., *42 USCS §1983*):

- 5 From the “Notes of Decisions” section following the text of the statute, locate the 1st case under Note #4; record the cite below; *then find this case*


- 6 Turn to the 1st page of this case; record the Headnote number of this case which is “on point” with your statute:



Exercise ⑧B

Statutes & CaseLaw

Imagine that you are a law clerk on a busy afternoon in the law library.

 *An inmate comes to you and asks the following question...*
“How do I find a federal statute on what is legal seizure
of an automobile transporting contraband?”

Take the following steps below to find the answer

- 1 Write down the inmate’s question. From these words, choose keywords to be researched as index headings & subheadings (*Use Statsky’s Cartwheel on a separate paper*)
- 2 From the Cartwheel, list all index headings found; list all subheadings found

- 3 Search the federal statute index until you locate one of these terms; follow the instructions given in the index (e.g., *See, See Also, Generally, This Index*, etc.)

- 4 Repeat #3 until you’ve found the statute. When you’ve found the statute, record the citation (e.g., *42 USCS §1983*):

- 5 From the “Notes of Decisions” section following the text of the statute, locate the 1st case under Note #8; record the cite below; *then find this case*

- 6 Turn to the 1st page of this case; record the Headnote number of this case that discusses contraband: _____




Exercise 8c

Statutes & CaseLaw

Imagine that you are a law clerk on a busy afternoon in the law library.

An inmate comes to you and asks the following question...

 “How do I find a federal law on what ‘fair use of copyrighted material’ means, and is there a case that discusses it?”

Take the following steps below to find the answer

- 1** Write down the inmate’s question in a sentence. From this sentence, choose keywords to be researched as index headings & subheadings (*Use the Cartwheel on a separate paper*)
- 2** From the Cartwheel, list all index headings and subheadings (if any) you’ve found:

- 3** Search the federal statute index until you locate one of these terms; follow the instructions given in the index (e.g., *See, See Also, Ante, Supra, Generally, This Index*, etc.)

- 4** When you’ve found the statute, record the citation (e.g., *42 USCS §1983*):

- 5** From the “Notes of Decisions” section following the text of the statute, locate a case interpreting the phrase ‘fair use;’ record the cite below; *then find this case*

- 6** Turn to the 1st page of this case; record the Headnote number of this case which is “on point” with your statute: _____



Exercise 9

UPDATING STATUTES

Fill in the columns of the chart by reading the statute sets named at left and recording 1) how frequently each set is supplemented, and 2) the name & type of each supplement.

FREQUENCY				
MATERIAL	Weekly	Monthly	Quarterly	Annually
United States Code Annotated				
United States Code Service				
The Rules [©]				
State Statute Set				

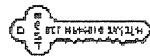
Briefing a Case

BLAKE v. COMMISSIONER OF CORRECTION Mass. 281

Cite as 437 N.E.2d 221 (Mass., 1983)

ness. The short answer is that Moore's employment was not terminated after her absences or after she asked her supervisor to retract her dismissal; she was fired after she deliberately reported for work at 9:30 A.M. instead of 8:30 A.M. While Moore was free to argue that her employment was terminated because of her absences or the quarrel with her supervisor, the board was not required to believe her. "It is the agency's responsibility to weigh the evidence, find the facts, and decide the issues." *Manias v. Director of the Div. of Employment Security*, 388 Mass. 201, 205, 445 N.E.2d 1048 (1983). *Graves v. Director of the Div. of Employment Security*, 384 Mass. 706, —, 429 N.E.2d 705 (1981). The board could conclude that Moore's decision to arrive at work at 9:30 A.M. was "deliberate misconduct" within the meaning of the statute.³ The judgment of the District Court is affirmed.

So ordered.



390 Mass. 537
Albert BLAKE et al.¹

v.

COMMISSIONER OF CORRECTION
et al.²

Supreme Judicial Court of Massachusetts,
Suffolk.

Argued Nov. 7, 1983.

Decided Dec. 6, 1983.

Civil action was brought challenging transfer of Massachusetts prisoners to fed-

3. Since we conclude that the board was warranted in determining that the discharge was attributable solely to willful misconduct, we need not consider whether a discharge, based in part on willful misconduct and in part on legitimate excusable reasons, disqualifies an employee from benefits under G.L. c. 151A, § 25(e)(2). See *Garfield v. Director of the Div. of Employment Security*, *supra* 377 Mass. at 96 n. 2, 384 N.E.2d 642. At oral argument, Moore raised additional issues. An appellate court need not pass upon questions or issues not argued in the

eral correctional institution in another state. The Superior Court, Suffolk Court, Garrity, J., rendered partial summary judgment for prisoners, and direct appellate review was ordered. The Supreme Judicial Court, Wilkins, J., held that prisoners proposed for transfer to federal prison in another state are entitled to reclassification hearings applicable on transfer to a higher custody status.

Affirmed.

Prisoners ⇐ 13.5(2)

Phrase "transfer to another state," in regulations of Department of Corrections establishing procedural rights on transfer of prisoner to another state includes transfers to federal facilities in another state. M.G.L.A. c. 127, § 97A.

See publication, Words and Phrases for other judicial constructions and definitions.

William D. Laxier, Jr., Asst. Atty. Gen.,
for defendants.

Barry Markow, Boston (Judith A. Stalus,
Boston, with him), for plaintiffs.

Before HENNESSEY, C.J., and WILKINS, LIACOS, ABRAMS and O'CONNOR, JJ.

WILKINS, Justice.

We agree with the determination of a judge of the Superior Court that, under regulations of the Department of Correction (department), an inmate in a Massachusetts correctional institution may not lawfully be transferred to a Federal correctional institution in another State unless the department has first afforded the in-

brief." MASS.R.A.P. 164a(4), as amended, 367 Mass. 921 (1975).

1. William Corrigan, Clayton Libby, Albert Little, George Nassar, Gordon O'Brien, Francis Samarian, and David Weichel.

2. William Hogan, the Commissioner of Correction from September, 1979, through September, 1980, and Charles Fenton, a consultant to the Massachusetts Department of Correction.

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mate the procedural rights set forth in the department's regulations concerning the reclassification of inmates to higher custody status. We, therefore, affirm the partial summary judgment that in effect ordered the Commissioner of Correction to return the "plaintiffs to Massachusetts Correctional Facilities forthwith."³

The facts are not in dispute, although from the information in the record appendix we cannot determine precisely what facts were uncontested on the record before the motion judge.⁴ The plaintiffs were serving sentences in Massachusetts prisons when, in the summer of 1980, they were transferred to Federal custody without first being afforded reclassification hearings. When the department is considering the transfer of an individual to a higher custody status, various procedures must be followed before the transfer may be made. 103 Code Mass.Reg. 420.13 (1978). For example, the inmate is given the right to attend classification board meetings and an opportunity to present his position. He is entitled to notice of the transfer decision, and the reasons for it, and he may object to the initial decision. 103 Code Mass.Reg. 420.13(2). Transfer to a "higher custody status" is defined to include "[a] transfer to another state." 103 Code Mass.Reg. 420.01(10).

The defendants acknowledge the department's obligation to comply with its own regulations (see *Royce v. Commissioner of Correction*, 390 Mass. 425, 427, 456 N.E.2d 1127 (1983)), but argue that the words "transfer to another state" apply only to the transfer of an inmate to a correctional facility operated by another State and not to a transfer to a Federal facility in another State. Literally and logically, the transfer of an inmate to a Federal prison in another State is a "transfer to another

state." The defendants advance no reason, and we can think of no logical reason, why an inmate should have the procedural protections of the regulations when transfer to the custody of the correction department of another State is contemplated and should have no procedural protections when transfer to Federal custody in another State is contemplated. A transfer of an inmate out of the Commonwealth has the same disadvantages of distance whether the out-of-State facility is operated by a State or by the Federal government. Our interpretation of the regulation is consistent with the expressed "Goals and Objectives" of the classification system, one of which is that "the classification system provides for maximum involvement of the individual in determining the nature and direction of [his] own goals, and a mechanism for appealing administrative decisions affecting him." 103 Code Mass.Reg. 420.02(1)(e) (1978).

References to "other states or the federal system" in another portion of the department's classification regulations (103 Code Mass.Reg. 420.08(2)(a)) do not require our rejection of the normal meaning of the words "to another state." There was nothing before the motion judge to show, as now argued, that the department's consistent interpretation of its regulations has been that the procedural protections of the regulations do not apply to an inmate transferred to Federal custody. Thus we need not consider whether we would resort to such an interpretation as a guide to construing the regulation.

Partial summary judgment affirmed.



3. The partial summary judgment was amended to state that there was no just reason for delay in its entry (Mass.R.Civ.P. 54(b)), 365 Mass. 820 (1974), thus permitting the defendants to appeal immediately upon its entry. We transferred the appeal here on our own motion.

We are advised by the plaintiffs' brief that a Justice of the Appeals Court allowed a partial stay of the judgment, that one plaintiff has been

released from custody, and that three plaintiffs have been returned to Massachusetts prisons and classified to various facilities.

4. The defendants' answer to the complaint is not in the appendix.

The Commissioner of Correction has statutory authority to transfer State prisoners to Federal custody. G.L. c. 127, § 97A.



Briefing A Case

*Your institution meets the **Bounds v. Smith** mandate of effective and meaningful access to the courts by providing assistance from circuit-riding paralegals who only visit your institution a few days a week. You feel that you should be provided with a working research law library.
You decide to research this as a question of law.*

First, frame the problem in legal terms:

☞ "Must a Department of Correction provide law libraries and/or research assistance, or can they meet their **Bounds** responsibility in other ways?"

Next, find a case dealing with this problem:

☞ *Bounds v. Smith*, 430 U.S. 817; 97 S.Ct. 1491

Finally, using the information in **Bounds**, answer the questions below:

1 Record the numbered Headnote, Digest Topic and Key Number assigned to this issue:

2 How has the Court framed this question of law in legal terms?

3 What is the Court's holding for this issue?

4 List some of the doctrine (Primary Sources) the Court uses to support their holding:



Exercise ①①B

Briefing A Case

You've been in Segregation for a week, and you have to complete some important legal work. Your institution has a Segregation Unit law library. But you're not very good at research and besides, you have a bigger problem--you can't read well. There are no inmate clerks providing legal assistance in this Unit. You ask for help but are told that you're on your own. You decide to research this as a question of law.

First, frame the problem in legal terms:

☞ *"Should law library clerks be available to assist Segregation Unit inmates?"*

Next, find a case dealing with this problem:

☞ *Cepulonis v. Fair, 732 F2d 1 (1984)*

Finally, using the information in *Cepulonis*, answer the questions below:

1 Record the numbered Headnote, Digest Topic and Key Number assigned to this issue:

2 How has the Court framed this question of law in legal terms?

3 What is the Court's holding for this issue?

4 List some of the doctrine (Primary Sources) the Court uses to support their holding:

Group ____



Exercise ①①c

Briefing A Case

A fellow inmate has been helping you prepare a reply brief on your criminal appeal. Recently, a staff member--who has seen you in the law library with this inmate--tells you he doesn't think that it's appropriate for inmates to help each other with legal matters. You're told to do your own work. You believe the staff member is incorrect. You decide to research this as a question of law.

First, frame the problem in legal terms:

☞ “Do inmates have a constitutional right to get legal help from other inmates?”

Next, find a case dealing with this problem:

☞ *Johnson v. Avery*, 393 U.S. 483; 89 S.Ct. 747 (1969)

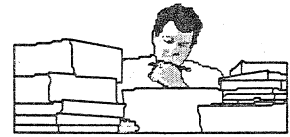
Finally, using the information in *Johnson*, answer the questions below:

1 Record the numbered Headnote, Digest Topic and Key Number assigned to this issue:

2 How has the Court framed this question of law in legal terms?

3 What is the Court's holding for this issue?

4 List some of the doctrine (Primary Sources) the Court uses to support their holding:



Exercise ①②A

Doctrine

☞ *Cepulonis v. Fair*, 732 F.2d 1

- 1 How many numbered headnotes does this case have? _____
- 2 Locate issue 3 in the text of the opinion:
 - a What is the issue?

 - b What was the holding for this issue?

- 3 Record the citations of the primary sources used as doctrine for this holding:
 - a Administrative Regulations _____
 - b Case Law _____

 - c Constitutional Law _____
 - d Statutory Law _____
- 4 What Digest Topic and Key Number assigned to this issue can be used to find doctrine in related cases? _____



Doctrine

 *Wolff v. McDonnell*, 418 U.S. 539

1 How many numbered headnotes does this case have? _____

2 Locate issue 3 in the text of the opinion:

a What is the issue?

b What is the holding for this issue?

3 Record the citations of the primary sources used as doctrine for this holding:

a Administrative Regulations _____

b Case Law _____

c Constitutional Law _____

d Statutory Law _____

4 What doctrine or principle is invoked in footnote 12? _____



Exercise ①②c

Doctrine

👉 *Gideon v. Wainwright*, 372 U.S. 335

- 1 How many numbered headnotes does this case have? _____
- 2 Locate issue 3 in the text of the opinion:
 - a What is the issue?

 - b What was the holding for this issue?

- 3 Record the citations of the primary sources used as doctrine for this holding:
 - a Administrative Regulations _____
 - b Case Law _____
 - c Constitutional Law _____
 - d Statutory Law _____
- 4 What Digest Topic and Key Number assigned to this issue can be used to find doctrine in related cases?



Exercise ①③A

DICTUM

☞ *Cepulonis v. Fair*, 732 N.E.2d 1

- 1 How many numbered headnotes does this case have? _____
- 2 Carefully read each issue in the text of the opinion. Are there any issues containing “If/Then” statements or similar language? If so, answer the following questions:

What is the issue?

What is the holding for this issue?

Record the Dictum statement you found on the lines below:

What is the language that identifies this statement as an example of Dictum?



Exercise ①③B

DICTUM

☞ *Wolff v. McDonnell*, 418 U.S. 539

- 1 How many numbered headnotes does this case have? _____
- 2 Carefully read each issue in the text of the opinion. Are there any issues containing “If/Then” statements or similar language? If so, answer the following questions:

What is the issue?

What is the holding for this issue?

Record the Dictum statement you found on the lines below:

What is the language that identifies this statement as an example of Dictum?



Exercise ①③c

DICTUM

 *Gideon v. Wainwright*, 372 U.S. 335

- 1 How many numbered headnotes does this case have? _____
- 2 Carefully read each issue in the text of the opinion. Are there any issues containing “If/Then” statements or similar language? If so, answer the following questions:

What is the issue?

What is the holding for this issue?

Record the Dictum statement you found on the lines below:

What is the language that identifies this statement as an example of Dictum?



Exercise ①④A

Key Number Digests

Known-Case Approach

Find 732 F.2d 1. Use the Digest Topic and Key Number found in Headnote 3 to find other material with a similar issue in both your state digest and the Federal Practice Digest, 4th Series

1 State Digest

- a Digest Topic/Key Number _____
- b Case Name _____
- c Volume/Page _____

2 Federal Practice Digest, 4th

- a Digest Topic/Key Number _____
- b Case Name _____
- c Volume/Page _____

Topical Approach

"May a bettor recover payment on a horse racing bet if he doesn't surrender the winning ticket?"

Using correct Digest Topics and Key Numbers, locate one case dealing with the same issue in both your state digest and the Federal Practice Digest, 4th Series

- 3** a State Digest Topic and Key Number _____
- b Federal Digest Topic and Key Number: _____

- 4** a State case name: _____
- b Federal case name: _____

Exercise 14B

Key Number Digests

Known-Case Approach

Find 773 F.Supp. 1309. Use the Digest Topic and Key Number found in Headnote 1 to find other material with a similar issue in both your state digest and the Federal Practice Digest, 4th

S e r i e s .

1 State Digest

- a** Digest Topic/Key Number _____
- b** Case Name _____
- c** Volume/Page _____

2 Federal Practice Digest, 4th

- a** Digest Topic/Key Number _____
- b** Case Name _____
- c** Volume/Page _____

Topical Approach

“Is the Department of Correction permitted to transfer a prisoner out-of-state without holding a classification hearing?”

Using correct Digest Topics and Key Numbers, locate one case dealing with the same issue in both your state digest and the **Federal Practice Digest, 4th Series**

- 3**
 - a** State Digest Topic and Key Number: _____
 - b** Federal Digest Topic and Key Number: _____
- 4**
 - a** State and Federal Case Names: _____



Exercise ①④c

Key Number Digests

Known-Case Approach

Find 116 S.Ct. 2174. Use the Digest Topic and Key Number found in headnote #1 to find other material with a similar issue in your state digest and the Federal Practice Digest, 4th Series.

1 State Digest

- a Digest Topic/Key Number _____
- b Case Name _____
- c Volume/Page _____

2 Federal Practice Digest, 4th Series

- a Digest Topic/Key Number _____
- b Case Name _____
- c Volume/Page _____

Topical Approach

“Must permission for an autopsy be granted by all next-of-kin of a decedent?”

Using correct Digest Topics and Key Numbers, locate one case dealing with the same issue in both your state digest and the Federal Practice Digest, 4th Series

- 3** a State Digest Topic and Key Number: _____
- b Federal Digest Topic and Key Number: _____
- 4** a State case name: _____
- b Federal case name: _____



Exercise ①⑤A

Descriptive Word Index

Right of prisoner to practice religious beliefs

- 1 Using the Descriptive Word Index, locate the correct Digest Topic for the above issue:

- 2 Under this Digest Topic, list the descriptive word under which this issue is listed:

- 3 Under the descriptive word, list the Key Number assigned to this issue: _____
- 4 Using the above Digest Topic & Key Number, locate a case on point with this issue and record the case name and citation below:
Case name: _____
Case citation: _____
- 5 Are there any other descriptive words you might use to find similar cases for this issue?
If so, list them:



Exercise ①⑤B

Descriptive Word Index

 ***Right of prisoner to classification hearing before transfer to an out-of-state institution***

- 1 Using the Descriptive Word Index, find the correct Digest Topic for the above issue:

- 2 Under this Digest Topic, list the descriptive word(s) under which this problem is listed:

- 3 Under the descriptive word, list the Key Number assigned to this issue: _____
- 4 Using the above Digest Topic & Key Number, locate a case on point with this issue: record the case name and citation below:
Case name: _____
Case citation: _____
- 5 Are there any other descriptive words you might use to find similar cases for this issue? If so, list them:



Exercise ①⑤c

Descriptive Word Index

☞ Right of prisoner to unimpeded access to the courts

- 1 Using the Descriptive Word Index, find the correct Digest Topic for the above issue:

- 2 Under this Digest Topic, list the descriptive word under which this problem is listed:

- 3 Under the descriptive word, list the Key Number assigned to this issue: _____
- 4 Using the above Digest Topic & Key Number, locate a case on point with this issue: give the case name and citation below.
Case name: _____

Case citation: _____
- 5 List other descriptive words you might use to find similar cases for this issue:



Exercise ①⑥A

Table of Cases

 Find a case called **Commonwealth v. Champagne**

- 1 List both *official citation* (if any) and the *unofficial citation* for *Champagne*:

- 2 List the number of separate issues found in *Champagne* [HINT! *Headnotes*]: _____
- 3 List the Digest Topic & Key Number found in Headnote 1:

- 4 List the Digest Topic & Key Number found in Headnote 18:

- 5 How many different Digest Topics are used in the Headnotes for *Champagne*?

- 6 How many times does the Digest Topic “Criminal Law” appear in the Headnotes? _____
- 7 How many times does the Digest Topic “Homicide” appear in the Headnotes? _____
- 8 In which state digest volume will you find cases for the Digest Topic in:
Answer 3? _____ Answer 4? _____



Exercise ①⑥B

Table of Cases

 Find a case called **Cepulonis v. Fair**

- 1 List the *official citation* (if any) and the *unofficial citation* for *Fair*

- 2 List the **Digest Topic & Key Number** found in Headnote 1:

- 3 List the second **Digest Topic & Key Number** given:

- 4 How many different **Headnotes** are given for *Fair* _____
- 5 List the number of separate issues contained in *Fair*: _____
- 6 In which state digest volume would you find cases for the **Digest Topic** in:
Answer 2? _____ Answer 3? _____



Exercise ①⑥c

Table of Cases

☞ Find a case called **Metropolitan Life Insurance Company v. Ditmore**

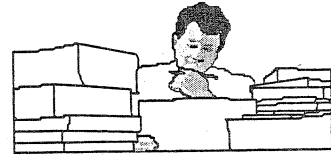
- 1 List the *official* citation (if any) and the *unofficial* citation for *MetLife*:

- 2 List the number of separate issues found in *MetLife* : _____
- 3 List the Digest Topic & Key Number found in Headnote 1:

- 4 List the second Digest Topic & Key Number given:

- 5 How many different Key Numbers are given for the Digest Topic “Federal Civil Procedure?”

- 6 How many different Key Numbers are given for the digest topic “Federal Courts?” _____
- 7 List the digest volume number in which you could find cases for Answer 3:



Exercise ①⑦A

Words and Phrases

 **Locate the phrase “Quasi-Criminal Conduct”**

- 1 List the case citations given under this term:

- 2 Are there any new cases listed for “Quasi-criminal conduct” in the pocket part?
If so, how many? _____
- 3 Using the 1st citation above for the phrase “Quasi-criminal conduct,” record the following:
 - ▶ Headnote“ (Digest Topic/Key Number)


 - ▶ Page of case where phrase is discussed:

- 4 What is the definition this case gives for “Quasi-criminal conduct?”



Exercise ①⑦B

Words and Phrases

 **Locate the phrase “Malice Aforethought”**

- 1 List the case citation(s) given under this term:

- 2 Are there any new cases listed for “Malice aforethought” in the pocket part? How many?

- 3 Using the “pocketpart” citation above for the phrase “Malice aforethought,” record the following:

- Headnote“ (Digest Topic/Key Number)

- Page of case where phrase is discussed:

- 4 What is the definition this case gives for “Malice aforethought?”



Exercise ①⑦c

Words and Phrases

 **Locate the phrase “Prisoner”**

1 List the case citations given under this term:

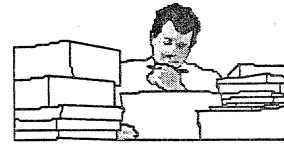
2 Are there any new cases listed for “prisoner” in the pocket part? If so, record the citations:

3 Using the “pocket part” citation above for the phrase “Prisoner,” record the following:

➤ **Headnote (Digest Topic/Key Number)**

➤ **Page of case where this phrase is discussed:**

4 What is the legal definition of “Prisoner?”



Exercise ①⑧A

Shepard's State Citations

☞ Using the case *Cepulonis v. Fair*, 732 F.2d 1, find the following:

- 1 Give the Shepard's set name/volume number/page number where *Cepulonis* is found:


- 2 The *official* citation (if any) and the *parallel* citation (if any):

- 3 Number of sources which have cited this case: _____
- 4 Number of citations preceded by lower-case letters: _____
 - a Number of citations giving the *treatment* of the case: _____
 - b Number of citations giving the *history* of the case: _____
- 5 Number of citations using ^{superscript} numbers (syllabi): _____



Exercise ①⑧B

Shepard's State Citations

 Using the case *Massachusetts v. Champagne*, find the following:
(Please use *MA Case Name Citator* to find the citation!)

- 1 Give the Shepard's name/volume number/page number where *Champagne* is found:

- 2 The *official* citation (if any) and the *parallel* citation (if any):

- 3 Number of sources which have cited this case: _____
- 4 Number of citations preceded by lower-case letters: _____
 - a Number of citations giving the *treatment* of the case _____
 - b Number of citations giving the *history* of the case _____
- 5 Number of cases using ^{superscript} numbers (syllabi): _____



Exercise ①⑧c

Shepard's State Citations

 Using *Commonwealth v. Wright*, 584 N.E.2d 621, find the following:

- 1 Give the Shepard's set name/volume number/page number where *Wright* is found:

- 2 The *official* citation (if any) and the *parallel* citation (if any):

- 3 Number of sources which have cited this case: _____
- 4 Number of citations preceded by lower-case letters: _____
 - a Number of citations giving the *treatment* of the case: _____
 - b Number of citations giving the *history* of the case: _____
- 5 Number of citations using ^{superscript} numbers (syllabi): _____



History & Treatment Symbols

☞ Using *Cepulonis V. Fair*, 732 F.2d 1, answer the following:

HISTORY • TREATMENT

- 1
 - a Number of cases that refer to the "History" of *Cepulonis*: _____
 - b Choose a citation that tells you about the cases' History ; record below:

 - c What does the citing case say about *Cepulonis*? (Use back of sheet)
- 2
 - a Number of citations that refer to the "Treatment" of *Cepulonis* : _____
 - b Choose a citation that tells you about the cases' Treatment ; record:

 - c What does the citing case say about *Cepulonis*? (Use back of sheet)

SYLLABI

- 3
 - a From the list of citations for *Cepulonis*, choose one with a ^{superscript} number; record below:

 - b What does the ^{superscript} number tell you? (Use back of sheet)
 - c Using this citation, locate the exact page where *Cepulonis* is mentioned; what does the citing case say about *Cepulonis*? (Use back of sheet)

History & Treatment Symbols

☞ Using *Commonwealth v. Blinn*, 503 N.E. 2d 25, answer the following:

HISTORY • TREATMENT

1

- a Number of cases that refer to the “History” of *Blinn*: _____
- b Choose a citation that tells you about the cases’ History; record below:

- c What does the citing case say about *Blinn*? (Use back of sheet)

2

- a Number of citations that refer to the “Treatment” of *Blinn* : _____
- b Choose a citation that tells you about the cases’ Treatment; record:

- c What does the citing case say about *Blinn*? (Use back of sheet)

SYLLABI

3

- a From the list of citations for *Blinn*, choose one with a ^{superscript} number; record below:

- b What does the ^{superscript} number tell you? (Use back of sheet)
- c Using this citation, find the exact page where *Blinn* is mentioned: what does the citing case say about *Blinn*? (Use back of sheet)



Exercise ①⑨c

History & Treatment Symbols

Using *Commonwealth v. Wright*, 584 N.E. 2d 621, answer the following:

HISTORY * TREATMENT

- 1
 - a Number of cases that refer to the “History” of *Wright*: _____
 - b Choose a citation that tells you about the cases’ History ; record below:

 - c What does the citing case say about *Wright*? (Use back of sheet)
- 2
 - a Number of citations that refer to the “Treatment” of *Wright* : _____
 - b Choose a citation that tells you about the cases’ Treatment ; record below:

 - c What does the citing case say about *Wright*? (Use back of sheet)

SYLLABI

- 3
 - a From the list of citations for *Wright*, choose one with a ^{superscript} number; record below:

 - b What does the ^{superscript} number tell you? (Use back of sheet)
 - c Using the above citation, locate the exact page where *Wright* is mentioned; what does the citing case say about *Wright*? (Use back of sheet)



Shepard's Federal Citations

Exercise 20A

Using 874 F.2d 147, and 526 F.Supp. 460, answer the following:

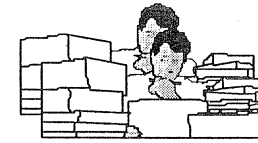
QUESTIONS	874 F2d 147	526 F.Supp. 460
Give the number of Shepard's citations that refer to the HISTORY of each cited case:		
Choose a Shepard's citation that tells you about the cited cases HISTORY * record them in the appropriate columns:		
What do the CITING CASES say about the cited cases (use back of sheet if necessary)?		
Give the number of Shepard's citations that refer to the TREATMENT of each cited case:		
Choose a Shepard's citation that tell you about the TREATMENT of each cited case * Record these citations in the appropriate columns:		
What do the CITING CASES say about each cited case (use back of sheet if necessary)?		
For each of the cited cases, choose a citation with a superscript number * Record these case citations in the appropriate columns:		
Bring these cited cases to your seat. What do the CITING CASES say about each cited case (use back of sheet if necessary)		

Shepard's Federal Citations



👉 **Using 732 F.2d 1, and 773 F.Supp. 1309, answer the following:**

QUESTIONS	732 F2d 1	773 F. Supp. 1309
Give the number of Shepard's citations that refer to the HISTORY of each cited case:		
Choose a Shepard's citation that tells you about the cited cases HISTORY * record them in the appropriate columns:		
What do the CITING CASES say about the cited cases (use back of sheet if necessary)?		
Give the number of Shepard's citations that refer to the TREATMENT of each cited case		
Choose a Shepard's citation that tell you about the TREATMENT of each cited case * Record these citations in the appropriate columns:		
What do the CITING CASES say about each cited case (use back of sheet if necessary)?		
For each of the cited cases, choose a citation with a superscript number * Record these case citations in the appropriate columns:		



Exercise 20C

Shepard's Federal Citations

Using 649 F.2d 281, and 536 F.Supp. 1330, answer the following:

QUESTION	649 F2d 281	536 F.Supp. 1330
Give the number of Shepard's citations that refer to the HISTORY of each cited case:		
Choose a Shepard's citation that tells you about the cited cases HISTORY * record them in the appropriate columns:		
What do the CITING CASES say about the cited cases (use back of sheet if necessary)?		
Give the number of Shepard's citations that refer to the TREATMENT of each cited case:		
Choose Shepard's citations that tell you about the TREATMENT of each cited case * Record these citations in the appropriate columns:		
What do the CITING CASES say about each cited case (use back of sheet if necessary)?		
For each of the cited cases, choose a citation with a ^{superscript} number * Record these case citations in the appropriate columns:		
Bring these cases to your seat * What do the CITING CASES say about each cited case (use back of sheet if necessary)?		



Exercise 21A

Shepard's U.S. Citations

Using 418 U.s. 539, and 438 U.S. 726, and answer the following:

QUESTION	418 U.S. 539	438 U.S. 726
Give the number of Shepard's citations that refer to the HISTORY of each cited case:		
Choose a Shepard's citation that tells you about the cited cases' HISTORY * record them in the appropriate columns:		
What do the CITING CASES say about the cited cases (use back of sheet if necessary)?		
Give the number of Shepard's citations that refer to the TREATMENT of each cited case:		
Choose Shepard's citations that tell you about the TREATMENT of each cited case * Record these citations in the appropriate columns:		
What do the CITING CASES say about the cited cases (use back of sheet)?		
For each of the cited cases, choose a citation with a ^{superscript} number * Record these case citations in the appropriate columns:		
Bring these citing cases to your seat * What do the CITING CASES say about each cited case (use back of sheet if necessary)?		



Shepard's U.S. Citations

21b: Using 441 U.S. 520 , and 393 U.S. 483, answer the following:

QUESTION	441 U.S. 520	393 U.S. 483
Give the number of Shepard's citations that refer to the HISTORY of each cited case:		
Choose a Shepard's citation that tells you about the cited cases' HISTORY * record them in the appropriate columns:		
What do the CITING CASES say about the cited cases (use back of sheet if necessary)?		
Give the number of Shepard's citations that refer to the TREATMENT of each cited case:		
Choose Shepard's citations that tell you about the TREATMENT of each cited case * Record these citations in the appropriate columns		
What do the CITING CASES say about each cited case (use back of sheet)?		
For each of the cited cases, choose a citation with a ^{superscript} number * Record these case citations in the appropriate columns:		
Bring these citing cases to your seat * What do the CITING CASES say about each cited case (use back of sheet if necessary)?		



Shepard's U.S. Citations

Exercise 21C

Using 430 U.S. 817, and 372 U.S. 335, answer the following:

QUESTION	430 U.S. 817	372 U.S. 335
Give the number of Shepard's citations that refer to the HISTORY of each cited case:		
Choose a Shepard's citation that tells you about the cited cases' HISTORY * record them in the appropriate columns:		
What do the CITING CASES say about the cited cases (use back of sheet if necessary)?		
Give the number of Shepard's citations that refer to the TREATMENT of each cited case:		
Choose Shepard's citations that tell you about the TREATMENT of each cited case * Record these citations in the appropriate columns:		
What do the CITING CASES say about each cited case (use back of sheet if necessary)?		
For each of the cited cases, choose a citation with a ^{superscript} number * Record these case citations in the appropriate columns:		
Bring these citing cases to your seat * What do the CITING CASES say about each cited case (use back of sheet if necessary)?		

Exercise 22A

Secondary Material

Using secondary material in this library, answer the following questions for the issue below:

“Post-Conviction Remedies”

- 1 What is the definition of “post-conviction remedies?”

- 2 Locate one treatise on post-conviction remedies:

a Title

b Author

c Publisher

- 3 Locate one form for “Notice of Appeal” using Bailey & Fishman’s *Complete Manual of Criminal Forms*:

a Name of Form

b Chapter

c Section (§)

d Page #



Exercise 22B

Secondary Material

Using Secondary Material in this library, answer the following questions for the issue below:

"Search and Seizure"

1 What is the legal definition of "seizure?"

2 What is the legal definition of "search?"

3 Locate a set on *Search and Seizure*, then record the following:

- a Name of Set _____
- b No. of Volumes _____
- c Author/Publisher _____

4 Locate a Secondary Source on "Warrantless seizures for items not named in a search warrant."

- a Volume _____
- b Chapter _____
- c Section _____
- d Page _____



Exercise 22C

Secondary Material

Using Secondary Material in this library, find 3 treatises discussing:

 ***“Prisoners’ ‘effective and meaningful access to the courts’”***

1 a Title _____
 b Author _____
 c Publisher _____
 d Chapter # _____
 e Chapter/Section _____

2 a Title _____
 b Author _____
 c Publisher _____
 d Chapter # _____
 e Chapter/Section _____

3 a Title _____
 b Author _____
 c Publisher _____
 d Chapter # _____
 e Chapter/Section _____

Appendix A

***CON*Sentrating on the Law[®]**

...a Law Clerk Training program

SIGN-UP SHEET

Name

Unit

1

2

3

4

5

6

7

8

9

10

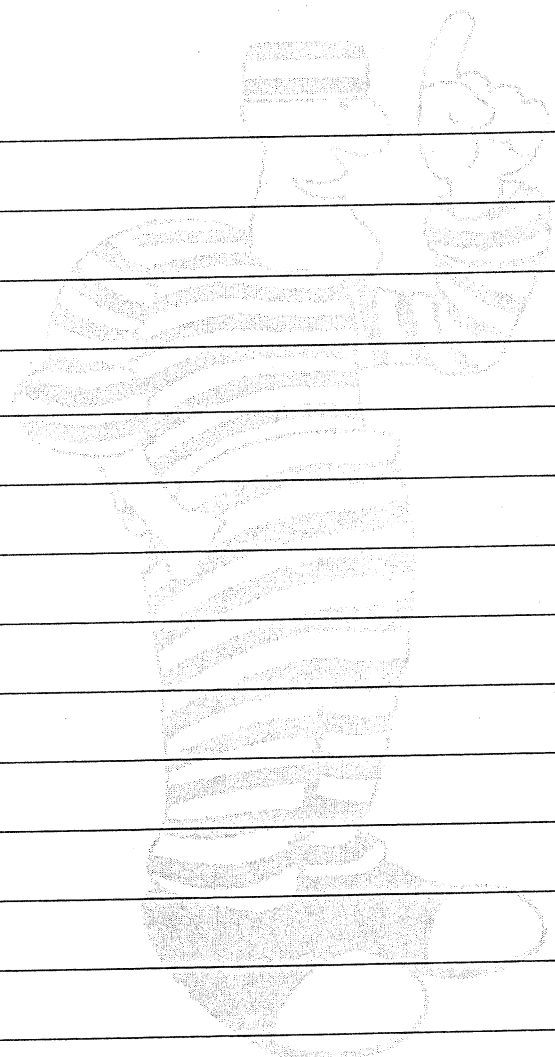
11

12

13

14

15



Appendix A

CONSentrating on the Law[®]

...the Self-Directed Legal Research Course

TO _____ / _____
Name Unit

FROM _____ / _____
Name Title

DATE ____ / ____ / ____

RE Legal Research Course

CONgratulations!

You have been selected to participate in the **CON**Sentrating on the Law[®] Course.
This Course consists of 16 ____-hour classes. Class is given ____ a week.
If you cannot attend, please notify the CourseGiver so that others can be scheduled.

WHERE: _____

DAY : _____

DATE : _____

TIME : _____

Please come prepared with paper and something to write with

Appendix A

NEW PROGRAM!

A new course called *CONSentrating on the Law*,[©] a law clerk training program will be hosted by the library. The 1st class will be on :

Date _____

Day _____

Place _____

Time _____ A/PM to _____ A/PM

Instructor _____

CourseGiver Checklist

- [] Review Opening Night lesson plan (Ch.2)**
- [] Review Chapter 2**
 - [] Relaxation advice**
 - [] Assembling CourseGiver lesson book**
- [] Prepare Classroom**
 - [] Supply Envelope**
 - [] LeftOver Binder**
 - [] Overhead projector/screen/transparencies**
 - [] Student folders**
 - [] Adequate seating**

Appendix A

Class Roster

Date: ____/____/____

Instructor: _____

	NAME	UNIT	COMMITMENT NUMBER
1	Jailhouse Joe	1-1	DOC12345
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

CONSentrating on the Law®

is not:

- *A legal clinic*
For legal advice, get a lawyer
- *"Story Time"*
There's no time to discuss your case
- *A "Jailhouse Lawyer" School*
It's illegal to practice law without a license
- *A Legal Writing Workshop*
The application of legal research is legal writing, which this Course does not cover (see your law librarian for available books on the subject)

CONSentrating on the Law®

was created to aid Departments of Correction
in meeting their affirmative obligation of
unimpeded prisoner's access to the courts



CONSentrating on the Law®

was designed to supplement and not replace
existing policies and programs relative to a
prisoners' unimpeded access to the courts.



The offering of ***CONSentrating on the Law®***

in no way implies or suggests an official
sanction by any federal, state, or local penal
institution or Department of Correction; nor
does it guarantee prisoners a job in the law
library; nor does it guarantee any degree of
success in the courts for prisoners who
complete the Course.



Opinions expressed in

CONSentrating on the Law®

are the sole responsibility of the author.

CONSentrating on the Law®

***A Program of
Self-Directed
Legal Research for
Prison CourseGivers***

Course Rules

(Revised 2*2*00)

(Instructor)

(Institution)

(Date)

Course Focus

To teach a method of
self-directed
legal research.
This will help:

- Empower you to perform your own
research
and eliminate the reliance on others whose
research “skills”
may hurt instead of help
- ▼ Demonstrate a basic level of competence
when seeking employment in prison law
libraries
- ▼ Aid in your unimpeded access to the
courts

NOTICE

You have a serious
responsibility
to use your legal research
knowledge wisely.
It is both illegal and
an institution offense to:

- ▼ Set up an “office”
in the law library

§

- ▼ Accept money
or anything of value
from anyone
for legal assistance

§

- ▼ Practice law without a license

§

- ▼ Disrupt the good order of the
institution by cultivating enemies
when submissions on the behalf
of inmates go the wrong way

Course Logistics

WHERE

Law Library

DAY

Monday

TIME

6PM

“GOOD TIME”

No

TESTING

Quizzes, CellWork
Exercises (Class/Group)
Pre-Test, Final Exam

SYLLABUS

Modules, Handouts

BEHAVIOR

Act like adults

ATTENDANCE

2 legitimate absences

Quiz Grade Sheet

	Quiz	1	2	3	4	5	6	7	8	9	10
Name											
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											

Graduation Checklist

- ☐ *Correct EXAMS by* ____/____/____
- ☐ *Complete GOOD TIME SHEETS (keep copy for your records)*
- ☐ *Submitted GOOD TIME SHEETS on* ____/____/____
- ☐ *Submit REFRESHMENT request: Received on* ____/____/____
- ☐ *Type CERTIFICATES OF ACHIEVEMENT*
- ☐ *Sign CERTIFICATES*
- ☐ *Sent CERTIFICATES for Superintendent's signature on* ____/____/____
- ☐ *Received signed CERTIFICATES on* ____/____/____
- ☐ *Type student INVITATIONS: sent on* ____/____/____
- ☐ *Type staff INVITATIONS: sent on* ____/____/____
 - ☐ Superintendent
 - ☐ Deputy Superintendent of Programs
 - ☐ Deputy superintendent for Operations
 - ☐ Immediate Supervisor
 - ☐ School Principal
 - ☐ Department Manager of Library Services

Course Evaluation Survey

*Please help to improve **CON**Sentrating on the Law[®] for future students by answering the following questions accurately, thoughtfully, and honestly. Thank you.*

A On a scale of 1-10 where 10 is the best, please rate the CourseGiver's:

- | | | |
|---|---------------|-------|
| 1 | Lecture Style | _____ |
| 2 | Knowledge | _____ |
| 3 | Preparation | _____ |

B Course Material

- 1 Did the CourseGiver give enough opportunity for students to get "hands-on" experience with the law collection? YES_____ NO____ If no, when in the Course did this happen (Digests, Framing the Question, etc.)?

- 2 How effective were the CourseGiver's in-class demonstrations of the various research skills (Shepardizing, using indexes, etc.)?
Very_____ Somewhat_____ Not at all_____
- 3 How helpful was the CellWork in preparing for the next lesson?
Very_____ Somewhat_____ Not at all_____
- 4 How closely were quizzes related to the lectures on those subjects?
Very_____ Somewhat_____ Not at all_____
- 5 How well did the CourseGiver use handouts to illustrate the lectures?
Very_____ Somewhat_____ Not at all_____

C How can **CON**Sentrating on the Law[®] be improved (Use back of sheet if necessary)?

Appendix B

Department of Correction Monthly Program/Work Roster

Month _____ Year _____

Work Assignment _____

Education _____

Program _____

	Name	Comm. #	Performance Rating
1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____

KEY TO RATING: (s) Satisfactory = 2.5 days; (U) Unsatisfactory = 0 Days; (I) Incomplete; Supervisor signature _____

Appendix B

TO :
FROM:
DATE :
RE : Signature

Superintendent:

Enclosed are _____ certificates representing inmates who have successfully completed the current cycle of ***CON**Sentrating on the Law[®]*.

As I will be returning these to the students on their graduation night in two weeks' time, please sign these certificates at your earliest convenience.

Thank you for your continued enthusiasm for and support of this program of self-directed legal research for the inmates at this institution.

Invitation

©MVL EHL NO

CONcentrating

Created Expressly for
Legal Research Students by:
Mongelli Greetings Ltd.

CONgratulations,

_____!

**You are cordially invited to attend the
graduation for the students of**

CONSENTRATING ON THE LAW

...Self-Directed Legal Research Course

Place: Law Library

Day:

Date: / / 2000

Certificate of Competence

This is to certify that

has successfully completed the ***CON*Sentrating on the Law®** law clerk training course
and is competent to work as Legal Reference Clerk in the law library at the
State/Federal Correctional Institution at
_____, this _____ day of _____, 20_____.

If you are transferred, present this Certificate to the librarian at your new
institution to demonstrate that you have completed this Course.

Course Giver

Superintendent

Appendix B

GOOD LUCK!

A You have new knowledge, AND a new responsibility to use it wisely

- ☐ *Don't make ridiculous claims* Filing frivolous suits
 - ☐ Destroys your credibility with the courts
 - ☐ Ruins your reputation with staff *and* inmates
- ☐ *Don't be vindictive*
 - ☐ Don't use the courts to "get even with" the Administration
 - ☐ The courts are hard on people who waste their time
- ☐ *Don't set up an "office" in the law library*
 - ☐ It is a disciplinary offense for extorting money/valuables for legal work
 - ☐ It is a felony to practice law without a license
 - ☐ You'll cultivate enemies if your filings for inmates go the wrong way

B No one masters legal research

- You've Only Just Begun
- Continue to learn
- Use the law library to sharpen your skills

**C Your Certificate of Achievement is not a measure of how much you know.
It measures your**

- ☐ Curiosity
- ☐ Acceptance of what you *don't* know
- ☐ Willingness to help yourself

D Practice the "3 Virtues of a Competent Researcher"

- Patience Tenacity Honesty

Tenacity

Don't let discouragements defeat you. Search until you find the answer.



3 Virtues of a Competent Researcher



Honesty

*Admit when you've run into a dead-end
Re-frame your original question*

Patience

*Pace yourself Go slowly and
carefully each step of the way*



Appendix C

Front-Street!

- 1 An annual supplement, kept in a pocket in the inside back cover of a hardbound volume
- 2 United States Code Annotated
- 3 The published opinions of an appellate court
- 4 *Black's Law Dictionary*
- 5 *Massachusetts Lawyer's Weekly*
- 6 Locating/updating primary sources
- 7 103 NOR 491
- 8 Massachusetts General Laws Annotated
- 9 Help you locate primary sources. E.g., Digests

Q1: Law Library Structure

- 1 Primary Sources/Secondary Material/Finding Tools
- 2 B/C/A
- 3 Administrative Regulations/Case Law/ Constitutional Law/ Statutory Law

Q2: Grievance Policy

- 1 C
- 2 Date of occurrence/ Institution where it happened /
Institution you live in/Brief statement of facts/
Remedy requested/ Signatures: yours & staff
recipient
- 3 Institution Grievance Coordinator
- 4 10 working days
- 5 Superintendent
- 6 160

Q3: Court Hierarchy

- 1 Supreme Judicial Court of Massachusetts
- 2 Appeals Court of Massachusetts
- 3 Trial Courts of Massachusetts
- 4 B
- 5 C
- 6 C
- 7 B
- 8 A

Q4: Framing the Question

- 1 Framing the Question
- 2 Index Heading
- 3 Statsky Cartwheel
- 4 "Are there controlling statutes?" "Is there case law interpreting those statutes?" "Does the issue fall under the scope of an administrative regulation?" "Does the issue raise constitutional questions?"

Q5: Statutes

- 1 Legislative branch
- 2 Controlling
- 3 Section; sections
- 4 M.G.L.A., Ch. 94C, §32H
- 5 42 U.S.C.S. §1983
- 6 Mass. General Laws Annotated
- 7 United States Code Annotated

Q6: Case Briefing

- 1 Factual History
- 2 Disposition
- 3 Doctrine
- 4 Dictum
- 5 Issue

Q7: Key Number Digests

- 1 3/2/1/4
- 2 True
- 3 True
- 4 C
- 5 A

Q8: Shepardizing®

- 1 History/ Treatment/ Locate issues on point
- 2 5 * 1 * 4 * 3 * 2 * 6 * 7
- 3 "Abbreviations-Analysis" Table
- 4 Front cover of any paper supplement
- 5 A

Q9: Secondary Material

- 1 *Black's Law Dictionary*
- 2 *Massachusetts Rules of Court*
- 3 *Massachusetts Lawyer's Diary and Manual*
- 4 *Massachusetts Lawyer's Weekly*
- 5 *Massachusetts Domestic Relations*
- 6 Treatise
- 7 True

Q10: Wrappin' Up!

- 1 A paper supplement received annually and kept in a pocket" in the inside back cover of a law book
- 2 Admin. Regs. * Case law * Constitutional law * Statutory
- 3 Judicial branch
- 4 Legal dictionary
- 5 Lawyer's Diary and Manual
- 6 A citation is an address to the set, volume, and section of primary sources and secondary material, e.g., 503 NE2d 25
- 7 Citation service that helps you update primary sources
- 8 103
- 9 MA General Laws Annotated * Annotated Laws of MA
- 10 Shepard's Citations * Digest * Index * Law Encyclopedia

Appendix C

Part One: Research Material

- 1 Finding Tools/ Primary Sources/ Secondary Material
- 2 B-C-A
- 3a *Massachusetts Digest/ Massachusetts Digest, Second Series /Federal Practice Digest (Series 1-4)*
- 3b *Shepard's Massachusetts Citations/ Shepard's Federal Citations / Shepard's United States Citations*
- 4a *Massachusetts Lawyer's Weekly/ 4b Black's Law Dictionary 4c Prisoner's Self-Help Litigation Manual*
- 5a Administrative Regulations/ Case Law/ Constitutional Law / Statutory Law
- 6a *Code of Massachusetts Regulations/ Code of Federal Regulations 6b MA Decisions/ MA Reporter/ MA Appeals Court Reports/ Northeastern Reporter, Second Series/ Federal Supplement/; Federal Reporter (2d or 3d series); Supreme Court Reporter 6c MA General Laws Annotated, or Annotated Laws of MA/United States Code Annotated or United States Code Service 6d [Same as "C" above]*
- 7 Locate

Part Two: Framing the Question

- 1 Framing the Question
- 2 Index heading
- 3 Statsky Cartwheel
- 4 "Are there any constitutional issues involved?" "Is there a controlling statute for this issue?" "Are there cases which interpret those statutes for this issue?" "Is this issue covered by an administrative regulation?"

Part Three: "Shepardizing"

- 1 5-1-4-3-2-6-7
- 2 Abbreviations Analysis
- 3 Front cover of Shepard's paper supplements
- 4 Finding Tool

Part Four: Statutes

- 1 Legislative branch
- 2 Controlling
- 3 Section/ Sections
- 4 M.G.L., ch.94C, §32H
- 5 42 U.S.C.S. §1983
- 6 Massachusetts General Laws Annotated
- 7 Annotated Laws of Massachusetts

Part Five: Case Briefing

- 1 Dividing a case into its component parts
- 2 Parties/ Deciding justices/ Author of opinion/ Attorneys/ Syllabus/ Headnotes/ Issues/ Holdings/ Key Numbers/ Digest Topics/ Factual History/ Doctrine/ Dictum/ Footnotes/ Disposition
- 3 Volume # / Set abbreviation / Page #
- 4 True

Part Six: Key Numbers

- 1 D
- 2 C

3 1-3-5-2-6-4

Part Seven: Court Hierarchy

- 1 Supreme Judicial Court of Massachusetts
- 2 Appeals Court of Massachusetts
- 3 Trial Courts of Massachusetts
- 4 B
- 5 A
- 6 C
- 7 B
- 8 A

Part Eight: Using State Material

- 1 Massachusetts General Laws Annotated; Annotated Laws of Massachusetts
- 2 MA Practice Series
- 3 MA Decisions
- 4 MA Rules of Court (current year)
- 5 MA Digest/ Massachusetts Digest, Second Series
- 6 Federal Practice Digest (Series 1-4)
- 7 MA Lawyer's Diary and Manual
- 8 Liacos on Massachusetts Evidence, 6th Edition

Part Nine: Grievance Regulation

- 1 C
- 2 Name of current institution/ Institution where incident took place/ Date of incident/ Brief statement of relevant facts/ Remedy requested/ Signatures of staff recipient & inmate
- 3 Institution Grievance Coordinator
- 4 10
- 5 Superintendent
- 6 160

Part 10: Updating Primary Sources

- 1 Pocket Part
- 2 Paper Supplements
- 3 Advance Sheets
- 4 Shepard's Citations
- 5 Loose-leaf
- 6 Sign-off
- 7 Computers

Bonus Questions

- 1 103 CMR 478
- 2 To explain further
- 3 Booklet from Secretary of State; MA General Laws Annotated
- 4 United States Code; U. S. Code Annotated U. S. Code Service/ Appendix of *Black's Law Dictionary*
- 5 a Statute b Session laws c Public Laws d General laws

Appendix C

Opening Nite

1A 1 Set name; Key Symbol; Volume Number; "Post Office to Product Liability, Key 70" 2 Page 17, "Topics in This Volume" 3 Alphabetically by Digest Topic; then numerically by Key Number 4 Yes; Digests federal cases for 9 separate topics, beginning with 'Post Office' and ending with 'Products Liability' 5 The digest itself is an alphanumerical index; also, there is an 'Outline of the Law,' pp. vii-xii.

1B 1 Set name; "Paupers to Records;" Key Symbol; "1933 to Date;" Volume 19 2 19 MassD2d 18 3 Alphabetically by Digest Topic, then numerically by Key Number 4 "Covers MA state and federal cases decided from 1933 to the present." 5 The volume itself is an alphanumerical index; also, there are Key Number outlines on the 1st page of each Digest Topic

1C 1 Volume name; Edition statement (e.g. 1998); Publisher name 2 Page 9; also, Title index at beginning of each new section; also, "Summary of Features" on back cover, and a Title list on front cover 3 Arranged in 2 parts; Part 1 = 'Federal Rules of Criminal Procedure for the U.S. District Courts,' Part 2 = Title 18, 'Crimes and Criminal P r o c e e d u r e s' 4 Yes; "Updates the rules and statutes in the [current year] Pamphlet and its [current year] Supplement." 5 Yes; "Consolidated Index," p. 1,345

Module 1

1 8 C.F.R. 4.20 / 103 C.M.R. 478 2 732 F.2d 1/ 503 N.E.2d 7 3 U.S. Const. Art. 2, §2, Cl. 1 /U.S. Const. Amendment 14, §1 * M.G.L. Const. Pt. 1, Art. 1/M.G.L. Const. Amend 48 4 18 U.S.C. §1111/M.G.L. ch. 265, §2

Module 2

1 14 2 10 3 14 4 42 5 (varies) 6 80 days

Module 3

1st Row = Supreme Court Reporter/ Federal Reporter/Federal Supplement/Massachusetts Reporter/Mass. Appeals Court Reports/Massachusetts Law Reporter 2nd Row = ALL FEDERAL LEVELS: United States Constitution * ALL STATE LEVELS: The Constitution of the Commonwealth of Massachusetts 3rd Row = ALL FEDERAL LEVELS: Federal Judicial Procedure & Rules, Federal Criminal Code & Rules, Rules volumes of USCA/USCS * ALL STATE LEVELS: MA Rules of Court, 1998, Rules volumes of MGLA or ALM 4th Row = ALL FEDERAL LEVELS: Code of Federal Regulations * ALL STATE LEVELS: Code of Massachusetts Regulations 5th Row = ALL FEDERAL LEVELS: U.S.C. or U.S.C.A. or U.S.C.S./ Massachusetts General Laws (All state levels)

Module 4

5A 1 A right to use another's property which is not inconsistent with the owner's rights and which is acquired by a use, open and notorious, adverse and continuous for the statutory period 2 Adverse Possession 3 *Ryan v. Stavros*, 348 Mass. 251/203 N.E.2d 85 4 *Sertic v. Roberts*, 171 Or. 121/136 P2d 248

5 Constructive Adverse Possession; Hostile; Possession; Notorious Possession; Prescription; Tacking

5B 1 "You have the body" 2 Habeas Corpus ad subjiciendum 3a A writ which issues when a prisoner has had a judgement against him in an action; and the plaintiff is desirous to bring him up to some superior court, to charge him with process of execution 3b True 3c U.S. Const. Art. 1, §9 3d A written judicial order to perform a specified act 4 47

5C 1 The failure to use such care as a reasonably prudent and careful person would use under similar circumstances 2 *Amoco Chemical Corp. v. Hill, Del. Super.*, 318 A.2d 614, 617 3 20 4 One who is negligent is liable only for the harm or injury which is in the orbit of foreseeability, and not for every injury which follows from his negligence 5 Twenty

6A 1 Yes/103 CMR 430, "Disciplinary Proceedings"/§6 2 Yes U.S.Const. Amends. 1, 14 3 N/A 4 Yes/468 N.E.2d 616

6B 1 Yes/ 103 CMR 481, "Inmate Mail" 2 Yes/U.S.Const Amends. 1, 5 3 Yes/M.G.L. Ch. 127, §87 4 Yes/805 F.2d 806

6C 1 Yes/103 CMR 420/420.13 2 Yes/U.S.Const. Amends. 5, 14 3 N/A 4 Yes/ 457 N.E. 2d 281

7A 1-5 (Varies) 6 103 CMR 471

7B 1-5 (Varies) 6 103 CMR 400

7C 1-5 (Varies) 6 103 CMR 478

Module 5

8A 1-3 (Varies) 4 17 U.S.C. §107

5 471 U.S. 539 6 Four

8B 1-3 (Varies) 4 49 U.S.C. §80302

5 488 F.2d 563 6 One

8C 1-3 (Varies) 4 M.G.L. Ch. 265, §43

5 657 N.E.2d 467 6 Two

9 First Row = Westlaw®/ U.S.C.A. Supplementary Pamphlet; N/A * Annual Pocket Parts 2nd Row = WestlawSM / U.S. Code Service Advance/ Cumulative Later Case & Statutory Service/ Annual Pocket Parts 3rd Row = N/A * Rules® Supplement loose-leaf advances/ N/A * N/A 4th Row = Official Opinions, Appeals Court of Mass./ Massachusetts Legislative Service/ Interim Annotation Service/ Annual Pocket Parts

Module 6

10 1st Page = Parties; Syllabus; Headnote (Digest Topic & Key Number); Attorney Names; Judge's Names; Factual History 2nd Page = Issues; Holdings; Doctrine; Dictum; Footnote; Disposition

11A 1 Headnote 13, Prisons, Key 4(13) 2 "While adequate law libraries are one constitutionally accepted method to ensure meaningful access...our decision here...does not foreclose alternative methods to achieve that goal" 3 Are law libraries the only constitutionally accepted method available to corrections professionals to guarantee unimpeded access to courts? 4 *Younger v. Gilmore*, 404 U.S. 13 (1971)/ *Johnson v. Avery*, 393 U.S. 488/ *Procunier v. Martinez*,

Appendix C

416 U.S. 396

11B 1 Prisons 4(13) 2 "[Must correctional officials] provide, in addition to a satellite library, at least 5 hours assistance[...] by 2nd and 3rd year law students...." 3 "Bounds does not create an entitlement to legal aid assistance if library access is otherwise constitutionally adequate." (732 F.2d at 6) 4 *Bounds v. Smith*, 430 U.S. 17/ *Procunier v. Martinez*, 416 U.S. 396

11C 1 Headnote 9 (Prisons, Key 13) 2 If the state does not provide some reasonable alternative to assist inmates in the preparation and filing of petitions for post-conviction relief, can they validly bar inmates from furnishing such assistance to other prisoners? 3 "The power of the state to control the practice of law cannot be exercised so as to abrogate federally protected rights." (89 S.Ct. 751) 4 *NAACP v. Burton*, 371 U.S. 415 (1963)/ *Sperry v. Florida*, 373 U.S. 379

12A 1 Seven 2a Can prison officials who fail to preserve an issue for appeal at trial argue that same issue on appeal? 2b "It is too late...to raise this issue: they did not make it below in their post-trial memorandum, nor did they file a motion...asking the District Court to modify its findings." 3a N/A 3b *Welch and Corr Construction Corporation v. Wheeler*, 470 F.2d 140, 141 (1972) 3c N/A 3d N/A 4 Federal Courts, Key 613

12B 1 21 2a Whether the validity of the procedures for depriving prisoners of good-time credits may be considered in a civil rights suit brought under 42 U.S.C. §1983 2b "Declaratory judgement as a predicate to a damage award is not barred in a civil rights action 3a N/A 3b *Preiser v. Rodriguez*, 411 U.S. 475 3c U.S.Const. Amends. 1, 14 3d 42 U.S.C. §1983 4 The principle of *res judicata*

12C 1 Three 2a Must the state provide counsel for the indigent accused in a criminal prosecution? 2b "...any person haled into Court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." 3a N/A 3b *Betts v. Brady*, 316 U.S. 455 (1942), *Powell v. Alabama*, 287 U.S. 45, 68 (1932), *Grosjean v. American Press Co.*, 297 U.S. 233 (1936), *Johnson v. Zerbst*, 304 U.S. 458, 462 (1938) 3c U.S.Const. Amends. 6, 14 3d N/A 4 Constitutional Law, Key 268

Module 7

13A 1a Federal Courts, Key 613 1b *Granada Wines, Inc. v. New England Teamsters & Trucking Industry Pension Fund* 1c 12 Mass D2d 542 2a Federal Courts, Key 613 2b *Daley v. Webb* 2c 54 FPD 4th 206 3a Gaming, Key 23 3b Gaming, Key 28(1) 4a *DePasquale v. Ogden Suffolk Downs, Inc.*, 564 N.E.2d 584 4b *White v. Turfway Park Racing Association, Inc.*, 909 F.2d 941

13B 1a Federal Courts, Key 13.15 1b *Illsley v. United States Parole & Probation* 1c 12 Mass D 2d 402 2a Prisons, 4(13) 2b *Board of Pardons v. Allen* 2c 49 FPD 4th 831 3a Prisons, Key 13.5(2) 3b Prisons, Key 13.5(2) 4a *Sisbarro v. Warden, Massachusetts State Penitentiary* 4b *Gaffney-Bey v. Federal Bureau of Prisons*

13C 1a Injunction, Key 189 1b *Perez v. Boston*

Housing Authority 1c 14 MassD2d 98 2a Injunction, 189 2b *Haitian Refugee Center v. Gracey* 2c 41 FPD 4th 524 3a Dead Bodies, Key 1 3b Dead Bodies, Key 1 4a Opinion of MA Attorney General, January 15, 1962, p. 136 4b O.C.G.A., §53-4-2; *Federal Employer's Liability Act*, §§1 et. seq., as amended

14A 1 Prisons 2 "Religion, prisoner's right to practice" 3 Key 4(14) 4 *McDonald v. Hall*, 579 F2d 120 5 E.g., Constitutional Law; Convicts; Prisoners; Religion

14B 1 Prisons 2 "Classification of Prisoners" 3 Key 13.5(1,2) 4 *Blake v. Commissioner of Correction*, 457 N.E.2d 281 5 E.g., Classification; Constitutional Law; Convicts; Prisoners;

14C 1 Prisons 2 "Law libraries and materials" 3 4(13) 4 *Cepulonis v. Fair*, 732 F.2d 1 5 E.g., Access to Courts; Constitutional Law; Courts; Law Libraries; Prisoners

15A 1 399 Mass. 80/503 NE2d 7 (1987) 2 20 3 Indictments and Information, Key 10.2(2) 4 Homicide, Key 286(2) 5 Four 6 10 7 Five 8 Vol. 13/ Vol. 12

15B 1 404 Mass. 165/533 N.E. 2d 1375(1989) 2 Appeal and Error, Key 761 3 Prisons, Key 4.7 4 2 5 2 6 Vol. 1/ Vol. 19

15C 1 (No "official citation")/729 F2D 1(1984) 2 14 3 Fraud, Keys 10, 13(2), 18, 20 4 Federal Courts, Key 802 5 Five 6 Four 7 Vol. 12

16A 1 *In Re West*, 313 Mass. 146, 46 N.E.2d 760 (1943) 2 No 3a Headnote 14, Workman's Compensation, Key 1138 3bp. 765 4 "The intentional doing of something either with the knowledge that it is likely to result in serious injury or with a wanton or reckless disregard for its probable consequences."

16B 1 380 Mass. 403/ 378 Mass. 680/ 376 Mass. 338 2 Yes; 412 Mass. 375/ 589 N.E. 2d 289 3 Headnote 3, "Homicide," Key 11 4 "Any attempt to inflict injury on another without legal excuse or p a l l i a t i o n ."

16C 1 *Com. v. Faulkner*, 8 Mass. App. 936, 396 N.E.2d 1024 2 Yes; *Com. v. Geary*, 31 Mass. App. 930; 579 N.E.2d 172 3 Criminal Law 1208.6(1), 174 "A committed offender and such other person as is placed in custody in a correctional facility in accordance with law."

Module 8

17A 1 Shepard's Federal Citations, Federal Reporter, 2d Series, Vols. 655-736, Vol. 12, 1995, p. 1,685 2 N/A * 732 F.2d 1 3 33 (32 bound vol., 1 paper supp.) 4 Six 4a Five 4b Twelve

17B 1 Shepard's Massachusetts Citations, Northeastern Reporter, Second Series, Case Edition, Part 4 1993, p. 1,025 2 399 Mass. 126 (1987) 3 12 (9 bound vol., 3 paper supp.) 4a Five 4b Two 5 Four

17C 1 Shepard's Massachusetts Citations, N.E.2d, Case Edition, Part 4 1993, p. 1,105 2 411 Mass. 678 (1992)/ 584 N.E.2d 621 3 39 (9 bound/30 paper) 4a Four 4b Three 5 Twenty

Appendix C

18A 1a Three 1b 482 U.S. 921 (June 15, 1987 memorandum) 1c Appeal from the same case to U.S. Supreme Court ("The appeal is dismissed for lack of a substantial federal question") 2a Two 2b 652 Northeastern Reporter, 2d Series (1995) 2c "...It is in the home that a person's expectation of privacy is at its highest." 3a 557 N.E. 2d 1130 *Com. v. Tart* (1 9 9 0)

3b The issue referred to in Headnote 5 of *Blinn* is mentioned in the citing case *Tart* 3c "The defendant here had clear notice that he was required to have a state permit and that his vessel would be subject to inspections to determine his permit status." 3 9 9 M a s s . A t 1 2 8 .

18B 1a One 1b s563 FS 659 (1984) 1c Same case at U.S. District Court level 2a Five 2b 926 F.2d 800 (1990) 2c "...*Cepulonis* explicitly held that a Court should order specific procedures to remedy a violation of prisoners' right of meaningful access to the courts." (*Thiocyanate v. McCarthy*, *supra* at 809) 3a 775 F. 2d 1433, *Hooks v. Wainwright* (1985) 3b The issue referred to in Headnote 7 in *Cepulonis* is mentioned on p. 1,437 of the citing case *Hooks* 3c "Other circuits have recognized that *Bounds* merely recommended attorneys, and did not require them as a matter of constitutional law...In *Cepulonis*...the First Circuit vacated a portion of the District Court order requiring that the State provide at least five hours a week of assistance to inmates by law students working under a lawyer's supervision." (*Hooks*, *supra*, at 1437)

18C 1a Three 1b 607 N.E.2d 995 (1993) 1c "We consider whether there was an error in the course of the trial (by defense counsel, the prosecutor, or the judge) and, if there was, whether that error was likely to influence the jury's conclusion." 2a-2c (N/A) 3a 668 N.E.2d 815, *Com. v. Kosilek* (1996) 3b The issue discussed to in Headnote 3 of *Wright* is mentioned on p. 815 of the citing case, *Kosilek*. 3c "If an error not objected to by trial counsel does not create a substantial likelihood of a miscarriage of justice, see G.L. c. 278, §33E...a claim of ineffective assistance of counsel with respect to such error will not succeed." (Citation omitted)

19A *** *Inmates of the Allegheny County Jail v. Wecht*, 874 F.2d 147 (1989) *** 1 Thirteen 2 493 US 948 3 Same case on writ of certiorari: "The petition for writ of certiorari is granted. The judgement is vacated and the case is remanded to the United States Court of Appeals, Third Circuit, for further consideration in light of *University of Texas v. Camenisch*, 451 US 390 (1981)." Opinion on remand, 893 F.2d 33. 4 One 5 726 F.Supp 5 539 6 "Orders to responsible public officials to prepare and submit plans for remedying constitutional violations are not uncommon...[i]n the prison context the courts have authority to order local officials to take costly measures to cure violations." (*Wecht*, *supra*, at 1 5 0) 7 907 F.2d 420/ *Tillery v. Owens* (1990) 8 "The problem of double-celling is not unique to SCIP, see (*Wecht*, *supra*) [Double-celling at the Allegheny County, PA jail]." *** U.S. v. *Miscellaneous Pornographic Magazines, Pieces of Pornographic Ad Matter with Hard Core Illustrations and Films*, 526 F.Supp 460 (1981) *** 1 One 2 s541 F.Supp 122 3 Same case in U.S. District Court

4 One 5 j780 F.2d 1401 6 "...The work must be assessed as a whole in determining whether it is obscene, not only in the context of the sale of books and magazines...but also in the context of regulations on the display of books and magazines" (*Upper Midwest Booksellers v. City of Minneapolis*). 7 625 F.Supp 861/ *US v. Various Articles of Merchandise, Seizure no. 187* 8 "In *US v. Pornographic Magazines, Etc.* [*supra*], the Court determined that under some circumstances, foreign language texts must be translated, as the text may be able to 'save' otherwise obscene publications" (citing *Kois v. Wisconsin*, 408 US 229)

19B *** *Cepulonis v. Fair*, 732 F.2d 1 (1984) *** 1 One 2 a563 F.Supp 659 3 (Same case on appeal in US District Court) 4 Five 5 d656 F.Supp 1099, 1104 (1987) *US Ex. Rel. Para-Professional Law Clinic v. Kane* 6 "Prison [r]estrictions on the amount of legal material []...limits the usefulness of research outside the library." 7 977 F.2d 7 996, 1003 (1992) *Knop v. Johnson* 8 "Bounds requires only 'adequate law libraries or adequate assistance from persons trained in the law,' not both." *** *Gluth v. Kangas*, 773 F.Supp. 1309 *** 1 Twelve 2 a951 F.2d 1504 3 Same case on appeal 4 1 5 j116 SCt 2174, 2207 *Casey v. Lewis* (1996) 6 "The constitutional violations alleged in this case are similar to those that the District Court previously found in one of Arizona's nine prisons," [*Casey*, *supra*, 2209-2211] 7 834 F.Supp 1553, 1 5 6 7 8 "In the absence of a program providing [prisoners unskilled in legal research] with lawyers or paralegals, ADOC must maintain a sufficient number of at least minimally-trained prisoner legal assistants." (*Gluth*, @1318-19)

19C *** *US v. Bell*, 649 F.2d 281 (1981) *** 1 Ten 2 462 US 356 3 Same case on certiorari to US Supreme Court 4 96 5 699 F.2d 702, *United States v. Lawrence* 6 "It is not necessary that the evidence exclude every reasonable hypothesis of innocence...A jury is free to choose among reasonable constructions of the evidence." [*Lawrence*, *supra*, at 702] 7 104 F.3d 1465, at 1470 (*US v. Harris*, 1997) 8 [Same as for Answer 6 above] 1 Seven 2 775 F.2d 1433 3 [Reversed and remanded]: "We hold the district court erred in requiring that any Florida library plan, devised to ensure constitutional access to the courts by state inmates, must include a provision for attorney assistance." 4-6 N/A 7 776 F.2d 851, 855/ *Lindquist v. Idaho State Board of Corrections* (1985) 8 "Assistance of counsel required because of State's unwillingness to comply with a plan requiring a law library and trained inmate law clerks."

20A *** *Wolff v. McDonnell*, 418 US 539 (1974) *** 1 3 2 494 US 128 3 (Hearing required before forfeiture of prisoners' good-time credits, *Wolff*, *supra*, at 557-58) 4 121 5 951 F.Supp 579, 583 (*Counts v. Newhart*, 1996) 6 "In *Sandin v. Connor*...the Supreme Court

revisited the analysis used to determine when a prisoner has alleged the violation of an interest protected by the due process clause. Under *Sandin*, the 'due process analysis begins with [*Wolff v. McDonnell*].'"

7 926 FSupp^s 260 (*Fernandez v. Rapone*, 1996) 8 "[L]awful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen," *Wolff, supra*, at 555. *** *Federal Communications Commission v. Pacifica Foundation*, 438 US 726 (1978) *** 1 One 2 556 F2d 9 3 Same case on appeal from the District of Columbia Circuit 4 40 5 e42 F3d 8 6 "As it did in *Bethel*, the Court went on to hold that the content-based regulations at issue were justified under the facts and circumstances of that particular case." (438 US at 748-51) 7 116 Sct¹³ 2386 8 "In *Pacifica*, this Court considered a governmental ban of a radio broadcast of 'indecent' materials, defined in part, like the provisions before us, to include language that describes in terms, patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience."

20B *** *Bell v. Wolfish*, 441 US 520, 1979 *** 1 Three 2 425 F.Supp.333 (1977) 3 Same case on appeal from U.S. District Court (S.D. New York) 4 136 (117 bound vol., 19 supp.) 5 1992 F2d 151, 153 /*Davis v. Hall* (1993) 6 "In *Wolfish*...the Supreme Court stated that in evaluating the constitutionality of prison conditions implicating pretrial detainees' liberty interests, the Court must decide whether a particular condition is imposed for the purposes of punishment or whether it is but an incident of some other legitimate government purpose." 7 916 FSupp⁷ 1308, 1323/ *Rudolph v. Cuomo* (1996) 8 "The constitutional rights of prisoners are necessarily limited by the fact of their incarceration and the goal of safeguarding institutional security." *Wolfish, supra*, at 545-46. *** *Johnson v. Avery*, 393 US 483, 1969 *** 1 Two 2 582 F2d 353 (1967) 3 Same case decided in the Circuit Court of Appeals (6th Circuit) 4 12 (6 bound, 6 supp.) 5 j 37 F3d 700, 709/*Beauchamp v. Murphy* (1994) 6 "It is well settled that prisoners, no less than other citizens, have a constitutional right of access to the courts." 7 116 Sct⁹ 2174, 2179/ *Lewis v. Casey* (1996) 8 "In the cases to which

Bounds traced its roots, we had protected that right by prohibiting state prison officials from actively interfering with inmates' attempts to prepare legal documents..." *Johnson v. Avery, supra*, at 489-490.

20C *** *Bounds v. Smith*, 430 US 817 (1977) *** 1 7 2741 F2d 66/ *Harrington v. Holshouser* (1984) 3 "The controversy involved in this appeal is now before this court for the third time. The underlying issue is whether the state of North Carolina has complied with the directions of the United States Supreme Court in *Bounds v. Smith, (supra)*." 4 175 5 f775 F2d 737 6 "...Prison officials did not fulfill their constitutional obligations under *Bounds v. Smith*, [], to provide MSU inmates with adequate law libraries or assistance from legally trained persons." 7 106 F3d 12 1281, 1284/ *Hampton v. Hobbs* (1997) 8 "[M]eaningful access to the courts is the touchstone," *Bounds v. Smith, supra*, at 823. *** *Gideon v. Wainwright*, 372 US 335 (1963) *** 1 3 282 SCT 1259 3 Related case on appeals from lower Florida court 4 [Memorandum decision] "...Writ of certiorari to the Supreme Court granted ...In addition to other questions presented by this case, counsel are requested to discuss the following...: "Should this Court's holding in *Betts v. Brady*, (316 US 455), be reconsidered?" 5 225 6 j89 F3d 1151 (1996) 7

[Footnote 1:] "Deprivation of each these rights has been held to be structural error. See...*Gideon, (supra, (1963))* 7 116 SCT³ 2074, 2085/ *Gray v. Netherland* (1996) 8 "We observed in *Saffle v. Parks* that the paradigmatic example of a watershed rule of criminal procedure is the requirement that counsel be provided in all criminal trials for serious offenses, 494 US at 495 [citing *Gideon v. Wainwright*, 372 US 335]

Module 9

21A 1 "A...prisoner, attacking the constitutionality of his sentence, may move the court which imposed the sentence to vacate, set aside, or correct the same...Almost every state...permits prisoners to challenge at least some constitutional violations." (*Black's Law Dictionary*, 6th Edition, p. 1,166) 2a *Post-Conviction Remedies: A Self-Help Manual*

2b Daniel E. Manville & George N. Brezna (Ed.)

2c Oceana Publications, Inc. 3a "Notice of Appeal"

3b 100 3c §§1-7 3d 100-1 to 100-10

21B 1 "The act of taking possession of property, e.g., for a violation of law or by virtue of an execution of a judgement" 2 "Looking for or seeking out that which is otherwise concealed from view" 3a Five 3b *Search and Seizure*, 3d Ed. 3c Wayne R. LaFave/ West Group 4a Two 4b Chapter 4 4c § 4.1 (b) 4d p. 401

21C 1a *Prisoner's Self-Help Litigation Manual* 1b Daniel E. Manville 1c Clark Boardman Callaghan 1d Chapter 5 1e § C4a 2a *Prisoners and the Law* 2b (Various) 2c Clark Boardman Callaghan 2d Chapter 5 2e §§5.1-5.64 3a *Law of Corrections & Prisoners' Rights* 3b Sheldon Krantz 3c West Group (Thompson) 3d Chapter 14 3e §§1-3, p. 538

CONSeNt rating on the Law[©]

Competency Examination

Revised:
February 2000

*Below are questions taken from the 10
quizzes you've already had during the
Course.*

*Answer each question
to the best of your ability.*

*Go slowly!
You have plenty of time to finish the exam.*

If you have any questions, ask me.

Good Luck!

§ 1: Research Material

- 1 The material in any law library can be classified under 3 basic categories. Name these categories:

A _____

B _____

C _____

- 2 MATCHING: Match the term to the definition at right by putting the correct letter on the corresponding line.

A Primary Source _____ Restatement of the law

B Finding Tools _____ Have the force of law

C Secondary Material _____ Help you locate primary sources

- 3 Name one example for each of the following types of *Finding Tools*:

A Digest _____

B Citator _____

- 4 Name one example for each of the following types of *Secondary Material*:

A Law Newspaper _____

B Law Dictionary _____

C Self-Help treatise _____

- 5 *Primary Sources* of law can be further classified under four important categories. Name them:

A _____

B _____

C _____

D _____

STOP!

Put down your writing implement.

If you have time, quietly review your answers for accuracy. When you're through, bring the examination to the CourseGiver.

Please take a copy of the Course Evaluation Survey, fill out accurately and completely, and return it to the CourseGiver.

Please give thoughtful, constructive responses to these questions. Your opinions count!

Thank you.

1 What is the correct citation for the administrative regulation governing your access to the law library?

2 In the acronym "M.G.L.A.," the "A" stands for the word "annotated." Define *annotated*:

3 Name one source containing the entire state Constitution:

4 Name one source containing the entire United States Constitution:

5 Name 4 synonyms for the word "law:"

1 _____

2 _____

3 _____

4 _____

5 Primary Sources of law can be further classified under 4 important categories. Name them (try putting them in alphabetical order):

6 Give one EXAMPLE for each of the Primary Sources which you just listed in question #5:

7

help the reader locate primary sources and secondary material.

§2: Framing the Question

8 Before you can begin your research, you must first analyze your facts and determine in legal terms what your issue is. This is called

9 When using indexes, you need to find the right

for your issue(s).

48 In the grievance regulation, what do the letters "I.G.O." stand for?

49 How many working days after an incident occurs may you file a grievance?

50 With whom do you file a grievance appeal?

51 Ordinarily, how many days can you reasonably expect to wait for an answer to your grievance, starting from the date of occurrence to the response to your appeal?

§10: Updating Primary Sources

52 A _____

_____ is an annual supplement that is kept in a cloth "pocket" in the inside back cover of a hardbound volume.

53 _____ arrive weekly and are kept with the sets that they update (e.g., case law reporters and Shepard's Citations)

54 The weekly paper supplements containing the latest case law opinions for both your states' Appeals Court and the Supreme

Page 895

_____ Find the "Case Edition" volume of MA Shepard's Citations containing NE2d cites

_____ Decide that the case is a MA case

_____ Turn to the page listing volume 318

_____ Use the superscript numbers

13 When Shepardizing, what do you use to interpret the meaning of the letters found at the beginning of some citations?

14 Where do you determine which hardbound volumes and paper supplements of Shepard's your library should contain?

15 Shepard's Citators can be classified as an example of a

§4: Statutes

16 Which branch of government creates statutes?

17 A statute which is "on point" which your legal issue is said to be a

statute.

18 When statutes are cited, the symbol § is used. What word does this symbol represent?

- 10 A technique invented by Prof. William Statsky in which words are placed in a diagram to help you determine which index headings and digest topics to use is called the

- 11 There are four questions you ask yourself to determine which primary sources to research. List these four questions:

A

B

C

D

§3: Shepardizing

- 12 Below are 6 basic steps you must take when Shepardizing a case citation. These steps are not in the correct order. Put these steps in the correct numerical order:

The citation you are Shepardizing is:
318 N.E. 2d 895

- ____ Use the lower-case letters, if any
____ Under the volume number, locate

Court are called

- 55 When you need to find out if the issue you're researching has changed over time, or if a case opinion or statute is still useful, you would use

- 56 A service that arrives weekly and helps keep the 3-ring binder *Criminal Law Reporter* material up-to-date is called a

 service.

- 57 When you need to determine if the administrative regulation (CFR) you're using is the one currently in force, look at its

 date.

- 58 A _____ is a machine that gives the researcher the luxury of using CD-ROM-based material and access to many legal databases.

BONUS QUESTIONS

INSTRUCTIONS

Answer only those you know.

If you guess wrong, it will be subtracted from your final score.

When there are two like this--§§--what does it mean?

- 19 If you know that the statute you are looking for is section 32H of Chapter 94C of the Massachusetts General Laws, how would you put this information in the correct citation form?
- _____

- 20 If you know that the statute you are looking for is section 1983 from Title 42, "Public Health and Welfare," of the United States Code, how would you put this information in its correct citation form?
- _____

- 21 What does the acronym "MGLA" stand for?
- _____
- _____

- 22 What does the acronym "USC" stand for?
- _____
- _____

- 23 The relationship between controlling statutes and interpretive cases is called the _____
- _____

§5: Case Briefing

- 24 To do proper legal research, you must "brief" every case that you decide is important to you. Define the term "brief:" _____
- _____

- 44 To find an alphabetical listing of state attorneys and addresses to state courts, what source would you use? _____
- _____

- 45 The leading text on the law of Massachusetts evidence written by the late Chief Justice Paul J. Liacos is called:
- _____
- _____

§9: Grievance Regulation

- 46 What is meant by an informal grievance?
- A Verbal
- B Written
- C Both A and B
- 47 Every grievance must contain 6 types of information. List them:
- 1 _____
- _____
- 2 _____
- _____
- 3 _____
- _____
- 4 _____
- _____
- 5 _____
- _____
- 6 _____
- _____

- A Cases where appellants are suing the United States
- B Cases where appellants are suing another country

§ 8: Using State Material

- 38 In what set would you find state statutes or “general laws”?

- 39 What is the name of the state-specific practice set that every predatory jailhouse lawyer hopes you won’t learn to use?

- 40 In which case law reporter would you find both state appeals court AND state supreme court opinions?

- 41 For both civil and criminal rules of your state courts, what *single source* would you use?

- 42 Name your state digest:

- 43 Name the code containing all state agency regulations:

- 24 When briefing a case, you can divide the information

into 14 components. List three of these components:

A _____

B _____

C _____

- 25 All case law citations give you three components of information. Using 732 F.Supp. 100, label each component:

732 = _____

F.Supp. = _____

100 = _____

- 26 TRUE OR FALSE? A case law syllabus is one component of a case which you cannot cite because it not considered an official part of the opinion.

§ 6: Key Number Digests

- 27 The West Key Number system helps you research your issues thoroughly. After reading the statement below, examine the list and circle the correct letter.

Using the Key Number System allows the researcher to:

- A Trace the same issue in West digests, case reporters, statute sets, and legal encyclopedias.
- B Trace the same issue from state to federal jurisdiction
- C Trace the same issue from one state jurisdiction to another (e.g., from CT to MA)
- D All of the above

28 How are the digests arranged?

- A Alphabetically
- B Numerically
- C Alpha-numerically
- D None of the above

29 EXERCISE: Imagine that the law library is closed to often. Below are six steps you need to take to use the Key Number system properly.

Put these steps in their correct numerical order.

- _____ Frame your question and decide that the issue is "Access to the courts"
- _____ Go to Federal Practice Digest (current series) Choose the volume(s) containing the digest topic "prisons."
- _____ On the page containing Key Number 4(13), read the case law annotations
- _____ Read the digest index and decide on the digest topic "Prisons."
- _____ Choose a case from the annotations; find and read the case
- _____ In the "Prisons" key number outline, choose Key Number 4(13) dealing with "Law library access."

§ 7: Court Hierarchy

30 Name the highest court of the state in which you live:

31 Name the second-highest court in your state:

32 What are the entry-level courts in your state called?

33 The court system in your state is divided into 14 separate:

- A Circuits
- B Counties
- C Districts

34 The U.S. Court of Appeals are divided into 13 separate:

- A Circuits
- B Counties
- C Districts

35 You can find the rules of courts for your state in:

- A The state statute set
- B An annual West paperback containing state court rules
- C Both A & B

36 When legal researchers speak of source matching, they are referring to:

- A Relating primary sources of law to court structure
- B Relating court rules to court structure
- C Neither A nor B

37 What type of cases are decided in the federal circuit of the U.S. Courts of Appeal?

Appendix E

W

HERE TO GET STUFF....

The following are addresses to publishers mentioned in the "Research Aids" section of Chapter Two. Particularly important will be the address to West Group; early in Pre-Course Preparation you'll need to request "How to Shepardize" booklets which make up CellWorks 12 and 13 (week two of Module ②/week one of Module ③). WARNING! As this goes to press, law book companies are falling all over themselves acquiring, hostile-by-taking over, and shanghaiing each other. You must not presume that any information given below is correct (Caveat #1), or even that this stuff is still available (Caveat #2). Translation? You're on your own, my friends....

American Civil Liberties Union

1400 20th Street NW

Room 118

Washington, DC 20038

&

ACLU

132 West 43rd Street NW

New York, New York 10036

Voice: 212-844-8800

Fax: 212-868-9065

§

American Correctional Association

4380 Forbes Boulevard

Lanham, MD 20706-4322

Voice: 301-918-1800

§

Nolo Press

850 Parker Street

Berkeley, CA 94701-8887

Voice: 1-800-855-4776

Fax: 1-800-845-0885

E-Mail: nolosub@nolopress.com

§

Oceana Publications Inc.

75 Main Street

Dobbs Ferry, New York 10522

Voice: 800-831-0758

§

Random House, Inc.

201 East 50th Street

NY, NY 10022

212-572-2104

§

West Group

620 Opperman Drive

St. Paul, Minnesota

800-328-4880

Publisher Addresses

Appendix F

TABLE OF CASES ANECDOTED¹

Here are citations to federal cases having to do with prisoners and their unimpeded access to the courts. This is not intended as an exhaustive list of all court access cases; just the ones you'll see most often. Also, you should read any state-specific consent decrees, court orders, and administrative directives with which your department or institution has to comply. This will outline your responsibility to your inmate population and to the institution, and keep you informed about which political direction the concept of unimpeded access to the courts is heading. You'll learn a lot about the way the criminal justice system--and the public--views corrections, prison administrators, and the incarcerated.

U. S. Supreme Court

EX PARTE HULL
312 U.S. 546 (1941)

A regulation made by a warden of a state prison that all legal documents in habeas corpus proceedings by inmates must first be submitted to the Institutional Welfare Office and, if favorably acted upon there, referred to the legal investigator for the Parole Board who--if deeming the documents submitted to be properly drawn--will direct them to the court designated or, otherwise, will refer them back to the inmate, is invalid in so far as it abridges the right of an inmate of the prison to apply to a Federal court for a writ of habeas corpus.

JOHNSON V. AVERY
393 U.S. 483 (1969)

State prison regulations barring inmates from assisting other prisoners in preparation of petitions for postconviction relief was invalid as in conflict with federal right of habeas corpus, despite state's claim that requirement was necessary to maintain prison discipline, where state did not provide available alternative to assistance provided by other inmates.

WOLFF V. MCDONNELL
418 U.S. 539 (1974)

In considering adequacy of legal assistance available to inmates, it was necessary that capacity of the single legal advisor appointed by the warden be assessed in the light of demand for assistance in civil rights actions as well as in the preparation of habeas writs.

LEWIS V. CASEY
116 S.Ct. 2174 (1996)

Inmates claiming denial of access to the courts cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical

sense; finding that only two inmates, who were illiterate or non-English speakers, suffered actual injury as a result of inability to receive adequate legal assistance to lockdown prisoners, who were the most dangerous and violent prisoners in the Arizona prison system, were products of prison regulations reasonably related to legitimate penological interests, delays of up to 16 days did not violate constitutional rights of access to the courts; even if they resulted in actual injury; and an order mandating detailed, systemwide changes in Arizona Department of Corrections' prison law libraries and legal assistance programs was improper as having been developed through a process that failed to give adequate consideration to views of state prison authorities.

U.S. Circuit Court of Appeals

GLUTH V. KANGAS
951 F.2d 1504 (1991)

Postlitigation promulgation of new access policy did not moot inmates' claims; policies of inmate legal assistant training, direct library access, and indigency were unconstitutional; and District Court did not abuse its discretion in the injunction it issued.

KNOP V. JOHNSON
977 F. 2d 996 (1992)

Michigan was not required to hire attorneys for preparation of prisoner lawsuits; to the extent that inmate writ-writers or jailhouse lawyers were not filling needs of prisoners claiming unconstitutional confinement, Michigan had to furnish functional equivalent of jailhouse lawyers; and duty to provide affirmative assistance to gain access to courts extended to collateral attacks on convictions and const. challenges to conditions of confinement.

U.S. District Court

CEPULONIS V. FAIR
563 F.Supp. 659; 732 F2d 1 (1983)
District Court did not abuse its discretion in ordering that a satellite law library be established, in view of the fact that prison officials themselves had suggested the creation of such a facility; nor in its determination of which volumes were to be placed in the library; but district court erred in ordering prison officials to provide, in addition to a satellite law library, at least five hours a week of assistance by second or third year law students working under a lawyers' supervision, in absence of either an explanation or opportunity for prison officials to suggest their own modifications for their proposal to permit inmates to use the main law library with an inmate legal clerk to assist them.

HADIX V. JOHNSON
694 F.Supp. 259 (1988)

Inmates had a fundamental right of meaningful access to the courts; prison's library, legal assistance, and grievance programs all failed to provide meaningful access to the courts; prison's outside programs such as adult education and tutorage were insufficient to provide meaningful access; help from outside agencies such as state appellate defense organization, pro bono attorneys, contingency fee attorneys, and legislative ombudsman were insufficient to provide meaningful access; and prison was to modify its library, legal services, and administrative grievance programs to provide meaningful access for inmates.

LADD V. HANNIGAN
962 F.Supp. 1390 (1997)

Inmate's right to meaningful access to courts was not violated, though he had no unlimited access to library, where he had library access on 29 days, copied 1100 pages and filed 40 suits.

¹ I actually mean "annotated," but inmates mispronounce & misspell this with such astonishing regularity I frequently get thrown off (I've also heard/seen "Antidoted" and "Anointed"....)

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The material listed below can help you understand "effective and meaningful access to the courts;" aid you in honing existing legal research skills; give you a better historical sense of prison law libraries and their purpose; and elucidate your responsibilities as a prison employee or volunteer.

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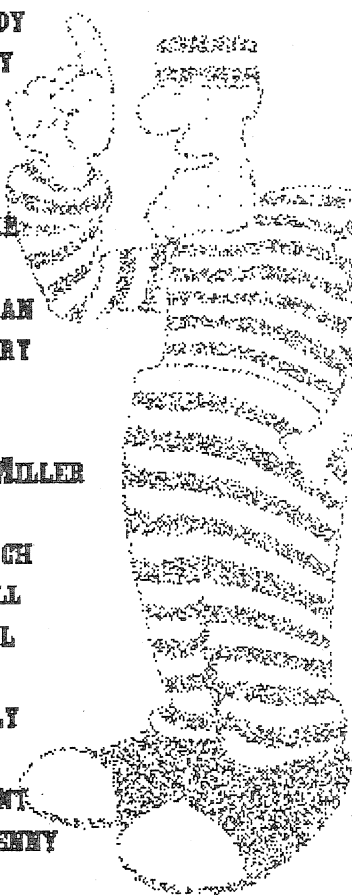
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W

HAT'S IN A NAME, MR. SHAKESPEARE? PLENTY!

As a point of interest, I had a difficult time coming up with a name for this character before deciding on "Jailhouse Joe" and, like an expectant parent, I experienced many nights of 'name anxiety.' And so, locking myself in my dimly-lit study for what seemed like millennia but was just over an hour & a half, I conjured a plethora of Big-House monikers that would do even the most wizened Mafioso boss proud. This of course created a new problem--Too Many Choices. I tried narrowing the list down by showing it to our School Building officers (fine men in uniform all). Wrong move. They loved the black humor of the list and actually added more names. Well, what can you do? In this same sardonic, politically incorrect jailhouse spirit, here're the ones that (thankfully) did not make the cut:

HOOLIGAN HANK
FELON FRANK
RECIDIVIST RANDY
ADDLEPATE ANDY
DERELICT DAN
VICIOUS VAN
SHYSTER SAM
MISCREANT MIKE
IGNORANT IKE
BACKSLIDER BRIAN
GUARDHOUSE GARY
LIFER LARRY
JAILBIRD JERRY
THRILLKILLER MILLER
SINISTER SID
RAPSCALLION RICH
BLACKSHEEP BILL
PROFLIGATE PHIL
BAD-EGG BILLY
SCALAWAG WILLY
CONVICT KEN
DEGENERATE KENT
BOWERY-BUM BENNY
LOWLIFE LENNY
EVIL ED
TREEJUMPER TED
KLEPTOMANIACAL CLEM
FUGITIVE FRED



PAT THE PUNK
FELONIOUS MONK
PUSILLANIMOUS PETE
FIENDISH GENE
HOBO BO
MALFEASANT MOE
ABOMINABLE ARE
SHAMELESS SHANE
DEPRAVED DAVE
REPROBATE RAY
JAILBAIT JOHN
BOW THE CON
DIDDLER DON
VAGABOND VAUGHAN
BABY-BLASTER BOB
ROTTEN RODNEY
WORTHLESS WALLY
MAYHEM MICK
NEFARIOUS -----
VERMIN VICE
RAPIST RICK
DECADENT DICK
CRIMINAL KURT
BLACKHEART BURT
MALEVOLENT MEL
CELLBLOCK SAL
WICKED WARD
IMMORAL ORAL

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