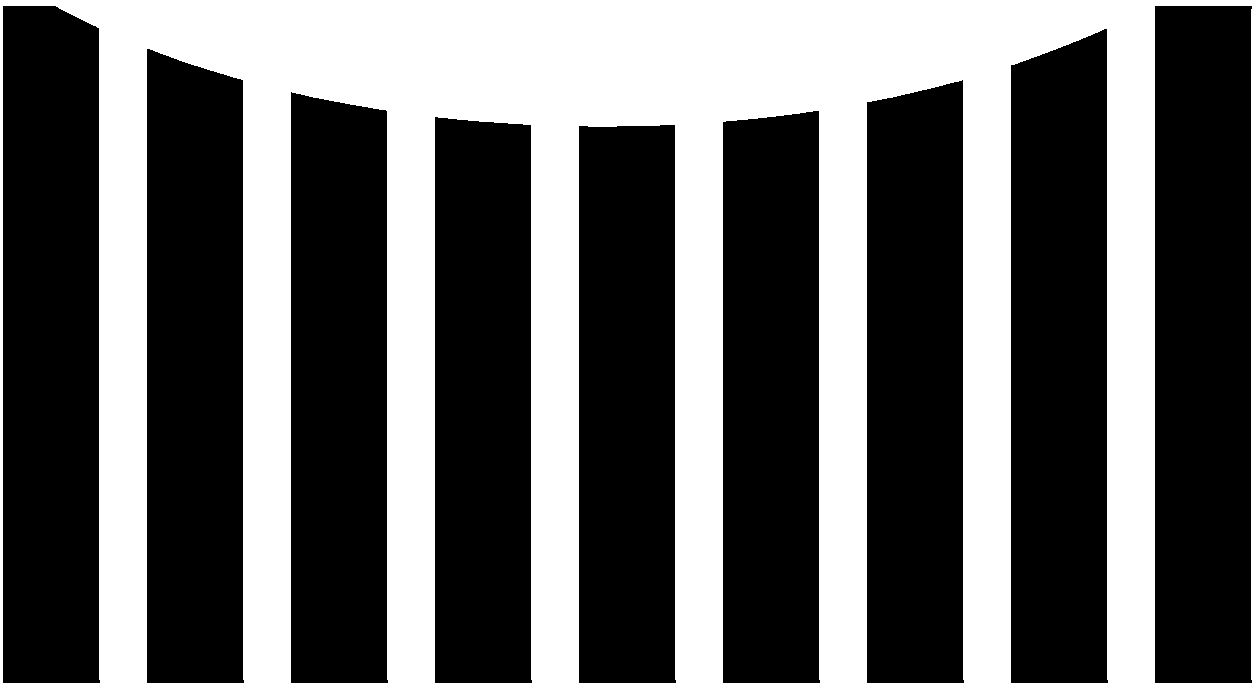


The Jailhouse Lawyer's Handbook

How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison

Published by the
Center for Constitutional Rights
and the
National Lawyers Guild



VISIT…



NOTE FROM THE EDITORS

This Handbook is a resource for prisoners who wish to file a Section 1983 lawsuit in federal court regarding poor conditions in prison and / or abuse by prison staff. It also contains limited information about legal research and the American legal system. The Handbook is available for free to anyone: prisoners, lawyers, families, friends, activists and others.

We hope that you find this Handbook helpful, and that it provides some aid in protecting your rights behind bars. As you work your way through a legal system that is often frustrating and unfair, know that you are not alone in your struggle for justice. **Good luck!**

In struggle,

Ian Head Rachel Meeropol

THE JAILHOUSE LAWYER'S HANDBOOK

How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison

PUBLISHED BY THE **CENTER FOR CONSTITUTIONAL RIGHTS**
AND THE **NATIONAL LAWYERS GUILD**

centerforconstitutionalrights

4th Edition, Revised in 2003.

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Original version by Brian Glick and the Prison Law Collective, 1974

The Handbook is available on the internet at www.jailhouselaw.org.

JAILHOUSE LAWYER'S HANDBOOK

Table of Contents

CHAPTER ONE: INTRODUCTION 1

A. WHAT IS THIS HANDBOOK 1
B. HOW TO USE THIS HANDBOOK 1
C. WHO CAN USE THIS HANDBOOK 2
1. Prisoners in City or County Jail can use this Handbook 2
2. Prisoners in Federal Prison can use this Handbook 2
3. Prisoners in Private Prison can use this Handbook 3
4. Prisoners in Every State can use this Handbook 3
5. Keeping Up to Date and Learning More Details 4
D. WHY TO TRY AND GET A LAWYER 4
E. MONITORING YOUR LAWYER AND CASE 5
F. A SHORT HISTORY OF SECTION 1983 AND THE STRUGGLES FOR PRISONERS RIGHTS 5
G. THE USES AND LIMITS OF LEGAL ACTIONS 6

CHAPTER TWO: PLANNING YOUR SECTION 1983 SUIT 8

A. YOU CAN SUE ABOUT CERTAIN VIOLATIONS OF YOUR FEDERAL RIGHTS BY STATE EMPLOYEES 8
1. Violations of Your Federal Rights: Conditions and Treatment in Prison 8
2. "Under Color of State Law" 9
B. THE PRISON LITIGATION REFORM ACT (PLRA) 9
C. YOUR RIGHTS UNDER THE U.S. CONSTITUTION 10
1. Your Right to Freedom of Speech & Expression in Prison 11
(a) Access to Reading Materials 12
(b) Free Expression of Political Beliefs 13
(c) Limits on Censorship of Mail 14
(d) Your Right to Telephone Access 15
2. Your Right to Freedom of Religious Activity 15
3. Protection from Racial Discrimination 18
4. Protection from Sexual Discrimination 18
5. Due Process Rights Regarding Punishment, Administrative Transfers, and Segregation 20
6. Fourth Amendment Limits on Prison Searches and Seizures 22
7. Eighth Amendment Protection from Physical Brutality 23
8. Your Right to Decent Conditions in Prison 23
9. Your Right to Medical Care 25
10. The Rights of Pretrial Detainees 27
D. INJUNCTIONS 28
1. When You Can Get an Injunction 29
2. Preliminary Injunctions 29
3. Termination of an Injunction 30
E. MONEY DAMAGES 30
F. WHOM YOU CAN SUE 32
1. Whom You Can Get An Injunction Against 32
2. Whom You Can Get Money Damages From 33
3. What Happens to Your Money Damages 33
G. SETTLEMENTS 34
H. CLASS ACTIONS 34

CHAPTER THREE: HOW TO START YOUR LAWSUIT 36

A. WHEN TO FILE YOUR SECTION 1983 SUIT 36

1. Statute of Limitations *36*
2. Exhaustion of Administrative Remedies *37*
B. WHERE TO FILE YOUR SUIT 37
C. WHAT LEGAL PAPERS TO FILE TO START YOUR SUIT 38
1. Summons and Complaint *39*
2. In Forma Pauperis Papers *43*
3. Request for Appointment of Counsel *46*
4. Declarations *47*
D. HOW TO FILE YOUR LEGAL PAPERS 48
E. GETTING IMMEDIATE HELP FROM THE COURT 48
1. When You Can Get Immediate Help *48*
2. How to Apply for Immediate Help *49*

CHAPTER FOUR: WHAT HAPPENS AFTER YOU FILE YOUR SUIT 51

A. A SUMMARY OF WHAT YOU CAN EXPECT TO HAPPEN 51
B. THE FIRST HURDLE: DISMISSAL BY THE COURT & WAIVER OF REPLY 52
C. HOW TO RESPOND TO A MOTION TO DISMISS YOUR COMPLAINT 52
D. HOW TO RESPOND TO A MOTION FOR SUMMARY JUDGMENT 54
1. The Legal Standard *54*
2. What to do if You Have Trouble Getting Affidavits *55*
3. Summary Judgment in Your Favor *55*
E. THE PROBLEM OF MOOTNESS 56
F. WHAT TO DO IF YOUR COMPLAINT IS DISMISSED OR THE DEFENDANTS WIN ON SUMMARY JUDGMENT 56
1. Motion to Alter or Amend the Judgment *57*
2. How to Appeal the Decision of the District Court *57*
G. PRE-TRIAL DISCOVERY 57
1. Discovery Tools *58*
2. What You Can See and Ask About *59*
3. Some Basic Steps *60*
4. Some Practical Considerations *61*
5. Procedure *61*
6. Their Discovery of Your Information and Material *62*

CHAPTER FIVE: HOW TO PROTECT YOUR FREEDOM TO TAKE LEGAL ACTION 63

A. THE RIGHT TO FILE PAPERS AND COMMUNICATE WITH COURTS, LAWYERS, LEGAL WORKERS AND THE MEDIA 63
1. Attorney and Legal Worker Visits *64*
2. Legal Mail *64*
3. Media Mail *64*
4. The Prison Law Library *64*
5. Getting Help from a Jailhouse Lawyer *65*
6. Your Right to be a Jailhouse Lawyer *65*
B. DEALING WITH RETALIATION 66

CHAPTER SIX: THE LEGAL SYSTEM AND LEGAL RESEARCH 68

A. THE IMPORTANCE OF PRECEDENT 68
1. The Federal Court System *68*
2. How Judges Interpret Laws on the Basis of Precedent *68*
3. Other Grounds for Court Decisions *69*
B. LEGAL CITATIONS: FINDING COURT DECISIONS AND OTHER LEGAL MATERIAL 70
1. Court Decisions *70*
2. Legislation and Court Rules *72*
3. Books and Articles *73*
4. Research Aids *73*
C. LEGAL WRITING 74

APPENDIX A: GLOSSARY OF TERMS **75**

APPENDIX B: MORE LEGAL FORMS & INFORMATION **80**

1. MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT 80
2. DECLARATION FOR ENTRY OF DEFAULT. 81
3. MOTION FOR JUDGMENT BY DEFAULT. 81

APPENDIX C: IMPORTANT CONSTITUTIONAL AMENDMENTS **82**

APPENDIX D: SOURCES OF SUPPORT & PUBLICITY **82**

APPENDIX E: PRISONERS' RIGHTS BOOKS AND NEWSLETTERS **84**

APPENDIX F: INFORMATION FOR NON-CITIZENS **85**

APPENDIX G: PROTECTION OF PRISONERS UNDER INTERNATIONAL LAW **86**

APPENDIX H: LIST OF DISTRICT COURTS **88**

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Chapter One: Introduction

A. WHAT IS THIS HANDBOOK?

This Handbook explains how a person in a state prison can start a lawsuit in the federal court, to fight against mistreatment and bad conditions. The Handbook does not assume that a lawsuit is the only way to challenge poor treatment or that it is always the best way. It only assumes that a lawsuit can sometimes be one useful weapon in the ongoing struggle to change prisons and the society that makes prisons the way they are.

The Handbook discusses only one kind of legal problem which prisoners face – **the problem of conditions inside prison** and **the way you are treated by prison staff.** The Handbook does not go into how you got to prison or how you can get out of prison. It does not explain how to conduct a legal defense against criminal charges or disciplinary measures for something you supposedly did in prison.

The Importance of "Section 1983"

A prisoner can take several different kinds of legal action about conditions and treatment in prison. This Handbook is about only one of those kinds of legal action – a lawsuit in federal court based on a federal law known as "Section 1983" (Section 1983 of Title 42 of the United States Code). The U.S. Congress passed Section 1983 to allow people to sue in federal court when a state or local official violates their federal rights. If you are in state prison, you can bring a Section 1983 suit to challenge certain types of poor treatment. Chapter Two of this Handbook explains in detail which kinds of problems fit under Section 1983.

B. HOW TO USE THIS HANDBOOK

The Handbook is organized into six chapters, plus several appendices.

- This is **Chapter One**, which gives you an introduction to the Handbook. Sections C through E of this chapter indicate the limits of this Handbook and explain how to try to get a lawyer. Sections F and G give a short history of section 1983 and discuss its use and limits in political struggles in and outside prison

- **Chapter Two** explains who can use Section 1983, what you can sue about, whom you can sue and what the court can do if it decides in your favor. It also summarizes many of your rights in prison.

FIRST STEPS:

1. **Know Your Rights!** Ask yourself: have my *federal* rights been violated? If you have experienced <u>one of the following</u>, the answer may be yes:

- Guard or prisoner brutality or harassment
- Unsafe cell or prison conditions
- Censorship, or extremely limited mail, phone, or visit privileges
- Inadequate medical care
- Interference with practicing your religion
- Inadequate food
- Racial, sexual or ethnic discrimination
- Placement in the hole without a hearing

2. **Exhaust the Prison Grievance System!** Use the prison complaint or grievance system and write up your concerns in detail. Appeal it all the way and save your paperwork. It is <u>very important</u> you do this before filing a suit.

3. **Try to Get Help**! Consider trying to hire a lawyer or talking to a jailhouse lawyer, and be sure to request a pro se section 1983 packet from your prison law library or the district court.

- **Chapter Three** gives the basic procedures for starting a Section 1983 suit and getting immediate help from the court – what legal papers to file, when, where and how.

- **Chapter Four** discusses the first things that happen after you start your suit. It helps you respond to a "motion to dismiss" your suit or a "motion for summary judgment" against you. It also tells you what to do if prison officials win these motions. It explains how to use "pre-trial discovery" to get information and materials from prison officials. Chapter Four does not go into the later stages of a Section 1983 suit. If you get to this point, you will need other books and – if possible – help from a lawyer or law student.

- **Chapter Five** provides some legal ammunition for your fight against harassment. Prison officials frequently try to make it hard for a prisoner to bring a lawsuit, especially when the suit is against those officials. Chapter Five summarizes recent decisions in which the U.S. Supreme Court and other courts have ruled that a prisoner has the legal right to prepare and file lawsuits on his or her own behalf; to get help with those suits from other

prisoners; and to have access to an adequate law library.

- **Chapter Six** gives some basic information about the U.S. legal system. It also explains how to find laws and court decisions in a law library and how to refer to them in legal papers. The strange way in which law books are organized and court decisions are written seems designed to make it very hard for a non-lawyer to deal with the law. But if you read Chapter Six carefully and follow it as you work, you will be able to cut through the maze and understand what is really happening.

IMPORTANT!
Chapters Five and Six are not specifically about Section 1983. They give general information which you may find useful when you prepare your suit. **It is a good idea to read Chapters Five and Six BEFORE you try to use Chapters Two through Four.**

Appendices

The "Appendices" are additional parts of the Handbook that provide extra information. The appendices to the Handbook provide materials for you to use when you prepare your suit and after you file it. **Appendix A** contains a glossary of legal terms. **Appendix B** contains forms for basic legal papers. You will also find helpful forms and sample papers within Chapters Three and Four. **Appendix C** gives the text of important constitutional provisions. **Appendix D** lists possible sources of support and publicity – legal groups, political and civic groups that help prisoners, progressive magazines and newspapers that cover prison issues, and other outlets you can write too. **Appendix E** lists other legal materials you can read to keep up to date and learn details which are not included in this manual. **Appendix F** provides special information for non-citizens, and **Appendix G** provides information about the rights of prisoners under International Law. **Appendix H** includes a list of District Courts for your reference.

C. WHO CAN USE THIS HANDBOOK:

This Handbook is meant to be used by state prisoners, but others may find it helpful too.

1. Prisoners in City or County Jail can use this Handbook.

If you are in a city or county jail, this Handbook may still be helpful to you. People serving sentences in jail have the same rights under Section 1983 and the U.S. Constitution as people in prison. People in jail waiting for trial, who are called "pretrial detainees," sometimes have even more protections under the Constitution. Chapter Two, Section C, Part 10 lists some federal court decisions on the constitutional rights of pretrial detainees.

2. Prisoners in Federal Prison can use this Handbook.

If you are in federal prison, this Handbook will also be somewhat helpful. You cannot use Section 1983 to sue about bad conditions and mistreatment in federal prison but you don't need it there. In a very important case called *Bivens v. Six Named Agents of Federal Bureau*

Private Prisons

As you know, most prisons are run by the state or the federal government, which means that the guards who work there are state or federal employees. A **private prison**, on the other hand, is operated by a for-profit corporation, which employs private individuals as guards.

Prompted by the huge increase in the prison population and the public concern for rising costs, private prisons have increased from just four in 1988, to 162 in 2000 and now house 6% of the total prison population. That is over 90,000 prisoners. Those in favor of private prisons argue that private companies can manage prisons more effectively than the government and for less money. Those against private prisons have argued that incarceration is the responsibility of the government and should not be controlled by private parties that are only interested in making a profit. Some of those against private prisons also ask whether large corporations are exploiting prisoners for cheap labor.

Studies have shown that the assumption that private prisons cost less money may be a mistake. These prisons may pay their staff lower salaries, but make up for this with higher administrative costs. One study found that factors like the age of the prison and the level of security (minimum, medium or maximum) determine costs no matter who runs the prison. On the other hand, the assumption that private prisons will be less protective of prisoners' rights may also be mistaken. Studies of the number of escapes, riots, assaults (both by inmates and by guards), and suicides all found little or no difference between public and private prisons.

of Narcotics, 403 U.S. 388 (1971), the Supreme Court said that you can sue in federal court whenever a federal official violates your rights under the U.S. Constitution. This is called a "*Bivens* action." Federal prisoners have basically the same federal rights as state prisoners so almost all of this Handbook applies to you too.

3. Prisoners in Private Prisons can use this Handbook.

If you are one of the hundreds of thousands of prisoners currently incarcerated in a private prison, most of the information in this Handbook also applies to you. The ability of state prisoners in private prisons to sue under Section 1983 is discussed in Chapter Two, Section B. In some cases it is actually easier to sue private prison guards, because they cannot claim "qualified immunity." You will learn about "immunity" later in the Handbook.

Federal prisoners serving sentences in private prisons can use the *Bivens* action described above in Section 2, with some limitations. In a case called *Correctional Services Corporation v. Malesko*, 534 U.S. 61 (2001), the Supreme Court held that a federal prisoner who suffered a heart attack after a private guard made him climb up five flights of stairs could not sue the private half-way house using the *Bivens* doctrine. However, someone in this situation may be able to sue the private prison employees themselves. Another choice for a prisoner in this situation is to file a claim in state court. These types of actions are described in Section G of this chapter.

4. Prisoners in Every State Can Use This Handbook.

Section 1983 lawsuits provide a way for you to assert your rights under the United States Constitution. Every prisoner in the country, no matter what state he or she is in, has those same rights. However, different courts interpret these rights differently. For example, a federal court in New York may come to one conclusion about an issue, but another federal court in Tennessee may reach a totally different conclusion about the same issue.

States also have their own laws, and their own constitutions. State courts, rather than federal courts, have the last word on what the state constitution means. This means that in some cases, you might have more success in state court, than in federal court. You can read more about this possibility in the box at the end of this chapter.

How do I use this Handbook?

This is the **Jailhouse Lawyers Handbook**. Sometimes it will be referred to as the "**JLH**" or the "**Handbook**." It is divided into six **Chapters**, which are also divided into different **Sections**. Each **Section** has a letter, like "**A**" or "**B**." Some **Sections** are divided into **Parts**, which each have a number, like "**1**" or "**2**."

Sometimes we will tell you to look at a **Chapter** and a **Section** to find more information. This might sound confusing at first but when you are looking for specific things, it will make using this Handbook much easier.

We have tried to make this Handbook as easy to read as possible. But there may be words that you find confusing. At the end of the Handbook, in Appendix A, we have listed many of these words and their meanings in the **Glossary.** If you are having trouble understanding any parts of it, you may want to seek out the **Jailhouse Lawyers** in your prison. Jailhouse Lawyers are prisoners who have educated themselves on the legal system, and one of them may be able to help you with your suit.

In many places in this Handbook, we refer to a past legal suit to prove a specific point. It will appear in italics, and with numbers after it, like this:

Smith v. City of New York, 311 U.S. 288 (1994)

This is called a "citation." It means that a court decided the case of Smith v. City of New York in a way that is helpful or relevant to a point we are trying to make. Look at the places where we use citations as examples to help with your own legal research and writing.

There is more information on understanding and writing using cases in Chapter Six.

Unfortunately, we don't have the time or the space to tell you about the differences in the law from state to state. So while using this Handbook, you should also try to check state law using the resources listed in Appendix E. You can also check the books available in your prison and contact the nearest office of the National Lawyers Guild or any other lawyers, law students or political groups you know of that support prisoners' struggles.

Anyone who wishes can contact us about revising this Handbook for free distribution in their state. Also, the Center for Constitutional Rights and the National Lawyers Guild are working to produce state manuals in coming years.

5. Keeping Up to Date and Learning More Details

This Handbook was completely revised and updated in 2003. However, one of the exciting but frustrating things about the law is that it is constantly changing. We have left out many details, and new decisions and laws will change the legal landscape significantly in the future.

So be very careful to <u>check for changes in the law</u> when you use this printing of the Handbook. Checking to make sure a case is still "good law," known as "Shepardizing," is very important, and is explained in Chapter Six. You can also write to prisoners' rights and legal organizations listed in Appendix D for help. Groups which can't represent you may still be able to help with some research or advice.

D. WHY TO TRY AND GET A LAWYER

In a Section 1983 suit you have a right to sue without a lawyer. This is called suing "*pro se*," which means "for himself or herself." Filing a law suit *pro se* is very difficult. Thousands of Section 1983 suits are filed by prisoners every year, and *most* of these suits are lost before they even go to trial. This is not said to discourage you from turning to the courts. Rather, it is to encourage you to do everything you can to try to get a lawyer to help you, before deciding to file *pro se*.

A lawyer is also very helpful after your suit has been filed. He or she can interview witnesses and discuss the case with the judge in court, while you are confined in prison. A lawyer also has access to a better library and more familiarity with legal forms and procedures. And despite all the legal research and time you spend on your case, many judges are more likely to take a lawyer seriously than someone filing *pro se*.

If you feel, after reading Chapter Two, that you have a basis for a Section 1983 lawsuit, try to find a good lawyer to represent you. You can look in the phone book to find a lawyer, or to get the address for the "bar association" in your state. A bar association is a group that many lawyers belong to. You can ask the bar association to give you the names of some lawyers who take prison cases.

You can also request a **Referral Directory**, which lists lawyers in various states, from the National Lawyers Guild. Their address is in Appendix D.

You probably will not be able to pay the several thousand dollars or more which you would need to hire a lawyer. But there are other ways you might be able to get a lawyer to take your case.

- If you have a good chance of winning a substantial amount of money (explained in Chapter Two, Section E), a lawyer might take your case on a "contingency fee" basis. This means you agree to pay the lawyer a part of the money if you win (usually one-third), but the lawyer gets nothing if you lose. This kind of arrangement is used in many suits involving car accidents and other personal injury cases outside of prison. In prison, it may be appropriate if you have been severely injured by guard brutality or an unsafe prison condition.

- If you don't expect to win money from your suit, a lawyer who represents you can get paid by the government if you win your case. These fees are authorized by the United States Code, title 42, section 1988. However, the recent Prison Litigation Reform Act of 1996 (called the "PLRA" and discussed in Section F of this chapter) added new rules that restrict the court's ability to award fees to your lawyer. These new provisions may make it harder to find a lawyer who is willing to represent you.

- If you can't find a lawyer to represent you from the start, you can file the suit yourself and ask the court to "appoint" or get a lawyer for you. Unlike in a criminal case, you have no "right to counsel." This means that a judge is not required by law to appoint counsel for you in a Section 1983 case, but he or she can appoint counsel if he or she chooses. You will learn how to ask the judge to get you a lawyer in Chapter Three, Section C, Part 3 of this Handbook.

- The judge can appoint a lawyer as soon as you file your suit. But it is much more likely that he or she will only appoint a lawyer for you if you successfully get your case moving forward, and

Why so much Latin?

"Pro Se" is one of several Latin phrases you will see in this manual. The use of Latin in the law is unfortunate, because it makes it hard for people who aren't trained as lawyers to understand a lot of important legal procedure. We have avoided Latin phrases whenever possible. When we have included them, it is because you will see these phrases in the papers filed by lawyers for the other side, and you may want to use them yourself. Also, all Latin phrases are highlighted in italics, *like this*. Check the glossary at Appendix A for any words, Latin or otherwise, that you don't understand.

convince the judge that you have a chance of winning. This means that the judge may wait until after he or she rules on the prison officials' motions to dismiss your complaint or motion for summary judgment. This Handbook will help you prepare your basic legal papers (see Chapters Two and Three) and respond to the *motion to dismiss* and the *motion for summary judgment* (see Chapter Four).

E. MONITORING YOUR LAWYER AND CASE

Even if you have a lawyer from the start, you may still want to use this Handbook to understand what he or she is doing. Be sure the lawyer explains the choices you have at each stage of the case. **Remember that he or she is working for you**. This means that he or she should answer your letters and return your phone calls within a reasonable amount of time. Don't be afraid to ask your lawyer anything. If you don't understand what is happening in your case, **ask your lawyer to explain it to you**. Don't ever let your lawyer force decisions on you or do things you don't want.

F. A SHORT HISTORY OF SECTION 1983 AND THE STRUGGLE FOR PRISONERS' RIGHTS

As you read in Section A, this Handbook is all about a federal law known as "section 1983." Section 1983 is a way for any individual (not just a prisoner) to challenge something done by a state employee. The part of the section you need to understand reads as follows:

> *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 ...*

Chapter Two will explain what this means in detail, but we will give you some background information here. Section 1983 is a law that was passed by the U.S. Congress over 100 years ago, but it had very little effect until the 1960s. Section 1983 was originally known as Section 1 of the Ku Klux Klan Act of 1871. Section 1983 does not mention race, and it is available for use by people of any color, but it was originally passed specifically to help African-Americans enforce the new constitutional rights they won after the Civil War -- specifically, the 13th, 14th and 15th Amendments to the U.S. Constitution. Those amendments prohibited slavery, established the right to due process of law and equal protection of the laws, and guaranteed every male citizen the right to vote. Although these Amendments became law, white racist judges in the state courts refused to enforce these rights, especially when the rights were violated by other state or local government officials. The U.S. Congress passed Section 1983 to allow people to sue in federal court when a state or local official violates their federal rights.

Soon after section 1983 became law, however, Northern big businessmen joined forces with Southern plantation owners to take back the limited freedom that African-Americans had won. Federal judges found excuses to undermine Section 1983 along with most of the other civil rights bills passed by the liberal Congress. Although the purpose of Section 1983 was to bypass the racist state courts, federal judges ruled that most lawsuits had to go back to those same state courts. Their rulings remained law until African-Americans began to regain their political strength through the civil rights movement of the 1960s.

In the 1960s, two very good Supreme Court cases named *Monroe v. Pape*, 365 U.S. 167 (1961) and *Cooper v. Pate*, 378 U.S. 546 (1964) reversed this trend and transformed section 1983 into an extremely valuable tool for state prisoners. You will learn more about these cases in Section B of Chapter Two. Prisoners soon began to file more and more federal suits challenging prison abuses. A few favorable decisions were won, dealing mainly with freedom of religion, guard brutality, and a prisoner's right to take legal action without interference from prison staff. But, many judges still continued to believe that the courts should leave prison officials in charge – no matter what those officials did. This way of thinking is called the "hands-off doctrine" because Judges keep their "hands off" prison administration.

The next big breakthrough for prisoners did not come until the early 1970s. African-Americans only began to win legal rights when they organized together politically, and labor unions only achieved legal recognition after they won important strikes. So too, prisoners did not begin to win many important court decisions until the prison movement grew strong.

Powerful, racially united strikes and rebellions shook Folsom Prison, San Quentin, Attica and other prisons throughout the country during the early 1970s. These rebellions brought the terrible conditions of prisons into

the public eye and had some positive effects on the way federal courts dealt with prisoners. Prisoners won important federal court rulings on living conditions, access to the media, and procedures and methods of discipline.

Unfortunately, the federal courts did not stay receptive to prisoners' struggles for long. In 1996, Congress passed and President Clinton signed into law the Prison Litigation Reform Act (PLRA). The PLRA is extremely anti-prisoner, and designed to limit prisoners' access to the federal courts. Why would Congress pass such a repressive piece of legislation? Many people say Congress believed a story that was told to them by states tired of spending money to defend themselves against prisoner lawsuits. In this story, prisoners file mountains of unimportant lawsuits because they have time on their hands, and enjoy harassing the administration. The obvious truth - **that prisoners file a lot of lawsuits because they are subjected to a lot of unjust treatment** - was ignored.

The PLRA makes filing a complaint much more costly, time-consuming, and risky to the prisoner. Many prisoners' rights organizations have tried to get parts of the PLRA struck down as unconstitutional, but so far this effort has been unsuccessful. You will find specific information about the individual parts of the PLRA in later chapters of this Handbook.

History has taught us that convincing the courts to issue new rulings to improve day-to-day life in prisons, and changing oppressive laws like the PLRA, requires not only litigation, but also the creation and maintenance of a prisoners' rights movement both inside and outside of the prison walls.

G. THE USES AND LIMITS OF LEGAL ACTION

Only a strong prison movement can win and enforce significant legal victories. But the prison movement can also use court action to help build its political strength. A well-publicized lawsuit can educate people outside about the conditions in prison. The struggle to enforce a court order can play an important part in political organizing inside and outside prison. Favorable court rulings backed up by a strong movement can convince prison staff to hold back, so that conditions inside are a little less brutal and prisoners have a little more freedom to read, write, and talk.

Still, the value of a Section 1983 lawsuit is limited. It may take several years from starting the suit to win a final decision that you can enforce. There may be complex trial procedures, appeals, and delays in

OTHER LEGAL OPTIONS TO CHALLENGE PRISON CONDITIONS

Claims under Section 1983 are federal claims that can be brought in federal court. You may want to consider suing in state court instead.

There are pros and cons to bringing a case in state court. In state court, you may be able to enforce rights that you don't have in federal court. For example, a state "tort" claim is an entirely different way to address poor prison conditions. A "tort" means an injury or wrong of some sort. The advantage of suing in state court is that lots of conduct by prison guards can be considered a "tort" but may not be so bad as to be a federal violation.

For example, you will learn in Chapter Two that the Eighth Amendment prohibits "cruel and unusual punishment" and protects prisoners from guard brutality. However, this type of constitutional claim requires that you prove that you were injured and that the guard acted maliciously. On the other hand, you can sue a guard for the tort of "battery" on much less serious facts. A "battery" is any intentional unwanted physical touch. If a guard spits on you or shoves you, that is a battery.

Another type of state claim is a claim based on your state's constitution. Some state constitutions provide more rights than the federal constitution.

Sometimes a prisoner's suit handled by a lawyer will include claims based on state law as well as federal law. You can do this in a Section 1983 suit if the action you are suing about violates both state and federal law. **You can't use Section 1983 to sue about an action that only violates state law**. But it is tricky to try this without an experienced lawyer, and usually it won't make a very big difference.

Historically, federal judges were more sympathetic to prisoners than state judges. However, the PLRA has made federal court a much less friendly place for prisoners. Sadly, that does not mean that you will necessarily get fair treatment in state court. Many state court judges are elected, rather than appointed, so they may avoid ruling for prisoners because it might hurt their chances of getting re-elected.

Unfortunately, as we said before, we don't have room in this manual to describe the law of all the states. However, look for new CCR & NLG state manuals available in 2005. In the mean time, Appendix E lists some organizations that may have information about your state.

complying with a court order. Prison officials may be allowed to follow only the technical words of a court decision, while continuing their illegal behavior another way. Judges may ignore law which obviously is in your favor, because they are afraid of appearing "soft on criminals" or because they think prisoners threaten their own position in society. Even the most liberal, well-meaning judges will only try to change the way prison officials exercise their power. No judge will seriously address the staff's basic control over your life.

To make fundamental change in prison, you can't rely on lawsuits alone. It is important to connect your suit to the larger struggle. Write press releases that explain your suit and what it shows about prison and about the reality of America. Send the releases to newspapers, radio and TV stations, and legislators. Keep in touch throughout the suit with outside groups that support prisoners' struggles. Look at Appendix D for media and groups that may be able to help you. We have also provided some pointers on writing to these groups. Discuss your suit with other prisoners and involve them in it even if they can't participate officially. Remember that a lawsuit is most valuable as one weapon in the ongoing struggle to change prisons and the society which makes prisons the way they are.

Of course, all this is easy for us to say, because we are not inside. All too often jailhouse lawyers and activists face retaliation from guards due to their organizing and litigation. Section B of Chapter Five explains some legal options if you face retaliation. However, while the law may be able to stop abuse from happening in the future, and it can compensate you for your injuries, the law cannot guarantee that you will not be harmed. Only you know the risks that you are willing to take. Finally, you should know that those of us who fight this struggle from the outside are filled with awe and respect at the courage of those of you who fight it, in so many different ways, on the inside.

Chapter Two: Planning Your Section 1983 Suit

The main way to understand what kind of suit you can bring under Section 1983 is to look at the words of that law:

> "*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…*"

Some of the words are perfectly clear. Others have meanings that you might not expect, based on years of different interpretation by judges. In this chapter we will explore what the words themselves and judge's opinions from past law suits tell us about what kind of suit is allowed under Section 1983 (Section A), the impact of the PLRA (Section B) what you can sue about (Section C), what you can ask the courts to do (Sections D & E), whom to sue (Section F), settlements (Section G), and class actions (Section H).

A. YOU CAN SUE ABOUT CERTAIN VIOLATIONS OF YOU FEDERAL RIGHTS BY STATE EMPLOYEES.

Although Section 1983 was designed especially to help African-Americans, anyone can use it, regardless of race. The law refers to "any citizen of the United States or any other person within the jurisdiction thereof." This means that you can file a Section 1983 action even if you are not a United States citizen. *Martinez v. City of Los Angeles*, 141 F.3d 1373 (9th Cir. 1998). All you need is to have been "within the jurisdiction" when your rights were violated. "Within the jurisdiction" just means physically present in the U.S.. The fact that you are in prison does not take away your right to sue under section 1983. *Cooper v. Pate*, 378 U.S. 546 (1964).

- Note: "Civil death laws," which take away or limit a prisoner's right to use state courts for personal injury suits, contracts, divorce, etc., also do not affect the right to sue in the federal courts on the basis of Section 1983. *Taylor v. Gibson*, 529 F.2d 709 (5th Cir. 1976).

Not every injury you suffer or every violation of your rights is covered by Section 1983. Section 1983 applies to the "*deprivation of any rights, privileges, or immunities secured by the Constitution and laws*." This means that the actions you are suing about must violate your **federal** rights. Section 1983 also says "*under color of any statue, ordinance, regulation, custom or usage, of any State or Territory."* Courts have developed a shorthand for this phrase. They call it "under color of state law." This means that the violation of your rights must have been done by a state or local official. These two requirements are explained in detail below.

1. Violations of Your Federal Rights: Conditions and Treatment in Prison.

Section 1983 won't help you with all the ways in which prison officials mistreat prisoners. There are two limits. First, you need to show that the acts you are suing about violate the U.S. Constitution or a law passed by the U.S. Congress.

Prisoners most commonly use Section 1983 to enforce rights guaranteed by the U.S. Constitution, these are called "constitutional rights." Your constitutional rights are explained in Section C of this chapter.

You can also use Section 1983 to enforce rights in federal laws, or "statutes." Only a very few federal laws grant rights which apply to prisoners. One such law, for example, is the **Americans with Disabilities Act**, or the "ADA". The ADA can be found at 42 U.S.C. §§ 12101 – 12213. The ADA prevents discrimination against people with disabilities, including prisoners. If you have any sort of physical or mental disability you may be able to file a Section

Chapter Two Table of Contents

Section A:
You can use Section 1983 to sue about certain violations of your federal rights by state employees.

Section B:
The Prison Litigation Reform Act or "PLRA"

Section C:
Your Constitutional Rights

Section D & E:
What You Can Ask the Courts to Do

Section F:
Who to Sue

Section G:
Settlements

Section H:
Class Actions

1983 lawsuit using the ADA.

Another federal statute that may be useful to prisoners is the **Religious Land Use and Institutionalized Persons Act**, or "RLUIPA," which was passed by Congress in 2000. 42 U.S.C. § 2000cc-1(a). RLUIPA protects prisoners' rights to exercise their religion. A second federal statute protecting the religious rights of prisoners is the **Religious Freedom Reformation Act**, or "RFRA." 42 U.S.C. § 2000bb-1(c). Unfortunately, this act can only be used by prisoners in federal prison. It is not available to prisoners in state prison. Religious freedom is a constitutional right protected by the First Amendment, but RLUIPA and RFRA provide even *more* protection than the First Amendment. Chapter Two, Section C, Part 2 explains the protection provided by each of these sources.

Second, as a prisoner, your suit has to be about conditions or treatment in prison. You cannot use Section 1983 to challenge the fact or duration of your imprisonment or to obtain immediate or speedier release from prison. If you want to challenge your trial, your conviction, or your sentence, you need to use a completely different type of action, called a *writ of habeas corpus*. Some of the resources listed in Appendix E explain how to do this.

2. "Under Color of State Law"

The second limit is that Section 1983 only applies to actions taken "under color of state law." This means that your rights must have been violated by a state or local official. This includes people who work for the state, city, county or other local governments. Anything done to you by a prison guard, prison doctor, or prison administrator (like the warden) is an action "under color of state law."

The "under color of state law" requirement does **not** mean that the action has to have been *legal* under state law. This very important principle was decided in a case called *Monroe v. Pape*, 365 U.S. 167 (1961). All you need to show is that the person you sue was working for the prison system or some other part of state or local government at the time of the acts you're suing about.

The official you sue must have been acting in "under color of state law" when he violated your rights. This just means that the official must have been "on the job" or otherwise exercising the power that comes from his position of authority. This is rarely a problem for prisoners, because any time you come into contact with a prison official, that official is exercising his power over you.

You can't use Section 1983 to sue over the actions of federal employees because they act "under color of *federal* law," not *state* law. This is OK. As we explained in Section C of Chapter One, you can sue in federal court whenever a federal official violates your constitutional rights. This is called a "*Bivens* action." It takes its name from the very important lawsuit that first allowed this type of action, called *Bivens v. Six Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

You can't use Section 1983 to sue a private citizen who acted without any connection to the government or any governmental power. For example, if another prisoner assaults you, you cannot use Section 1983 to sue him, because he or she does not work for the government. You could, however, use Section 1983 to sue a guard for failing to protect you from the assault.

A person can exercise power from the government even if he or she doesn't actually work for the state directly. You could use Section 1983 to sue a private citizen, such as a doctor, who mistreats you while he is working with or for prison officials. In a case called *West v. Atkins*, 487 U.S. 42 (1988), the Supreme Court held that a private doctor with whom the state contracts to provide treatment to a prisoner can be sued using Section 1983.

Using Section 1983 is complicated if you are incarcerated in a private prison. The Supreme Court has not yet decided whether you can sue private prison guards the way you can sue state prison guards. However, almost all of the lower courts have decided that you can. For example, in *Skelton v. PriCor, Inc.*, 963 F.2d 100 (6th Cir. 1991), a private prison employee wouldn't let an inmate go to the law library or have a bible. The Sixth Circuit ruled that the private prison guard's action was "under color of state law" and allowed the prisoner to sue using Section 1983. Another helpful case is *Giron v. Corrections Corporation of America*, 14 F. Supp. 2d 1245 (D.N.M. 1998), which involved a section 1983 suit by a woman who was raped by a guard at a private prison. The court held that the guard was "performing a traditional state function" by working at the prison, so his actions were "under color of state law."

B. THE PRISON LITIGATION REFORM ACT (PLRA)

The PLRA, an anti-prisoner statute which became law in 1996, has made it much harder for prisoners to gain

relief in the federal courts. While you will learn more about the PLRA in the following chapters, we have included a brief outline of its major provisions here so that you keep them in mind as you start to structure your lawsuit. Remember that most of these provisions only apply to suits filed while you are in prison. If you want to sue for damages after you are released, you will not need to worry about these rules.

1. INJUNCTIVE RELIEF – This section limits the "injunctive relief" (also called "prospective relief") that is available in prison cases. Injunctive relief is when you ask the court to make the prison do something differently, or stop doing something altogether. Injunctive relief and the changes in its availability under the PLRA are discussed in Section D of this chapter.

2. EXHAUSTION OF ADMINISTRATIVE REMEDIES – The PLRA states that *"[n]o action shall be brought with respect to prison conditions … by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."* 42 U.S.C.A. § 1997e(a).

   This is known as the "exhaustion" requirement. If you try to sue a prison official about *anything* he or she has done to you, the court may well dismiss your case unless you have first filed an inmate grievance or complaint form provided by your prison, and appealed that grievance all the way up. You will learn more about exhaustion in Chapter Three, Section A, Part 2.

3. MENTAL OR EMOTIONAL INJURY – The PLRA also states that *"[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury."*42 U.S.C.A. § 1997e(e).

   Most courts agree that this means that if you are suing for money damages, you can not get money for mental or emotional injury alone. If you are suing for injunctive relief or to stop a violation of your constitutional or federal rights, you do not need to worry. This rule is explained in detail in Chapter 2, Section E on money damages.

4. ATTORNEYS' FEES – As explained in Chapter One, Section D, the PLRA limits the court's ability to make the defendants pay for "attorneys' fees" if you win your case. If you do have a lawyer, you should talk to them and have them explain the significance of this to you. Keep in mind, though, that the PLRA does not affect any agreement you may have made with your lawyer to pay fees yourself.

5. FILING FEES AND THE THREE STRIKES PROVISION – Courts charge everyone fees when they file a lawsuit. However, poor people who are not prisoners are not required to pay all these fees up front. Chapter Three, Section C, Part 2, describes how to file "*in forma pauperis* papers" which allow poor prisoners to pay their fees on an installment plan. If you have had three prior lawsuits dismissed as "frivolous, malicious, or failing to state a claim for relief," 28 U.S.C.A. 1915, you may not proceed *in forma pauperis* and will have to pay your fees up front. However, there is an exception for prisoners who are "in imminent danger of serious physical injury."

6. SCREENING, DISMISSAL & WAIVER OF REPLY – The PLRA allows for courts to dismiss prisoners' cases very soon after filing if the case is ruled "frivolous," "malicious," does not state a claim, or seeks damages from a defendant with immunity. The court can do this before requiring the defendant to reply to your complaint. These provisions are explained in Chapter Four, Section B.

C. YOUR RIGHTS UNDER THE U.S. CONSTITUTION

The U.S. Constitution is the supreme law of the land. The Amendments to the Constitution provide individuals in this country with certain rights. Within the U.S. Constitution, the main protection against actions by state officials is found in the Fourteenth Amendment:

> *"No State shall…deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

These guarantees are known as the "Due Process Clause" and the "Equal Protection Clause." The courts have ruled that both clauses protect prisoners.

- **Equal protection** means that prison officials are not supposed to discriminate against you on the basis of your race or any other arbitrary category, such as your religion, nationality, sex, income, or political beliefs.

- **Due process** means prison officials are not supposed to restrict your access to courts or lawyers, or punish you (take away your property or your liberty, even within prison) without fair procedures.

The first ten amendments to the U.S. Constitution are known as the "Bill of Rights." Technically, these amendments apply only to actions by the federal government, not to actions by state officials. However, the courts have ruled that the Due Process Clause of the Fourteenth Amendment "incorporates" most of the Bill of Rights. This means when a state or local official does something that is prohibited by one of the first ten amendments, it is a violation of the Due Process Clause of the Fourteenth Amendment.

In this way, the Due Process Clause protects a state prisoner's rights under the First Amendment, including free speech, the right to associate with anyone you choose, and freedom to practice your religion. The Due Process Clause also incorporates your right under the Fourth Amendment to be free from unreasonable searches or seizure of your property. And it includes the protection of the Eighth Amendment against "cruel and unusual punishment," including brutality and inhumane prison conditions. Appendix C gives the full text of these Amendments.

Reminder

Chapter Six explains the court system, how cases are used as grounds for court decisions, how legal citations work, and the basics for legal research. Be sure to read it if you are going to do any legal research. Remember that federal courts in one state do not always follow decisions by federal courts in other parts of the country.

This section of the Handbook will discuss the major constitutional rights that prisoners have won in the federal courts. It will indicate the key court decisions in support of each right. For more details and citations, as well as legal arguments in favor of additional constitutional rights for prisoners, check the books and resources listed in Appendix E. Be sure to keep up with new decisions by using *Shepard's Citations* and other resources in your law library. There is more information on *Shepard's Citations* in Chapter Six.

1.Your Right to Freedom of Speech & Expression in Prison

The First Amendment protects everybody's right to freedom of speech and expression. Freedom of speech and expression includes the right to read books and magazines, the right to call or write to your family and friends, the right to criticize the government or state officials you disagree with, and much more. However, in prison, those rights are restricted by the prison's need for security and administrative ease. Because of this, it is often very hard for a prisoner to assert these rights. Almost all of the rights protected by the First Amendment are governed by the same legal standard, developed in a case called *Turner v. Safley*, 482 U.S. 78 (1987). In *Turner*, prisoners in Missouri brought a class action lawsuit challenging a regulation that limited the ability of prisoners to write letters to each other. The Supreme Court used the case to establish a four-part test for First Amendment claims. Under this test, a law that restricts your freedom is ok as long as it is "reasonably related to a legitimate penological interest." A court will decide if a law, prison regulation, or guard's action is "reasonably related to a legitimate penological interest" by asking four questions.

THE TURNER TEST

The four questions are as follows:

- **Is the regulation reasonably related to a legitimate, neutral government interest**? "Reasonably related" means that the rule is a least somewhat likely to do whatever it is intended to do. A rule banning a book on bomb-making is reasonably related to the prison's goal of security. However, a rule banning all novels is not reasonably related to security. "Neutral government interest" means that the prison's goal must not be related to its dislike of a particular idea or group. The prison can't pick and chose certain books or ideas or people unless it has a "neutral" reason, like security, for doing so.

- **Does the regulation leave open another way for you to exercise your constitutional rights?** This means the prison can't have a rule that keeps you from expressing yourself in all ways. For example, prison officials can keep the media from conducting face-to-face interviews with prisoners, as long as prisoners have other ways (like by mail) to communicate with the media. *Pell v. Procunier* 438 U.S. 1 (1978)

- **How does the regulation impact other prisoners, prisons guards or officials and prison resources**? This is most often about how much any change would cost, in terms of money and staff time. For example, one court held that it is constitutional to prevent prisoners from calling anyone whose

number is not on their list of ten permitted numbers, because it would take prison staff a long time to do the necessary background checks on additional numbers. *Pope v. Hightower*, 101 F.3d 1382 (11th Cir. 1996). This question is not always just about money though, it also requires the court to take into consideration whether changing the regulation would pose a risk to other prisoners or staff or create a "ripple effect" in the prison. *Fraise v. Terhune*, 283 F.3d 506, 520 (3d Cir. 2002).

- **Are there obvious, easy alternatives to the regulation that would not restrict your right to free expression?** This part of the test offers a chance for the prisoner to put forward a suggestion of an obvious and easy way for a prison to achieve its desired goal. For example, one court held that it is constitutional to ban correspondence between a pair of prisoners in two different facilities after one sent a threatening letter to the other's Superintendent, because monitoring their correspondence is **not** an obvious or easy alternative to banning it. *U.S. v. Felipe*, 148 F.3d 101 (2d Cir. 1998).

You will want to keep these four questions in mind as you read the following sections on the First Amendment.

(a) Access to Reading Materials

The Basics: Prison Officials can keep you from getting or reading books that they think are dangerous or pornographic. They can also make you get all books straight from the publisher.

The First Amendment protects your right to receive and keep reading material like books and magazines. This doesn't mean that you can have any books you want. Your right is limited by the interest of prison officials in maintaining order and security and promoting prisoner rehabilitation. Until 1989, the Supreme Court required prisons to prove that banning material was necessary to meet government interests in prison order, security, and rehabilitation before they could violate a prisoner's legal rights. This standard, developed in *Procunier v. Martinez*, 416 U.S. 396 (1974), gave prisoners fairly strong protection of their access to reading materials. Today, however, the Supreme Court has become much more conservative, and has given prisons greater power to restrict your First Amendment rights. Now a prison can keep you from having magazines and books as long as it fulfills the *Turner* test, explained above. This was decided in an important Supreme Court case called *Thornburgh v. Abbot*, 490 U.S. 401, 404 (1989). If you feel that your right to have reading materials is being violated, you should try reading *Thornburgh v. Abbot.*

Why Read Cases?

Sometimes in this Handbook we suggest that you read Supreme Court and other court cases. While we have tried to summarize the law for you, the cases we suggest will give you much more detailed information, and will help you figure out whether you have a good legal claim. Chapter Six explains how to find cases in the law library based on their "citation." You can also ask the library clerk for help finding a case. Chapter Six also gives helpful tips on how to get the most out of reading a case.

While the *Turner* standard is less favorable to prisoners, it still guarantees you a number of important rights. Prison officials still need to justify their policies in some convincing way. If they can't, the regulation may be struck down. For example, one court overturned a ban on all subscription newspapers and magazines for prisoners in administrative segregation, because it meant that prisoners were kept from reading all magazines, a problem under the second question in *Turner*, and because the rule wasn't reasonably related to the prison's interested in punishment and cleanliness, a problem under *Turner* Question 1. *Spellman v. Hopper*, 95 F. Supp. 2d 1267 (M.D. Ala., 1999).

Prisons can't just ban books and magazines randomly. Courts require prisons to follow a certain procedure to ban a publication. A prison cannot maintain a list of excluded publications, or decide that no materials from a particular organization will be allowed in. It must decide about each book or magazine on a case-by-case basis. This is true even if prison official already knows that the book or magazine comes from an organization they don't approve of. *Williams v. Brimeyer*, 116 F.3d 351 (8th Cir. 1997). Also, some prisons require the warden to tell you when he or she rejects a book or magazine sent to you, and to give the publisher or sender a copy of the rejection letter. Courts may require that the prison have a procedure so that you, or the publisher or sender, can appeal the decision.

Prison officials cannot censor material just because it contains religious, philosophical, political, social, sexual, or unpopular or repugnant content. They can

only censor material if they believe it will incite disorder or violence, or will hurt a prisoner's rehabilitation. Unfortunately, the *Thornburgh* standard gives prison wardens broad discretion in applying these rules, and sometimes decisions are inconsistent among different courts. Courts have allowed censorship of materials that advocate racial superiority and violence against people of another race or religion. *Stefanow v. McFadden*, 103 F.3d 1466 (9th Cir. 1996); *Chriceol v. Phillips*, 169 F.3d 313 (5th Cir. 1999). One court allowed special inspection of a prisoner's mail after he received a book with a suspicious title, even though the book was just an economics textbook. *Duamutef v. Holllins*, 297 F.3d 108 (2nd Cir. 2002). Prison officials are normally allowed to ban an entire offending publication, as opposed to just removing the sections in question. *Shabazz v. Parsons*, 127 F. 3d 1246 (10th Cir. 1997). However, prisons must abide by the Fourteenth Amendment, which guarantees equal protection of the laws to all citizens. This means that, for example, a prison cannot ban access to materials targeted to an African-American audience, if they do not ban similar materials popular among white people.

You do not have a right to all kinds of sexually explicit materials. But most courts have said that you do have a right to non-obscene, sexually explicit material that is commercially produced (as opposed to, for example, nude pictures of spouses or lovers). *Thornburgh*, 490 U.S. at 405. Recently, however, some courts have allowed total bans on any publication portraying sexual activity, or featuring frontal nudity. *Mauro v. Arpaio*, 188 F.3d 1054 (9th Cir. 1999). Courts do not allow prisoners access to child pornography because it is against federal law, and usually will not allow access to sexually explicit sadomasochistic materials on the grounds that they may incite violence. Courts have also upheld bans on homosexually explicit material when the material depicts individuals of the same sex as the prison population, arguing that a prisoner might be identified as homosexual when he receives the material and attacked by others as a result. *Espinoza v. Wilson*, 814 F.2d 1093 (6th Cir. 1987). Homosexual material that is not sexually explicit is allowed in at least some circuits. *Harper v. Wallingford*, 877 F.2d 728 (9th Cir. 1989).

A prison can usually require that publications come directly from a publisher or bookstore. *Bell v. Wolfish*, 441 U.S. 520, 550 (1979). Courts have justified this by arguing that materials from sources other than the publisher or bookstore may contain contraband, and that the cost of searching all of these materials would be too great.

(b) Free Expression of Political Beliefs

The Basics: You can believe whatever you want, but the prison *may* be able to stop you from some writing, talking or organizing.

You also have the right to express your political beliefs. This means that prison officials may not punish you simply because of your political beliefs. *Sczerbaty v. Oswald*, 341 F. Supp. 571 (S.D.N.Y. 1972). To justify any restriction on your right to free expression, prison officials need to satisfy the *Turner* test by showing that the restriction is "reasonably related to legitimate governmental interests." The *Turner* test was explained earlier in this section.

Prison officials may be able to limit what you write and publish in prison, but not all of these limitations will pass the *Turner* standard. For example, one court found a rule that kept prisoners from carrying on businesses or professions in prison to be not reasonably related to legitimate governmental interests when it kept Mumia Abu-Jamal from continuing his journalism career. *Abu-Jamal v Price*, 154 F.3d 128 (3rd Cir. 1998). The court relied on evidence that (1) the rule was enforced against Mumia, at least in part, because of the content of his writing, and not because of security concerns; (2) his writing did not create a greater burden within the prison than any other prisoner's writing; and (3) there were obvious, easy alternatives to the rule that would address security concerns.

However, regulations limiting prisoners from publishing their work may be constitutional in other situations. In a case called *Hendrix v. Evans*, 715 F. Supp. 897 (N.D. Ind. 1989), the court held that a ban on publishing leaflets to be distributed to the general public on the topic of a new law was constitutional, because prisoners still had other ways to inform the public about the issue, such as by individual letters.

Often the prison will rely on "security concerns" to justify censorship. In *Pittman v. Hutto*, 594 F.2d 407 (4th Cir. 1979), the court held that prison officials did not violate the constitution when they refused to allow publication of an issue of a prisoners' magazine because they had a reasonable belief that the issue might disrupt prison order and security.

Some courts will examine the "security" reason more closely then others to see if it is real or just an excuse. For example, in *Castle v. Clymer*, 15 F. Supp. 2d 640 (E.D. Pa. 1998), the court held that prison officials

violated the constitution when they transferred a prisoner in response to letters he had written to a journalist. The letters mentioned the prisoner's view that the proposed prison regulations would lead to prison riots. The court found that since there was no security risk, the transfer was unreasonable.

Prison officials are permitted to ban petitions, like those asking for improvements in prison conditions, as long as prisoners have other ways to voice their complaints. *Duamutef v. O'Keefe*, 98 F.3d 22 (2d Cir. 1996). Officials can ban a prisoner from forming an association or union of inmates, because it is reasonable to conclude that such organizing activity would involve threats to prison security. *Brooks v. Wainwright*, 439 F. Supp. 1335 (M.D. Fl. 1977). In one very important case, the Supreme Court upheld the prison's ban on union meetings, solicitation of other prisoners to join the union, and bulk mailings from the union to prisoners, as long as there were other ways for prisoners to communicate complaints to prison officials and for the union to communicate with prisoners. *Jones v. North Carolina Prisoners' Labor Union, Inc*., 433 U.S. 119 (1977).

(c) Limits on Censorship of Mail

The Basics: The prison usually can't stop you from writing whatever you want to people outside the prison. The prison can keep other people from writing you things it considers dangerous. Prison guards can look in your letters, to make sure there is no contraband inside.

The First Amendment also protects your right to send and receive letters. Until 1989, prison officials were required to meet a relatively strict test to justify their needs and interests before courts would allow them to interfere with mail. Today, the court still uses this test for outgoing mail, but allows prison officials more flexibility in controlling incoming mail.

In order to censor the letters you send to people outside the prison, prison officials must be able to prove that the censorship is necessary to protect an "important or substantial" interest of the prison. Examples of important interests are: maintaining prison order, preventing criminal activity and preventing escapes. The prison officials must be able to show that their regulations are actually "necessary and essential" to achieving this important goal, not just that the regulation is intended to achieve that goal. The regulations cannot restrict your rights any more than is required to meet the goal. *Procunier v. Martinez*, 416 U.S. 396 (1974).

This means that prisons cannot restrict or censor your outgoing mail without meeting the "important" and "necessary" test. A prison official cannot censor your mail just because it makes rude comments about the prison or prison staff. *Bressman v. Farrier*, 825 F.Supp. 231 (N.D. Iowa 1993).

However, courts have usually allowed guards to look in your outgoing mail, especially for contraband. Courts explain that looking in a letter is different from censorship. *Altizer v. Deeds*, 191 F.3d 540 (4th Cir. 1999); *Stow v. Grimaldi*, 993 F.2d 1002 (1st Cir. 1993).

Some restrictions on outgoing mail are allowed. Courts have allowed bans on "letter kiting," which means including a letter from someone else with your letter, or sending a letter to someone in an envelope with another prisoner's name. *Malsh v. Garcia*, 971 F. Supp 133. (S.D.N.Y. 1997). Some courts have allowed prisons to refuse prisoner correspondence with anyone not on an approved mailing list, while other courts have not.

Censorship of <u>incoming</u> mail, on the other hand, is governed by the *Turner* test, which was explained earlier in this chapter. As you learned earlier, the *Turner* test only requires that the regulation in question be "reasonably related" to a "legitimate" government interest, as opposed to "necessary" to meet an "important interest." This means that while your rights are still protected to some extent, prisons can put restrictions on incoming mail for a variety of reasons. Courts have allowed restrictions on incoming packages on the grounds that they can easily hide contraband and would use up too many prison resources on inspection. *Weiler v. Purkett*, 137 F.3d 1047 (8th Cir. 1998). Courts have also generally upheld restrictions on mail between prisoners. *Farrell v. Peters*, 951 F.2d 862 (7th Cir. 1992).

A prison must follow special procedures to censor your mail. You should be notified if a letter addressed to you is returned to the sender or if your letter is not sent. The author of the letter should have a chance to protest the censorship. The official who responds to a protest cannot be the person who originally censored the mail in question. *Procunier*, 416 U.S. at 419-20.

Courts have generally upheld limitations on the amount of postage you can have at one time and the amount of postage they will provide to prisoners who cannot afford it for non-legal mail. *Van Poyck v. Singletary*, 106 F.3d 1558 (11th Cir. 1997); *Davidson v. Mann*, 129

F.3d 700 (2d Cir. 1997).

Special rules apply to mail between you and your attorney, and to mail you send to non-judicial government bodies or officials. This mail is called "privileged mail" and is protected by your constitutional right of access to the courts, as well as by the attorney-client privilege. When this mail is clearly marked as "privileged," and is related to your case, prison officials cannot read it. They can only open it in your presence to inspect it for contraband. *Castillo v. Cook County Mail Room*, 990 F.2d 304 (7th Cir. 1993). If you wish to protest reading or censorship of your mail in court, however, you may have to show that the acts you are complaining about actually affected your case or injured you in some way. *John v. N.Y.C. Dept. of Corrections*, 183 F. Supp. 2d 619 (S.D.N.Y. 2002). Even if a prison restricts most of your correspondence with other prisoners, you may be allowed to correspond by mail with a prisoner serving as a jailhouse lawyer.

A number of courts have decided that incoming mail from an attorney must bear the address of a licensed attorney and be marked as "legal mail." If not, it will not be treated as privileged. In addition, you must have requested that legal mail be opened only in your presence, and according to some courts your attorney must have identified himself to the prison in advance. *U.S. v. Stotts*, 925 F.2d 83 (4th Cir. 1991); *Boswell v. Mayor*, 169 F.3d 384 (6th Cir. 1999); *Gardner v. Howard*; 109 F.3d 427 (8th Cir. 1997).

(d) Your Right to Telephone Access

The Basics: Most of the time, you have a right to make some phone calls, but the prison can limit the amount of calls you can make. They can probably also listen in while you talk.

Your right to talk with friends and family on the telephone is also protected by the First Amendment. However, courts do not all agree on how much telephone access prisoners must be allowed. Prisons may limit the number of calls you make. The prison can also limit how long you talk. Courts disagree on how strict these limits can be. Most courts agree that prison officials can restrict your telephone privileges in "a reasonable manner." *McMaster v. Pung*, 984 F.2d 948, 953 (8th Cir. 1993).

Courts also disagree on how much privacy you can have when you make phone calls. Some courts have held that prisoners have no right to make private phone calls. *Cook v. Hills*, 3 Fed.Appx. 393 (6th Cir. 2001) (unpublished). Others have held that prisoners who are told that they are being monitored consent to giving up their privacy. *U.S. v. Footman*, 215 F.3d 145, 155 (1st Cir. 2000); *U.S. v. Workman*, 80 F.3d 688, 693-694 (2d Cir. 1996). In other words, if there is a sign under the phone saying that "all calls are monitored" you can't complain about it. Prisons are generally allowed to place more severe restrictions on telephone access for prisoners who are confined to Special Housing Units for disciplinary reasons, as long as they can show that these restrictions are reasonably related to legitimate security concerns about these prisoners.

In general, prisons are allowed to limit the number of different people whom you can call, and to require you to register the names of those people on a list to be approved by the prison. *Pope v. Hightower*, 101 F.3d 1382 (11th Cir. 1996); *Washington v. Reno*, 35 F.3d 1093 (6th Cir. 1994).

Courts have upheld prison requirements that prisoners pay for their own telephone calls. This can impose a serious burden on prisoners, especially when states enter into private contracts with phone companies that force prisoners to pay far more for their phone calls than people using pay phones in the outside world must pay. Successful challenges to these types of contracts or excessive telephone charges in general have been rare, but several organizations are suing over this issue in hopes of ending this exploitation of prisoners and their families and friends.

2. Freedom of Religious Activity

The Basics: You have the right to practice your religion if it doesn't interfere with prison security.

Your freedom of religion is protected by the First and Fourteenth Amendments of the U.S. Constitution and several federal statutes. There are five ways you can challenge a restriction on your religious freedom. The most important way is the "Free Exercise Clause" of the First Amendment.

The First Amendment to the United States Constitution states: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…"*

The second half of that sentence is known as the **Free Exercise Clause**, and it protects your right to practice your religion. You must be able to show the court that

your belief is both religious and sincere. Different courts have different definitions of "religion," but they generally agree that your beliefs do not have to be associated with a traditional or even an established religion to be religious. *Africa v. Commonwealth of Pennsylvania*, 662 F.2d 1025 (3d Cir. 1981); *Love v. Reed*, 216 F.3d 682 (8th Cir. 2000). It is important to understand how "religion" is defined in your District or Circuit before bringing your case.

Courts judge your religious "sincerity" by looking at how well you know the teachings of your religion and how closely you follow your religion's rules. However, you don't have to follow every single rule of your religion. And your belief doesn't have to be the same as everyone else's in your religion. *LaFevers v. Saffle*, 936 F.2d 1117 (10th Cir. 1991). Courts will usually listen to what a prison chaplain or clergyperson says about your religious sincerity. *Montano v. Hedgepeth*, 120 F.3d 844 (8th Cir. 1997).

If a court determines that your belief is both religious and sincere, it will next balance your constitutional right to practice your religion against the prison's interests in order, security, and efficiency. Prison officials cannot prohibit you from practicing your religion without a real reason. They have to show that a restriction is "reasonably related to a penological interest," under the *Turner* test described in Section C, Part 1 of this chapter. Courts often follow the decisions of prison officials, but any restriction on the free exercise of religion is still required to meet the four-part *Turner* test before it will be upheld.

The first clause in the First Amendment is called the **Establishment Clause**, and it says that the government can't encourage people to be religious, or chose one religion over another. The Circuit Courts currently rely on two different standards in deciding whether a prison has violated the Establishment Clause.

For both tests, you must first show that the prison or its officials acted in a way that endorsed, supported, or affiliated themselves in some way with a religion.

The **first test** was developed in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). This test that says to be valid under the Constitution, a regulation or action

1) must be designed for a purpose that is not religious;

2) cannot have a main effect of advancing or setting back any religion; and

3) cannot encourage excessive government entanglement with religion.

The **second test**, developed in *Lee v. Weisman*, 505 U.S. 577 (1992), can be stated more simply: it prohibits the government from forcing you to support or participate in any religion.

- **Note:** A claim under the Establishment Clause is rare in prison, so you should probably try one of the other four options first.

Another source of protection for religion is the **Fourteenth Amendment.** It provides all individuals, including prisoners, with "equal protection under the law." This means that a prison cannot make special rules or give special benefits to members of only one religion or group of religions without a reason. The prison can treat members of one religion differently if it has a reason that isn't about the religion. *Benjamin v. Coughlin*, 905 F.2d 571 (2d Cir. 1990). For example, a prison cannot treat members of one religious affiliation differently just because they are few in number or hold non-traditional beliefs, but they can have better facilities and services for religions that have more followers. *Cruz v. Beto*, 405 U.S. 319 (1972).

Ways to Protect Your Religious Freedom

1) The **Free Exercise Clause** of the First Amendment protects your right to follow the practices of your religion, like eating kosher food, covering your hair, or praying at a certain time;

2) The **Establishment Clause** of the First Amendment keeps the government from encouraging you to follow a certain religion, or be religious at all;

3) The **Fourteenth Amendment** means that the government can't discriminate against you or treat you poorly because of your religion;

4) The **Religious Freedom Restoration Act** provides added protection for prisoners in federal custody;

5) The **Religious Land Use and Institutionalized Persons Act** provides additional protection for all prisoners.

For each type of challenge, a court will balance your constitutional rights against prisons' interest in security and administration.

The following is a brief description the type of problems that often come up in cases about prisoners' constitutional rights to religious freedom.

- Religious services and meetings with clergy: You have the right to meet with a religious leader and to attend religious services of your faith. You may meet with a clergy person of a particular faith even if you weren't a member of that faith before entering prison. However, courts have allowed prisons to restrict your rights based on the prison's interests in order, security, and efficiency. The bottom line is that while you are not entitled to unlimited meetings, you have a right to a "reasonable opportunity" to attend services or meet with a religious leader. The prison gets to decide what a "reasonable opportunity" means. For example, courts have allowed work requirements that prevent prisoners from attending some weekly services of their faith, *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987). The prison can keep you from visiting a sweat lodge for religious practice at certain times of day, *Thomas v. Gunter*, 103 F.3d 700 (8th Cir. 1997). The prison can also require that all religious services be led by a non-prisoner religious leader, *Anderson v. Angelone*, 123 F.3d 1197 (9th Cir. 1997).

- Personal grooming, hygiene, and headgear: Courts have taken different approaches to prisoners who maintain certain hairstyles or facial hair or wear headgear. Prisons can only keep you from doing this if they have a good reason based on security or hygiene, *Swift v. Lewis*, 901 F.2d 730 (9th Cir. 1990). However, courts often agree with whatever the prison says is a "good reason." *Young v. Lane*, 922 F.2d 370 (7th Cir. 1991).

- Special diets: Special religious diets often raise issues of cost, and sometimes also raise questions related to the Establishment Clause, which prohibits endorsement of one religion above others. Courts have often required prisons to accommodate prisoners' religious diets, but usually allow them to do so in a way that is least costly for them. *Ashelman v. Wawrzaszek*, 111 F.3d 674 (9th Cir. 1997); *Beerheide v. Suthers*, 286 F.3d 1179 (10th Cir. 2002); *Makin v. Colorado Dept. of Corrections*, 183 F.3d 1205 (10th Cir. 1999). Courts will often not require prisons to provide special diets if they are not absolutely required by a prisoner's religion.

Courts have also addressed such issues as religious name changes, *Hakim v. Hicks*, 223 F.3d 1244 (11th Cir. 2000); access to religious literature, *Chriceol v. Phillips*, 169 F.3d 313 (5th Cir. 1999); *Williams v. Brimeyer*, 116 F.3d 351 (8th Cir. 1997); prison requirements for medical procedures that violate religious principles, *Shaffer v. Saffle*, 148 F.3d 1180 (10th Cir. 1998); and the right to possess religious objects, *Morrison v. Garraghty*, 239 F.3d 648 (4th Cir. 2001).

In addition to the protections provided by the constitution, there are two statutes that protect the religious rights of prisoners. If you look at cases about your right to religious freedom in prison that were decided between 1993 and 1997, you may notice references to the **Religious Freedom Restoration Act (RFRA)**.

The RFRA provided prisoners with substantially more protection of religious freedom than does the First Amendment. Specifically, the Act stated that the government can only "substantially burden a person's exercise of religion" if two conditions are met. First, the government restriction must be "in furtherance of a compelling governmental interest." This is a much stricter test than that upheld in *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987), where the Supreme Court said that government restrictions need only be "reasonably related to legitimate penological interests" (under the four-part *Turner* test). Second, the government must prove that its restriction is the "least restrictive means of furthering that compelling interest." This also provides prisoners with more protection than *Shabazz* did, since the Court in *Shabazz* allowed certain restrictions on religious practice as long as prisoners were still offered alternative means of practicing their religion. For example, if they could attend worship services on some days but not on others.

However, the Supreme Court struck down the RFRA as it applies to state prisoners in a 1997 case, *City of Boerne v. Flores*, 521 U.S. 507 (1997). This means that you cannot use the RFRA if you are a state prisoner. You must rely on the four-part *Turner* test instead. However, the Supreme Court did not explicitly overrule the RFRA as it applies to the federal government and most courts have held it is still valid as to federal agencies like the Federal Bureau of Prisons.

- **HINT**: If you are a federal prisoner and you think your right to practice your religion has been violated, write a separate claim in your "complaint" under the Religious Freedom Restoration Act.

Finally, in 2000, Congress passed the **Religious Land Use and Institutionalized Persons Act (RLUIPA)**,

another law that protects prisoners' rights to practice their religion. Like the RFRA, RLUIPA states that a prison cannot "impose a substantial burden on the religious exercise of a person residing in or confined to an institution" unless the burden is: (1) "in furtherance of a compelling governmental interest" and (2) "the least restrictive means of furthering that compelling interest."

The RLUIPA is different than the RFRA because it applies only to programs or activities that receive money from the federal government. This financial assistance gives Congress the right to pass laws that it might not otherwise be able to pass. So far, several courts that have considered the RLUIPA have found it constitutional. *Mayweathers v. Newland,* 314 F.3d 1062 (9th Cir. 2002); *Charles v. Verhagen,* -- F.3d ---, No. 02-3572, 2003 WL 22455960 (7th Cir. Oct. 30, 2003). At least two other courts have found it unconstitutional. *Madison v. Riter,* 240 F. Supp. 2d 566 (W.D.Va.2003); *Cutter v. Wilkinson*, --F.3d --, 2003 WL 22513973 (6th Cir. Nov. 7, 2003).

Although some people believe the law will eventually be held unconstitutional by the Supreme Court, just as the RFRA was, RLUIPA is currently good law in many jurisdictions. You should therefore consider bringing a claim under RLUIPA if you believe that your right to exercise your religion freely has been inappropriately restricted by authorities at your prison.

3. Freedom from Racial Discrimination

The Basics: Prison officials cannot treat you differently because of your race and the prison can't segregate prisoners by race except in very limited circumstances. However, proving racial discrimination or segregation is hard.

Racial discrimination and racial segregation by prison authorities are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. *Washington v. Lee*, 263 F. Supp. 327 (M.D. Ala. 1966). For example, prisons cannot prevent black prisoners from subscribing to magazines and newspapers aimed at a black audience. *Jackson v. Godwin*, 400 F.2d 529 (5th Cir. 1968). Nor can they segregate prisoners by race in their cells. *Sockwell v. Phelps*, 20 F.3d 187 (5th Cir. 1994).

When bringing a racial discrimination claim, it is important to understand that it is not enough to show that prison rules had the **effect** of discriminating against you; you must show that a discriminatory **purpose** was at least part of the reason for the rules. *David K. v. Lane*, 839 F.2d 1265 (7th Cir. 1988). One way you can do this is by showing that discrimination is the only possible reason for a policy. For example, a federal court in Alabama decided that the constitution had been violated because it could not find any non-discriminatory reason for the fact that African-Americans consistently made up a greater proportion of those detained in Alabama's segregation unit than of those detained in Alabama's prisons generally. *McCray v. Bennett*, 467 F. Supp. 187 (M.D. Ala. 1978).

However, proving a case like this is not easy, and will probably require expert witnesses and statistical analysis. For example, another court held that prison officials did not violate the constitution when they censored certain cassettes, most of which were African-American rap music, because there was not enough evidence that they intended to discriminate against African-Americans. *Betts v. McCaughtry*, 827 F. Supp. 1400 (W.D. Wisc. 1993).

Even if you get past this first hurdle, and successfully prove discriminatory intent, courts may allow racial segregation or discrimination if prison officials show that it is **essential** to prison security and discipline. *Washington v. Lee*, 263 F. Supp. 327, 331 (M.D. Ala. 1966). This exception to the general rule is narrow. Racial segregation must be in response to an obvious danger to security, discipline, and good order, and it may only be "limited and isolated." *U.S. v. Wyandotte County, Kan.*, 480 F.2d 969 (10th Cir. 1973). A vague fear of racial violence is not a sufficient justification for a broad policy of racial segregation. For example, one court did not accept the argument that there might be an increase in violence if people of different races shared two-person cells, since the rest of the prison was integrated. *Sockwell v. Phelps*, 20 F.3d 187 (5th Cir. 1994).

Most courts have held that racial discrimination in the form of occasional verbal abuse does not violate the Constitution.

4. Protection from Sexual Discrimination

The Basics: Women have a right to programs that are as good as the programs in prisons for men, but this right is very hard to enforce.

The Equal Protection clause of the Fourteenth Amendment also prohibits discrimination based on

gender against prisoners and non-prisoners alike. While it protects both men and women from discrimination, gender discrimination is a bigger problem for women.

In addition to the sexism toward women that exists outside prison, women prisoners often experience discrimination because they are a minority population in prison. Unlike men, who make up the majority of prisoners, women will often be lumped together in one prison with other prisoners from all levels of security classification because there are so few women's prisons. They will sometimes be sent much farther away from their homes than men because there are no women's prisons nearby. States that provide treatment and educational programs for male prisoners usually provide fewer programs for women, because it is very expensive to provide so many programs for so few women.

Faced with these inequalities, women prisoners in some states have brought successful suits against state prison officials using an Equal Protection argument. For example, in a landmark class action case in Michigan, *Glover v. Johnson*, 478 F. Supp. 1075 (E.D. Mich. 1979), female prisoners challenged the educational opportunities, vocational training, prison industry and work pass programs, wage rates, and library facilities they were provided as compared to those male prisoners were provided. Although prison officials tried to argue that it was impractical and too expensive to provide the same level of services to such a small population of women that they provided to men, the court ruled in favor of the women. The judge ordered the prison to undertake a series of reforms, and the court oversaw these reform efforts for close to twenty years, often stepping in to enforce its decision when it became evident that the prison was not following the *Glover* court's orders.

While women in other states have also effectively challenged gender discrimination under the Equal Protection clause, relatively few cases by women prisoners have succeeded. As they do in other cases involving constitutional rights of prisoners, the courts like to leave the decisions to prison officials. There are a number of things a court takes into account when deciding a gender discrimination case, and each raises its own obstacles for female prisoners trying to bring an Equal Protection action. The following section addresses these considerations and the challenges they create.

(a) The "similarly situated" argument

To make an Equal Protection claim, you must first show that the male and female prisoners you wish to compare are "similarly situated" for the purposes of the claim you are bringing. "Similarly situated" means that there are no differences between male and female prisoners that could explain the different treatment they receive. While it is unconstitutional to treat prisoners in the same situation differently, it is acceptable to treat prisoners in different situations differently. Courts will look at a number of factors in determining whether male and female prisoners are "similarly situated," including number of prisoners, average sentence, security classification, and special characteristics such as violent tendencies or experiences of abuse. Unfortunately, courts very often decide on the basis of these factors that male and female prisoners are *not* similarly situated. *Keevan v. Smith*, 100 F.3d 644 (8th Cir. 1996); *Klinger v. Department of Corrections*, 31 F.3d 727 (8th Cir. 1994).

(b) The Equal Protection test for gender discrimination

If you successfully show that male and female prisoners are "similarly situated" for the purposes of the challenge you are making, you must then show that prison officials discriminated between the groups on the basis of gender, and not for a different, legitimate reason. Courts will use a different test for this depending on whether the action you are challenging is **gender-based** or **gender-neutral**. These two terms are explained below.

- **Gender-based classifications:** A rule or practice is "gender-based" if it states one thing for men, and another for women. For example, a policy that says all women will be sent to child care training and all men will be sent to vocational training is "gender-based." Judges look very carefully at gender-based rules. The government must show that the distinction between men and women is "**substantially related to important governmental objectives**." *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982); *Jackson v. Thornburgh*, 907 F.2d 194 (D.C. Cir. 1990). Note that this is a much stricter standard than the "reasonable relationship" *Turner* test that is used with respect to other constitutional rights, described in Part 1 of this Section.

- **Gender-neutral classifications**: A "gender-neutral" classification may still have the effect of discriminating against women in practice, but it does not actually say anything about gender. If the action challenged is "gender-neutral" then the

courts use a less strict standard of review. The court must determine whether the action is in fact gender-neutral, and, if it is, examine whether the different treatment of men and women that results is "**rationally related to legitimate government interests**" (the *Turner* test) or whether, instead, it reflects an **intent to discriminate** on the basis of gender. *Jackson v. Thornburgh*, 907 F. 2d 194 (D.C. Cir. 1990).

In distinguishing between the tests, there are two important considerations to keep in mind.

First, whether you are looking for an important governmental objective or just a legitimate governmental objective, these objectives are not acceptable if they are proven to be the result of stereotyping or outdated ideas about proper gender roles. *Pitts v. Thornburgh*, 866 F.2d 1450 (D.C. Cir. 1989). For example, the court will not accept an objective of protecting one gender because it is "inherently weaker" than the other gender. *Glover v. Johnson*, 478 F. Supp 1075 (E.D. Mich. 1979).

Second, it is not always obvious whether an action is gender-based or gender-neutral, and courts disagree on how to read certain types of regulations or policies. Very often, there will be two regulations at play. The first assigns men and women to specific prisons on the basis of their gender. Courts have rarely held that this kind of segregation is discrimination. The second regulation assigns certain programs or facilities to prisons on the basis of such factors as size, security level, or average length of prisoner sentence. These second types of regulations do not appear to be gender-based; they seem instead to be based on characteristics of the prisons alone. However, they often result in different treatment of male and female prisoners.

Some courts have taken the requirement that an action be gender-based to get heightened scrutiny very literally. These courts have argued that when a statute or policy does not explicitly distinguish between men and women in how the prison facility is run, it is basically gender-neutral. *Klinger v. Dep't of Corrections*, 31 F. 3d 727 (8th Cir. 1994); *Jackson v. Thornburgh*, 907 F. 2d 194 (D.C. Cir. 1990). Other courts, however, have read the requirement more favorably to prisoners. They see that in reality, gender-neutral regulations about programming interact with gender-based assignment of prisoners to specific prisons, which makes the regulations gender-based. "Programming" means how a prison is run by officials. Even where the statute or policy about programming decisions does not actually mention gender, these courts will apply the higher standard of scrutiny detailed above. *Pitts v. Thornburgh*, 866 F. 2d 1450 (D.C. Cir. 1989).

5. Due Process Rights Regarding Punishment, Administrative Transfers, and Segregation

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The Basics: You can only challenge a transfer or punishment in prison if it is extremely and unusually harsh, or if it is done to get back at you for something you have the right to do.

The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving "any person of life, liberty or property without due process of law." Discipline, placement in segregation, transfers to different prisons, and loss of good time credit are all things that the prison can do to you that might violate "procedural due process." Procedural due process defines the amount of protection you get before the prison can do something that harms your life, liberty, or property. Procedural due process has two parts: first you have to show a "**liberty interest**" and second, you have to show that you should have gotten **more procedure** than you received.

You have a "**liberty interest"** when the prison's actions interfere with or violate your constitutionally protected rights.

Two important Supreme Court cases govern due process rights for prisoners:

- In the first case, *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court found that, when prisoners lose good time credits because of a disciplinary offense, they are entitled to: (1) written notice of the disciplinary violation; (2) the right to call witnesses at their hearing; (3) assistance in preparing for the hearing; (4) a written statement of the reasons for being found guilty; and (5) a fair and impartial decision-maker in the hearing.

- The second important Supreme Court case, *Sandin v. Conner*, 515 U.S. 472 (1995), however, sharply limits the holding of *Wolff* and sets a higher standard that you have to meet in order to show that you have a "liberty interest." If you don't have a "liberty interest," then the prison doesn't have to provide you with any process at all. Any prisoner alleging a violation of due process should first read *Sandin*. In *Sandin*, a prisoner was placed in disciplinary segregation for 30 days and was not

allowed to have witnesses at his disciplinary hearing. But the Court in *Sandin* found that, unless the punishment an inmate receives is an "**atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life**," then there is no right to the five procedures laid out above, taken from *Wolff*. "Atypical" means that the way you were treated has to be much different than the way most prisoners are treated. "Significant hardship" means that treatment must be really awful, not just uncomfortable or annoying.

This means that if you want to argue that you should have been given the rights laid out in *Wolff*, you must show that your punishment was extremely harsh. Frequently, short periods of solitary confinement, "keeplock," or loss of privileges will not be considered harsh enough to create a liberty interest. For example, in *Key v. McKinney*, 176 F.3d 1083 (8th Cr. 1999), the court found that 24 hours in shackles was not severe enough to violate due process. On the other hand, the Second Circuit has found that 305 days in solitary confinement in one case, and 762 days in another, were severe enough to create a liberty interest. You can read *Giano v. Selsky*, 238 F.3d 223 (2d Cir. 2001) and *Colon v. Howard*, 215 F.3d 227 (2d Cir. 2000) to get a sense of how to make this type of claim.

Although *Sandin* changed the law in important ways, the Supreme Court did not say they were overruling *Wolff*. This means that, when you can show that there is a "liberty interest" at stake (much harder to prove under *Sandin*), the rights guaranteed by *Wolff* still apply. In other words, if a decision by prison officials results in conditions that are severe enough to meet the "significant and atypical" standard, the prison must give the inmate procedures like a hearing and a chance to present evidence.

Courts have found due process violations when prisoners are disciplined without the chance to get witness testimony, have a hearing, or present evidence. Courts have also found due process violations when punishment is based on vague claims of gang affiliation. Some cases in which these types of claims were successfully made are: *Ayers v. Ryan*, 152 F.3d 77 (2d Cir. 1998); *Taylor v. Rodriguez*, 238 F.3d 188 (2d Cir. 2001); and *Hatch v. District of Columbia*, 184 F.3d 846 (D.C. Cir. 1999). On the other hand, it is also true that courts will not require the prison to call witnesses when calling additional witnesses would be unnecessary or irrelevant. *Kalwasinski v. Morse*, 201 F.3d 103 (2d Cir. 1999).

If you are transferred to a different facility or to a different location within a prison, the same standard set out under *Sandin v. Connor* applies: you must show that the transfer resulted in conditions that were a significant or atypical departure from the ordinary instances of prison life. Given the fact that the new prison will likely be similar to prisons everywhere, it is very hard to win on such a claim. In *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997), for example, the court said that transfer from a minimum-security facility to a maximum-security facility did not create conditions that gave rise to a claim of due process violation. However, you may have a case if you are transferred to a supermaximum security facility without the due process protections described above, especially if the conditions there are much harsher than most prisons.

If you are placed in administrative segregation, as opposed to disciplinary segregation, you still have some due process rights, but these rights are more limited. The Supreme Court has found that, in general, a formal or "adversarial" hearing is not necessary for putting prisoners in administrative segregation and that all you get is notice and a chance to present your views informally. This was decided in *Hewitt v. Helms*, 459

BEWARE!

You cannot bring a procedural due process challenge to a disciplinary proceeding resulting in the lose of good time credits if winning would result in the Court necessarily reversing the judgment you received in the disciplinary proceeding.

This important but confusing concept comes from a Supreme Court case called *Edwards v. Balisok*, 520 U.S. 641 (1997). In *Edwards,* a prisoner challenged the conduct of the hearing examiner, stating that the examiner hid evidence that would have helped him and didn't question witnesses adequately. At the hearing, the prisoner was sentenced to time in solitary and loss of good time credits. The Court held that, if what the prisoner said was true, it would mean that the result of his disciplinary hearing would have to be reversed and his good time credits would have to be given back to him. This would affect the length of his confinement, and a challenge like that can only be brought if the prisoner can show that his/her disciplinary conviction has already been overturned in a state proceeding.

If you are just challenging a disciplinary decision that does not affect the length of your confinement, you are probably O.K. Read *Brown v. Plaut*, 131 F.3d 163 (D.C. Cir. 1997) for more on this issue.

U.S. 460 (1983), the most important case on administrative segregation. Some courts believe that, after *Sandin*, there is no longer an obligation on the part of prisons to follow any procedures at all before placing an inmate in administrative segregation. An example of this precedent can be found in *Wagner v. Hanks*, 128 F.3d ll73, ll75 (7th Cir. 1997). One case that provides a useful argument against this holding is *Sealey v. Giltner*, 197 F.3d 578 (2d Cir. 1999).

Although it has become more difficult in recent years for prisoners to bring claims of due process violations involving transfers or administrative segregation, there may be other ways of challenging such decisions. For example, a prison can't transfer you to punish you for complaining or to keep you from filing a lawsuit. Prison officials must not use transfers or segregation to restrict your access to the courts. For an example of this type of claim, read *Allah v. Seiverling*, 229 F.3d 220 (3d Cir. 2000).

6. Fourth Amendment Limits on Prison Searches and Seizures

The Basics: Prison officials can usually search your cell whenever they want but there are some limits on when and how they can strip search you.

The Fourth Amendment forbids the government from conducting "unreasonable searches and seizures." Outside of prison, this means that a police officer or F.B.I. agent cannot come into your home or search your clothing without your consent or a search warrant unless it is an emergency. However, the Fourth Amendment only protects places or things in which you have a "reasonable expectation of privacy." In the outside world, this means that if you have your window shades wide open, you can't expect somebody not to look in, so a cop can too. In *Hudson v. Palmer*, 468 U.S. 517, 530 (1984), the Supreme Court held that prisoners don't have a reasonable expectation of privacy in their cells, so prison officials can search them as a routine matter without any particular justification, and without having to produce anything like a search warrant.

This doesn't mean that *all* cell searches are permissible. If a prison official searches your cell with the purpose of harassing you or for some other reason that is not justified by a penological need, this may be a Eighth Amendment violation. However, to get a court to believe that the "purpose" was harassment, you will need some truly shocking facts. For example, in *Scher v. Engelke*, 943 F.2d 921, 923-24 (8th Cir. 1991) a prison guard searched a prisoner's cell 10 times in 19 days and left the cell in disarray after three of these searches.

Some states have passed laws or interpreted their constitutions to require officers to have a warrant before searching your cell, or to require that you be allowed to watch while the search occurs. Check out the law in your state to learn more about this issue.

Prisoners have more protection from searches of their bodies. While they have no expectation of privacy in their cells, they retain a "limited expectation of privacy" in their bodies. In analyzing body cavity searches, strip searches, or any invasions of bodily privacy, courts will balance the need for the search against the invasion of privacy the search involves. Prisoners seem to have had the most success when the searches were conducted by, or in front of, guards of the opposite gender. For example, in *Hayes v. Marriott*, 70 F.3d 1144, 1147-48 (10th Cir. 1995), the court held that a body cavity search of a male prisoner in front of female guards stated a claim for a Fourth Amendment violation absent the showing of a security need; in *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993), the court recognized a claim by male inmates who were observed by female guards while they showered and went to the bathroom; in *Cornwell v. Dahlberg*, 963 F.2d 912, 916 (6th Cir. 1992), the court recognized a male prisoner's Fourth Amendment claim based on a strip search done outdoors, in front of several female guards; and in *Kent v. Johnson*, 821 F.2d 1220, 1226-27 (6th Cir. 1987), the Sixth Circuit refused to dismiss a complaint stating that female prison guards routinely saw male prisoners naked, showering, and using the toilet. Even when the search is not done by or in front of the other gender, however, you may be able to show a Fourth Amendment violation if there was no reasonable justification for the invasive search.

There is especially good case law on this issue in some circuits with respect to searches of pretrial detainees. The Second Circuit, for example, has held that strip searches of pretrial detainees who are in custody for misdemeanor or other minor offenses are unconstitutional unless the guard or officer has a reasonable suspicion that the detainee has a concealed weapon or contraband of some sort. One case that explains this issue is *Shain v. Ellison*, 273 F.3d 56, 66 (2d Cir. 2001).

7. Eighth Amendment Protection from Physical Brutality

The Basics: Guards do NOT have the right to beat you or harm you unless their action is considered reasonable given the situation.

The Eighth Amendment forbids "cruel and unusual punishment" and is probably the most important amendment for prisoners. It has been interpreted to prohibit excessive force and guard brutality, as well as unsanitary, dangerous or overly restrictive conditions. It is also the source for your right to medical care in prison.

Courts have held that "excessive force" by guards in prisons constitutes cruel and unusual punishment. In a very important Supreme Court case called *Hudson v. McMillian*, 503 U.S. 1 (1992) the Supreme Court found a violation of the Eighth Amendment when prison officials punched and kicked a prisoner, leaving him with minor bruises, swelling of his face and mouth, and loose teeth. The Court held that a guard's use of force violates the Eighth Amendment when it is **not** applied "in a good faith effort to maintain or restore discipline" but instead is used to "maliciously and sadistically cause harm." In other words, "excessive force" is any physical contact by a guard that is meant to cause harm, rather than keep order. To decide what force is excessive, judges consider:

(1) The need for force
(2) Whether the amount of force used was reasonable given the need
(3) How serious the need for force appeared to the guards
(4) Whether the guard made efforts to use as little force as necessary, and
(5) How badly you were hurt

To win on an excessive force claim, you will have to show that force was used against you, but you do not have to show a serious injury or harm. It is usually enough to show some actual injury, even if it is relatively minor. Not all courts agree with this though, so you should check the law in your circuit. For example, one court found that there was no violation of the Eighth Amendment when a prisoner's ear was bruised during a search. *Siglar v. Hightower*, 112 F.3d 191 (5th Cir. 1997).

- **Remember**: Under the PLRA, you cannot recover compensatory money damages for mental or emotional injury, unless you can also claim some physical injury. This rule can be very harsh. It means that if a guard threatens you, or assaults you in some way, but does not injure you, you will not be able to get money damages for the very real emotional and mental distress that you feel as a result of this brutality. However, you may be able to get "punitive damages" or "nominal damages." We explain this issue, and the difference between the three types of damages, in Section E of this Chapter.

The state of mind of the prison officials is important in excessive force cases. Courts have found a violation of the Eighth Amendment where prison officials were responsible for "the unnecessary and wanton infliction of pain." "Wanton" means malicious, or uncalled-for. You can meet this requirement by showing that the force used was not a necessary part of prison discipline. For example, one court found an Eighth Amendment violation when an officer repeatedly hit a prisoner even though the prisoner had immediately obeyed an order to lie face down on the floor, and was already being restrained by four other officers. *Estate of Davis by Ostenfeld v. Delo*, 115 F.3d 1388 (8th Cir. 1997). However, the Ninth Circuit held that there was no Eighth Amendment violation when a prisoner was shot in the neck during a major prison disturbance, because the court found that the officer was trying to restore order. *Jeffers v. Gomez*, 267 F.3d 895 (9th Cir. 2001).

8. Your Right to Decent Conditions in Prison

The Basics: You have a right to safe conditions in prison.

The Eighth Amendment's prohibition of cruel and unusual punishment also protects your right to safe and somewhat decent conditions in prison. You can challenge prison conditions that deprive you of a **"basic human need,"** such as shelter, food, exercise, clothing, sanitation, and hygiene. However, the standard for unconstitutional conditions is high—courts allow conditions that are "restrictive and even harsh." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). You must have evidence of conditions that are serious and extreme and cause more injury than discomfort alone.

To challenge prison conditions using the Eighth Amendment, you must provide *both* objective evidence and subjective evidence. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Wilson v. Seiter*, 501 U.S. 294 (1991). **Objective evidence** is factual evidence that you were

deprived of a basic human need. **Subjective evidence** is evidence that the prison official you are suing knew you were being deprived and did not respond reasonably. You must show how you were injured and prove that the deprivation of a basic need caused your injury.

When you provide **objective evidence**, you must show that the condition(s) you are challenging could seriously affect your health or safety. In considering a condition, a court will think about how bad it is and how long it has lasted. *Barney v. Pulsipher*, 143 F.3d 1299, 1311 (10th Cir. 1998). You must show that you were injured either physically or psychologically, though courts do not agree on how severe the injury must be. You may challenge conditions even without an injury if you can show that the condition puts you at serious risk for an injury in the future. *Helling v. McKinney*, 509 U.S. 25 (1993).

When you provide **subjective evidence**, you must show that the official you are suing acted with "deliberate indifference." *Wilson v. Seiter,* 501 U.S. 294 (1991). This means that the official knew of the condition and did not respond to it in a reasonable manner. *Farmer v. Brennan*, 511 U.S. 825 (1994). One way to show this is by proving that the condition was so obvious that the official must have purposefully ignored it to not know about it. Courts will also consider any complaints or grievance reports that you or other prisoners have filed, *Vance v. Peters*, 97 F.3d 987 (7th Cir. 1996), as well as prison records that refer to the problem. Prison officials cannot ignore a problem once it is brought to their attention. Prison officials may try to argue that the prison does not have enough money to fix problems, but courts have generally *not* accepted this defense (although the Supreme Court has not clearly addressed this defense yet). *Spain v. Procunier*, 600 F.2d 189 (9th Cir. 1979). It is important to note that while there is a subjective component to Eighth Amendment claims, you do *not* need to show *why* prison officials acted as they did.

As explained in other sections of this Handbook, the PLRA bars claims for damages that rely on a showing of emotional or mental injury without a showing of physical injury. This provision should not affect your claim for injunctive relief from poor conditions. However it may be quite difficult to get money damages for exposure to unsafe or overly restrictive conditions unless they have caused you a physical injury. The courts are not in agreement on this issue, so you may want to just include these claims anyway, and hope for the best.

Here are some of the most common Eighth Amendment challenges to prison conditions:

- **Food:** Prisons are required to serve food that is nutritious and prepared under clean conditions. *Robles v. Coughlin*, 725 F.2d 12 (2d Cir. 1983). As long as the prison diet meets nutritional standards, prisons can serve pretty much whatever they want. They must, however, provide a special diet for prisoners whose health requires it and for prisoners whose religion requires it. See Part 2 of this section, on religious freedom.

- **Exercise:** Prisons must provide prisoners with opportunities for exercise outside of their cells. *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996); *Delaney v. DeTella*, 256 F.3d 679 (7th Cir. 2001). Courts have not agreed upon the minimum amount of time for exercise required, and it may be different depending on whether you are in the general population or segregation. One court has considered three hours per week adequate, *Hosna v. Groose*, 80 F.3d 298, 306 (8th Cir. 1996), while another has approved of just one hour per week for a maximum security prisoner. *Bailey v. Shillinger*, 828 F.2d 651 (10th Cir. 1987). Some circuits have determined that prisoners cannot be deprived of *outdoor* exercise for long periods of time. *LeMaire v. Maass*, 12 F.3d 1444 (9th Cir. 1993). Prisons must provide adequate space and equipment for exercise, but again, there is not clear standard for this. It is generally acceptable to limit exercise opportunities for a short time or during emergencies.

- **Air Quality and Temperature:** Prisoners have successfully challenged air quality when it posed a serious danger to their health, particularly in cases of secondhand smoke, *Reilly v. Grayson*, 310 F.3d 519 (6th Cir. 2002), *Alvarado v. Litscher*, 267 F.3d 648 (7th Cir. 2001) and asbestos, *LaBounty v. Coughlin*, 137 F.3d 68 (2d Cir. 1998). While you are not entitled to a specific air temperature, you should not be subjected to extreme hot or cold, and should be given bedding and clothing appropriate for the temperature. *Gaston v. Coughlin*, 249 F.3d 156 (2d Cir. 2001).

- **Sanitation and Personal Hygiene:** Prisoners are entitled to sanitary toilet facilities, *DeSpain v. Uphoff*, 264 F.3d 965 (10th Cir. 2001), proper trash procedures, and basic supplies such as toothbrushes, toothpaste, soap, sanitary napkins, razors, and cleaning products.

- **Overcrowding:** Although overcrowding is one of the most common problems in U.S. prisons, it is not considered unconstitutional on its own. *Rhodes v. Chapman*, 452 U.S. 337 (1981); *C.H. v. Sullivan*, 920 F.2d 483 (8th Cir. 1990). If you wish to challenge overcrowding, you must show that it has caused a serious deprivation of basic human needs such as food, safety, or sanitation. *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985); *Toussaint v. Yockey*, 722 F.2d 1490 (9th Cir. 1984).

- **Rehabilitative Programs:** In general, prisons are not required to provide counseling services like drug or alcohol rehabilitation to prisoners unless they are juveniles, mentally ill, or received rehabilitative services as part of their sentence. *Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia*, 93 F.3d 910, 927. (D.C. Cir. 1996).

- **Other Conditions:** Prisoners have also successfully challenged problems with lighting, *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir. 1985), fire safety, *Id.* at 784, furnishings, *Brown v. Bargery*, 207 F.3d 863 (6th Cir. 2000), accommodation of physical disabilities, *Bradley v. Puckett*, 157 F.3d 1022, (5th Cir. 1998), and unsafe work requirements. *Fruit v. Norris*, 905 F.2d 1147 (8th Cir. 1990), as well as other inadequate or inhumane conditions.

Instead of challenging a particular condition, you may also bring an Eighth Amendment suit on a "totality of the conditions" theory, either on your own or as part of a class action lawsuit. Using this theory, you can argue that even though certain conditions might not be unconstitutional on their own, they add up to create an overall effect that is unconstitutional. *Palmer v. Johnson*, 193 F.3d 346, (5th Cir. 1999). The Supreme Court has limited this argument to cases where multiple conditions add up to create a single, identifiable harm. *Wilson*, 501 U.S. at 305, but the courts are in disagreement as to what exactly that means.

9. Your Right to Medical Care

The Basics: The prison must provide you with medical care if you need it, but the Eighth Amendment does not protect you from medical malpractice.

The Eighth Amendment also protects your right to medical care. The Constitution guarantees prisoners this right, even though it does not guarantee medical care to individuals outside of prison because, as one court explained, "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

If you feel that your right to adequate medical care has been violated, the Constitution is not the only source of your legal rights. You can bring claims under your state constitution or state statutes relating to medical care or the treatment of prisoners or bring a medical malpractice suit in state courts. You might also bring a claim in federal court under the Federal Tort Claims Act or a federal statute such as the Americans With Disabilities Act. This section, however, will focus exclusively on your rights to medical care under the U.S. Constitution.

Unfortunately, the Eighth Amendment does not guarantee you the same level of medical care you might choose if you were not in prison. To succeed in an Eighth Amendment challenge to the medical care in your prison, you must show that:

(a) You had a serious medical need;

(b) Prison officials showed "deliberate indifference" to your serious medical need; and

(c) This deliberate indifference caused your injury.

Estelle v. Gamble, 429 U.S. 97 (1976). These requirements are described in more detail below.

(a) Serious Medical Need

Under the Eighth Amendment, you are only entitled to medical care for "serious medical needs." Courts do not all agree on what is or isn't a serious medical need; you should research the standard for a serious medical need in your circuit before filing a suit.

Some courts have held that a serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Hill v. Dekalb Reg'l Youth Det. Ctr.,* 40 F.3d 1176, 1187 (11th Cir. 1994). Courts usually agree that the medical need must be "one that, if left unattended, 'pos[es] a substantial risk of serious harm.'" *Taylor v. Adams,* 221 F.3d 1254, 1258 (11th Cir. 2000). In other words, if a doctor says you need treatment, or your need is obvious, than it is probably "serious."

Courts generally agree that the test for serious medical need is highly individual. *Smith v. Carpenter*, 316 F.3d 178 (2d Cir. 2003). A condition may not be a serious medical need in one situation but could be a serious medical need in another. Furthermore, a prisoner may suffer from a serious underlying medical condition, but not have a serious medical need for Eighth Amendment purposes:

> "it's the particular risk of harm faced by a prisoner due to the challenged deprivation of care, rather than the severity of the prisoner's underlying medical condition, considered in the abstract, that is relevant for Eighth Amendment purposes." Id. at 186; *Chance v. Armstrong,* 143 F.3d 698, 702-703 (2d Cir. 1998).

In considering whether you have a serious medical need, the court will consider several factors, including:

(1) Whether a reasonable doctor or patient would consider the need worthy of comment or treatment,
(2) Whether the condition significantly affects daily activities, and
(3) Whether you have chronic and serious pain.

For more on these factors, one good case to read is *Brock v. Wright*, 315 F.3d 158 (2d Cir. 2003).

It is important that you keep detailed records of your condition and inform your prison medical staff of exactly how you are suffering.

Mental health concerns can qualify as serious medical needs. For example, several courts have held that a risk of suicide is a serious medical need for the purposes of the Eighth Amendment. *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254 (7th Cir. 1996); *Gregoire v. Class*, 236 F.3d 413 (8th Cir. 2000).

(b) Deliberate Indifference

The standard for "deliberate indifference" in medical care cases is the same two-part standard used in cases challenging conditions of confinement in prison, explained in Part 8 of this chapter. To prove deliberate indifference, you must show that (1) prison officials knew about your serious medical need and (2) failed to respond reasonably to it. *Estelle*, 429 U.S. at 104. *Gutierrez v. Peters,* 111 F.3d 1364, 1369 (7th Cir. 1997). This means that you cannot bring an Eighth Amendment challenge to medical care just because it was negligent (just because a doctor should have known about your medical need) or because you disagree with the type of treatment a doctor gave you. You must bring these sorts of claims through other means, such as state medical malpractice laws.

To increase your chances of receiving proper care and succeeding in a constitutional challenge to your medical care, you should keep careful records of your condition and your efforts to notify prison officials. You should take advantage of sick call procedures at your prison and report your condition even if you do not think officials will help you. Although courts will not find deliberate indifference just because a prison "should have known" that you had a serious medical need, they will assume that prison officials knew about your condition when it was very obvious. *Farmer v. Brennan*, 511 U.S. 825, 842 (1995).

Courts most often find deliberate indifference when:

- a prison doctor fails to respond appropriately or does not respond at all to your serious medical needs
- prison guards or other non-medical officials intentionally deny or delay your access to treatment,
- or when these same non-medical officials interfere with the treatment that your doctor has ordered. *Estelle*, 429 U.S. at 104-105; *Meloy v. Bachmeier,* 302 F.3d 845, 849 (8th Cir. 2002).

Unfortunately, courts do not usually require prison medical staff to give you the best possible care. For example, courts have not found a violation when prison medical staff sent a patient who was severely beaten by another patient to a doctor and then followed that doctor's orders despite the prisoner's continued complaints, even though the prisoner's condition was more serious than the doctor had recognized. *Perkins v. Lawson*, 312 F.3d 872 (7th Cir. 2002). Another court found that there could not have been deliberate indifference in a case where a patient received thirteen medical examinations in one year, even though he claimed that a muscular condition in his back did not improve. *Jones v. Norris*, 310 F.3d 610 (8th Cir. 2002).

(c) Causation

Finally, you must show that you suffered some harm or injury **as a result** of the prison official's deliberate indifference. If officials failed to respond to your complaints about serious pain but the pain went away on its own, you will not succeed in a constitutional challenge. For example, one court failed to find a constitutional violation when a prison did not give a prisoner with HIV his medication on two occasions, because even though HIV is a very serious condition, the missed medication did not cause him any harm. *Smith v. Carpenter*, 316 F.3d 178 (2d Cir. 2003).

In some situations, you may wish to challenge your prison's medical care system as a whole, and not just the care or lack of care that you received in response to a particular medical need. These systemic challenges to prison medical care systems are also governed by the deliberate indifference standard. Successful cases have challenged the medical screening procedures for new prisoners used by prisons, the screening policies or staffing for prisoners seeking care, and the disease control policies of prisons, *Hutto v. Finney*, 437 U.S. 678 (1978).

10. The Rights of Pretrial Detainees

The Basics: Pretrial detainees have most of the same rights as prisoners.

Not everybody who is incarcerated in a prison or jail has been convicted. Many people are held in jail before their trial. Special issues arise with respect to these "pretrial detainees." As you know from the above sections, the Eighth Amendment prohibits *cruel and unusual punishment* of people who have already been **convicted**. Since detainees are considered innocent until proven guilty however, they may not be punished *at all*. One legal result of this is that conditions for pretrial detainees are reviewed under the Fifth or Fourteenth Amendment Due Process Clause as opposed to the Eighth Amendment prohibition of cruel and unusual punishment.

The most important case for pretrial detainees is *Bell v. Wolfish*, 441 U.S. 520 (1979), which was a challenge to the conditions of confinement in a federal jail in New York. In *Bell*, the Court held that only jail conditions that amount to **punishment** of the detainee violate Due Process. The Court explained that there is a difference between punishment, which is unconstitutional, and regulations that, while unpleasant, have a valid administrative or security purpose. It held that restraints that are "reasonably related" to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they cause discomfort.

You can prove that poor conditions or restrictive regulations are really punishment in two different ways:

(1) by showing that the prison administration or individual guard intended to punish you, or

Immigration Detainees

In the wake of September 11, 2001, more and more non-citizens are being held in prisons or jails, even though they are not convicted criminals or even pretrial detainees. These people are "immigration detainees." Like pretrial detainees, immigration detainees can challenge the conditions of their confinement under the Due Process Clause. Some courts have held that such challenges should be analyzed under the *Bell* standard. For an example of this point of view, read *Edwards v. Johnson*, 209 F.3d 772 (5th Cir. 2000) or *Medina v. O'Neil*, 838 F.2d 800 (5th Cir. 1988).

However, other courts have acknowledged that it is not yet clear how immigration detainees' claims should be treated. In *Preval v. Reno*, 203 F.3d 821 (4th Cir. 2000) the Fourth Circuit reversed a lower court ruling on a case brought by immigration detainees because the district court had dismissed their claims using the standard for pretrial detainees, without giving the detainees the opportunity to argue about the correct standard. If you are an immigration detainee, you may want to argue that you deserve a standard that is more protective of your rights than the standard for pretrial detainees, because you have not gotten the usual protections that courts give defendants in the criminal justice system. You may also want to argue that, because the correct standard is unclear, the court should appoint an attorney to represent you.

Another important issue for immigration detainees is whether the PLRA applies to them. While the Supreme Court has not considered this issue yet, the lower courts have held that the sections of the PLRA which specifically apply to "prisoners" **do not** apply to immigration detainees. This includes the exhaustion requirement, the mental & emotional injury requirement, and the filing fee provision. *See Agyeman v. INS*, 296 F.3d 871 (9th Cir. 2002). On the other hand, the section of the PLRA on the requirements for and termination of injunctive relief apply to "all civil actions with respect to prison conditions." This section may apply to immigration detainees. *See Vasquez v. Carver*, 18 F. Supp. 2d 503 (E.D. Penn. 1998).

(2) by showing that the regulation is not reasonably related to a legitimate goal, either because it doesn't have any purpose, or because it is overly restrictive or an exaggerated response to a real concern.

As with the *Turner* standard for convicted prisoners, courts defer to prison officials in analyzing what is a "legitimate concern."

Although the *Bell* standard for analyzing the claims of pretrial detainees is well-established, the circuits are not in agreement as to whether the content of that standard is any different from the content of the Eighth Amendment standard explained above. In *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244 (1983) the Supreme Court held that pretrial detainees have due process rights that are "at least as great" as the Eighth Amendment protection available to prisoners. However, when faced with claims by pretrial detainees, many courts simply compare the cases to Eighth Amendment cases.

If you are a pretrial detainee, you should start by reading *Bell v. Wolfish*, and then research how courts in your circuit have applied that standard.

D. INJUNCTIONS

Now that you know your rights under the Constitution, the next step is figuring out how to put together your lawsuit. You will need to decide whom to include as plaintiffs, what you want the court to do, and whom to sue.

If you bring a lawsuit under Section 1983, you can ask for one, two, or all of the following: **money damages**, a **declaratory judgment,** and an **injunction**.

- "**Money damages**" is when the court orders the defendants to pay you money to make up for a harm you suffered in the past.

- An **injunction** is a court order that directs prison officials to make changes in your prison conditions and/or stop on-going conduct that the court finds to be illegal.

- A "**declaratory judgment**" lies somewhere in between: it is when a court makes a decision that explains your legal rights and the legal duties and obligations of the prison officials. However, the court doesn't order the prison to do or stop doing anything. If you get a declaratory judgment and the prison doesn't follow it, you can then ask the court for an injunction to make them do so.

Although a court usually issues a declaratory judgment and an injunction together, it is also possible for a court to issue only the declaratory judgment and let the prison officials decide what actions will comply with the court's declaratory judgment.

A court will only issue an injunction if it feels that money damages will not fix whatever has harmed you. For instance, if you have to continue living in the unsafe conditions you sued over, money damages will not make those conditions any safer.

This section talks about injunctions in more detail, including when you can get an injunction, what it can cover, and how to enforce it. Section E of this Chapter explains money damages, Section F explains whom you can sue (the "defendants") and Section G explains settlements.

If you are part of a group of prisoners who are seeking a declaratory judgment and injunctive relief (and sometimes money damages) from a court, you can ask the court to make the lawsuit a "class action." This kind of lawsuit joins together all plaintiffs, both present and future, that have been harmed in the same manner as you at the same prison or jail. There are very specific requirements for bringing a class action lawsuit. These requirements will be discussed in Section H of this chapter.

What is an Injunction?

An injunction is an order issued by a court that tells the defendant to do or not do something. You can get an injunction to stop the defendants from harming you. Or, you can get an injunction to make the defendants do something to improve conditions or care in the prison. Sometimes an injunction is referred to as "**prospective relief**." You can ask for an injunction if you are experiencing any of the following:

1. Overcrowded, unsafe, or extremely harsh conditions;

2. A pattern of guard brutality or harassment;

3. Inadequate medical care;

4. Continuing violation of any of your rights.

When you think about what kind of relief you want, it is important to keep in mind that in a Section 1983 suit, a federal court cannot release you from prison or reduce your sentence. Additionally, you cannot use a Section 1983 suit to request the reinstatement of good-conduct-time credits that have been unconstitutionally taken from you. *Presier v. Rodriguez*, 411 U.S. 475 (1973). You can only

challenge the fact or the length of your prison sentence through a *writ of habeas corpus*, which requires that you go through your state court system before seeking relief from a federal court. A detailed discussion of the writ of *habeas corpus* is beyond the scope of this Handbook. But see Appendix E for some books and resources on *habeas corpus*.

Your options when filing a Section 1983 suit

You can get one, two or all of the following:

(1) **Money damages**,

(2) **An injunction**,

(3) **A declaratory judgment**

You may use a Section 1983 suit to get money damages to challenge the unconstitutionality of disciplinary sanctions and convictions, including the loss of good-conduct-time credits. However, because of a case called *Edwards v. Balisok,* 520 U.S. 641 (1997), you cannot bring a Section 1983 suit to challenge a disciplinary proceeding that **extends your time** in prison **until** you have had your disciplinary conviction or sanction set aside in state court.

1. When You Can Get an Injunction

An injunction is an order issued by a court that tells the defendant to do or not do some act or acts. It can order the defendants to stop doing harmful and unconstitutional things to you or require the defendants to act in a way that will prevent them from violating your rights in the future. If the defendants don't follow the court's order, as set out in the injunction, they can be held in "contempt" by the court that issued the injunction and can be fined or jailed.

In considering whether to ask for an injunction in your lawsuit, you should think about the harm you have suffered and figure out if it happened just once, is still happening or is likely to happen again soon. You may be able to get an injunction if the harm is continuing or is very likely to happen again soon.

The Supreme Court in *Lewis v. Casey*, 518 U.S. 343 (1996), stated that in order to get an injunction, a prisoner must show "actual or imminent injury." This means that you have to show the court that you were really harmed in some way, or that it is likely that you will be harmed very soon. It is not enough to show that there is something wrong in your prison, you must have been harmed by whatever is wrong.

In this context, "injury" does not have to mean actual physical damage to your body. It just means that you are, or will be, worse off because of the illegal acts of the prison staff, such as: your mail wasn't sent out, your books were taken away, or you have to live in a strip cell.

If your suit is about living conditions in prison, you should ask for an injunction. For instance, if you are suing about overcrowding, unless your living situation has changed since you filed the lawsuit, you are still living in overcrowded conditions, so you are suffering an "ongoing harm" and you can request an injunction.

On the other hand, if the overcrowding just happened for a week or two, and you do not have a good reason to believe that it is likely to happen again in the near future, you should not request an injunction. An example of harm that is *not ongoing* is being beaten once by a guard. Unless the guard threatens to beat you again, or engages in a pattern of violence, there is nothing that the court can order the prison officials to do that will fix the abuses that you suffered in the past.

- **Remember**: Even if the abuse you suffered does not fit the standard discussed here, you can still sue for monetary damages. This is discussed in Part E of this chapter.

2. Preliminary Injunctions

Most injunctions are called **permanent injunctions**. The court can only give you a permanent injunction at the end of your lawsuit. However, sometimes prisoners can't wait a long time, sometimes years, for the court to decide whether to grant them a permanent injunction. Perhaps you are facing serious injury or even death. In a case like that, you can ask the court for a **preliminary injunction**. You can get a preliminary injunction much faster than a permanent injunction and it protects you while the court is considering your case, and deciding whether or not you will get a permanent injunction.

There are four things that you have to show to win a preliminary injunction:

(1) You are likely to show at trial that the defendants violated your rights;

(2) You are likely to suffer irreparable harm if you do not receive a preliminary injunction "Irreparable harm" means an injury that can never be fixed;

(3) The threat of harm that you face is greater than the harm the prison officials will face if you get a preliminary injunction; and

(4) A preliminary injunction will serve the public interest.

The next chapter and legal resources that you can find in your library will assist you with writing a complaint that includes all of the necessary information to get a preliminary injunction.

If you are successful in winning your preliminary injunction, the battle is unfortunately not over. Because of the PLRA, the preliminary injunction lasts only 90 days from the date that the court issues it. This usually means that you have to hope that you are able to win your permanent injunction within those 90 days. As stated before, lawsuits take a long time and it is unlikely that this will happen. You can get the preliminary injunction extended for additional 90-day periods if you can show that same conditions still exist. *Mayweathers v. Newland*, 258 F.3d 930 (9th Cir. 2001).

You must also consider the "exhaustion" requirements of the PLRA. In Chapter Three, Section A, Part 2 you will learn that the PLRA requires you to use the prison grievance system before filing a lawsuit. If you have an emergency situation, and you do not have time to use the prison grievance system, you can request a preliminary injunction. The courts are split on whether you will have to exhaust your prison's administrative remedies while you are getting relief through the injunction. One case to read on this issue is *Jackson v. District of Columbia*, 254 F.3d 262 (D.C. Cir. 2001). Either way, you will have to show the court that if you were forced to wait to file after using the prison grievance system, you would face "irreparable harm." "Irreparable harm" is an injury that would cause permanent harm that can not be fixed.

What all this means is that you need to carefully take a look at the law in your Circuit. To be safe, you should use the prison grievance system while are working on your lawsuit. In your complaint, you should state what you have done to file a grievance.

There is another means of relief that you can get even faster than a preliminary injunction, called a "temporary restraining order" or "TRO." Sometimes you can get a TRO before the prison officials are even aware of the lawsuit. These are issued in emergency situations and only last for a short period of time. However, unless you are working with a lawyer, you may have trouble getting a TRO. So, it might be best to focus on preliminary and permanent injunctions. You will learn more about preliminary injunctions and TROs in Chapter Three, Section E.

3. Termination of an Injunction

The PLRA also states that court-ordered injunctions may be terminated, or ended, after two years, unless the court finds that an injunction is "necessary to correct a current or ongoing violation" of your rights and that the injunction still satisfies the requirements for an injunction set forth above. After the first two years of an injunction, it may be challenged every year. To keep the injunction, you will have to show that without it, your rights would still be violated. Don't worry about this for now. It is very likely that if you are faced with this issue, you will also have a lawyer to help you.

E. MONEY DAMAGES

In a Section 1983 suit the court can order prison officials to give you money to make up for the harm you suffered when those officials violated your federal rights. You can get money damages instead of, or in addition to, an injunction. You may want an injunction against some of the people you sue and damages from others, or both. This section explains when and how to get damages.

There are three types of money damages. The first type of damage award that an individual can get in a Section 1983 suit is an award of **nominal damages.** Nominal damages are frequently just $1, or some other very small sum of money. Nominal damages are awarded when you have proven a violation of your rights, but you have not shown any actual harm that can be compensated.

You are most likely to win a significant amount of money if you suffered an actual physical injury. The officials who are responsible should pay you for medical and other expenses, for any wages you lost, for the value of any part of your body or physical functioning which cannot be replaced or restored, and for your "pain and suffering." These are called **compensatory damages**. The purpose of these damages is to try and get you back to the condition you were in before you received the injury.

Another type of damages you may be able to get is **punitive damages.** To get punitive damages, you need to show that the defendants' actions were "motivated by evil motive or intent" or involved "reckless or callous indifference to [your] rights." In other words, the officials had to either hurt you on purpose, or do

something so clearly dangerous, they must have known it was likely to hurt you. An example of a prisoner getting punitive damages can be found in *Smith v. Wade*, 461 U.S. 30 (1983). In this case, Mr. Wade had been moved into protective custody in his prison after having been assaulted by other prisoners. A prison guard moved two other prisoners into Mr. Wade's cell, one of whom had recently beaten and killed another prisoner. Mr. Wade's cellmates harassed, beat, and sexually assaulted him. The court found that the guard's conduct in placing Mr. Wade in a situation the guard knew was likely to expose him to serious physical harm, satisfied the standard for punitive damages.

MONEY DAMAGES

- You can get **nominal damages** if your rights have been violated
- You can get **compensatory damages** to make up for the physical harm you were caused.
- You can get **punitive damages** to punish guards who hurt you on purpose.

The point of punitive damages is to punish members of the prison staff who violate your rights and to set an example to discourage other prison staff from acting illegally in the future. Therefore, the court usually won't impose punitive damages for one incident. You will have to show there has been a pattern of abuse or that there is a threat of more abuse in the near future.

Just because you are able to prove your case and win compensatory damages, does not automatically mean you will win punitive damages. For instance, in *Coleman v. Rahija*, 114 F.3d 778 (8th Cir. 1997), Ms. Coleman was able to win compensatory damages by proving that she was illegally denied medical treatment, but she did not win punitive damages. In this case, Ms. Coleman had a history of premature and complicated pregnancies and was experiencing severe pain and bleeding in connection with her premature labor. Nurse Rahija, the nurse on duty at Ms. Coleman's prison, was aware of Ms. Coleman's medical history. Nurse Rahija examined Ms. Coleman and determined that Ms. Coleman could be in early labor. However, she delayed Ms. Coleman's transfer to a hospital for several hours. The court ruled that Nurse Rahija's actions reached the standard of "deliberate indifference" and therefore violated the Eighth Amendment of the Constitution, but were not bad enough to show that she acted with the "callous indifference" required for punitive damages.

Even though you may not always get punitive damages, if you are suing for a violation of your rights and you have to prove **deliberate indifference** or **excessive force** to win your claim (these standards are discussed earlier in the Handbook), it probably makes sense to ask for punitive damages too. It can't hurt.

If you have not been physically hurt, the PLRA has made it much harder to get any kind of award of monetary damages. The PLRA states that a prisoner must show "physical injury" in order to file a lawsuit for "mental or emotional injury". Different courts have different standards as to what qualifies as physical injury. The physical injury has to be greater than "*de minimis*" (very minor), but it does not have to be severe. For example, In a case called *Siglar v. Hightower,* 112 F.3d 191 (5th Cir. 1997), a guard twisted a prisoner's ear, and it was bruised and sore for three days. The court held that this was not enough of a physical injury. However, the court noted that a prisoner does not need to show a "significant" injury. Many courts do not have clear precedent on what kind of injury is enough.

What is a "mental or emotional injury?"

Some courts have held a "mental or emotional" injury is any claim for *any* constitutional violation that does not include a physical injury. For a case like this, read *Thompson v, Carter*, 284 F.3d 411 (2d Cir. 2002). However, this section of the PLRA does not apply to claims for injunctive or declaratory relief or claims for nominal and punitive damages. *Harris v. Garner*, 190 F.3d 1279 (11th Cir. 1999) discusses injunctive relief and *Calhoun v. DeTella*, 319 F.3d 936 (7th Cir. 2003) discusses nominal and punitive damages.

It is difficult to know for sure how much in compensatory and/or punitive damages you should request from the court. You should think carefully about asking for huge amounts of money, like millions of dollars, because the judge will be less likely to take your claim seriously if you do not ask for an appropriate amount. You can estimate a number for your compensatory damages by thinking about what your injury cost you. For example, try and come up with the amount of medical expenses you are likely to face in the future, or wages you have lost or will lose because you can not work. Also, think about the effect your injury has had on your life. How long have you suffered? Are you permanently injured? In what specific ways were you harmed? You can look up cases in your Circuit involving injuries that are similar

to your own and see what the court awarded those prisoners.

F. WHOM YOU CAN SUE

In your complaint you will name at least one defendant. You should include all of the people or entities that were responsible for the harm that you suffered. However, you do not want to go too far and name uninvolved people in the hopes of increasing your chances of winning; there must be a good reason to sue someone.

First, as you learned in Chapter Two, Section A, Part 2, every defendant you sue must have acted "under color of state law." What this means is that each prison official who was responsible for your injury must have acted while working at your prison or "on duty." This can include anyone who is involved in running your prison. You can sue the people who work in your prison, such as guards, as well as the people that provide services to prisoners, such as nurses or doctors.

You have to prove that each defendant in your case acted in a way or failed to act in a way that led to the violation of your rights. This is called "causation." For example, if a guard illegally beats you and violates your rights, he or she causes your injury. In this example, the guard's supervisor could also be liable for violating your rights if you can show that the supervisor made or carried out a "policy" or "practice" that lead to the violation or your rights. So, let's say that the prison warden, the supervisor of the guard who beat you, instructed his guards to beat prisoners anytime that they did not follow orders. In this instance, the warden didn't actually beat you himself, but he can be held responsible for creating a policy that led to the beatings. A supervisor can also be sued for ignoring and failing to react to a widespread health or safety problem. For example, if the warden was aware that guards refused to let prisoners eat on a regular basis and did not do anything to stop it, you should sue the warden as well as the guards.

There are legal differences between whom you can sue in an action for an injunction and who you can sue for money damages. A discussion of these differences follows below. It is important to keep in mind that you can still sue for an injunction and money damages together in one lawsuit.

First, you have to decide whether to sue a prison official in his or her "individual capacity" or "official capacity". If you are suing John Doe, supervising guard at "X" State Prison, in his **individual capacity**, that means you are suing John Doe personally. In contrast, if you are suing John Doe, supervising guard at X State Prison, in his **official capacity**, that means that you are suing whoever is the supervising guard at the time of your lawsuit, whether or not that person happens to be John Doe.

Naming Your Defendants:

- Sue prison guards or administrators in their "individual capacity" if you want **money damages.**
- Sue prison guards or administrators in their "official capacity" if you want an **injunction**.

If you want both, sue everybody is their "individual and official capacities."

You will learn how to state that you are suing someone in his or her individual or official capacity in ***Chapter Three****.*

1. Whom You Can Get An Injunction Against

To get an injunction from the court, you will need to sue prison guards and officers in their "official capacity." The purpose of an injunction is to change your prison by making prison officials take some action or stop doing something that violates your rights. So, in this kind of lawsuit you would want to sue the officials in charge. You cannot sue a state or a state agency directly, so you can't sue "X State Department of Corrections" for either an injunction or for money damages. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). The law does allow you to sue state-employed prison officials in their official capacity, and this can force the state and its state agencies respect your rights. So, if you are asking for an injunction, you want to make sure that you sue high-ranking officials at your prison, and mention the titles of the prison officials that you are suing as well as each of their names.

Although you can't sue a state, you can sue a municipality directly for an injunction. A "municipality" is a city, town, county or other kind of local government. This is called a "*Monell* claim" because it first succeeded in an important case called *Monell v. Dept. of Social Services of the City of New York*, 436 U.S. 659 (1978). You can sue a city, or any other municipality, for an injunction or damages where the violation of your rights was the product of a **policy or custom** of the city. *Pembaur v. Cincinnati*, 475 U.S.

469 (1986). Be warned that proving a "policy or custom" is hard unless the policy is actually written down. For example, in *Board of County Commissioners of Bryan County v. Brown*, 520 U.S. 397 (1997), Ms. Brown was not able to win her case against a municipality when she tried to prove that the municipality was responsible for a police officer's illegal use of excessive force in connection with her arrest. The court stated that the municipality's decision to hire one police officer was not "deliberate conduct" that was the "moving force" behind the violation of Ms. Brown's rights.

You will be in a better position to win against a municipality if you can show that the municipality was guilty of some pattern of abuse that resulted in the violation of your rights. You are unlikely to win against a municipality if your injury happened once or was caused by one prison or jail official.

2. Whom You Can Get Money Damages From

If you want to sue for money damages in your lawsuit, you have to sue the prison officials that violated your rights in their individual capacity (personally). As with injunctions, you cannot sue your state or its agencies. The biggest hurdle in suing prison officials for money damages is the doctrine of **qualified immunity**.

Qualified immunity is a form of legal protection given to government officials. If a court rules that the prison officials you are suing are protected by qualified immunity, that will be the end of your lawsuit for damages. However, **qualified immunity does <u>not</u> protect defendants from an *injunction*!**

To overcome qualified immunity, your complaint (explained in detail in Chapter Four) must include facts that show that:

- Your rights were violated;
- The right that was violated was "clearly established; and
- The defendant was *personally responsible* for the violation of your rights.

For a right to be "clearly established," a prison official must have warning that his or her actions in a situation were illegal. Under the law, a prison official is allowed to make mistakes. Prison officials may act illegally and still be free from liability if he or she couldn't be expected to know better because the law in that area is unclear. However, an official can be held responsible if he or she knew (or should have known) that he or she was acting illegally.

The **personal involvement** requirement means that prison supervisors or other high level officials (like the state prison commissioner) cannot be held liable for a violation of your rights *just because* they are responsible for supervising or employing the guards who actually violated your rights. This type of supervisory liability is called "*respondeat superior*" and it is not enough **not** for Section 1983 liability. However, you can hold supervisors responsible on the following theories:

(1) The supervisor directly participated;
(2) The supervisor learned of the violation of your rights and failed to do anything to fix the situation;
(3) The supervisor created a policy or custom allowing or encouraging the illegal acts; OR
(4) The supervisor was **grossly negligent** in managing the people he or she was supposed to supervise.

For a case explaining this kind of liability, read *Meriweather v. Coughlin*, 879 F.2d 1037 (2d Cir. 1989).

Some public officials have what is called **absolute immunity**. Unlike qualified immunity, absolute immunity is a complete bar to suit. Because of this doctrine, you cannot sue a judge, a legislator, or anyone else acting "as an integral part of the judicial or legislative process" no matter what he or she has done.

You may be worried that the prison officials you want to sue do not seem to have enough money to pay you. But, in most cases any money damages that the court orders the prison officials to pay will be paid by their employers: the prison or the state or state agency that runs the prison.

Finally, although there are different rules as to which remedies you can ask for from specific defendants, you can still ask for an injunction and money damages in the same complaint. For example, you can sue a guard in his or her individual capacity (for money damages) and his or her official capacity (for an injunction) in the same lawsuit.

3. What Happens to Your Money Damages

If you win money damages, the PLRA contains rules that may dip into your award before you get it. The PLRA states: *"any compensatory damages…shall be paid directly to satisfy any outstanding restitution*

orders pending against the prisoner. The remainder…shall be forwarded to the prisoner."

This means that if you are awarded compensatory damages after a successful suit, any debts you have towards the victim of your crime will be automatically paid out of your award before you get your money. This rule does not apply to punitive damages.

The PLRA also states that if you are awarded damages, "reasonable efforts" will be made to notify the "victims of the crime" for which you were convicted. However, there have been no rulings regarding these provisions so far, so it is hard to say whether and how they will affect suits and prisoners.

G. SETTLEMENTS

Before a judge rules on your case, the defendants may want to "settle," which means both parties involved give in to some of each others' demands and your suit will end without a trial. In a settlement, an injunction can still be issued against the defendant, and damages can be awarded to you. **No one, not even the judge, can force you to settle.**

The PLRA describes some rules on settlements. Settlements which include any kind of prospective relief (or injunctions) are often called "consent decrees." Consent decrees must meet strict requirements: the settlement must be narrowly drawn, necessary to correct federal law violations, and do so in the least intrusive way. The court will approve and make sure PLRA restrictions are enforced. This means that a court can only approve a settlement or a consent decree if it is shown evidence or admissions by the defendants that your rights were violated by the prison officials that you are suing. This is a pretty hard task, since you would have to go to court and prove to the court all of the requirements for an injunction.

Some prisoners have been successful in having their consent decrees approved by a court when both the prisoner and the prison officials being sued agree that it meets all of the requirements of the PLRA. There is no guarantee that this will work in all cases.

Parties can enter into "private settlement agreements" that may not meet PLRA standards, but these agreements cannot be enforced by federal law. These agreements are very risky if your rights are being violated.

The PLRA does not restrict settlements that only deal with money, and do not include prospective relief.

H. CLASS ACTIONS

One prisoner, or a small group of prisoners, can sue on behalf of all other prisoners who are in the same situation. This is called a "class action." The requirements for a "class action" are found in Rule 23 of the Federal Rules of Civil Procedure. Rule 23 requires:

(1) The class must be so large that it would not be practical for everyone in it to bring the suit and appear in court.
(2) There must be "questions of law or fact common to the class."
(3) The claims made by the people who bring the suit must be similar to the claims of everyone in the class.
(4) The people who bring the suit must be able to "fairly and adequately protect the interests of the class."
(5) The defendants "must have acted or refused to act on grounds generally applicable to the class," so that it would be appropriate for a court to issue one injunction or declaratory judgment "with respect to the class as a whole."

A class action has two big advantages. First, any court order will apply to the entire class. Anyone in the class can ask the court to hold the officials in contempt of court and fine or jail them if they disobey the court order. If the suit were not a class action, prisoners who were not a part of the suit would have to start a new suit if prison officials continued to violate their rights.

Second, a class action cannot be dismissed as "moot" because the prisoners who start the suit are released from prison or transferred to a prison outside the court's jurisdiction, or because the prison stops abusing those particular prisoners. The case will still be alive for the other prisoners in the class. *Sosna v. Iowa*, 419 U.S. 393 (1975) (the problem of "mootness" is discussed in Chapter Four, Section E).

A class action has one very big disadvantage. <u>If you lose a class action, the judgment binds all the class members, so individuals cannot successfully challenge conditions that were upheld in the class action.</u> On the other hand, if you lose a suit that is not a class action, you merely establish a bad precedent. Other prisoners can still raise the same legal issues in another suit, and they may be able to convince a different judge to ignore or overrule your bad precedent. Chapter Six explains how precedent works.

This is why the Federal Rules require that the people who bring a class action must be able to "fairly and adequately protect the interests of the class." Protecting the interests of a class requires resources that are not available to prisoners, such as a staff of investigators, access to a complete law library, and the opportunity to interview potential witnesses scattered throughout the state. **As a result, courts require that classes are represented by an attorney**.

You can start a suit under Section 1983 for yourself and a few other prisoners and send copies to some lawyers to see if they'll help. If a lawyer agrees to represent you or the court appoints a lawyer, your lawyer can "amend" your legal papers to change your suit into a class action.

- **Chapter One, Section D**, explains how to try and find a lawyer.

- **Chapter Three, Section C, Part 3** explains how to ask the court to appoint a lawyer to represent you.

Chapter Three: How to Start Your Lawsuit

This chapter explains how to start a lawsuit under Section 1983. It explains what legal papers to file, when, where, and how to file them, and it provides forms to guide your writing. It also explains what to do in an emergency, when you need immediate help from the court. The next chapter, Chapter Four, discusses what happens after a suit is started. Neither chapter gives all the rules or procedures for this kind of suit. These details are in the **Federal Rules of Civil Procedure** issued by the U.S. Supreme Court. The Federal Rules are supposed to be in your prison library as part of Title 28 of the United States Code Annotated (U.S.C.A.). The U.S.C.A. gives short summaries of important court decisions which interpret each rule. Chapter Six explains how to use the U.S.C.A. and other law books.

> **TIP:** Before you start writing your complaint, request the following documents from your District Court:
>
> 1. The District Court's Local Rules;
> 2. Forms for a Section 1983 *pro se* action;
> 3. *In Forma Pauperis* forms;
> 4. Forms for Appointment of Counsel.

The Federal Rules are not too long and they are very important. When we refer to a specific rule in this Handbook, you should read the rule if you possibly can. The rules are revised every few years, so be sure to check the "pocket parts" in the back of the books in the U.S.C.A. or read a current copy of the paperback. You may find reading the rules frustrating, since they are written in very technical language, and even lawyers and judges can't always agree on what they mean. For this reason, you may want to read a book that explains the Federal Rules and court decisions that interpret the Rules. If your library has it, a good book to read is *Wright and Miller's Federal Practice and Procedure*. You may also want to read the Advisory Committee notes which are printed in some editions of the rules. These notes explain the purpose of the rules and how they are supposed to work.

In addition to the Federal Rules, each United States District Court issues "Local Rules of Practice," which are based on the Federal Rules. The Local Rules cover details of procedure that may be different in each particular district. You can get a copy from the Clerk of the U.S. District Court for each district, but you may have to pay a small fee. You may want to request these rules when you write the court to get forms (explained below). Look in Appendix H to find the address of your District Court. Or, if you have a friend or relative with internet access, he or she can download the rules for free from the specific District Court's website.

A. WHEN TO FILE YOUR SECTION 1983 SUIT

If you are trying to stop an official policy or practice within the prison, you will, of course, want to act as quickly as possible. If a rule has been issued or an official decision has been made, you do not need to wait until the new procedure is put into effect. You can sue right away to block it.

If you are suing mainly to recover damages for an abuse that has already ended, you may not be in such a hurry. But it is usually best to get your suit going before you lose track of important witnesses or evidence.

1. Statute Of Limitations

For damage suits there is a "statute of limitations" which sets a deadline for how long you can wait, after the events occurred, before you start your suit. If your time runs out your case is "time-barred," which means you will not be able to bring it. To meet a statute of limitations, you need to ***file*** your suit before the deadline. The deadline for a Section 1983 suit is determined by your state's general personal injury statute. *Owens v. Okure*, 488 U.S. 235, 236 (1989). This same rule applies to *Bivens* actions brought by federal prisoners. In some states, the statute of limitations is as short as one year, but most states give two or more years. Statutes of limitations can change, so always check current state statutes to make sure. To discover the statute of limitations in your state, look in the "civil code" or "civil procedure" section of the state code.

If you expect to get out of prison fairly soon – for example, you already have a parole date – then you might be better off waiting until you are out before you start a suit that is only for damages. You will obviously have more freedom to get your suit together when you're out, and you'll have access to a more complete law library. You may be able to raise the money to hire a lawyer, and prison officials will have a harder time getting back at you for filing suit. Also, some sections of the PLRA do not apply to prisoners who have been released.

You do not have to worry about the statute of limitations if you have a suit for an injunction, because

you must be experiencing on-going harm to get an injunction. If you are still being harmed, than each harm brings you a new period within which you have a right to sue. On the other hand, if you want an injunction you have to start and finish your suit while you are inside to avoid the problem of "mootness" explained in Chapter Four, Section E

If you file your suit in time, but then need to file an amended complaint to add new claims, you should be fine. However, you may have trouble if you try to add new defendants after the statute of limitations has run out. Read Federal Rule of Civil Procedure Rule 15(c) to learn whether your new complaint will "relate back" to your first filing.

2. Exhaustion of Administrative Remedies

The PLRA states that *"[n]o action shall be brought with respect to prison conditions ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."* 42 U.S.C.A. § 1997e(a).

This provision is known as the "exhaustion" requirement, and it means that you have to use the prison grievance system before you file your lawsuit. If you try to sue a prison official about anything he or she has done to you, the court will almost always dismiss your case unless you have first filed an inmate grievance or complaint form provided by your prison. Not only do you have to file this form, but you also need to wait for a response, and appeal that response as far up as possible.

Because of the PLRA, you must use the grievance system. It doesn't matter if you believe your prison's grievance system is inadequate, unfair or futile. You may know that nothing is going to change by you filing a grievance, but you still need to do it. **Your case will be dismissed if you do not follow the rules.**

Very rarely, exhaustion may not be required if you can show that you were *unable* to file a grievance through *no fault of your own*. For instance, if you are in protective custody, and not allowed to file a grievance, or if a prison official told you not to file a grievance, the court **may** decide to excuse the exhaustion requirement in your case. However, courts are very skeptical of these claims, so you should definitely go through the grievance process unless you are truly unable.

The exhaustion requirement applies to all type of prison cases. Although "prison conditions" sounds like it might only include claims about things like inadequate food or dirty cells, in a case called *Porter v. Nussle*, 534 U.S. 516 (2002), the Supreme Court held that "prison conditions" refers to everything that happens in prison, including single incidents of guard brutality or inadequate medical care. Under another important Supreme Court case, *Booth v. Churner*, 532 U.S. 731 (2001), you even have to use the prison's grievance system if it does not offer the type of relief you would like to sue for. The prisoner in that case, Timothy Booth, wanted money damages and the administrative grievance system at his prison did not allow money damages. The Court decided that even though Mr. Booth's prison administrative grievance system could not award him money damages, Mr. Booth was still forced to go through the entire administrative grievance process before coming to court to seek monetary damages.

It is not entirely clear yet if you have to exhaust each separate issue in your case, or name each defendant, or what will happen if you miss a prison grievance deadline. For this reason, you should try to be as detailed as possible in your grievance and try to comply with all the prison's grievance rules and deadlines, even if they don't make any sense.

If the court does dismiss your case for failure to exhaust, it will probably be a "dismissal without prejudice" which means that you can exhaust your remedies, and then re-file. The dismissal will probably not be considered a "strike" against you. However, if the statute of limitations has run by the time you are done exhausting, you will be out of luck.

B. WHERE TO FILE YOUR SUIT

You will file your lawsuit at the federal trial court, called a "district court." This is where all cases start. There is often more than one district in a state. In total there are 94 U.S. district courts. Some states, such as Alaska, only have one district. Others have several. New York, for example, is composed of four districts: the Northern, Western, Eastern, and Southern Districts. What district you should file in is determined by the law of "venue." The main venue rule for a suit based on Section 1983 is section 139(b) of Title 28 of the United States Code.

It is usually easiest to file in the district "in which the claim arose." That is, you should file in the district that includes the prison in which your rights were violated. To determine what district this is and to get the address of the district court, locate your state in Appendix H, and then check to see which district covers the county

your prison is in.

You do not *have* to say in your complaint why you decided to file in a particular district. It is up to the defendants to challenge your choice of venue if they think you filed in the wrong place. However, the district court often will return your papers, instead of delivering them to the defendants, if the judge decides you sued in the wrong court. For this reason, we have included a sentence on "venue" in our sample complaint in Section C, Part 1 of this chapter.

Always be sure to send the Court Clerk a letter stating that your address has been changed if you are transferred to a different prison.

C. WHAT LEGAL PAPERS TO FILE TO START YOUR SUIT

As you will see, a lawsuit requires an amazing amount of paperwork. There are two basic papers for starting any federal lawsuit: a "**summons**" and a "**complaint**." They are described in Part 1, below. If you have very little or no money, you will want to request that the court allow you to sue "*in forma pauperis*," to give you more time to pay the court filing fee. *In forma pauperis* papers are described in Part 2. You will also probably want to ask the court to appoint a lawyer for you, and this is described in Part 3. Eventually, you may want to submit "**declarations**" to present additional facts in support of your complaint. Declarations are described in Part 4 of this Section.

The courts expect legal papers to be written a certain way, which is different from how anyone ordinarily writes. But don't be intimidated! **This does not mean that you need to use legal jargon, or try to sound like a lawyer**. This chapter will include forms for each basic document that you will need. The forms and examples in this chapter show only one of the many proper ways to write each type of paper. Feel free to change the forms to fit your case. If you have access to copies of legal papers from someone else's successful Section 1983 lawsuit, you may want to follow those forms instead.

If you need a legal paper that is not covered by this chapter or Chapter Four, you may want to see if your prison library has a book of forms for legal papers. Two good books of forms for federal suits are: *Moore's Manual-Federal Practice Forms* and *Bender's Federal Practice Forms*. Some U.S. District Courts have special rules about the form your legal papers should follow – like what kind of paper to use, what line to start typing on and what size type to use. You will find these rules in the Local Rules you request from your district court, described above.

Most district courts also have a packet of forms that it will send for free to prisoners who want to file actions *pro se* (without a lawyer). You can write a letter to the court clerk explaining that you are a prisoner, that your rights were violated in your prison, and request forms for a 42 U.S.C. § 1983 action. The court may or may not require you to use their forms. **If you can get these forms, use them. They are the easiest way to file a complaint!** With or without the forms, you will need to be sure to include all of the information described below. It is a good idea to request both the Local Rules and the Section 1983 forms before you start trying to write your complaint.

Generally, you should type if you can. Large type is best. Check with the local court rules or court clerk to see if you need to use a particular type or length of paper. Type or write on only one side of each sheet, and staple the papers together at the top.

Try to follow the forms in this chapter, and Chapter Four, and the special rules for your district. But don't let these rules stop you from filing your suit. Just do the best you can. If you can't follow all the rules, write the court a letter that explains why. For example, you can tell the court that you were not allowed to use a typewriter, or you could not get the right paper. The courts should consider your case even if you do not use the correct form. When a prisoner files a lawsuit without help from a lawyer, the federal courts will even accept handwritten legal papers.

Do not worry about using special phrases or fancy legal words. These are never necessary**. Just write clearly and simply and try to keep it short.**

Be sure to put your name and address at the top left hand corner of the first page of your complaint and any motion you submit. All the prisoners who bring the suit should sign the complaint. At least one plaintiff should sign each motion.

The summons and complaint and any other papers you submit to the court must be served by a marshal or someone appointed by the court. This is explained below. Whenever you submit a motion or other legal paper after the suit is started, mail a copy to the Deputy Attorney General who represents the prison officials. His or her name and address will be on the legal papers submitted by the prison officials.

1. Summons And Complaint

You start a Section 1983 suit by mailing a legal document called a "complaint" to the appropriate U.S. District Court.

The Complaint

The complaint is the most important document in your lawsuit. In it, you officially describe your lawsuit. You explain who you are (plaintiff), whom you are suing (defendants), what happened (factual allegations), what you want the court to do (relief), and what laws give the court the power to rule in your favor (legal claims). If your complaint does not meet all the requirements for a Section 1983 lawsuit, your suit could be dismissed at the very start.

Getting all the right facts down in your complaint can be difficult but is very important. The following is a sample complaint. Yours should be on a full sheet of paper, not in two columns like it is here. You can copy the parts of this form that are appropriate for your suit, and add your own facts to the *italicized* sections. The letters (A) through (J) in grey by each section should not be included in your complaint. They are just there for your reference. Each section will be explained below.

The Complaint Form:

IN THE UNITED STATES
DISTRICT COURT FOR THE (A)
_____.

----------x

Names of all the people bringing the suit, :
Plaintiff, :
: COMPLAINT
v. : Civil Action No. __
:
Names of all the people the suit is against, :
individually and in their official capacities, :
Defendants :
:

----------x

I. JURISDICTION & VENUE (B)

1. This is a civil action authorized by 42 U.S.C. Section 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. Section 1331 and 1343 (a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure.

2. The [*name of district you are filing your suit in*] is an appropriate venue under 28 U.S.C. section 1391 (b)(2) because it is where the events giving rise to this claim occurred.

II. PLAINTIFFS (C)

3. Plaintiff, [*your full name, and names of other plaintiffs*], is and was at all times mentioned herein a prisoner of the State of [*state*] in the custody of the [*state*] Department of Corrections. He/she is currently confined in [*name of prison*], in [*name of City and State*].

III. DEFENDANTS (D)

4. Defendant, [*full name of head of corrections department*] is the [*Director / Commissioner*] of the state of [*state*]. He is legally responsible for the overall operation of the Department and each institution under its jurisdiction, including [*name of prison where plaintiffs are confined*].

5. Defendant, [*warden's full name*] is the [*Superintendent / Warden*] of [*name of prison*]. He is legally responsible for the operation of [*name of prison*] and for the welfare of all the inmates of that prison.

6. Defendant, [*guard's full name*] is a Correctional Officer of the [*state*] Department of Corrections who, at all times mentioned in this complaint, held the rank of [*position of guard*] and was assigned to [*name of prison*].

7. Each defendant is sued individually and in his [*or her*] official capacity. At all times mentioned in this complaint each defendant acted under the color of state law.

III. FACTS (E)

8. *State IN DETAIL all the facts that are the basis for you suit. You will want to include what happened, where, when, how and who was there. Remember that the judge may know very little about prison, so be sure to explain the terms you use. Divide your description of the facts into separate short paragraphs in a way*

that makes sense – by time, date, or event.

9. *You may want to include some facts that you do not know personally. It may be general prison knowledge, or it may be information given to you by people who are not plaintiffs in your lawsuit. It is proper to include this kind of information, but you need to be sure that each time you give these kinds of facts, you start the paragraph with the phrase* "Upon information and belief."

10. *You can refer to documents, affidavits, and other materials that you have attached at the back of your complaint as "exhibits" in support of your complaint. Each document or group of documents should have its own letter: "Exhibit A", "Exhibit B" etc.*

IV. EXHAUSTION OF LEGAL REMEDIES (F)

11. Plaintiff [*name*] used the prisoner grievance procedure available at [*name of institution*] to try and solve the problem. On [*date filed grievance*] plaintiff [*name*] presented the facts relating to this complaint. On [*date got response*] plaintiff [*name*] was sent a response saying that the grievance had been denied. On [*date filed appeal*] he/she appealed the denial of the grievance.

V. LEGAL CLAIMS (G)

12. Plaintiffs reallege and incorporate by reference paragraphs 1 – 11 [*or however many paragraphs the first four sections took*].

13. The [*state the violation, for example, beating, deliberate indifference to medical needs, unsafe conditions, sexual discrimination*] violated plaintiff [*name of plaintiff*]'s rights and constituted [*state the constitutional right at issue, for example, cruel and unusual punishment, a due process violation*] under the [*state the number of the Constitutional Amendment at issue, usually Eighth or Fourteenth*] Amendment to the United States Constitution.

14. The plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the declaratory and injunctive relief which plaintiff seeks.

VI. PRAYER FOR RELIEF (H)

WHEREFORE, plaintiff respectfully prays that this court enter judgment granting plaintiffs:

15. A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States.

16. A preliminary and permanent injunction ordering defendants [*name defendants*] to [*state what it is you want the defendants to do or stop doing*].

17. Compensatory damages in the amount of $____ against each defendant, jointly and severally.

18. Punitive damages in the amount of $____ against each defendant.

19. A jury trial on all issues triable by jury

20. Plaintiff's costs in this suit

21. Any additional relief this court deems just, proper, and equitable.

Dated: _____ (I)

Respectfully submitted,

Prisoners' names and addresses

VERIFICATION (J)

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at [*city and state*] on [*date*]

Signature
Type name of plaintiff

Explanation of Form:

Part (A) is called the "caption." It looks strange, but it is how courts want the front page of every legal document to look. There is no one right way to do a caption, so you should definitely check your court's local rules to see what they want. As you can see, the top line is the name of the court. You will have already figured out where you are filing your lawsuit by reading Section B of this chapter, and referring to Appendix H. If you are suing in the Western District of New York, where many New York prisons are, you would insert those exact words "Western District of

New York" where the blank is. Inside the box, you need to put the full names of all the plaintiffs, and the full names and titles of all the defendants. Think carefully about the discussion in Chapter Two, Sections D and E about whom you can sue, and remember to include that you are suing them in their "official capacity," if you want injunctive relief, and their "individual capacity" if you want money damages. The plaintiffs and defendants are separated by "v" which stands for "versus" or "against". Across from the box is the title of your document. This is a complaint, so call it that. Each document you file in your case will have a different title. Under the title is a place for your civil action number. Leave that line blank until you are assigned a number by the court. You will get a number after you file your complaint.

Part (B) is a statement of the court's jurisdiction (paragraph 1) and venue (paragraph 2). Jurisdiction really means "power." Federal courts, unlike most state courts, are courts of "limited jurisdiction." This means they can only hear cases that Congress has said they should hear. For the purposes of a complaint, all you have to understand about jurisdiction is what statutes to cite. All prisoners bringing Section 1983 suits should cite 28 U.S.C. Section 1331 and 1343 (a)(3) in this paragraph. The other statutes you cite depend on what kind of case you are bringing:

- If you are seeking declaratory relief (see Chapter Two, Section D), you should include a sentence stating "Plaintiffs seek declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202."

- If you are seeking injunctive relief (see Chapter Two, Section D) you should include a sentence stating "Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure."

- If you have included state law claims in your complaint you should include a sentence stating "the court has supplemental jurisdiction over plaintiff's state law claims under 28 U.S.C. Section 1367."

Rules of venue are about physical location. Venue rules can help you decide which federal district court you chose in which to file your case. Prisoners will almost always want to bring their case where the actions occurred. See Section B, above, and Appendix H.

Part (C) is a list of the plaintiffs in the lawsuit. This may just be you. Or, you may have decided to file suit with other prisoners who are having or had similar problems. In this paragraph, you should tell the court who you are, and where you are incarcerated. If you are bringing an equal protection claim, you may also want to include your race, ethnicity, or gender, if relevant. If you have more than one plaintiff, you can list them all in one paragraph, unless there are differences in their situations that you need to note. For example, one plaintiff could have been released since the event occurred. If you or any of the other plaintiffs were transferred from one facility to another since the events occurred, indicate where you were at the time of the event, and where you are now.

Part (D) is a list of potential defendants and their titles. This is just an example. You may sue more people or less people. They may be all guards, or all supervisors. As explained above, you will need to put careful thought into whom you are suing, and whether to sue them in their official or individual capacity. **Only sue people who were actually involved in your violating your rights!** You will also want to include, for each defendant, a statement of why they are responsible for what happened to you. Generally, this just means stating a defendant's job duties. **You must be sure to include the statement in Paragraph 6: that at all times, each defendant acted under color of state law**. As you may remember from Chapter Two, Section B, this is one of the requirements for Section 1983 actions.

Part (E) is the factual section of your complaint. It is very important, and can be very rewarding if done well. It is your chance to explain what has happened to you. In this section, you must be sure to state (or "allege") enough facts to meet all the elements of your particular claim. This can be a very big task. We would suggest that you start by making a list of all the claims you want to make, and all the elements of each claim. For example, in Chapter Two, Section C, Part 5, you learned that an Eighth Amendment claim based on guard brutality requires a showing that:

> (1) you were harmed by a prison official,
> (2) the harm caused physical injury (necessary for money damages under PLRA) and
> (3) the guard's actions were not necessary or reasonable to maintain prison discipline.

This means that in your complaint, you will need to state facts that tend to show that each of these three factors is true. It is fine to state facts that you believe are true but don't know to be true through personal knowledge, as long as you write "upon information and belief."

Make sure that you include facts that show how **each**

defendant was involved in the violation of your rights. If you do not include facts about a certain defendant, the court will probably dismiss your claim against that person.

Part (F) is a statement that you have exhausted your administrative remedies by using the prison grievance system. While all courts in the country require exhaustion under the PLRA, only some courts require you to state the facts about exhaustion in your complaint. To be safe, it can't hurt to state **all the steps** you have taken to exhaust your complaint, and attach copies of your grievance and appeal forms as exhibits.

Part (G) is where you state your legal claims, and explain which of your rights were violated by each defendant. In all complaints, you need to be sure to include the sentence in Paragraph 11 so you do not have to restate all the facts you have just laid out. You should have one paragraph for each individual legal claim. For example, if you feel that prison officials violated your rights by beating you and then denying you medical care, you would want to list these two claims in two separate paragraphs. If all the defendants violated your rights in all the claims, you can just refer to them as "defendants." If some defendants violated your rights in one way, and others in another, then refer to the defendants individually, by name, in each paragraph. Here is an example:

1. Defendant Greg Guard's use of excessive force violated plaintiff's rights, and constituted cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

2. Defendants Nancy Nurse, David Doctor and Wilma Warden's deliberate indifference to plaintiff's serious medical needs violated plaintiff's rights, and constituted cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

Paragraph 14 is only necessary if you are applying for injunctive relief. You should include that sentence in any complaint that requests an injunction.

Part (H) is where you tell the court what you want it to do. You can ask for a declaration that your rights were violated, an injunction, money damages, costs, and anything else the court thinks is fair. Once again, this is just an example. Do not include paragraph 16, requesting injunctive relief, unless you are eligible for injunctive relief. If you request an injunction, you should spend some time thinking about what it is you actually want the prison to do or stop doing. Be creative but also specific. And make sure that the injunction you request is related to a continuing violation of your rights. You should review Chapter Two, Section D on injunctive relief before writing this section. You should also think carefully about how much money you want in compensatory and punitive damages. If you cannot figure out how much to ask for, just request compensatory and punitive damages without including a dollar amount. Review Chapter Two, Section E on damages before writing this section.

Part (I) is where you sign and date the complaint. You must always sign a legal document.

Part (J) is a "verification." This part is optional. You do not have to verify a complaint, but if you do, you can use it as evidence if the defendants file a motion for summary judgment against you (see Chapter Four, Section D) or to support your request for a temporary restraining order (see Section E of this Chapter). When you verify a complaint, you are making a sworn statement that everything in the complaint is true to the best of your knowledge. Making a sworn statement is like testifying in court. If you lie, you can be prosecuted for perjury.

- **Note**: You are expected to tell the truth in an "unverified" complaint as well.

If you want to change your complaint after you have submitted it, you can submit an "amended complaint" which follows the same form as your original complaint. The amended complaint is still about the same basic events. But you might want to change who some of the defendants are, ask the court to do slightly different things, add or drop a plaintiff, or change your legal claims. You also might discover that you need to make some changes in order to avoid having your complaint dismissed. See Chapter Four, Section C.

When and how you can amend your complaint is governed by Rule 15(a) of the Federal Rules of Civil Procedure. You have a right to amend once before the defendants submit an Answer in response to your complaint. You need the court's permission, or the consent of the defendants, to submit a second amended complaint or to submit any amendment after the prison officials have filed an Answer. According to the Federal Rules of Civil Procedure, Rule 15(a), the court should grant permission "freely… when justice so requires."

You might also want to change your complaint to cover events that happened after you filed it. The guards might have beaten you again, confiscated your books,

or placed you in an isolation cell. Now you need to submit a "supplemental complaint." This procedure is governed by Rule 15(c). The court can let you submit a supplemental complaint even if your original complaint was defective. The supplemental complaint also follows the same form as your original complaint.

The Summons:

Along with your complaint, you must submit a "summons" for the court clerk to issue. The summons notifies the defendants that a suit has been started against them and tells them by when they must answer to avoid having a judgment entered against them. A summons is much easier than a complaint. All you need to do is follow this form:

IN THE UNITED STATES
DISTRICT COURT FOR THE (A)
_____.
----------x
Names of all the people bringing the suit, Plaintiff, : SUMMONS
v. : Civil Action No.__
Names of all the people the suit is against, individually and in their official capacities, Defendants :
----------x

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon plaintiffs, whose address is [*your address here*] an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service, or 60 days if the U.S. Government or officer / agent thereof is a defendant. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of the Court

Date: _____

2. *In Forma Pauperis* Papers

The federal courts charge $150 for filing a lawsuit, and another $105 if you wish to appeal the court's decision. If you can't afford these fees, you will usually be allowed to pay them in installments by proceeding *"in forma pauperis*," which means "as a poor person." If you are granted this status, court fees will be taken in installments from your prison account. If you win your suit the court will order the defendants to reimburse you for these expenses. Before the PLRA, the court could let you proceed without pre-paying for filing or service. However, this is no longer possible. Now you must eventually pay the entire filing fee.

The legal basis for suing *in forma pauperis* is Section 1915 of Title 28 of the United States Code. To request this status, you will need to file an Application to Proceed *in Forma Pauperis*. Each court has a different application, so you should request this form from the district court clerk before filing your complaint, and the clerk will also send you paperwork for you to fill out regarding your prison account. You will also need to file a certified copy of your prison account statement for the past six months. Some prisoners have experienced difficulty getting their institution to issue this statement. If you are unable to get a copy of your prison account statement, include in your declaration an explanation of why you could not get the account statement. You will also need to file a declaration in support of your motion. The form of this declaration will probably also be available in the *pro se* packet, but in case it is not, use the following example.

Again, only use this declaration if you **cannot** get a declaration form from the District Court clerk's office. If you have to use this declaration, copy it **exactly**, and fill in your answers, taking as much space as you need.

***In Forma Pauperis* Form:**

IN THE UNITED STATES
DISTRICT COURT FOR THE (A)
_____.
----------x
Names of the first plaintiff, Plaintiff, : DECLARATION IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS
v. :
Name of all the first Defendant, et al. Defendants :

: Civil Action No.
:
----------x

I, _____, am the petitioner / plaintiff in the above entitled case. In support of my motion to proceed without being required to prepay fees or costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore, and that I believe I am entitled to redress.

I declare that the responses which I have made below are true.

1. If you are presently employed, state the amount of your salary wage per month, and give the name and address of your employer _____. (B)

2. If you are not presently employed state the date of last employment and amount of salary per month that you received and how long the employment lasted.

3. Have you received, within the past twelve months, any money from any of the following sources:
a. Business, profession or form of self-employment?
YES___ NO ___
b. Rent payments, interest or dividends?
YES___ NO ___
c. Pensions, annuities, or life insurance payments?
YES___ NO ___
d. Gifts or inheritances?
YES___ NO ___
e. Any form of public assistance?
YES___ NO ___
f. Any other sources?
YES___ NO ___

If the answer to any of questions (a) through (f) is yes, describe each source of money and state the amount received from each during the past months _____.

4. Do you have any cash or money in a checking or savings account? _____. If the answer is yes, state the total value owned. (C)

5. Do you own any real estate, stock, bonds, notes, automobiles, or other valuable property (including ordinary household furnishings and clothing)? ____. If the answer is yes, state the total value owned. _____.

6. List the person(s) who are dependent on you for support, state your relationship to those person(s), and indicate how much you contribute toward their support at the present time. _____.

7. If you live in a rented apartment or other rented building, state how much you pay each month for rent. Do not include rent contributed by other people. _____. (D)

8. State any special financial circumstances which the court should consider in this application.

_____
_____.

I understand that a false statement or answer to any questions in this declaration will subject me to the penalties of perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this _____ day of _____, 20 ___.

_____
(your signature)

_____
Date of Birth

_____
Social Security Number

Explanation of Form:

In section (A), you can use a slightly shortened version of the caption you used for your complaint. You only need to list the first plaintiff and defendant by name. The rest are included by the phrase "et al." which means "and others." However, be aware that if there is more than one plaintiff in your lawsuit, each plaintiff needs to file his or her own declaration and application.

In section (B), if you have never been employed, just say that. If you have a job in prison, state that.

In section (C), you should include any money you have in a prison account.

Some of these questions may sound weird, or not apply to you -- section (D) for example. However, answer them anyway. Like for question 7, just state that you do not live in an apartment.

Although the judge does not have to let you sue *in forma pauperis*, he or she almost always will if you show you are poor and your suit has some real legal basis. You do not need to be absolutely broke. Section 1915(b)(1) of Title 28 directs the judge to compare the monthly deposits and the average balance for your prison account. He or she will figure that you can initially pay twenty percent of the larger of these numbers. If this is less than $150, then Section 1915(b)(2) states that you must pay twenty percent of the monthly deposits to your account until the $150 is paid. If the court decides you are not poor or your suit is entirely "frivolous," it will return your legal papers and you will have to find a way to pay the full amount.

Another initial expense in filing your lawsuit is personal delivery of legal papers to each defendant, which can be done for a fee by the U.S. Marshal's office or a professional process server. Personal delivery of legal papers, called "service of process," is required under most circumstances, according to Rule 4 of the Federal Rules of Civil Procedure. One of the advantages to gaining *in forma pauperis* status is that Rule 4(c) of the Federal Rules of Civil Procedure directs that your complaint will be served quickly and without cost by the U.S. Marshal's Service. There are other potential benefits to gaining *in forma pauperis* status. You may avoid having to pay witness fees for depositions and at trial. If you appeal, you may not have to pay the costs of preparing transcripts. In addition, some courts have used Section 1915 to appoint a lawyer to represent a prisoner in a Section 1983 suit and even to pay the lawyer's expenses. This is discussed in Part 3 of this section.

Unfortunately, *in forma pauperis* status affects only a very small part of the expense of your lawsuit. It will not pay for postage or for making photocopies, and it will not cover the costs of "pre-trial discovery" (see Chapter Four, Part G), though you may be able to recover these expenses from the defendants if you win. Appointed counsel recovered such expenses in *Armstrong v. Davis*, 318 F.3d 965 (9th Cir. 2003).

- **Tip:** If you ask for *in forma pauperis* status at the start of your suit, your legal papers will not be served on the defendants – and so your suit will not begin – until the court decides whether you can sue *in forma pauperis*.

While most districts grant *in forma pauperis* status quickly and routinely, some districts have a reputation for a great deal of delay. This is a serious problem. If you discover that your district has long delays, or your motion to proceed *in forma pauperis* is denied, you could try one of the following methods.

(1) If you can raise the money, pay the $150 filing fee yourself, and have someone outside the prison serve your papers for free. Rule 4(c)(2) of the Federal Rules of Civil Procedure allows service by any person older than 18 who is not a party to the lawsuit.

(2) Alternatively, you can ask the defendants to waive service under Federal Rule of Civil Procedure 4(d) by mailing them a Request for Waiver of Service. You can find the forms for this request in the Federal Rules of Civil Procedure Appendix of Forms, Form 1A and 1B (You can find the Appendix of forms at the end of the Federal Rules). Make sure you copy both the Notice of Lawsuit and Request for Waiver of Service of Summons and the actual Waiver of Service of Summons. You should be sure to include a copy of your complaint, a stamped envelope or other pre-paid means to return the waiver, and an extra copy of the request. If the defendant does not agree with your request to waive service, then you may later be able to recover the costs of personal service by a professional process service or a marshal.

The Problem of Three Strikes:

The "three strikes provision" of the PLRA states:

> *In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section [*in forma pauperis*] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.*

28 U.S.C.A. § 1915(g). This provision means that if you have had three complaints or appeals dismissed as "frivolous," "malicious," or "failing to state a claim," you cannot proceed *in forma pauperis* unless you can show you are in imminent danger of serious injury. **This means you will have to pay the entire filing fee up front, or your case will be dismissed.**

The PLRA is very specific about what dismissals count as strikes: dismissals for **frivolousness**, **maliciousness**, or **failure to state a claim**. A case dismissed on some other ground is not a strike. A summary judgment is not a strike. A partial dismissal – an order that throws out some claims, but lets the rest of the case go forward – is not a strike. A case that you voluntarily withdraw will usually not be considered a strike. A dismissal is not a strike if it is impossible to tell what the basis for the dismissal was. Only federal court dismissals count as strikes and dismissal in a habeas corpus action is not a strike.

What counts as a "strike?"

Dismissals for:

- **frivolousness,**
- **maliciousness,**
- **failure to state a claim.**

The courts have not yet determined if a second strike is counted if a case is re-filed, than dismissed a second time. Dismissals may be strikes even if they were not *in forma pauperis* cases. Cases filed or dismissed before the PLRA was enacted have also been counted as strikes. Dismissals will not count against you until you have exhausted or waived all your appeals. At that point, if the court dismisses your case as "frivolous, malicious, or failing to state a claim upon which relief may be granted," you will receive a strike.

The Three Strikes Provision does not apply when a prisoner is in "imminent danger of serious physical injury." To meet this requirement, the injury does not need to be so serious as to be an Eighth Amendment violation. The risk of future injury is enough to invoke the imminent danger exception.

In conclusion, the Three Strikes Provision means you will need to think more carefully about whether any litigation you may bring is well-founded and really worth it. Once you are given a third strike, you will have to pay the entire filing fee of $150 up front before you can file a new lawsuit.

3. Request For Appointment Of Counsel

The *in forma pauperis* law, 28 U.S.C. § 1915(e)(1), allows a U.S. District Judge to "request an attorney to represent any person unable to afford counsel." On the basis of this law, district judges have appointed lawyers for prisoners who filed Section 1983 suits on their own behalf. Generally, when deciding whether or not to appoint a lawyer for you, the court will consider:

- How well can you present your own case?
- How complicated are the legal issues?
- Does the case require investigation that you will not be able to do because of your imprisonment?
- Will credibility (whether or not a witness is telling the truth) be important, so that a lawyer will need to conduct cross-examination?
- Will expert testimony be needed?
- Can you afford to hire a lawyer on your own?

These factors are listed in *Montgomery v. Pinchak*, 294 F.3d 492, 499 (3rd Cir. 2002).

Unfortunately, appointment is usually at the "discretion" of the judge, which means that if a judge doesn't want to appoint you counsel, he or she doesn't have to. On the other hand, there have been a few rare cases in which a court held that a judge abused this discretion. In *Hendricks v. Coughlin*, 114 F.3d 390 (2d Cir. 1997), a U.S. Court of Appeals found that the district court had abused its discretion in refusing to appoint counsel for a prisoner in a Section 1983 case. In *Parham v. Johnson*, 126 F.3d 454, 461 (3d Cir. 1997), another Court of Appeals said that "where a plaintiff's case appears to have merit and most of the aforementioned factors have been met, courts should make every attempt to obtain counsel." In general, whether you will be appointed counsel has a lot to do with how strong your case looks to a judge. If the judge thinks your case has no merit, he or she will not want to appoint counsel.

The best procedure is to request appointment of counsel at the same time you request *in forma pauperis* status. **If you can get this an appointment of counsel form from the district court, use that form.** If there is no form for this request in the *pro se* packet, use the following form:

PLRA Tip:
Revocation of Earned Release Credit

This is another provision of the PLRA that you should also consider before deciding to file a lawsuit. If you are confined in a federal correctional facility, any civil action you bring may put you at risk of losing your earned good time credit.

A court can take away your earned good time credit if they decide that:

a) The claim was filed for a malicious purpose;
b) The claim was filed solely to harass the party against which it was filed; or
c) You testify falsely or otherwise knowingly present false evidence or information to the court.

IN THE UNITED STATES
DISTRICT COURT FOR THE (A)
_____.
----------x
Names of all the people :
bringing the suit, :
Plaintiff, :
: MOTION FOR
v. : APPOINTMENT OF
: COUNSEL
Names of all the people :
the suit is against, : Civil Action No. __
individually and in their :
official capacities, :
Defendants :

:
----------x

Pursuant to 28 U.S.C. § 1915(e)(1) plaintiff (or plaintiffs) moves for an order appointing counsel to represent him in this case. In support of this motion, plaintiff states:

1. Plaintiff is unable to afford counsel. He has requested leave to proceed in forma pauperis.

2. Plaintiff's imprisonment will greatly limit his ability to litigate. The issues involved in this case are complex, and will require significant research and investigation. Plaintiff has limited access to the law library and limited knowledge of the law. (A)

3. A trial in this case will likely involve conflicting testimony, and counsel would better enable plaintiff to present evidence and cross examine witnesses.

4. Plaintiff has made repeated efforts to obtain a lawyer. Attached to this motion are _____. (B)

WHEREFORE, plaintiffs request that the court appoint_____, a member of the _____ Bar, as counsel in this case. (C)

_____
Date

_____
Signature, print name below

_____
Address

Explanation of Form:

You can include any facts in this motion that you think will help convince the court that you need a lawyer. For example, in section (A) you could add that you are in administrative segregation, that your prison doesn't have a law library, or that it takes weeks to get a book.

In part (B) you need to describe the evidence that you will attach to show that you have tried to get a lawyer. Copies of letters lawyers have sent you, or you have sent them, should be enough.

Only ask for a specific lawyer in part (C) if there is a lawyer who you know and trust. If you do have a relationship like this, list the lawyer's name, and the state where he or she is admitted to practice law. If the judge decides to appoint a lawyer for you, he or she does not have to appoint the one you suggest, but this may well be the easiest and most convenient thing for the judge to do. And it is obviously very important that the lawyer appointed for you be someone you can trust, who is clearly on your side.

If the court denies your request at that time, or simply ignores it, be sure to renew your request after the court has denied the prison officials' motion to dismiss your complaint and their motion for summary judgement. These motions are explained in Chapter Four, Sections B and C. The court may be more willing to appoint counsel after it has ruled that you have a serious case. To renew your motion, use the same form as above.

4. Declarations

At the beginning of or during your case, you may also want to submit declarations. A "declaration" is a sworn statement of facts written by someone with personal knowledge of those facts, which is submitted to the court in a certain form. If your suit has several plaintiffs, each of you should make out a separate statement of the details of all the facts that plaintiff knows. This statement does not need to be "notarized." Just put at the bottom: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date) at (city and state)." Then sign. This can also be called a "declaration under penalty of perjury." It is acceptable in any federal court and most state courts. The following is an example of what your declaration should look like:

In the United States District Court
For the _____
----------x
Name of first plaintiff :
in the case, et al., :
Plaintiffs, :
:
v. : DECLARATION OF
: [*Name of person*
Names of first defendant : *making declaration*]
in the case, et al., : Civil Action No. __
Defendants :
----------x

[*Full name of prisoner or other person making the statement*] hereby declares:

WRITE STATEMENT HERE

I declare under penalty of perjury that the foregoing is true and correct. Executed at (*city and state)* on (*date*).

_____

Signature.

The declaration is in the name, and signed by, the person who knows the relevant facts. This could be anyone: it does not have to be from you or another plaintiff. It is helpful to submit declarations from other people who were witnesses to events that you describe in your complaint or who know facts that you need to prove. These declarations may be important when prison officials move for summary judgment against you. Summary judgment is explained in Chapter Four, Section D.

You can submit declarations from plaintiffs or other people along with your complaint. Each declaration is an "exhibit" in support of the complaint and each exhibit has its own letter – "Exhibit A," "Exhibit B," etc. You can also submit letters from prison officials, copies of rules, and any other relevant document as lettered exhibits. You can refer to these exhibits when you state the facts of your case in your complaint. You do not have to submit declarations or other evidence when you file a complaint. But considering how frequently judges dismiss or discredit prisoner complaints, if you have strong support for your facts, it may be in your best interests to show the court right away.

You can also submit declarations later in your suit. You can submit declarations any time you get them. In some situations, which will be explained later in this Handbook, you are required to submit declarations from yourself and other plaintiffs.

D. HOW TO FILE YOUR LEGAL PAPERS

As explained above, it is very important to request the Local Rules from the district you plan to file in, because different courts require different numbers of copies, and may have different rules about filing. You should follow the local rules whenever possible. In general, though, you will need to send the original of each document and one copy for each defendant to the Clerk of the Court for the United States District Court for your district. Include two extra copies – one for the judge and one for the clerk to endorse (showing when and where it was filed) and return to you as your official copy. The court will have a marshal deliver a copy to each defendant, unless you ask that someone else be appointed to deliver them.

IMPORTANCE OF DECLARATIONS:

It is always helpful to submit declarations. You can submit them **anytime** you get them. If there are people who were witnesses to events that you describe in your complaint, or who know facts that you need to prove, ask them to fill out and sign a declaration. It will help strengthen your suit in general, and can stop prison officials from getting a "summary judgment" against you.

Be sure to keep your own copy of everything you send the court, in case your papers are lost in the mail or misplaced in the clerk's office. If you cannot make photocopies, make copies by hand.

E. GETTING IMMEDIATE HELP FROM THE COURT.

Ordinarily a federal lawsuit goes on for months or even years before the court reaches any decision. But you may need help from the court long before that. A U.S. District Judge has the power to order prison officials to stop doing certain things while the judge is considering your suit. The judge can do this by issuing a Temporary Restraining Order (TRO) and / or a Preliminary Injunction.

1. When You Can Get Immediate Help

Chapter Two, Section D explains when you are eligible for an injunction. By way of review, to get any kind of injunction, you must show

1) an ongoing, illegal practice by the defendant, and
2) that money damages will not fix your injury.

A "preliminary injunction" is an order from the judge that addresses your concerns during the period after you file your complaint, but before you have a trial. Federal Rules of Civil Procedure Rule 65(a) sets out the requirements for a preliminary injunction.

On top of fulfilling the two requirements above, you must also show that:

3) Without the court's help you are likely to suffer irreparable harm;
4) You are likely to succeed at trial;

5) You will suffer more if the injunction is denied than the defendant will suffer if it is granted; AND
6) A preliminary injunction will serve the public interest.

A preliminary injunction requires a hearing, at which the defendants have a chance to tell their side of the story to the Judge.

The other option is a "**temporary restraining order**," also called a "**TRO**." It is explained in Federal Rules of Civil Procedure Rule 65(b). A TRO is very difficult to get, especially for prisoners. It is only available in an emergency, when you can show that waiting for a preliminary injunction hearing will cause you immediate and irreparable injury, loss, or damage.

If you are confused about whether you are eligible for any kind of injunction, you should review Chapter Two, Section D. If you decide to go ahead and try to get a preliminary injunction or a TRO, you will need to follow the instructions below.

2. How to Apply for Immediate Help

If you think you meet all the tests for immediate help from the court, submit a "Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction." This is one legal paper, and looks like this:

In the United States District Court
For the _____
----------x
Name of first plaintiff :
in the case, et al., : ORDER TO SHOW
Plaintiffs, : CAUSE FOR A :
PRELIMINARY
v. : INJUNCTION AND : A TEMPORARY
Names of first defendant : RESTRAINING
in the case, et al., : ORDER
Defendants : Civil Action No. __
----------x

Upon the complaint, the supporting affidavits of plaintiffs, and the memorandum of law submitted herewith, it is:

ORDERED that defendants [*names of defendants against who you are seeking a preliminary injunction*] show cause in room ____ of the United States Courthouse, [*address*] on the ___ day of ____, 20__, at ___ o'clock, why a preliminary injunction should not issue pursuant to Rule 65(a) of the Federal Rules of Civil Procedure enjoining the defendants, their successors in office, agents and employees and all other persons acting in concert and participation with them, from [*state the actions you want the permanent injunction to cover*].

IT IS FURTHER ORDERED that effective immediately, and pending the hearing and determination of this order to show cause, the defendants [*names of defendants against whom you want temporary relief*] and each of their officers, agents, employers, and all persons acting in concert or participation with them, are restrained from [*state the actions you want the TRO to cover*].

IT IS FURTHER ORDERED that the order to show cause, and all other papers attached to this application, be served on the aforesaid Plaintiffs by [*date*].

[*Leave blank for the Judge's signature*]

Dated: [*leave blank*]
United States District Judge

Explanation of Form:
If you only want a preliminary injunction, and not a TRO, do not use the parts of this sample order that are highlighted. You will notice that you are supposed to leave some blanks in this document. That is because it is an order that the Judge will sign, and you are just writing a draft for the Judge to make it easier. He or she will fill in all the important information and times and places.

The most difficult part of the document is where you have to fill in the actions you want a preliminary injunction and / or a TRO about. You should limit what you ask for in the TRO to the things that the prison officials have to stop doing immediately. Include in your request for a preliminary injunction everything you want the court to order the prison staff to stop doing while the court is considering your case.

You will need to give or send a copy of this paper to all the defendants, along with the following supporting documents.

- Prepare a declaration which states how you tried to notify the defendant that you're applying for a TRO and also states in detail exactly what "immediate and irreparable injury, loss or damage will result" if the court

does not sign your TRO. (The quote is from Rule 65 of the Federal Rules of Civil Procedure, which governs TROs and preliminary injunctions.) A court will often consider an ongoing violation of your constitutional rights to be "irreparable injury." Submit your declaration and your "TRO and Order to Show Cause" together with your summons, complaint and *in forma pauperis* papers.

- You also need to submit a short "memorandum of law". A memorandum of law is a document in which you cite legal cases, and argue that your situation should be compared to or distinguished from these cases. For this, you will need to do legal research and writing, explained in Chapter Six. You will want to find cases similar to yours in which prisoners got TROs or preliminary injunctions. Cite a few cases that show that the officials' actions (or failures to act) are unconstitutional. Also explain how you meet the tests for temporary relief. If possible, show how your situation is like some other case where a TRO was issued.

If the judge signs your TRO and Order to Show Cause, the prison staff will be restrained for at least 10 days. They will have to submit legal papers to show why the court should not issue a preliminary injunction that will be in force through the suit. You will be sent a copy of their legal papers and get a chance to respond to them.

The judge should consider the legal papers submitted by both sides. He or she is not supposed to meet with lawyers representing prison officials unless he or she appoints a lawyer for you or orders prison officials to bring you to court to argue your own case. The proper procedure for judicial rulings when prisoners do not have lawyers is discussed more fully in Chapter Four.

Under Rule 65(c) of the Federal Rules of Civil Procedure, a plaintiff who requests a TRO or a preliminary injunction is supposed to put up money as "security" to repay the defendants for any damages they suffer if it later turns out that they were "wrongfully enjoined or restrained." This is a matter for the judge's discretion, which means he or she will look at the circumstances and decide whether or not you should have to pay. Thus, some judges will not make people who file *in forma pauperis* pay. In *Miller v. Carlson*, 768 F. Supp. 1331, 1340 (N.D. Cal 1991), for example, the plaintiffs were poor people who received AFDC (Aid for Families with Dependant Children) so the judge did not make them pay security.

Remember: Political pressure and media publicity may be as important as your suit itself, and they may help you win your suit. Send copies of your legal papers to prison groups, legislators, other public officials, newspapers, radio, TV, etc. Enclose a brief note explaining what your suit is about and why it is important. A prisoner has a constitutional right to correspond and meet with representatives of the media. See Chapter Five, Section A.

Look for more decisions in your circuit, and cite those cases in your Memo of Law and ask the court to not require security from you.

Chapter Four: What Happens After You File Your Suit

A. A SUMMARY OF WHAT YOU CAN EXPECT TO HAPPEN

Filing your suit is only the beginning. By itself, filing a summons and complaint does not accomplish anything. You must be prepared to do a lot of work after you file the complaint to achieve your goal. Throughout the suit, it will be your responsibility to keep your case moving forward, or nothing will happen. This chapter will explain what may happen after you file the complaint and how to keep your case moving.

Once you file, the court clerk will give you a civil action number. **You need to write this number in the case caption of <u>all</u> documents you file related to your case.** Next you will have to deal with a series of pretrial procedures.

Again, the PLRA has produced more roadblocks for prisoners. You will have to deal with the possibility of a "waiver of reply" and screening by the district court. Both of these issues are described in Section B.

If the defendants do reply, then within 20 days after he or she is served with your complaint, each defendant must submit either a **motion to dismiss**, a **motion for a more definite statement** (asking that you clarify some part of your complaint), a **motion for an extension of deadline**, or an **answer**. Each defendant must eventually submit an answer, unless the judge dismisses your complaint as to that defendant. The Answer admits or denies each fact you state and accepts or states a defense against each legal claim you make. See Rule 12, Federal Rules of Civil Procedure.

Each side can get more information from the other through "interrogatories," "depositions," and other forms of "pre-trial discovery." Each can submit additional declarations from people who have relevant information. Each side can file motions which ask the judge to issue various orders or to decide the case in its favor without a trial.

If the case goes to trial, there will be witnesses who will testify in court, and they will be cross-examined. Both sides may submit exhibits. If you request damages, you can have that issue decided by a jury.

Whichever side loses in the district court has a legal right to appeal to a United States Circuit Court of Appeals. The appeals court may **affirm** (agree with) or **reverse** (disagree with) the district court's decision or it may order the district court to hold a new trial. The side which loses on appeal can ask the U.S. Supreme Court to review the case, by filing a "petition for writ of certiorari." The Supreme Court does not have to consider the case, however, and it will not unless the case raises a very important legal issue.

The Handbook cannot describe all these procedures in detail and suggest strategy and tactics. But you can get a basic understanding of some of the procedures by reading some of the Federal Rules of Civil Procedure and this Handbook. Moreover, if your case goes to trial, the judge might appoint a lawyer to assist you.

This chapter of the Handbook will help you handle the key parts of pretrial procedure: the **Motion to Dismiss**; the **Motion for Summary Judgment**; and pre-trial discovery. It will also explain what to do if the court dismisses your complaint or grants the defendants summary judgment against you.

Remember that much of the success of your suit depends on your initiative. If you don't keep pushing, your suit can stall at any number of points. For example, if the defendants haven't submitted an Answer, a motion or some other legal paper after the time limits set by the Federal Rules of Civil Procedure,

HINT: Cases Before Magistrate Judges

Many prisoner complaints are given to "Magistrate Judges." A Magistrate Judge is a judicial officer who is like a Federal Judge. Their powers are limited in comparison to a District Court Judge, but they do much of the work in many prison cases.

Your District Court Judge can tell the Magistrate who he/she works with to decide certain things in your case, like a discovery issue, scheduling, or requests for extensions. If you don't like what the Magistrate says, you can write "objections" to the action within ten days and file them at the District Court. However, for decisions like these, it is very hard to get a Magistrate's decision changed.

A District Court Judge can also ask the Magistrate to do important things in your case, like hold a hearing or "propose findings." You can also file objections to these types of actions. You are more likely to get meaningful review by a District Court Judge on an issue of importance. Whether or not you file objections, the District Court Judge will read what the Magistrate has written, and then adopt, reject, or modify the Magistrate's findings.

submit a **Declaration for Entry of Default**. If you receive notice of entry of default, submit a **Motion for Judgment by Default**. Forms for the affidavit and the motion are in Appendix B. You probably can't win a judgment this way, but you can keep the case moving. The prison officials may just submit an Answer and then do nothing. If this happens, you should move ahead with pretrial discovery. Follow Part G of this chapter. This will probably bother them enough so that they will try harder to get out of the case. If they still hold back, move for summary judgment against them (Part D of this Chapter) or ask the court to set a date for a trial.

Keep trying at every point to get the court to appoint a lawyer for you. If you don't have a lawyer, don't be afraid to write the court clerk and prisoners' rights groups when you don't know what to do next. The worst thing is to let your suit die.

B. THE FIRST HURDLE: DISMISSAL BY THE COURT & WAIVER OF REPLY

Once you have filed your complaint, the court is required to "screen" it. This means the court looks at your complaint and decides, without giving you the chance to argue or explain anything, whether or not you have any chance of winning your case. The PLRA requires the Court to dismiss your complaint right then and there if it:

(1) is "frivolous or malicious,"
(2) fails to state a claim upon which relief may be granted, or
(3) seeks money damages from a defendant who is immune from money damages.

If the court decides that your complaint has any one of these problems, the court will dismiss it *"sua sponte,"* without the defendant even getting involved. "*Sua sponte*" means "on its own."

At this point, the court might dismiss your lawsuit "with leave to amend." This is ok. It means you can file an "amended" (or changed) complaint that fixes whatever problem the court brings to your attention. If the court dismisses your lawsuit without saying anything about amending, you can ask the court for permission to fix your complaint by filing a "Motion to Amend." (See Appendix B) Some courts will allow this and others won't. A court should not deny a chance to amend, especially if the plaintiff is alleging a civil rights violation. *Ricciuti v. N.Y.C. Transit Authority*, 941 F.2d 119, 123 (2d Cir. 1991).

If you can't amend, you may want to quickly respond (within ten days if possible) with a **Motion for Reconsideration**. In this short motion, all you need to do is tell the court why they got it wrong, and cite a case or two that support your position. The next section of this Handbook will give you some advice on what kind of arguments you can make. If your complaint was dismissed by a Magistrate Judge, you can file "objections" to the Magistrate's recommendation. If neither of these two approaches work, you will have to appeal. Procedures for appealing are laid out in Section F of this chapter.

The other new hurdle created by the PLRA is something called a "**waiver of reply**." A defendant can file this waiver to get out of having to file an Answer or any of the other motions described later in this chapter. When a defendant does this, the court reviews your complaint to see if you have a "reasonable opportunity to prevail on the merits." If the court thinks you have a chance at winning your lawsuit, it will order the defendants to either file a Motion to Dismiss or an Answer. If the court does nothing for a few weeks, you can file a motion asking the court to order the defendants to reply.

C. HOW TO RESPOND TO A MOTION TO DISMISS YOUR COMPLAINT

If you get through the first hurdles, the next legal paper you receive from the prison officials will probably be their Motion to Dismiss your suit. They may give a number of reasons. One reason is sure to be that you did not "state a claim upon which relief can be granted," which means what you are complaining about does not violate the law.

The Motion to Dismiss is simply a formal written request that the judge deny your suit. It will come together with a Notice of Motion which sets a date, time, and place for a court hearing at which the defendants will ask the judge to rule on the motion. The Notice and the Motion may be combined in one legal paper.

Attached to the Motion and Notice will be a Memorandum of Law which gives the defendant's legal arguments for dismissing your suit. Usually you will have at least two or three weeks between the date when you receive the Motion and the Notice and the date of the hearing. During this time you should prepare and submit a memorandum of your own which answers the defendant's arguments. If you need more time, send the judge a letter explaining why you need more time. If you can, you should check the local rules to see if the

court has any specific requirements for time extensions. If you cannot find any information, just send the letter and send a copy to the prison officials' lawyer.

Chapter Six explains in more detail how to research and write this memo, so be sure to read it before you start working. After you read the suggestions in Chapter Six, you may want to try to read all of the cases that the defendants use in their memo. If you read these cases carefully, you may come to see that they are different in important ways from your case. You should point out these differences. You may also want to try to find cases the defendants have not used that may be more supportive of your position.

To support their Motion to Dismiss, the prison officials will make all kinds of arguments which have been dealt with in other parts of this Handbook. They may say you failed to exhaust administrative remedies (see Chapter Three, Section A), or that you cannot sue top prison officials who did not personally abuse you (see Chapter Two, Section F). They may claim you sued in the wrong court ("improper venue" – see Chapter Three, Section B) or that your papers weren't properly served on some of the defendants.

The prison officials will also argue against your constitutional claims. They will say that you failed to state a proper claim because the actions you describe do not deny due process or equal protection, are not cruel and unusual punishment, etc. Your memo has to respond to whatever arguments the government makes. Unfortunately, this requires quite a bit of legal research and writing. One thing you will have going for you is that in considering this motion the judge must assume that every fact you stated in your complaint is absolutely true. He or she must then ask whether, **accepting all those facts, there is any possibility that you should win your case on any theory**. If any combination of the facts stated in your complaint might qualify you for any form of court action under Section 1983, then the judge is legally required to deny the prison officials' motion to dismiss your complaint. This is a very helpful standard.

You may want to include in your memo some quotes from the Supreme Court, to make sure the court realizes just how good a standard it is. One good quote to include is from one prisoner's Section 1983 case called *Cruz v. Beto*, 405 U.S. 319, 322 (1972). In that case, the court stated that a complaint "should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." You may also want to remind the court that in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), the Supreme Court said that in considering a motion to dismiss, a *pro se* complaint should be held to less strict standards than a motion drafted by a lawyer.

Because of this favorable standard, you should include in your memo anything the defendants say about the facts you stated in your complaint that you think is unfair or wrong. For example, if you stated in your complaint that you were "beaten severely" by two guards, and then the defendant says in his motion to dismiss that an "inadvertent push" doesn't amount to cruel and unusual punishment, you should tell the court in your memo that you did not allege an "inadvertent push," you alleged a severe beating, and that is what the court has to assume is true.

Send three copies of your memo to the court clerk (one to be returned to you) and one copy to each defendant's lawyer. Usually all the prison officials are represented by one lawyer from the office of the Attorney General of your state. The name and office address of that lawyer will be on the notice and motion.

You may receive a **Motion for Extension of Time** or a **Motion to Relate**. An extension (or "enlargement") gives the other side more time to turn in an answer or motion. One extension is usually automatic. If your situation is urgent, write the court to explain the urgency and ask that the prison officials not get another extension.

A Motion to Relate tries to combine your suit with others which the court is already considering. Check out what the other suit is about, who is bringing it, and what judge is considering it. This could be a good or bad thing for you, depending on the situation. If you think you'd be better off having your suit separate, submit an affidavit or memorandum in opposition to the motion. Say clearly how your suit is different and why it would be unfair to join your suit with the other one. For example, the facts might get confused.

Ordinarily, after the parties exchange memos, they both appear before the judge to argue for their interpretation of the law. However, when dealing with a case filed by a prisoner, most judges decide motions based only on the papers you send in, not on argument in person. In the rare case that a judge does want to hear argument, many federal courts now use telephone and video hook-ups, or hold the hearing at the prison. It is quite hard to get a court to order prison administrators to bring you to court, because the PLRA requires that courts use these new techniques "to the extent practicable."

If the judge does decide to dismiss your complaint, he or she must send you a decision stating the grounds for his or her action. In most jurisdictions, prisoners are entitled to "an opportunity to amend the complaint to overcome the deficiency unless it clearly appears from the complaint that the deficiency cannot be overcome by amendment." *Potter v. McCall*, 433 F.2d 1087, 1088 (9th Cir 1970); *Armstrong v. Rushing*, 352 F.2d 836, 837 (9th Cir. 1965). Under Rule 15(a), you have an absolute right to amend your complaint once before the defendants file an Answer. In the Ninth Circuit, prisoners also have a right to amend the complaint even if it is not the first time, to overcome any problems with it, unless it is absolutely clear that the problems can't be fixed. *Potter v. McCall*, 433 F.2d 1087 (9th Cir. 1970). Part F of this chapter explains what else you can do if the court dismisses your complaint.

- **Note**: If you defeat the prison officials' motion to dismiss your complaint, ask again for appointed counsel. Follow the procedure in Chapter Three, Section C. The judge is more likely to appoint a lawyer for you at this stage of your case.

D. MOTION FOR SUMMARY JUDGMENT

At some point, the prison officials will probably submit a Motion for Summary Judgment. Be sure to read about the rules and procedure for summary judgment in Rule 56 of the Federal Rules of Civil Procedure. Defendants can ask for summary judgment along with their Motion to Dismiss your complaint or at some later time. You can also move for summary judgment. Your motion will be discussed separately at the end of this section.

1. The Legal Standard

"Summary Judgment" means the judge decides your case without a trial. Through summary judgment, a court can throw out part or all of your case. To win on summary judgment, the prison officials have to prove to the judge "**there is no genuine issue as to any material fact and that [defendants] are entitled to judgment as a matter of law**." Fed. R. Civ. P. 56(c). This means that there is no point in holding a trial because both you and the defendant(s) agree about all the important facts and the Judge should use those facts to decide him- or herself that the defendant(s) should win.

This test is very different from the test which is applied in a Motion to Dismiss your complaint. When the judge receives a Motion to Dismiss, he or she is supposed to look only at your complaint. His or her question is: could you have a right to judgment in your favor if you could prove in court everything you say in your complaint? When the judge receives a motion for summary judgment, however, he or she looks at all the legal papers that have been sent in by both sides and asks: is there is any real disagreement about the important facts in the case?

The first part of this test that is important to understand is what is meant by "**a genuine issue**." Just saying that something happened one way, when the prison says it happened another way, is not enough, you need to have some proof that it happened the way you describe. Sworn statements (affidavits or declarations), photographs, and copies of letters or documents count as proof because you or the prison officials could introduce them as evidence if there were a trial in your case. An "unverified" Complaint or Answer is not proof of any facts. It only says what facts you or the prison officials are going to prove. If you "verify" your complaint, however, then it counts the same as a declaration. See Chapter Three, Section C for more on verification.

If prison officials give the judge evidence that important statements in your complaint are not true, and you do not give the judge any evidence (such as your sworn statement) that those statements are true, then there is no real dispute about the facts. The judge will end your case by awarding summary judgment to the prison officials.

On the other hand, if you do give the judge some evidence that supports your version of the important facts, then there is a real dispute. The prison officials are not entitled to summary judgment and your case should go to trial.

For example, if you sue certain guards who you say locked you up illegally, the guards could submit affidavits swearing they didn't do it and then move for summary judgment. Their affidavit would carry more weight in court than a simple denial of your charges in their answer to your complaint. If you do not present evidence supporting your version of what happened, the guards' motion might be granted. But if you present a sworn affidavit from yourself or a witness who saw it happen, the guards' motion for summary judgment should be denied.

The second important part of the test is that the "genuine issue" explained above must be about a "**material fact**." A "material fact" is a fact that is so important to your law suit that it could determine whether you win or lose. If the prison officials can show that there is no genuine dispute as to just one,

single material fact, then the court may grant them summary judgment. To know whether a fact is material, you have to know what courts consider when they rule on your type of case.

For example, in the case *Boomer v. Lanigan*, No. 00 Civ 5540 (DLC), 2002 WL 31413804 (S.D.N.Y. Oct. 25, 2002), a pretrial detainee who suffered from a medical condition called epilepsy sued the prison officials and doctors under several legal theories, one of which was excessive force. The prison officials moved for summary judgement on all of the claims. As you know from Chapter Two, Section C, to win on an excessive force claim, a prisoner has to show that a prison official (1) caused him a serious harm and (2) did it maliciously, or *without justification*. Facts that could prove or disprove either of these two elements are material facts. Boomer's complaint stated that the prison officials used excessive force when they used a chemical spray against him, for no reason, while he was having a seizure. Unfortunately for Boomer, the prison officials produced, as evidence to support their motion for summary judgment, a video tape of the interaction, which showed that the guard only sprayed Boomer after he had repeatedly failed to follow an order. Boomer didn't submit any evidence to show a reason why he shouldn't have had to follow the order. If Boomer was unable to follow the order due to his condition, than sending the court a declaration stating this might have helped his motion. Instead, because the prison officials presented undisputed evidence that the spray was used with *justification*, the court held that Boomer failed to show a genuine dispute as to that material fact, and granted summary judgment for the prison officials on that claim.

When the judge considers a motion for summary judgment, he or she is supposed to view the evidence submitted by both sides "in the light most favorable to the party opposing the motion." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 160 (1970); *see also Curry v. Scott*, 249 F.3d 493, 505 (6th Cir. 2001). This just means that as the "opposing party" you are supposed to be given the benefit of the doubt if the meaning of a fact could be interpreted in two different ways.

2. What to do if you have trouble getting declarations

When the prison officials move for summary judgment, check to be sure you have submitted all the declarations and other materials that support your version of the facts. It may be difficult for you to get declarations, especially from prisoners who have been transferred to other prisons or placed in isolation. Tell the judge why you can't get these declarations and indicate what you think the declarations would say if you could get them.

Under Rule 56(f) of the Federal Rules of Civil Procedure, the judge can deny the prison officials' motion for summary judgment because you cannot get the declarations you need. If the judge doesn't deny the motion for summary judgment under Rule 56(f), you should ask him or her to grant you a "continuance" (more time) until you have a chance to get the declarations you need. This means the judge puts off ruling on the motion. Some courts have been very supportive of the fact that prisoners may need extra time to get declarations. *Harris v. Pate*, 440 F.2d 315, 318 (7th Cir. 1971).

The judge also has the power under Rule 56(f) to "make such other order as may be just." This could include an order to prison officials to let you interview witnesses or write to prisoners in other prisons. It could also include an order that prison officials bring you to court to let you testify on your own behalf. *Hudson v. Hardy*, 412 F.2d 1091, 1095 (D.C. Cir 1968). However, remember from Section C of this chapter that the PLRA makes it harder to physically get into court.

Besides getting all your declarations and telling the judge about the declarations you can't get, you should also prepare a memorandum which summarizes your evidence and explains how it supports each point that you need to prove. Check Chapter Two for the requirements of Section 1983. Be sure to repeat the major cases which support your argument that the prison officials violated your federal constitutional rights.

3. Summary Judgment in Your Favor

You also have a right to move for summary judgment in your favor. You may want to do this in a "test case" where everyone agrees that the prison is following a particular policy and the only question for the court is whether that policy is legal.

For example, suppose your complaint says that you were forced to let prison officials draw your blood to get your DNA and put it in a DNA database. The prison officials admit they are doing this, but deny that it is illegal. You may move for summary judgment on your behalf. Since the facts are agreed on, the judge should grant you a summary judgment if he or she agrees with your interpretation of the law. On the other hand, if your suit is about brutality or prison conditions or denial of medical care, you usually will want to go to trial since what actually happened is bound to be the

major issue.

- **Note:** If you defeat the prison officials' Motion for Summary Judgment, be sure to renew your request for appointment of counsel. Follow the procedure outlined in Chapter Three, Section C. The judge is much more likely to appoint a lawyer for you at this stage of your case.

E. THE PROBLEM OF MOOTNESS

One argument that prison officials often raise, either in their Motion to Dismiss or later on, is that you have no legal basis for continuing your suit because your case has become "moot." This is only a problem if you are asking for injunctive relief, rather than money damages. A case is moot if after you have filed a suit the prison stopped doing what you complained about, or released you on parole or transferred you to a different prison. The prison officials will try and have your case dismissed as moot because there is no longer anything the court can order the prison to do that would affect you. For example, say you sue the prison for injunctive relief for failure to provide medical care for your diabetes, and you ask the court that the prison be ordered to provide you with adequate medical care in the future. If, after you file your complaint, the prison starts to provide you with medical care, than the prison can argue that your case is moot, because the only remedy you asked for from the court has already been given to you by the prison.

The good news is that the defendants will have the burden of proving that the case is really moot. This is a heavy burden, since they must show that there is no reasonable expectation that the alleged violations of your rights will happen again. There are four additional arguments you can make to defeat the government's efforts to get your case dismissed on this theory:

(1) If you have asked for money damages your suit can never be moot. You have a right to get money for injuries you suffered in the past, as long as you sue within the period allowed by the statute of limitations for that type of injury. This does not just apply to physical harm: if you have been denied your constitutional rights it is an "injury" for which you might be able to get money damages. For more on damages, read Chapter Two, Section E.

(2) A violation of your rights is not moot just because it is over if it is "capable of repetition, but evading review." In other words, the court will not keep you from suing in a situation where the illegal action would almost always end before the case could get to court. Imagine that a prisoner wants to sue to force the prison to improve conditions in administrative segregation. By the time the prisoner actually gets into court, however, he has been moved back to general population. This case should not be dismissed as moot because it is "capable of repetition," meaning he could get put in administrative segregation again, and it "evades review" because he might never stay in segregation long enough to get to trial. To meet this test, the condition must be reasonably likely to recur. Most courts have not applied this exception when a prisoner is transferred to another prison, since it is only "possible" and not "likely" that he will be transferred back. *Oliver v. Scott*, 276 F.3d 736, 741 (5th Cir. 2002). Transfer may not moot your case however, if the department or officials whom you sued are also in charge of the new prison. *Scott v. District of Columbia*, 139 F.3d 940, 942 (D.C. Cir. 1998)

(3) If you get a lawyer and file a "class action" suit on behalf of all the prisoners who are in your situation and the class is certified, your suit will not be moot as long as the prison continues to violate the rights of anyone in your class. If you are paroled or transferred, the court can still help the other members of your class. Part H of Chapter Two discusses class action lawsuits. Remember that you generally can't bring a class action without an attorney.

(4) If any negative entries have been put in your prison records because of your suit or the actions you are suing about, you can avoid mootness by asking the court to order the prison officials to remove (or "expunge") these entries from your records. The federal courts have held that a case is not moot if it could still cause you some related injury. An entry which could reduce your chances for parole could count as a related injury. *Sibron v. New York*, 392 U.S. 40, 55 (1968).

F. WHAT TO DO IF YOUR COMPLAINT IS DISMISSED OR THE DEFENDANTS WIN ON SUMMARY JUDGMENT

The sad truth of the matter is that prisoners file thousands of Section 1983 cases every year, and the vast majority of these are dismissed at one of the three stages described in sections B, C, & D above. This may happen to you even if you have a valid claim, and a good argument. It may happen even if you work very hard on your papers, and follow every suggestion in this Handbook perfectly. The important thing to remember is that you don't have to give up right away. You can chose to keep fighting. You have already learned how to file an amended complaint, the next few pages tell what else you can do if your case is

dismissed or the court grants summary judgment in favor of the defendants.

1. Motion to Alter of Amend the Judgment

Your first option is to file a Motion to Alter or Amend the Judgment under Federal Rules of Civil Procedure Rule 59(e). This motion must be filed within ten days after entry of judgment, so you will have to move quickly. Follow the form in Appendix B. Include a legal memorandum that cites the cases from your circuit.

Follow the same procedure if the court dismisses your complaint without giving you an opportunity to amend it to "overcome the deficiency." Also follow this procedure if the court grants a summary judgment to the defendants before you had enough time to submit your declarations. Cite the cases discussed in Section D of this chapter and submit any declarations you have been able to get since you were notified of the summary judgment.

2. How to Appeal the Decision of the District Court

If you lose your motion to alter the judgment, you can appeal to the U.S. Court of Appeals for your district. You begin your appeal by filing a Notice of Appeal with the clerk of the district court whose decision you want to appeal. Follow the form in Appendix B. If you moved to alter under Rule 59(e), file your notice within 30 days after the court denied your motion. Otherwise file your notice within 30 days of the day the order or judgment was entered by the district court.

The appeals process is governed by the Federal Rules of Appellate Procedure. These rules are supposed to be in your prison library as part of Title 28 of the United States Code Annotated (U.S.C.A). The U.S.C.A. also gives summaries of important court decisions which interpret the Federal Rules of Appellate Procedure. (Chapter Six explains how to use the U.S.C.A. and other law books.) Some of the books listed in Appendix E give more information on the appeals process.

If you sued *in forma pauperis*, you can appeal *in forma pauperis*, unless the district court finds that your appeal is not taken "in good faith." If the district court decides this, you have to send to the Appeals Court *in forma pauperis* papers like those you sent to the district court, except that you should explain the basis of your appeal. Submit these papers within 30 days after you are notified that the district court ruled that your appeal was not in good faith.

Soon after you receive a notice that your appeal has been transferred to the Court of Appeals, submit another Motion for Appointment of Counsel. Use the form in Chapter 3, Section C for requesting counsel from the district court, but change the name of the court and state the basis of your appeal. If you have to submit new *in forma pauperis* papers, send them together with the motion for counsel.

Along with your Motion for Appointment of Counsel, submit a Memorandum of Law which presents all your arguments for why the appeals court should reverse the decision of the district court. If the appeals court thinks your appeal has merit, it usually will appoint a lawyer for you. Otherwise you may get a summary dismissal of your appeal.

G. PRE-TRIAL DISCOVERY

On the other hand, if you have made it past the defendant's motions for dismissal and / or summary judgment, then there is a better chance that the court will appoint an attorney to assist you. If so, you can use this section of the Handbook to understand what your lawyer is doing, to help him or her do it better and to figure out what you want him or her to do. If you do not have a lawyer, this section will help you get through the next stage on your own – but what you will be able to do will be more limited.

The Importance of "Discovery"

- Uncover factual information about the events that gave rise to your case.
- Learn about how prisons in general, and your prison in particular, operate, as long as it is somehow related to your case.
- Put the defendants on the defensive by making them spend time and money answering *your* questions.

The next major activity in your suit will be "**pre-trial discovery**." Rules 26-37 of the Federal Rules of Civil Procedure explain "discovery" tools that either party in a lawsuit can use to get important information and materials from the other party before the case goes to trial. Discovery is very important, because it is a way for you to get the information you will need to win your case. If you don't have a lawyer at this stage, you will need to spend a lot of time thinking about what facts you will need to prove at trial, and coming up with a plan about how to find out that information. The Southern Poverty Law

Center's litigation guide for prisoners, *Protecting Your Health & Safety,* has a very helpful chapter on developing discovery strategies. You will find information on ordering that book in Appendix E.

In most cases, the first step in the discovery process is called a "Rule 26(f) Meeting." The Federal Rules of Civil Procedure require that the plaintiffs and the defendants get together to talk about the case, the possibility of settlement (when you come to an agreement with the defendants that ends your case before trial), arrange for some exchange of information, and create a discovery plan or schedule. You need to read your district court's rules, however, because many courts do not require this meeting for *pro se* inmates. If you don't need to have a Rule 26(f) meeting, you can start right in on discovery requests.

1. Discovery Tools

There are four main discovery tools: **depositions**, **interrogatories**, **production,** and **inspection**. (You can also request an examination by an outside doctor, under Rule 35). This Handbook gives you only a brief introduction to these techniques. The details of how they work are in the Federal Rules of Civil Procedure.

A "**deposition**" is a very valuable discovery tool. You meet with a defendant or a potential witness, that person's lawyer, and maybe a stenographer. You or your lawyer ask questions which the "deponent" (the defendant or witness you are deposing) answers under oath. Because the witness is under oath, he or she can be prosecuted for perjury if he or she lies. The questions and answers are tape-recorded or taken down by the stenographer. A deposition is very much like testimony at a trial. In fact, you can use what was said at a deposition in a trial if the person who gave the deposition either (1) is a party (plaintiff or defendant), (2) says something at the trial which contradicts the deposition, or (3) can't testify at the trial. Despite these benefits, you should BEWARE: a deposition is very hard to arrange from in prison, because it can be expensive, and it involves a lot of people.

"Interrogatories" are written questions which must be answered in writing under oath. Under Fed.R.Civ.P. 33, you can send up to 25 questions to each of the other parties to the suit. A person who is just a witness, and not a party, cannot be made to answer interrogatories, though he or she can voluntarily answer questions in an affidavit. To get an affidavit from someone in another prison, you may need a court order. You can use the following example to write interrogatories of your own.

In the United States District Court
For the _____

Name of first plaintiff	:
in the case, et al.,	: PLAINITFF'S
Plaintiffs,	: FIRST SET OF
	: INTERROGA-
v.	: TORIES TO
	: DEFENDANTS
Names of first defendant	:
in the case, et al.,	: Civil Action No. __
Defendants	:

In accordance with Rule 33 of the Federal Rules of Civil Procedure, Plaintiff requests that Defendant [*Defendant's name*] answer the following interrogatories under oath, and that the answers be signed by the person making them and be served on plaintiffs within 30 days of service of these interrogatories.

If you cannot answer the following interrogatories in full, after exercising due diligence to secure the information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

These interrogatories shall be deemed continuing, so as to require supplemental answers as new and different information materializes.

[*List your questions here…and be creative and as detailed as possible.*]

If you have a guard brutality case, you may want to ask questions about how long the specific guard has worked at the prison, where he is assigned, what his duties are, what he remembers of the incident, what he wrote about the incident in any reports, whether he has ever been disciplined, etc.

It is also a good idea to take the opportunity to try to find out who else might be a helpful witness. You could ask the defendant to:

- State the name and address or otherwise identify and locate any person who, to you or your attorney's knowledge, claims to know of facts relevant to the conduct described in these interrogatories.

You can also ask for documents. For example, you could include the following as a question:

- Identify and attach a copy of any and all documents relating to prison medical center staff training and education.

or

- Identify and attach a copy of any and all documents showing who was on duty in cell block B at 9 p.m. the night of August 18, 2003.

At the end of your questions, you should date and sign the page and type your full name and address below your signature.

The third discovery tool is "**Production."** If you want to read and copy documents (letters, photos, rules etc.) that the prison officials have, ask for production of those items under Rule 34 of the Federal Rules of Civil Procedure. You can look at Form 24 in the Federal Rules of Civil Procedure Appendix of Forms, or you can use the following form:

In the United States District Court
For the _____
----------x
Name of first plaintiff :
in the case, et al., : PLAINITFF'S
Plaintiffs, : FIRST REQUEST
: FOR PRODUCTION
v. : OF DOCUMENTS
:
Names of first defendant :
in the case, et al., : Civil Action No. __
Defendants :
----------x

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff requests that Defendants [*put defendants' full names here*] produce for inspection and copying the following documents:

[List the documents you want here, some examples follow]
1. The complete prison records of all Plaintiffs
2. All written statements, originals or copies, identifiable as reports about the incident on August 18, 2003, made by prison and civilian employees or the Department of Corrections and prisoner witnesses.
3. Any and all medical records of Plaintiff from the time of his incarceration in Fishkill Correctional Institution through and including the date of your response to this request.
4. Any and all rules, regulations, and policies of the New York Department of Corrections about treatment of prisoners with diabetes.

Dated: _____

Signed:_____

You can also get **inspection** of tangible things (clothing, weapons, etc.) and a chance to "inspect and copy, test or sample" them. And you have a right to enter property under the defendants' control – such as a prison cell, exercise yard or cafeteria, to examine, measure, and photograph it.

You can use any combination of these techniques at the same time or one after the other. If you have new questions or requests, you can go back to a defendant for additional discovery. And, of course, you can also use informal investigation to find out important information. You can talk to other prisoners and guards about what is going on. Or, you can use state Freedom of Information Laws to request prison policies and information. Each state has different rules about what information is available to the public. Of course, prison officials may use various tactics to interfere with your investigation. Try to be creative in dealing with these problems, and, if necessary, you may want to write a letter to the judge explaining the problem.

2. What You Can See and Ask About

The Federal Rules put very few limits on the kind of information and materials you can get through discovery and the number of requests you can make. Under Federal Rule of Civil Procedure 26(b)(1) you have a legal right to anything which is in any way "relevant to the subject matter involved in the pending action," including anything relevant to any defense offered by the prison officials, so long as your requests do not impose "undue burden or expense." "Relevant to the subject matter" means somehow related to what you are suing about. "Undue burden or expense" means that your request would cost the prison a lot of money, and wouldn't be very helpful to you.

You can demand information that the rules of evidence would not allow you to use at a trial, so long as the information "appears reasonably calculated to lead to the discovery of admissible evidence." This just means that the information could possibly help you to find other information that you could use at trial. You have a right to know "the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity of persons having knowledge of any discoverable material." Rule 26(b)(1).

The people you are suing must give you all the information that is available to them. If you sue a top official, discovery includes what his subordinates know and the information in records available to him. This

could possibly even include information that is only held by a party's attorney, if you can't get that information any other way. *Hickman v. Taylor*, 329 U.S. 495 (1947). Defendants may try to get out of having to comply with your requests by arguing that they are "unduly burdensome or expensive." However, as one Judge explained, "the federal courts reject out of hand claims of burdensomeness which are not supported by a specific, detailed showing, usually by affidavit, of why weighing the need for discovery against the burden it will impose permits the conclusion that the court should not permit it." *Natural Resources Defense Council v. Curtis*, 189 F.R.D. 4, *13 (D.D.C. 1999). In other words, **the defendants can't avoid discovery by just stating it will be too difficult**. They have to really prove it.

Even when defendants can show that producing the requested information would be very expensive and difficult, the court may not let them off the hook if the information is truly essential for your lawsuit. For example, in *Alexander v. Rizzo*, 50 F.R.D. 374 (E.D. Pa. 1970), the court ordered a police department to compile information requested by plaintiffs in a Section 1983 suit even though the police claimed it would require "hundreds of employees to spend many years of man hours." The burden and expense involved was not "undue" because the information was essential to the suit and could not be obtained any other way.

You may not be able to discover material that is protected by a special legal "privilege," such as the attorney-client privilege. A "privilege" is a rule that protects a certain type of information from discovery. There are several types of privileges, including the attorney-client privilege, attorney work product privilege, the husband-wife privilege, etc. Explaining all these privileges is too complicated for us to attempt here. However, it is important for you to know that prison officials cannot avoid discovery of relevant information merely by claiming it is "confidential." *Beach v. City of Olathe, Kansas*, 203 F.R.D. 489 (D. Kan. 2001). Instead, a party who asserts a legal privilege against disclosing information has the burden of identifying the specific privilege at issue, and proving that the particular information is in fact privileged. Information which would be considered "confidential" under state law may still have to be disclosed if, after examining it privately ("*in camera*"), the judge decides it is very important for your suit. *King v. Conde*, 121 F.R.D. 180, 190 (E.D.N.Y. Jun. 15, 1988). If the material is confidential, the judge may keep you from showing the information to anyone else or using it for any purposes other than your suit.

BEWARE: Although interrogatories are fairly cheap, other forms of discovery require money. If you request production of documents, you have to pay to get copies of the documents the prison produces. If the court lets you tape record depositions instead of hiring a certified court reporter (Federal Rules of Civil Procedure, Rule 30(b)(2)), you still need a typed transcript of the entire tape if you want to use any of it at the trial of your suit. Discovery expenses are included in the costs you will be awarded if you win, but federal courts generally refuse to advance money for discovery. You will have to find some other way to pay for copying and transcription.

3. Some Basic Steps

Usually, in a prison suit, you start with production and interrogatories and then move to depositions. The documents you get in response to a motion for production can lead you to other useful documents, potential witnesses, and people you might want to depose. Some of the kinds of documents that have been obtained from prison officials include: policy statements, prison rules and manuals, minutes of staff meetings, files about an individual prisoner (provided he signs a written release), and incident reports filed by prison staff.

You can use interrogatories to discover what kinds of records and documents the prison has, where they are kept, and who has them. This information will help you prepare a request for production. Only people you have named as defendants can be required to produce their documents and records. Wardens, associate wardens, and corrections department officials have control over all prison records. If your suit is only against guards or other lower-level staff, however, you may have to set up a deposition of the official in charge of the records you need and ask the court clerk to issue a "subpoena" which orders the official to bring those records with him to the deposition. See Rule 45(d) of the Federal Rules of Civil Procedure.

Interrogatories are also good for statistics which are not in routine documents but which prison officials can compile in response to your questions. Examples are the size of cells, the number and titles of books in the library, and data on prisoner classification, work release, and punishments. If your suit is based on brutality or misbehavior by particular prison employees, you can also use interrogatories to check out their background and work history, including suits

or reprimands for misbehavior. If you are suing top officials for acts by their subordinates, you should find out how responsibilities relevant to your case are assigned within the prison and the Corrections Department and how, if at all, these responsibilities were fulfilled in your case.

4. Some Practical Considerations

Interrogatories have two big drawbacks: (1) you can use them only against people you have named as defendants; and (2) those people have lots of time to think out their answers and go over them with their lawyers. As a result, interrogatories are not good for pressing officials into letting slip important information they're trying to hide. You won't catch them giving an embarrassing off-the-cuff explanation of prison practices or making some other blunder that you can use against them.

Depositions are much better for this purpose. You can use them against anyone. The deponent can't know the questions in advance and must answer them right away. Regular depositions, however, are much less practical than interrogatories for a prisoner suing *pro se.* Judges are unlikely to order the authorities to set up a deposition within the prison or allow you to conduct one outside. If you have no lawyer, you might try a "Deposition Upon Written Questions" (Fed. R. Civ. P. Rule 31). You submit your questions in advance, as with interrogatories, but the witness does not send back written answers. He has to answer in his own words, under oath, before a stenographer who writes down his answers. Although the witness will still have time to prepare in advance, at least he won't be able to submit answers written for him by a Deputy Attorney General.

5. Procedure

The procedure for getting interrogatories and production is fairly simple. Just send your questions and your requests for production to the Deputy Attorney General who is the lawyer for the prison officials. Send separate requests and questions for each defendant.

The prison officials must respond within 30 days unless the court or the parties agree otherwise. The officials may ask the judge for a "protective order" which blocks some of your questions or requests because they are irrelevant, privileged, or impose "undue burden or expense." They have to submit a motion which then proceeds like the motion to dismiss, with opportunity for legal memos and a court hearing. See Part C of this chapter.

The prison officials may also refuse to answer questions or requests which are not covered by a protective order. Then you need to submit a Motion for an Order Compelling Discovery. In this motion, you indicate what they refused and why you need it. Use the following example:

In the United States District Court
For the _____

Name of first plaintiff	:
in the case, et al.,	: MOTION FOR
Plaintiffs,	: AN ORDER
	: COMPELLING
v.	: DISCOVERY
	:
Names of first defendant	: Civil Action No. __
in the case, et al.,	:
Defendants	:

Plaintiffs move this court for an order pursuant to Rule 37(a) of the Federal Rules of Civil Procedure compelling Defendants [*list defendants who failed to fully answer interrogatories*] to answer fully interrogatories number [*list unanswered questions*], copies of which are attached hereto. Plaintiffs submitted these interrogatories, pursuant to Rule 33 of the Federal Rules of Civil Procedure on [*date*] but have not yet received the answers.

[*OR*]

Plaintiffs move this court for an order pursuant to Rule 37(a) of the Federal Rules of Civil Procedure compelling Defendants [*list defendant who did not produce documents*] to produce for inspection and copying the following documents: [*list requested documents that were not produced*]. Plaintiffs submitted a written request for these documents, pursuant to Rule 34 of the Federal Rules of Civil Procedure on [*date*] but have not yet received the documents.

Plaintiffs also move for an order pursuant to Rule 37(a)(4) requiring the aforesaid Defendants to pay Plaintiffs the sum of $___ as reasonable expenses in obtaining this order, on the ground that the Defendants' refusal to answer the interrogatories [*or produce the documents*] had no substantial justification.

Dated:_____

Signed:_____
Type name and address

---

6. Their Discovery of Your Information and Material

Prison officials can use discovery against you. They will try to intimidate and scare you and get you to say things they can use against you. You must answer the questions unless the answers are privileged. If you don't have an attorney, then the privilege that it is most important for you to know about is the 5th Amendment **right against self-incrimination**. You can refuse to answer a question in a deposition or an interrogatory if it might amount to admitting that you have committed a crime for which you could face charges.

In general, try to keep cool and say as little as you can. If they ask to depose you, then ask the judge to put off the deposition until after he or she reconsiders your request for appointed counsel. See if the judge will at least appoint a lawyer to represent you at the deposition. You may want to tell the judge that you're afraid you might be asked to say things which could be used against you in a criminal prosecution. Under Rule 30(a), a prisoner can be deposed "only by leave of the court on such terms as the court prescribes."

Warn your witnesses that the Attorney General's office probably will depose them once you've revealed their identities. You must be notified in advance of any deposition scheduled in your case. You or your lawyer are entitled to be present, to advise and consult with your witness, and ask him or her questions that become part of the official record of the deposition. The witness has a right to talk with you or your lawyer beforehand and also to refuse to talk about your suit outside the deposition with anyone from the prison or the Attorney General's office.

Chapter Five: How to Protect Your Freedom to Take Legal Action

Just like people on the outside, prisoners have a fundamental constitutional right to use the court system. This right is based on the First, Fifth and Fourteenth Amendments to the Constitution. Under the First Amendment, you have the right to "petition the government for a redress of grievances," and under the Fifth and Fourteenth Amendments, you have a right to "due process of law." Put together, these provisions mean that you must have the opportunity to go to court if you think your rights have been violated. Unfortunately, doing legal work in prison can be dangerous, as well as difficult, so it is important to **KNOW YOUR RIGHTS**!

A terrible but common consequence of prisoner activism is harassment by prison officials. Officials have been known to block the preparation and filing of lawsuits, refuse to mail legal papers, take away legal research materials, and deny access to law books, all in an attempt to stop the public from knowing about prisoner issues and complaints. Officials in these situations are worried about any actions that threaten to change conditions within the prison walls or limit their power. In particular, officials may seek to punish those who have gained legal skills and try to help their fellow prisoners with legal matters. Prisoners with legal skills can be particularly threatening to prison management who would like to limit the education and political training of prisoners. Some jailhouse lawyers report that officials have taken away their possessions, put them in solitary confinement on false charges, denied them parole, or transferred them to other facilities where they were no longer able to communicate with the prisoners they had been helping.

With this in mind, it is very important for those of you who are interested in both legal and political activism to keep in contact with people in the outside world. One way to do this is by making contact with people and organizations in the outside community who do prisoners' rights or other civil rights work. You can also try to find and contact reporters who may be sensitive to, and interested in, prison issues. These can include print newspapers and newsletters, broadcast television and radio shows, and online sites. It is always possible that organizing from the outside aimed at the correct pressure points within prison management can have a dramatic effect on conditions for you on the inside.

Certain court decisions that have established a standard for prisoner legal rights can be powerful weapons in your activism efforts. These decisions can act as strong evidence to persuade others that your complaints are legitimate and reasonable, and most of all, can win in a court of law. It is sometimes possible to use favorable court rulings to support your position in non-legal challenges, such as negotiations with prison officials or in administrative requests for protective orders, as well as providing a basis for a lawsuit when other methods may not achieve your desired goals.

This Chapter explains your rights regarding access to the courts. This includes your right to:

(1) File legal papers, and to communicate freely about legal matters with courts, lawyers, and media;

(2) Reasonable access to law books;

(3) Obtain legal help from other prisoners or help other prisoners; and

(4) Be free from retaliation based on legal activity.

A. THE RIGHT TO FILE PAPERS AND COMMUNICATE WITH COURTS, LAWYERS, LEGAL WORKERS, AND THE MEDIA

In 1977, the Supreme Court held in a case called *Bounds v. Smith*, 430 U.S. 817 (1977), that prisoners have a fundamental constitutional right of access to the courts. This right of access requires prison authorities to help prisoners prepare and file meaningful legal papers in one of two ways. They can give you access to a decent law library **OR** they can hire people to help you with your cases. The prison gets to choose which way they want to do it. However, that ruling was changed by a later Supreme Court case, *Lewis v. Casey*, 518 US. 343 (1996), which held that prisoners have to show an "actual injury" and the existence of a "non-frivolous legal claim" to win an access to the courts case. In other words, even if your prison isn't allowing you to use the law library and isn't giving you legal help, you still can't necessarily win a lawsuit about it. To win, you would also have to show that you have a real case that you lost or had problems with because of your lack of access to the law library or legal assistance. Courts do not agree on exactly what constitutes "actual injury" and it is not yet clear whether you need to show actual injury if prison officials have actively interfered with your right of access, like by stopping you from mailing a complaint.

For a few different takes on these questions, compare *Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001) and *Tourscher v. McCollough*, 184 F.3d 236, 242 (3d Cir. 1999).

The "actual injury" requirement in *Lewis v. Casey* also applies if you are seeking damages for a past injury. In another recent Supreme Court case, *Christopher v. Harbury*, 536 U.S. 403 (2002), a woman who wasn't a prisoner claimed that she had been denied access to the court because the U.S. government had withheld information from her about her husband's torture by Guatemalan military officers in the pay of the CIA. The Court dismissed her claim because she still had a way to get damages. The Court explained that to get damages for a past denial of court access the plaintiff must identify a remedy that is presently unavailable.

- **IMPORTANT:** Keep the *Lewis v. Casey* "actual injury" requirement in mind as you read the rest of this chapter. It may or may not apply to *all* of the following rights related to access to the courts, and it means that many of the cases cited in this chapter from before 1996 are of somewhat limited usefulness. For this reason, it is very important for you to find out how the courts in your circuit interpret *Lewis v. Casey*.

1. Attorney and Legal Worker Visits

Your right of access to the courts includes the right to try to get an attorney and then to meet with him or her. For pretrial detainees, the Sixth Amendment right to counsel protects your right to see your attorney. However, even prisoners without pending criminal cases have a due process right to meet with a lawyer. In a case called *Procunier v. Martinez*, 416 U.S. 396 (1974), the Supreme Court explained that not only do you have a right to meet with your attorney, but you also have a right to meet with law students or legal paraprofessionals who work for your attorney.

However, you should be aware that prisons can impose reasonable restrictions on timing, length, and conditions of attorney visits. For example, the right to meet with legal workers and lawyers does not necessarily mean that you have a right to meet them in a contact visit. Most courts have held that you do have the right to a contact visit with your attorney. On the other hand, other courts have held that a prison may be able to keep you from getting a contact visit if there is a legitimate security reason. For more about contact visits with attorneys, compare: *Ching v. Lewis*, 895 F.2d 608 (9th Cir. 1990) and *Casey v. Lewis*, 4 F.3d 1516 (9th Cir. 1993).

2. Legal Mail

Mail that is sent to you from attorneys, courts, and government officials is protected by the First and Sixth Amendments. This means that prison officials are not allowed to read or censor this type of incoming mail. However, they can open it and inspect it for contraband as long as they do it in front of you. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

Mail you send to attorneys and courts is also privileged and may not be opened unless prison officials have a special security interest that must meet certain Fourth Amendment requirements. *Washington v. James,* 782 F.2d 1134 (2d Cir. 1986); *Taylor v. Sterrett*, 532 F.2d 462 (5th Cir. 1976).

3. Media Mail

Mail to and from reporters is treated much the same way. Mail you send to reporters usually may not be opened or read. Incoming mail from the press can be inspected for contraband, but only in front of you. *Taylor v. Sterrett*, 532 F.2d 462 (5th Cir. 1976). However, requests from news media for face-to-face interviews can be denied, since the press does not have a special constitutional right of access to jails and prisons any more than the average person does. *Pell v. Procunier,* 417 U.S. 817 (1974).

4. The Prison Law Library

If your prison decides to have a law library to fulfill their requirements under *Bounds*, you can then ask the question: Is the law library adequate? A law library should have the books that prisoners are likely to need, but remember, under *Lewis v. Casey*, you probably can't sue over an inadequate law library unless it has hurt your non-frivolous lawsuit. The lower courts have established some guidelines as to what books should be in the library.

Books Required to be Available in Law Libraries:

- Relevant state and federal statutes
- State and federal law reporters from the past few decades
- **Shepards** citations
- Basic treatises on habeas corpus, prisoners' civil rights, and criminal law

For more detailed information on what must be available, you may want to read some of the following cases: *Johnson v. Moore*, 948 F.2d 517 (9th Cir. 1991); *Corgain v. Miller,* 708 F.2d 1241 (7th Cir. 1983); *Cruz v. Hauck*, 627 F.2d 710 (5th Cir. 1980) or take a look at the American Association of Law Libraries list of recommended books for prison libraries. This list is reprinted in the *Columbia Human Rights Law Review Jailhouse Lawyers' Manual*. Ordering information for the Columbia Manual is in Appendix E. However, you need to keep in mind the fact that these cases and lists have limited value today, and must be understood in connection to *Lewis v. Casey*.

Federal courts have also required that prisons libraries provide tables and chairs, be of adequate size, and be open for inmates to use for a reasonable amount of time. This does not mean that inmates get immediate access, or unlimited research time. Some cases that explore these issues are: *Shango v. Jurich*, 965 F.2d 289 (7th Cir. 1992); *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851 (9th Cir. 1985); *Cepulonis v. Fair*, 732 F.2d 1 (1st Cir. 1984).

Inmates who cannot visit the law library because they are in disciplinary segregation or other extra-restrictive conditions must have meaningful access some other way. Some prisons use a system where prisoners request a specific book and that book is delivered to the prisoner's cell. This system makes research very hard and time-consuming, and some courts have held that, without additional measures, such systems violate a prisoner's right to access the courts. See, for example, *Marange v. Fontenot*, 879 F. Supp. 679 (E.D. Tex. 1995).

What if I don't have a law library?

Many prisons have either closed their law library or not re-stocked it with new material in years. If this is the case in your law library and you or someone you know on the outside has access to a lawyer, you can try and bring suit against the prison for not complying with *Bounds*. If not, you could try publicizing the fact that your prison is failing to comply with a Supreme Court ruling by sending press releases to various media outlets, like newspapers, television, and the internet.

5. Getting Help from a Jailhouse Lawyer

You have a limited constitutional right to talk with other prisoners about legal concerns. You have a right to get legal help from other prisoners unless the prison "provides some reasonable alternative to assist inmates in the preparation of petitions." *Johnson v. Avery*, 393 U.S. 483, 490 (1969). This means that if you have no other way to work on your lawsuit, you can insist on getting help from another prisoner. In *Johnson,* the Supreme Court held that the prison could not stop prisoners from helping each other write legal documents because no other legal resources were available.

If you have other ways to access the court, like a law library or a paralegal program, the state can restrict communications between prisoners under the *Turner* test if "the regulation… is reasonably related to legitimate penological interests." *Turner v. Safley,* 482 U.S. 78, 89 (1987). The Supreme Court has held that jailhouse lawyers do not receive any additional First Amendment protection, and the *Turner* test applies even for legal communications. Therefore, if prison officials have a "legitimate penological interest," they can regulate communications between jailhouse lawyers and other prisoners. *Shaw v. Murphy*, 532 U.S. 223, 228 (2001).

Courts vary in what they consider a "reasonable" regulation. *Johnson* itself states that "limitations on the time and location" of jailhouse lawyers' activities are permissible. The Sixth Circuit Court of Appeals said that it was OK to ban meetings in a prisoner's cell and require a jailhouse lawyer to only meet with prisoner-clients in the library. *Bellamy v. Bradley,* 729 F.2d 417 (6th Cir. 1984). The Eighth Circuit Court of Appeals upheld a ban on communication when, due to a transfer, a jailhouse lawyer is separated from his prisoner-client. *Goff v. Nix*, 113 F.3d 887 (8th Cir. 1997). However, the *Goff* court did require state officials to allow jailhouse lawyers to return a prisoner's legal documents after the transfer. *Id.* at 892.

6. Your Right to Be a Jailhouse Lawyer

The right to counsel is a right that belongs to the person in need of legal services. It does not mean that you have a right to be a jailhouse lawyer or **provide** legal services. *Gibbs v. Hopkins*, 10 F.3d 373 (6th Cir. 1993); *Tighe v. Wall*, 100 F.3d 41, 43 (5th Cir. 1996). Since jailhouse lawyers are usually not licensed lawyers they *generally* do not have the right to represent prisoners in court or file legal documents with the court, and the conversations between jailhouse lawyers and the prisoner-clients are not usually privileged. *Bonacci v. Kindt,* 868 F.2d 1442 (5th Cir. 1989); *Storseth v. Spellman* 654 F.2d 1349, 1355-56 (9th Cir. 1981). Furthermore, the right to counsel does not give a prisoner the right to choose whom he wants

as a lawyer. *Gometz v. Henman*, 807 F.2d 113, 116 (7th Cir. 1986).

Some courts require a jailhouse lawyer to get permission from prison officials before helping another prisoner. For example, a New York state court held that the prison could punish a prisoner for helping another prisoner by writing to the FBI without first getting permission. *Rivera v. Coughlin,* 620 N.Y.S.2d 505, 210 A.D. 2d 543 (App. Div. 1994).

Nor will being a jailhouse lawyer protect you from transfer, although the transfer may be unconstitutional if it hurts the case of the prisoner you are helping. For more on this, compare *Buise v. Hudkins*, 584 F.2d 223 (7th Cir. 1978) with *Adams v. James*, 784 F.2d 1077, 1086 (11th Cir. 1986). The prison may reasonably limit the number of law books you are allowed to have in your cell. Finally, jailhouse lawyers have no right to receive payment for their assistance. *Johnson v. Avery*, 393 U.S. 483, 490 (1969).

Do Other Prisoners Have a Right to Have You as Their Jailhouse Lawyer?

In some parts of the country, jailhouse lawyers do not have a "right" to help others. However, if the other prisoner can't possibly file a claim without you, the **he or she may have a right to your assistance**, *Gibbs v. Hopkins*, 10 F.3d 373, 378 (6th Cir. 1993). Prisoners are guaranteed "meaningful" access to the courts, so if the person you are helping can't file their claim because he or she doesn't speak English or is locked in administrative segregation without access to the law library, their rights may be being violated.

B. DEALING WITH RETALIATION

If you file a civil rights claim against the warden, a particular guard, or some other prison official, there is a chance that they will try to threaten you or scare you away from continuing with your suit. Retaliation can take many forms. In the past, prisoners have been placed in administrative segregation without cause, denied proper food or hygiene materials, transferred to another prison, and had their legal papers intercepted. Some have been physically assaulted. Most forms of retaliation are illegal, and you may be able to sue to get relief.

In many states, you may be transferred to another correctional facility for any or no reason at all. *Olim v. Wakinekona*, 103 S.Ct. 1741 (1983). However, <u>you cannot be put into administrative segregation solely to punish you for filing suit</u>, *Cleggett v. Pate*, 229 F. Supp. 818 (N.D. Ill. 1964). Nor can you be transferred to punish you for filing a lawsuit. Of course, there are other, more subtle things that officers can do to harass you. Perhaps your mail will be lost, your food served cold, or your turn in the exercise yard forgotten. One of these small events may not be enough to make a claim of retaliation, but if it keeps happening, it may be enough to make a claim of a "campaign of harassment." *Bart v. Telford*, 677 F.2d 622 (7th Cir. 1982).

To prove that the warden or a correctional officer has illegally retaliated against you for filing a lawsuit, you must show three things:

(1) You were doing something you had a constitutional right to do, which is called "protected conduct." Filing a Section 1983 claim is an example of "protected conduct."

(2) What the prison official(s) did to you, which is called an "adverse action," was so bad that it would stop an "average person" from continuing with their suit, and

(3) There is a "causal connection." That means the officer did what he did because of what you were doing. Or, in legal terms: The prison official's **adverse action** was directly related to your **protected conduct**.

If you show these three things, the officer will have to show that he would have taken the same action against you regardless of your lawsuit.

- **<u>Example:</u>** An officer learns that you have filed suit against the warden and throws you into administrative segregation to keep you away from law books or other prisoners who might help you in your suit. The "protected action" is you filing a lawsuit against the warden; the "adverse action" is you being placed in the hole. You would have a valid claim of retaliation unless the officer had some other reason for putting you in the hole, like you had just gotten into a fight with another prisoner.

It is possible -- but not easy -- to get a preliminary injunction to keep correctional officers from threatening or harming you or any of your witnesses in an upcoming trial, *Valvano v. McGrath,* 325 F. Supp. 408 (E.D.N.Y. 1970). Also remember that groups of

prisoners are allowed to bring class action suits if many of them are regularly deprived of their constitutional rights. You have strength in numbers – it cannot hurt to enlist the help of friends inside and outside prison. If you can get somebody on the outside to contact the media or the prison administration on your behalf, it may remind the powers that be that others are out there watching out for you, and it may scare them away from engaging in particularly repressive tactics.

❑ **REMEMBER!** Even when you think it would be pointless for you to try to talk to a guard's superior or go through the prison's formal complaint system, the PLRA still requires you to do so. If you complain and a guard or someone else threatens you, you still have to go through all available procedures before the court will consider your Section 1983 claim. *Booth v. Churner*, 532 U.S. 731, 740 (2001).

Chapter Six: The Legal System and Legal Research

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

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

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

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

Important Books You Can Order

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

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

More order information available in Appendix E.

A. THE IMPORTANCE OF PRECEDENT

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

1. The Federal Court System

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

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

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

2. How Judges Interpret Laws on the Basis of Precedent

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

Order of Precedents:

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

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

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

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

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

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

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

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

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

3. Other Grounds for Court Decisions

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

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

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

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

1. Court Decisions

Reported Decisions

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

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

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

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

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

- **"Johnson v. Avery"** is the name of the case. Usually, the case name comes from the last name of the person who brings the suit, and the last name of the person being sued. The name of the plaintiff always comes first at the trial level, but the names can switch order after that, depending on which party is appealing. You should always *italicize* **or** underline the case name.
- The **"U.S."** indicates that the decision can be found in United States Reports.
- **"393"** is the number of the volume of U.S. Reports in which you can find the case.
- **"483"** is the page number in volume 393 on which the decision begins.

How to Read a Case

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

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

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

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

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

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

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

- **"1969"** is the year in which the decision was announced.

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

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

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

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

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

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

A typical Circuit Court citation is:

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

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

A typical District Court citation is:

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

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

Unpublished Decisions

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

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

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

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

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

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

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

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

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

that what the writer has written is true.

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

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

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

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

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

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

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

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

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

Once you have cited the full name of a case once, you don't have to cite it fully again. Instead, you can use a short form of the official cite. So, instead of writing *Hershberger v. Scaletta*, 33 F.3d 955 (8th Cir. 1994) over and over again, you can just write:

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

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

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

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

2. Legislation and Court Rules

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

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

> **42 U.S.C. § 1983**

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

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

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

3. **Books and Articles**

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

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

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

Citing a book is relatively easy:

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

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

4. Research Aids

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

Shepard's Citations

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

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

Digests

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

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

Encyclopedias

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

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

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

C. LEGAL WRITING

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

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

Idea
Rule
Application
Conclusion

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

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

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

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

Third is **Application**. For this step, you want to state the facts that show how your rights were violated. In other words, you should show the court how and why the rule applies to the facts of your specific case. Be detailed and specific, but also brief and to the point. For example:

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

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

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

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

Appendix A: Glossary of Terms

Below is a list of legal terms, phrases and other words that you may come across in this Handbook or in further research.

Admissible: Evidence that can be used at a trial is known as "admissible" evidence. "**In**admissible" evidence can't be used at a trial.

Affidavit: A written or printed statement of facts that is made voluntarily by a person who swears to the truth of the statement before a public officer, such as a "notary public."

Affirm: When the appellate court agrees with the decision of the trial court, the appellate court "affirms" the decision of the trial court. In this case, the party who lost in the trial court and appealed to the appellate court is still the loser in the case.

Allege: To claim or to charge that someone did something, or that something happened, which has not been proven. The thing that you claim happened is called an "allegation."

Amendment (as in the First Amendment): Any change that is made to a law after it is first passed. In the United States Constitution, an "Amendment" is a law added to the original document that further defines the rights and duties of individuals and the government.

Annotation: A remark, note, or comment on a section of writing which is included to help you understand the passage.

Answer: A formal, written statement by the defendant in a lawsuit which responds to each allegation in the complaint

Appeal: When one party asks a higher court to reverse the judgement of a lower court because the decision was wrong or the lower court made an error. For example, if you lose in the trial court, you may "appeal" to the appellate court.

Brief: A document written by a party in a case that contains a summary of the facts of the case, relevant laws, and an argument of how the law applies to the factual situation. Also called a "memorandum of law."

Burden of proof: The duty of a party in a trial to convince the judge or jury of a fact or facts at issue. If the party does not fulfill this duty, all or part of his/her case must be dismissed.

Causation: The link between a defendant's conduct and the plaintiff's injury or harm. In a civil rights case, the plaintiff must always prove "causation."

Cause of Action: Authority based on law that allows a plaintiff to file a lawsuit. In this handbook, we explain the "cause of action" called Section 1983.

"*Cert*" or "*Writ of Certiorari*": An order by the Supreme Court stating that it will review a case already decided by the trial court and the appeals court. When the Supreme Court makes this order, it is called "granting cert." If they decide not to review a case, it is called "denying cert."

Cf.: An abbreviation used in legal writing to mean "compare." The word directs the reader to another case or article in order to compare, contrast or explain views or statements.

Circuit Court of Appeals: The United States is divided into federal judicial circuits. Each "circuit" covers a geographical area, and has a court of appeals. This court is called the U.S. Court of Appeals for that particular circuit.

Citation: A written reference to a book, a case, a section of the constitution, or any other source of authority.

Civil (as in "civil case" or "civil action"): In general, all cases or actions which are not criminal. "Civil actions" are brought by a private party to protect a private right.

Claim: A legal demand made about a violation of one's rights.

Class Action: A lawsuit in which the plaintiffs represent and sue on behalf of all the people who are in the same situation and have the same legal claims as the plaintiffs.

Color of State Law: When a state or local government official is carrying out his/her job, or acting like he/she is carrying out his/her job. Acting "under color of state law" is one of the requirements of a Section 1983 action.

Complaint: The legal document filed in court by the plaintiff that begins a civil lawsuit. A "complaint" sets out the facts and the legal claims in the case, and requests some action by the court.

Consent: Agreement; voluntary acceptance of the wish of another.

Consent Order / Consent Decree: An order for an injunction (to change something the defendant is doing) that is agreed on by the parties in a settlement and given to the court for approval and enforcement.

Constitution: The supreme law of the land. The U.S. Constitution applies to everyone in this country, and each state also has a constitution.

Constitutional law: Law set forth in the Constitution of the United States or a state constitution.

Counsel: A lawyer.

Criminal (as in "criminal case" or "criminal trial"): When the state or federal government charges a person with committing a crime. The **burden of proof** and the procedural rules in a criminal trial may be different from those in a civil trial.

Cross-examination: At a trial or hearing, the questioning of a witness by the lawyer for the other side. Cross-examination takes place after the party that called the witness has questioned him or her. Each party has a right to "cross-examine" the other party's witnesses.

Damages: Money awarded by a court to a person who has suffered some sort of loss, injury, or harm.

Declaration: A statement made by a witness under penalty of perjury.

Declaratory Judgment: A court order that sets out the rights of the parties or expresses the opinion of the court about a certain part of the law, without ordering any money damages or other form of relief for either side.

Default judgment: A judgment entered against a party who fails to appear in court or respond to the charges.

Defendant: The person against whom a lawsuit is brought.

Defense: A reason, stated by the defendant, why the plaintiff should lose a claim.

Deliberate Indifference: The level of intent that you must show the defendants' had in an Eighth Amendment claim. It requires a plaintiff to show that a defendant (1) actually knew of a substantial risk of serious harm, and (2) failed to respond reasonably.

***De Minimis**:* Very small or not big enough. For example, in an Eighth Amendment excessive force claim, you need to prove an injury that is more than *de minimis.*

Denial: When the court rejects an application or petition. Or, when someone claims that a statement offered is untrue.

Deposition: One of the tools of discovery. It involves a witness giving sworn testimony in response to oral or written questions.

Dictum: An observation or remark made by a judge in his or her **opinion**, about a question of the law that is not necessary to the court's actual decision. Future courts do not have to follow the legal analysis found in "dictum." It is not "binding" because it is not the legal basis for the judge's decision. Plural: "Dicta"

Direct Examination: At a trial or hearing, the questioning of a witness by the lawyer or party that called the witness. The lawyer conducts "direct examination" and then the lawyer for the other side gets the chance to "cross examine" that same witness.

Discovery: The process of getting information which is relevant to your case in preparation for a trial.

Discretion: The power or authority of a legal body, such as a court, to act or decide a situation one way or the other, where the law does not dictate the decision.

Disposition: The result of a case; how it was decided.

Document Request: One of the tools of discovery, allows one party to a lawsuit to get papers or other evidence from the other party.

Due process: A constitutional right that guarantees everyone in the United States a certain amount of protection for their life, liberty and property.

Element: A fact that one *must* prove to win a claim.

Enjoining: When a court orders a person to perform a certain act or to stop performing a specific act. The order itself is called an "injunction."

Evidence: Anything that proves, or helps to prove, the claim of a party. "Evidence" can be presented orally by witnesses, through documents or physical objects or any other way that will help prove a point.

Exclude from evidence: The use of legal means to keep certain evidence from being considered in deciding a case.

Excessive Force: more force than is justified in the situation.

Exhaustion of Administrative Remedies: the requirement that a prisoner use the prison grievance system to make (and appeal) a complaint before filing a lawsuit. One of the requirements of the Prison Litigation Reform Act.

Exhibit: Any paper or thing used as evidence in a lawsuit.

Federal law: A system of courts and rules organized under the United States Constitution and statutes passed by Congress; different than state law.

File: When you officially send or give papers to the court in a certain way, it is called "filing" the papers.

Finding: Formal conclusion by a judge or jury on a issue of fact or law.

Footnote: More information about a subject indicated by a number in the body of a piece of legal writing which corresponds to the same number at the bottom of the page. The information at the bottom of the page is the "footnote."

Frivolous: Something that is groundless, an obviously losing argument or unbelievable claim.

Grant: To allow or permit. For example, when the court "grants a motion," it allows what the **motion** was asking for.

***Habeas Corpus* (*Habeas*)**: An order issued by a court to release a prisoner from prison or jail. For example, a prisoner can petition (or ask) for "*habeas*" because a conviction was obtained in violation of the law. The "*habeas* writ" can be sought in both state and federal courts.

Hear: To listen to both sides on a particular issue. For example, when a judge "hears a case," he or she considers the validity of the case by listening to the evidence and the arguments of the lawyers from both sides in the litigation.

Hearing: A legal proceeding before a judge or judicial officer, in some ways similar to a trial, in which the judge or officer decides an issue of the case, but does not decide the whole case.

Hearsay: Testimony that includes a written or verbal statement that was made out of court that is being offered in court to prove the truth of what was said. Hearsay is often "inadmissible."

Holding: The decision of a court in a case and the accompanying explanation.

Immunity: When a person or governmental body cannot be sued, they are "immune" from suit.

Impartial: Even-handed or objective; favoring neither side.

Impeach: When one party presents evidence to show that a witness may be lying or unreliable.

Inadmissible evidence: Evidence that cannot legally be introduced at a trial. Opposite of "admissible" evidence.

Injunction: An order by a court that a person or persons should stop doing something, or should begin to do something.

Injury: A harm or wrong done by one person to another person.

Interrogatories: A set of questions in writing. One of the tools of **discovery**.

Judge: A court officer who is elected or appointed to hear cases and make decisions about them.

Judgment: The final decision or holding of a court that resolves a case and determines the parties' rights and obligations.

Jurisdiction: The authority of a court to hear a particular case.

Jury: A group of people called to hear a case and decide issues of fact.

Law: Rules and principles of conduct set out by the constitution, the legislature, and past judicial decisions.

Lawsuit: A legal action that involves at least one plaintiff, making one or more claims, against at least one defendant.

Liable: To be held responsible for something. In civil cases, plaintiffs must prove that the defendants were "liable" for unlawful conduct.

Litigate: To participate in a lawsuit. All the parts of a lawsuit are called "litigation" and some time lawyers are called "litigators."

Majority: More than half. For example, an opinion signed by more than half the judges of a court is the "majority opinion" and it establishes the decision of the court.

Material evidence: Evidence that is relevant and important to the legal issues being decided in a lawsuit.

Memorandum of law: A written document that includes a legal argument, also called a "brief."

Mistrial: If a fundamental error occurs during trial that cannot be corrected, a judge may decide that the trial should not continue and declare a "mistrial."

Moot: A legal claim that is no longer relevant is "moot" and must be dismissed.

Motion: A request made by a party to a judge for an order or some other action.

Municipality: A city or town.

Negligent or Negligence: To be "negligent" is to do something that a reasonable person would not do, or to not do something that a reasonable person would do. Sometimes a party needs to prove that the opposing party in the suit was "negligent." For example, if you do not shovel your sidewalks all winter when it snows, you may be negligent.

Notary or Notary Public: A person who is authorized to stamp his or her seal on certain papers in order to verify that a particular person signed the papers. This is known as "notarizing the papers."

Notice or Notification: "Notice" has several meanings in the law. First, the law often requires that "notice" be given to an individual about a certain fact. For example, if you sue someone, you must give them "notice" through "service of process." Second, "notice" is used in cases to refer to whether an individual was aware of something.

Objection: During a trial, an attorney or a party who is representing him/herself pro se may disagree with the introduction of a piece of evidence. He or she can voice this disagreement by saying "I object" or "objection." The judge decides after each objection whether to "**sustain**" or "**overrule**" the objection. If the judge sustains an objection it means the judge, based on his or her interpretation of the law, agrees with the attorney raising the objection that the evidence cannot be presented. If an objection is "**overruled**" it means the judge disagrees with the attorney raising the objection and the evidence can be presented.

Opinion: When a court decides a case, a judge writes an explanation of how the court reached its decision. This is an "opinion."

Order: The decision by a court to prohibit or require a particular thing.

Oral arguments: Live, verbal arguments made by the parties of a case that a judge may hear before reaching a decision and issuing an **opinion**.

Overrule: To reverse or reject.

Party: A plaintiff or defendant or some other person who is directly involved in the lawsuit.

Per se: A Latin phrase meaning "by itself" or "in itself."

Perjury: The criminal offense of making a false statement under oath.

Petition: A written request to the court to take action on a particular matter. The person filing an action in a court or the person who appeals the judgment of a lower court is sometimes called a "petitioner."

Plaintiff: The person who brings a lawsuit.

Precedent: A case decided by a court that serves as the rule to be followed in similar cases later on. For example, a case decided in the United States Supreme Court is "precedent" for all other courts.

Preponderance of evidence: This is the standard of proof in a civil suit. It means that more than half of the evidence in the case supports your explanation of the facts.

Presumption: Something that the court takes to be true without proof according to the rules of the court or the laws of the jurisdiction. Some presumptions are "rebuttable." You can overcome a "rebuttable presumption" by offering evidence that it is not true.

Privilege: People may not have to testify about information they know from a specific source if they have a "privilege." For example, "attorney-client privilege" means that the information exchanged between an attorney and his or her client is confidential, so an attorney may not reveal it without the client's consent.

Proceeding: A hearing or other occurrence in court that takes place during the course of a dispute or lawsuit.

Pro se: A Latin phrase meaning "for oneself." Someone who appears in court "pro se" is representing him or herself without a lawyer.

Question of fact: A dispute as to what actually happened. It can be contrasted to a "question of law."

Qualified Immunity: a doctrine that protects government officials from liability for acts they couldn't have reasonably known were illegal.

Reckless: To act despite the fact that one is aware of a substantial and unjustifiable risk.

Record (as in the record of the trial): A written account of all the proceedings of a trial, as transcribed by the court reporter.

Regulation: A rule or order that manages or governs a situation. One example is a "prison regulation."

Relevant / irrelevant: A piece of evidence which tends to make some fact more or less likely or is helpful in the process of determining the truth of a matter is "relevant." Something that is not at all helpful to determining the truth is "irrelevant."

Relief: The remedy or award that a plaintiff or petitioner seeks from a court, or a remedy or award given by a court to a plaintiff or petitioner.

Remand: When a case is sent back from the appellate court to the trial court for further action or proceedings.

Remedy: Same as "relief".

Removal: When a defendant transfers a case from state court to federal court.

Respondent: The person against whom a lawsuit or appeal is brought.

Retain: To hire, usually used when hiring a lawyer.

Reverse: When an appellate court changes the decision of a lower court. The party who lost in the trial court and then appealed to the appellate court is now the winner of the case. When this happens, the case is "reversed."

Right: A legal entitlement that one possesses. For example, as a prisoner, you have the "right" to be free from cruel and unusual punishment.

Sanction: A penalty the court can impose when a party disobeys a rule or order.

Service, "service of process" or "to serve": the physical act of handing something over, or delivering something to a person, as in "serving legal papers" on a person.

Settlement: when both parties agree to end the case without a trial.

Shepardizing: Method for determining if a case is still "good law" that can be relied upon.

Standing: A requirement that the plaintiff in a lawsuit has an actual injury that is caused by the defendant's alleged action and that can be fixed by the court.

Statute: A law passed by the U.S. Congress or a state legislature.

Statute of limitations: A law that sets out time limitations within which different types of lawsuits must be brought. After the "statute of limitations" has run on a particular type of lawsuit, the plaintiff can not bring that lawsuit.

Stipulation: An agreement between the plaintiff and the defendant as to a particular fact.

Subpoena: An official court document that requires a person to appear in court at a specific time and place. A particular type of "subpoena" requires an individual to produce books, papers and other things.

Summary judgment: A judgment given on the basis of pleadings, affidavits or declarations, and exhibits presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law.

Suppress: To prevent evidence from being introduced at trial.

Testimony: The written or oral evidence given by a witness under oath. It does not include evidence from documents or objects. When you give testimony, you "testify."

Tort: A "wrong" or injury done to someone. Someone who destroys your property or injures you may have committed a "tort."

Trial: A proceeding that takes place before a judge or a judge and a jury. In a trial, both sides present arguments and evidence.

v. or vs. or versus: Means "against," and is used to indicate opponents in a case, as in "Joe Inmate v. Charles Corrections Officer."

Vacate: To set aside, as in "vacating the judgment of a court." An appellate court, if it concludes that the decision of the trial court is wrong, may "vacate" the judgment of the trial court.

Vague: Indefinite, or not easy to understand.

Venue: the specific court where a case can be filed.

Verdict: A conclusion, as to fact or law, that forms the basis for the court's judgment.

Verify: To confirm the authenticity of a legal paper by affidavit or oath.

Waive or waiver: To give up a certain right. For example, when you "waive" the right to a jury trial or the right to be present at a hearing you give up that right.

Witness: a person who knows something which is relevant to your lawsuit and testifies at trial or in a deposition about it.

Writ: An order written by a judge that requires a specific act to be performed, or gives someone the power to have the act performed. For example, when a court issues a writ of **habeas corpus**, it demands that the person who is detaining you release you from custody.

APPENDIX B:

MORE LEGAL FORMS & INFORMATION

Most of the legal forms that we discuss in this handbook can be found within the chapters. However, we have also placed some additional forms that may be helpful in this appendix. Keep in mind that these forms are only examples, and they may not be appropriate for some individual circumstances.

1. Motion for Leave to File an Amended Complaint

Below is one example of a Motion for Leave to File an Amended Complaint. It is an example where the plaintiff wants to add a new defendant. You could also file this type of motion if you want to amend your complaint to include more or different facts, or add a new legal claim.

In the United States District Court
For the _____

Name of first plaintiff	:	
in the case, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.__
	:	
Name of first defendant	:	
in the case, et al.,	:	
Defendants	:	

MOTION FOR LEAVE TO FILE AN

AMENDED COMPLAINT

Plaintiff [*your name*], pursuant to Rules 15(a) and 19(a), Fed. R. Civ. P., requests leave to file an amended complaint adding a party.

1. The plaintiff in his original complaint named a John Doe Defendant.

2. Since the filing of the complaint the plaintiff has determined that the name of the John Doe defendant is [*defendant's name*]. Paragraphs [*paragraphs in which you refer to John Doe*] are amended to reflect the identity and the actions of Officer {*defendant's name*].

3. This Court should grant leave freely to amend a complaint. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

[Date]

Respectfully submitted,

[Plaintiff's name]
[Plaintiff's Address]

2. Declaration for Entry of Default.

In the United States District Court
For the _____

Name of first plaintiff	:	
in the case, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.__
	:	
Name of first defendant	:	
in the case, et al.,	:	
Defendants	:	

DECLARATION FOR ENTRY OF DEFAULT

[*Your name*], hereby declares:

I am the plaintiff herein. The complaint herein was filled on the [*day you filed the complaint*] of [*month, year you filed the complaint*].

The court files and record herein show that the Defendants were served by the United States Marshal with a copy of summons, and a copy of the Plaintiffs' complaint on the [*day of service*] of [*month, year of service*].

More than 20 days have elapsed since the date on which the Defendants herein were served with summons and a copy of Plaintiffs' complaint, excluding the date thereof.

The Defendants have failed to answer or otherwise defend as to Plaintiffs' complaint, or serve a copy of any answer or any defense which it might have had, upon affiant or any other plaintiff herein.

Defendants are not in the military service and are not infants or incompetents.

I declare under penalty of perjury that the foregoing is true and correct. Executed at (*city and state)* on (*date*).

_____
Signature.

3. Motion for Judgment by Default.

You only need to submit this Motion if the court clerk enters a default against the defendant.

In the United States District Court
For the _____

Name of first plaintiff	:	
in the case, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.__
	:	
Name of first defendant	:	
in the case, et al.,	:	
Defendants	:	

MOTION FOR DEFAULT JUDGMENT

Plaintiffs move this court for a judgment by default in this action, and show that the complaint in the above case was filed in this court on the [*date filed*] day of [*month, year filed*]; the summons and complaint were duly served on the Defendant, [*Defendants' names*] on the [*date served*] day of [*month, year served*]; no answer or other defense has been filed by the Defendant; default was entered in the civil docket in the office of this clerk on the [*day default entered*] day of [*month, year default entered*]; no proceedings have been taken by the Defendant since the default was entered; Defendant was not in military service and is not an infant or incompetent as appears in the declaration of [*your name*] submitted herewith.

Wherefore, plaintiff moves that this court make and enter a judgment that [*same as prayer for relief in complaint*]

Dated: _____

[*your signature*]
Plaintiffs' Names and Addresses

APPENDIX C: Important Constitutional Amendments

In this section you will find the text of the Constitutional Amendments which we refer to throughout this handbook.

The First Amendment
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Fourth Amendment
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment
"No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

The Eighth Amendment
"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment
"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

- **PLEASE NOTE:** There is more to the Fourteenth Amendment that we have not included.

APPENDIX D: Sources of Support & Publicity

Below is a short list of other organizations working on prison issues, mainly with a legal focus. When writing to these groups, please remember a few things:

- Write simply and specifically, but don't try and write like you think a lawyer would. Be direct in explaining yourself and what you are looking for.
- It is best not to send any legal documents unless they are requested. If or when you do send legal documents, **only send copies**. Hold on to your original paperwork.
- Because of rulings like the PLRA and limited funding, many organizations are small, have limited resources and volunteer staff. It may take some time for them to answer your letters. But always keep writing.

American Civil Liberties Union
National Office
125 Broad Street, 18th Floor
New York, NY 10004
The biggest civil liberties organization in the country. They have a Prison Project, and also have chapters in each of the 50 states. Write them for information about individual chapters.

American Friends Service Committee Criminal Justice Program – National
1501 Cherry St., Philadelphia PA, 19102
Human and civil rights issues, research/analysis, women prisoners, prisoner support.

American People Human Rights Review Committee (APHRRC)
1316 Perry Ave., Bremerton, WA, 98310
Research/analysis, prisoners rights, legal resources

Books Through Bars
4722 Baltimore Ave., Philadelphia, PA, 19143
Sends books to prisoners for free / very low cost.

California Prison Focus
2940 16th St. #307, San Francisco, CA, 94103
A general resource center in California. Produces publications, legal resources, information on prisoners' rights, health care and medical issues, AIDS.

Community Justice Center
103 E 125th. St., Rm 604, New York, NY, 10035
Does work around prisoners' rights.

Criminal Justice Policy Coalition
99 Chauncy St Room 310, Boston, MA, 02111
Involved in work and outreach around numerous prison issues.

Florida Institutional Legal Services, Inc.
1110-B NW 8th Ave Gainesville, FL, 32601
Provides legal resources, prisoner support.

Freedom House Immigrant Justice Project
2630 W Lafayette, Detroit, MI, 48216-2019
Legal resources, especially Latino/a, Chicano/a issues.

Friends and Families of Incarcerated Persons
PO Box 93601, Las Vegas, NV, 89193
Legal resources for friends and families of prisoners.

Southern Center for Human Rights
c/o 83 Poplar St. NW Atlanta, GA, 30303-2122
Civil rights organization doing lots of work around prison issues, anti-racism. Legal resources are available.

Human Rights Watch Prison Project
350 5th Ave. 34th Floor New York NY 10118-3299
National organization dedicated to research, analysis, and publicizing human rights violations, and working towards stopping them.

Legal Publications in Spanish, Inc. Publicaciones Legales en Espanol, Inc.
PO Box 623 Palisades Park NJ 07650
Publications, legal resources in Spanish.

Inmates Legal Assistance Program
78 Oak Street, PO Box 260237, Hartford, CT
Legal Assistance in civil matters.

Legal Services for Prisoners with Children
1540 Market St. Suite 490 San Francisco CA 94102
Legal resources and issues around women in prison.

National Association of Legislative Review (NALR)
PO Box 3064 Russellville AR 72801-9998
Legal resources.

National Lawyers Guild
National Office
143 Madison Avenue, 4th Floor
New York, NY 10016
Membership organization of progressive lawyers. Co-publishers of this Handbook.

Prison Activist Resource Center
PO Box 339 Berkeley CA 94701
Clearinghouse for information and resources on organizing for prisoners rights, prison issues, anti-racism.

Prison Book Project
PO Box 396 Amherst MA 01004-0396
Sends free books to prisoners.

Prison Law Offfice - San Quentin
General Delivery San Quentin CA 94964
Legal resources in California.

Prison Law Office – Davis
UC Davis PO Box 4745 Davis CA 95617
Legal resources in California.

Prison Legal Aid Network
1521 Alton Rd. #366 Miami Beach FL 33139
Legal resources in Florida, the South.

Prison Reform Advocacy Center
617 Vine St #1428 Cincinnati OH 45202
Center for research and analysis of prison issues; legal resources, medical information, etc.

Prisoner Litigation Support, Inc.
PO Box 83 Lonoke AR 72086
Legal and other resources. Focus on prisoners rights, especially prisoners from communities of color.

Prisoner Self Help Legal Clinic
35 Halsey St. Suite 4B Newark NJ 07102
Very good self-help legal kits on a variety of issues.

Southern Poverty Law Center
P.O. Box 548 Montgomery AL 36101
Legal resources and publications. Also files class-action suits around prison conditions.

Western Prison Project
PO Box 40085 Portland OR 97240
Resources and publications around prison issues, focusing on the northwestern United States.

B. PUBLICITY

The best way to publicize your case is to have a contact, like a family member or a friend, who is on the outside do the work for you. They will have much more access to the media, the internet, and communications in general.

Make sure it is someone you trust, who also has time to dedicate to the work, and who will be honest about what they can and cannot do. Provide them with detailed and specific information regarding your case, but remember to keep any original paperwork you may have.

If you decide to go about publicizing your case yourself, we have provided a short list of places you can write to, besides the support organizations already mentioned. Again, when writing, be specific and focus on what you believe are the main points of your case. You will also want to <u>always</u> include a

cover letter, briefly introducing yourself and telling the publication why you are writing them.

Z Magazine
18 Millfield Street
Woods Hole, MA 02543
A progressive, national magazine that is always looking for writing submissions.

Pacifica Radio
National Programming
2390 Champlain St., NW
Second Floor
Washington, D.C. 20009
Progressive radio, often covering stories on prisoners and prison issues.

CounterPunch
PO Box 228
Petrolia, CA 95558
Alternative media magazine, covering issues not addressed by mainstream media.

The Progressive
409 East Main Street
Madison, WI 53703
Excellent leftist magazine.

Publishers
BlackCommentator.com
Suite 473
93 Old York Road
Jenkintown PA 19046
Weekly internet publication focusing on African-American issues and radical politics. Best contacted by internet at www.blackcommentator.com if you have a friend on the outside.

The Nation
33 Irving Place
New York, New York 10003
Highly acclaimed national progressive publication.

APPENDIX E: Prisoners' Rights Books & Newsletters

A list of printed publications and books that you can order for further assistance.

A. FEDERAL RESOURCES

Federal Rules of Civil Procedure - $7.50
Federal Rules of Appellate Procedure - $3.75

If convicted of a federal crime, you can request the ***Federal Rules of Criminal Procedure*** for $4.25 and the ***Federal Rules of Evidence*** for $2.50. **These books will not assist state prisoners**.

All prices include postage. Write to:

Superindendent of Documents
PO Box 371954
Pittsburgh, PA 15250-7954

B. NATIONAL RESOURCES

Please note that prices may change on many of the publications.

- **Columbia University *Jailhouse Lawyers Manual*** is an excellent resource, updated every two years. Highly recommended, especially if you are incarcerated in New York state. Please refer to the full page order form at the end of this handbook.

- ***Protecting Your Health & Safety*** is a publication of the Southern Poverty Law Center, and explains the legal rights inmates have regarding health and safety – including the right to medical care and to be free from inhumane treatment. Another excellent jailhouse lawyer resource. Send $10 and your request to: Southern Poverty Law Center, Protecting Your Health and Safety, P. O. Box 548, Montgomery, Alabama 36101-0548. Prison law libraries can receive copies for free upon request.

- ***Constitutional Rights of Prisoners, 7th edition***. Send order and check to: Lexis-Nexis Matthew Bender, 1275 Broadway, Albany, NY 12204. Cost is $70.00. Please make checks payable to **LexisNexis Matthew Bender.**

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

- ***The Prisoners' Guide to Survival***. A comprehensive legal assitance manual for post-conviction relief and prisoners' civil rights. For prisoners, send $54.95 to: PSI Publishing, Inc., 413-B 19th Street, #168, Lynden, WA 98264

- ***The Bluebook: A Uniform System of Citation.*** Write to: Attn Business Office, Bluebook Orders, Harvard Law Review Association, Gannett

House, 1511 Massachusetts Ave., Cambridge, MA 02138

- **Prison Legal News**. A monthly newsletter. Highly recommended. The best source of the latest prison-related legal news. A 6 month subscription is $9, sample newsletter available for $1. Send check and order to: 2400 NW 80th Street #148, Seattle, WA 98117.

- **Fortune News**. Newsletter from the Fortune Society, specifically for prisoners. The majority of the writers are prisoners / ex-prisoners. Free. Write to: Fortune News, 39 W. 19th Street, 7th Floor, New York, NY 10011.

- **Law Offices of Alan Ellis, PC**. Attorney Alan Ellis has a number of publications available., including the ***Federal Prison Guidebook*** for $21.00. Write to him for a full list, or to order the Guidebook: Alan Ellis, P.C., PO Box 2178, Sausalito, CA, 94966.

- ***The Prisoners' Assistance Directory*** is published by the American Civil Liberties Union Prison Project. It includes contact information and services descriptions for over 300 national, state, local and international organizations that provide assistance to prisoners, ex-offenders and families of prisoners. It also includes a bibliography of informative books, reports, manuals and newsletters of interest to prisoners and their advocates. Latest edition was published in Dec. 2001. Copies are available for $30, prepaid. Send a check or money order to National Prison Project Publications, 733 15th St., NW, Washington, DC 20005.

- ***Prisoners Self-Help Litigation Manual, 3rd Edition***. Includes an outline of Federal and State legal systems and relevant terminology, with expert research from John Boston and Daniel Manville. Send $32.95 and order to: Oceana Publications, 75 Main Street, Dobbs Ferry, NY 10522.

- ***Introduction to the Legal System of the United States***. This publication will help you understand the principles of the U.S. legal system. Required reading at many law schools. Send $29.50 and order to: Oceana Publications, 75 Main Street, Dobbs Ferry, NY 10522.

- ***Brief Writing and Oral Argument, 8th edition***. Guidance on preparing effective oral and written arguments, especially relating to the Courts of Appeals. Send $35.00 and order to: Oceana Publications, 75 Main Street, Dobbs Ferry, NY 10522.

Also Available Upon Request from CCR or NLG:

1. Special Issues for Women in Prison

APPENDIX F: Information for Non-citizens

Some people assume that the U.S. Constitution and other U.S. laws only protect the rights of U.S. citizens. This is not true. Non-U.S. citizens share many of the same fundamental legal protections that U.S. citizens enjoy. This section will outline some of the legal rights that non-citizens possess, which include the Constitutional right to "due process," under the Fifth and Fourteenth Amendment and the right under the Eighth Amendment to be free from cruel and unusual punishment.

The second part of this section is a brief introduction to the current immigration laws that may subject non-citizen prisoners to deportation after serving their sentences if they have been convicted of certain kinds of crimes. **Please keep in mind that this section is only a very brief introduction to this complex and changeable area of immigration law, and is not meant to be a complete source of information.** For more detailed information on post-conviction removal or deportation, you may wish to read Chapters 29 & 30 of *A Jailhouse Lawyer's Manual*, 5th Edition (2000), produced by the Columbia Law School Human Rights Law Review. If you do not have access to one in your facility, you may be able to request a copy by writing to the Human Rights Law Review at 435 W. 116th Street, New York, NY 10027. Or, you may want to contact an immigration attorney.

A. THE CIVIL RIGHTS OF NON-CITIZEN PRISONERS

Non-citizens may bring Section 1983 challenges against governmental authorities for violations of civil rights. As a non-citizen prisoner, you have many of the same rights as citizen prisoners.

The Fourteenth Amendment is universal and applies to everyone within the territorial jurisdiction of the

United States "without regard to any differences of race, of color, or nationality." *Wong Wing v. United States*, 163 U.S. 228 (1896); *Plyler v. Doe*, 457 U.S. 202 (1982). This means that all persons within the territory of the United States are entitled to the protection guaranteed by the Fourteenth Amendment. In Chapter Two, Section C, Parts 3, 4, and 5 of this handbook, you learned that the Fourteenth Amendment protects your right to due process in disciplinary proceedings and administrative segregation, and your right to equal protection, which prohibits race, gender, and other forms of discrimination. Since non-citizens are also protected by the Fifth and Fourteenth Amendments, you can raise violations of due process and equal protection in the same ways that citizens can, through Section 1983 actions.

Non-citizens who are serving prison sentences are also protected by the Eighth Amendment right to be free from cruel and unusual punishment. As you learned in Chapter Two, Section C, Parts 7, 8 and 9, the Eighth Amendment protects you from guard brutality in prison, as well as guaranteeing you safe prison conditions and some level of medical care.

B. POTENTIAL FOR DEPORTATION OR REMOVAL

One of the most important things to be aware of as a non-citizen prisoner is that if you have been convicted of a certain kind of crime (as defined by the relevant statute, described below), you may be deportable after you have served your sentence. If you are determined to be deportable, you could be detained after you have finished serving your sentence and held for an uncertain period of time before you are deported from the country. Your rights in this area may depend on your immigration status at the time you were prosecuted, but both admitted and inadmissible non-citizens can still be removed for criminal convictions under certain circumstances. The category of crimes for which a convicted non-citizen may be removed differs depending on what law was in effect when your criminal proceeding began.

There are currently three laws under which a non-citizen's potential for removal can be evaluated.

- If your case began **prior to 1996**, it is governed by "old law."
- If your case began **between April 24, 1996 and April 1, 1997**, it is governed by the *Anti-Terrorism and Effective Death Penalty Act of 1996*, often referred to as "AEDPA."
- If your case was began **after April 1, 1997**, it is governed by the *Illegal Immigration Reform and Immigrant Responsibility Act*, referred to as "IIRIRA."

These laws will almost certainly change in the future, so if you are researching this area, it is important to make sure you have the most up-to-date materials available. If you think that you might be deportable on criminal grounds, you may be able to challenge your deportation, so it is important to understand this area fully and figure out which law applies to your case. You should try to contact an immigration attorney to learn more about your status and your rights.

Appendix G: Protection of Prisoners Under International Law

Along with the U.S. Constitution, your state Constitution, and federal and state laws, another potential source of protection for prisoners is **international law**. However, using international law in United States courts is very difficult and controversial so you may not want to attempt it without a lawyer. This appendix will outline some basic facts about international law, and provide you with resources should you want to explore the area further.

There are two main sources of international law: "customary international law" and treaties. Customary international law is unwritten law based on certain principles that are generally accepted worldwide. Treaties are written agreements between countries that set international legal standards. Customary and treaty-based international law are supposed to be enforceable in the United States, but sometimes it is difficult to get courts here to follow them.

Customary international law prohibits several practices, such as slavery, state-sponsored murders and kidnappings, torture, arbitrary detention, systematic racial discrimination, and violation of generally accepted human rights standards. Restatement (Third) of Foreign Relations Law,

Section 702 (1987). U.S. courts have recognized that some of these practices violate customary international law. For example, in *Filartiga v. Pena-Irala*, the court established that torture violates customary international law. 630 F.2d 876 (2d Cir. 1980)

However, American courts have often acted threatened when people argue that a certain U.S. practice violates customary international law. As a result, many American courts have ruled that even if most other nations oppose a specific practice, that practice does not violate customary international law. Most significantly, American courts continue to rule that the death penalty does not violate customary international law. *Hain v. Gibson*, 287 F.3d 1224, 1242-44 (10th Cir. 2002); *Buell v. Mitchell*, 274 F.3d 337, 370-76 (6th Cir. 2001). It is very hard to get a US court to recognize that any specific practice is outlawed under customary international law.

The U.S. government is a party to several treaties that explain how prisoners should be treated. There are two stages to becoming a party to a treaty: signing the treaty and ratifying the treaty. By signing a treaty, a country agrees to abide by its general principles. But only by ratifying a treaty does a nation incorporate the treaty's standards into domestic law. The U.S. has ratified three human rights treaties that address the rights of prisoners: the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment*; the *International Covenant on Civil and Political Rights*; and the *International Convention on the Elimination of All Forms of Racial Discrimination*.

However, the U.S. has limited the ability of individuals to invoke the rights created by these treaties. First, when ratifying these treaties, Congress has specifically stated that the U.S. government is not bound by certain provisions and that the U.S. government understands certain rights and protections to be severely restricted. Second, Congress has declared that many provisions of the treaties are not self-executing, meaning that individuals cannot sue in U.S. courts to enforce those provisions unless Congress has also passed "implementing legislation." *Foster v. Neilson*, 27 U.S. 253 (1829).

It is very difficult to bring a successful case based on the fact that your rights under customary international law or treaty-based international law have been violated. However, you may want to use these international standards to bolster suits based on more established domestic law. For example, one court referred to standards set out in the International Covenant on Civil and Political Rights when deciding that searches of prisoners by guards of the opposite sex violated their rights under the Eighth Amendment. *Sterling v. Cupp*, 625 P.2d 123, 131 n.21 (Or. 1981).

To learn more about this interesting subject, check out the following resources:

General Sources

Martin Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections under Domestic Civil Rights Law—A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71 (2000).

Stephen Karlson, *International Human Rights Law: United States' Inmates and Domestic Prisons*, 22 NEW. ENG. J. ON CRIM. & CIV. CONFINEMENT 439 (1996).

Nigel S. Rodley, *The Treatment of Prisoners Under International Law*, (2d ed. 2002)

Selected International Human Rights Documents

These documents are probably not available in your prison law library. However, if you know someone outside of prison who has access to the Internet, they can obtain these documents at the University of Minnesota Human Rights website: http://www1.umn.edu/humanrts/

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

International Covenant on Civil and Political Rights; and the *International Convention on the Elimination of All Forms of Racial Discrimination*

International Convention on the Elimination of All Forms of Racial Discrimination

Standard Minimum Rules for the Treatment of Prisoners

Basic Principles for the Treatment of Prisoners

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

You may also want to try writing to Human Rights Watch, an organization that constantly monitors the conditions in prisons and publishes reports on prisons. They answer mail from prisoners, and they also send free reports that you can use to support your legal claims.

U.S. Program Associate
Human Rights Watch
350 5th Avenue, 34th Floor
New York, New York 10118

APPENDIX H:
List of District Courts

You have already learned that the Federal judiciary is broken into districts. Some states have more than one district, and, confusingly, some districts also have more than one division, or more than one courthouse. We have compiled the following list of District Courts to help you figure out where to send your complaint. Find your state in the following list, and then look for the county your prison is in. Under the name of your county, you will find the address of the District Court where you should send your complaint. All special instructions are in *italics*.

ALABAMA (11th Circuit)
Northern District of Alabama: Counties: Bibb, Blount, Calhoun, Cherokee, Clay, Cleburne, Colbert, Cullman, DeKalb, Etowah, Fayette, Franklin, Greene, Jackson, Lamar, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, Pickens, Randolph, Saint Clair, Shelby, Sumter, Talladega, Tuscaloosa, Walker, Winston

United States District Court
Hugo L. Black U. S. Courthouse
1729 Fifth Avenue North
Birmingham, AL 35203

Middle District of Alabama
The United States District Court for the Middle District of Alabama has three divisions:
The Northern Division: Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike.
The Southern Division: Coffee, Dale, Geneva, Henry, and Houston.
The Eastern Division: Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa.

All official papers for all the divisions should be sent to:
Ms. Debra Hackett
Clerk of the Court
One Church Street
Montgomery, AL 36104

Southern District of Alabama: Baldwin, Choctaw, Clarke, Conceuh, Dallas, Escambia, Hale, Marengo, Mobile, Monroe, Perry, Washington, Wilcox.

U.S. Courthouse
143 St. Joseph Street
Mobile, AL 36602

ALASKA (9th Circuit)
District of Alaska
Documents for cases in any county in Alaska may be filed in Anchorage, or in the divisional office where the case is located (addresses below).

U.S. District Court Clerk's Office
222 W. 7th Avenue, #4
Anchorage, AK 99513

U.S. District Court
101 12th Ave, Rm332
Fairbanks, AK 99701

U.S. District Court
101 12th Avenue
Room 332
Fairbanks, AK 99701

U.S. District Court
PO Box 020349
709 W. 9th Ave, R 979
Juneau, AK 99802

U.S. District Court
648 Mission Street
Room 507
Ketchikan, AK 99901

U.S. District Court
Front Street
PO Box 130
Nome, AK 99762

ARIZONA (9th Circuit)
District of Arizona – *The District of Arizona covers the entire state, but it is divided into three divisions with the following counties:*
Phoenix Division: Maricopa, Pinal, Yuma, La Paz, Gila
Prescott Division: Apache, Navajo, Coconino, Mohave, Yavapai
You should send all documents for cases in the Phoenix OR the Prescott division to the Phoenix Courthouse, at:

Sandra Day O'Connor U.S. Courthouse
401 West Washington Street, Suite 130, SPC 1
Phoenix, AZ 85003

Tucson Division: Pima, Cochise, Santa Cruz, Graham, Greenlee
Send all documents for cases in the Tucson Division to Tucson, at:

Evo A. DeConcim U.S. Courthouse
405 West Congress Street, Suite 1500
Tucson AZ 85701

ARKANSAS (8th Circuit)
Eastern District of Arkansas – *has five divisions.*
Northern Division 1: Cleburne, Fulton, Independence Izard, Jackson, Sharp, Stone
Eastern Division 2: Cross, Lee, Monroe, Phillips, St. Francis and Woodruff
Western Division 4: Conway, Faulkner, Lonoke, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White, Yell

Pine Bluff Division 5: Arkansas, Chicot, Cleveland, Dallas Desha, Drew, Grant, Jefferson and Lincoln
Send documents for cases that arise in any of these four divisions to:

U.S. District Court Clerk's Office
U.S. Post Office & Courthouse
600 West Capitol, #402
Little Rock, AR 72201-3325

Jonesboro Division 3: Clay, Craighead, Crittenden, Greene, Lawrence, Mississippi, Poinsett, Randolph
Send documents for cases in this division to:

U.S. District Court Clerk's Office
P.O. Box 7080
Jonesboro, AR 72403

Western District of Arkansas – *Has six divisions. You should send documents to the division where the case arose.*

El Dorado Division 1: Ashley, Bradley, Calhoun, Columbia, Ouachita and Union

U.S. District Court Clerk's Office
205 United States Courthouse & Post Office
P.O. Box 1566
El Dorado, AR 71730-1566

Fort Smith Division 2: Crawford, Franklin, Johnson, Logan, Polk, Scott and Sebastian

U.S. District Court Clerk's Office
1038 Isaac C. Parker Federal Building P.O. Box 1547
Fort Smith, AR 72902-1547

Harrison Division 3: Baxter, Boone, Carroll, Marion, Newton and Searcy

U.S. District Court Clerk's Office
523 Federal Building
35 East Mountain Street
P.O. Box 6420
Fayetteville, AR 72702-6420

Texarkana Division 4: Hempstead, Howard, Lafayette, Little River, Miller, Nevada and Sevier

U.S. District Court Clerk's Office
302 U.S. Post Office and Courthouse
500 State Line Blvd.
P.O. Box 2746
Texarkana, AR 75504-2746

Fayetteville Division 5: Benton, Madison and Washington

U.S. District Court Clerk's Office
523 Federal Building
35 East Mountain Street
P.O. Box 6420
Fayetteville, AR 72702-6420

Hot Springs Division 6: Clark, Garland, Hot Spring, Montgomery and Pike

U.S. District Court Clerk's Office
347 U.S. Post Office and Courthouse
Reserve and Broadway Streets
P.O. Drawer 1
Hot Springs, AR 72902-4143

CALIFORNIA (9th Circuit)
Northern District of California: Alameda, Contra Costa, Del Norte, Humbolt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma
There are actually three divisions in the Northern District of California, and there are courthouses in San Francisco, San Jose and Oakland, but all prisoners' civil rights cases should be filed in San Francisco:

U.S. District Courthouse
Clerk's Office
450 Golden Gate Ave., 16th floor
San Francisco, CA 94102

Eastern District of California – *has two divisions. Send you documents to the division where your case arose.*
Fresno Division: Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare and Tuolumne.

U.S. District Court
1130 O Street
Fresno, CA 93721

Sacramento Division**:** Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, and Yuba.

U.S. District Court
501 I Street, Suite. 4-401
Sacramento, CA 95814

Central District of California: Los Angeles, Orange County, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, Ventura

U.S. Courthouse
312 N. Spring Street
Los Angeles, CA 90012

Southern District of California: Imperial, San Diego

Office of the Clerk
U.S. District Court
Southern District of California

880 Front Street, Suite 4290
San Diego, CA 92101-8900

COLORADO (10th Circuit)
District of Colorado – *Send all documents to:*

Clerk's Office
Alfred A. Arraj United States Courthouse Room A-105
901 19th Street
Denver, Colorado 80294-3589

CONNECTICUT (2d Circuit)
District of Connecticut – *there are four different U.S. District Courthouses in the District of Connecticut. You can file your complaint in any of the following locations.*

U.S. Courthouse
141 Church Street
New Haven, CT 06510

U.S. Courthouse
450 Main Street
Hartford, CT 06103

U.S. Courthouse
915 Lafayette Boulevard
Bridgeport, CT 06604

U.S. Courthouse
14 Cottage Place
Waterbury, CT 06702

DELAWARE (3d Circuit)
District of Delaware

U.S. District Court
844 N. King Street
Lockbox 18
Wilmington, DE 19801

DISTRICT OF COLUMBIA (D.C. Circuit)
District for the District of Columbia

United States District Court
for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

FLORIDA
Northern District of Florida
There are four divisions in the Northern District of Florida, and you must file your complaint in the division in which your case arose:

Pensacola Division: Escambia, Santa Rosa, Okaloosa and Walton.

U.S. Federal Courthouse
1 North Palafox St.
Pensacola, FL 32502

Panama City Division: Jackson, Holmes, Washington, Bay, Calhoun, and Gulf.

U.S. Federal Courthouse
30 W. Government St.
Panama City, FL 32401

Tallahassee Division: Leon, Gadsden, Liberty, Franklin, Wakulla, Jefferson, Taylor and Madison.

U.S. Federal Courthouse
111 N. Adams Street
Tallahassee, FL 32301

Gainesville Division: Alachua, Lafayette, Dixie, Gilchrist, and Levy.

U.S. Federal Courthouse
401 S.E. First Ave. Rm. 243
Gainesville, FL 32601

Middle District of Florida - *There are five divisions in the Middle District of Florida, you should file your case in the division in which your case arose.*

Tampa Division**:** Hardee, Hemando, Hillsborough, Manatee, Pasco, Pinellas, Polk, Sarasota

Clerk's Office, United States District Court
Sam M. Gibbons US Courthouse
801 N. Florida Avenue, Rm. 218
Tampa, Florida 33602-3800

Ft. Myers Division**:** Charlotte, Collier, DeSoto, Glades, Hendry, Lee

Clerk's Office, United States District Court
US Courthouse & Federal Building
2110 First Street, Rm. 2-194
Fort Myers, FL 33901-3083

Orlando Division**:** Brevard, Orange, Osceola, Seminole, Volusia

Clerk's Office, United States District Court
George C. Young US Courthouse
80 N. Hughey Avenue, Rm. 300
Orlando, FL 32801-9975

Jacksonville Division: Baker, Bradford, Clay, Columbia, Duval, Flagler, Hamilton, Nassau, Putnam, St. Johns, Suwanne, Union

Clerk's Office, United States District Court
US Courthouse
Suite 9-150
Jacksonville, FL 32202-4271

Ocala Division: Citrus, Lake, Marion, Sumter
Clerk's Office

United States District Court
Golden-Collum Memorial Federal Building and US Courthouse
207 N.W. Second Street, Rm. 337
Ocala, FL 34475-6666

Southern District of Florida - *the Southern District of Florida covers the following counties*: Broward, Collier, Dade, Glades, Hendry, Highlands, Indian River, Martin, Monroe, Okeechobee, Palm Beach, St. Lucie. *There are five divisions in the Southern District of Florida. You can file your case in any one of them.*

United States District Court Clerks Office
299 East Broward Boulevard Room 108
Fort Lauderdale, FL 33301

United States District Court Clerks Office
300 South Sixth Street
Fort Pierce, FL 34950

United States District Court Clerks Office
301 Simonton Street
Key West, FL 33040

United States District Court Clerks Office
301 North Miami Avenue Room 150
Miami, FL 33128

United States District Court Clerks Office
701 Clematis Street Room 402
West Palm Beach, FL 33401

GEORGIA (11th Circuit)
Northern District of Georgia - *covers the following counties*: Banks, Barrow, Bartow, Carroll, Catoosa, Chattooga, Cherokee, Clayton, Cobb, Coweta, Dade, Dawson, DeKalb, Douglas, Fannin, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Heard, Henry, Jackson, Lumpkin, Meriwether, Murray, Newton, Paulding, Pickens, Pike, Polk, Rabun, Rockdale, Spalding, Stephens, Towns, Troup, Union, Walker, White, Whitfield

There are four different Divisions in the Northern District of Georgia, but all prisoners should file their 1983 cases at the following main location:

U.S. Federal Courthouse
111 N. Adams Street
Tallahassee, FL 32301

Middle District of Georgia - *The Middle District of Georgia is divided into six divisions. You can file your case in any division where you are, where the defendant is, or where the claim arose.*

Albany Division: Baker, Ben Hill, Calhoun, Crisp, Dougherty, Early, Lee, Miller, Mitchell, Schley, Sumter, Terrell, Turner, Worth, Webster

U.S. District Court
Clerk's Office
P.O. Box 1906
Albany, GA 31702

Athens Division**:** Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Oconee, Oglethorpe, Walton

U.S. District Court
Clerk's Office
P.O. Box 1106
Athens, GA 30603

Columbus Division**:** Chattahoochee, Clay, Harris, Marion, Muscogee, Quitman, Randolph, Stewart, Talbot, Taylor

U.S. District Court
Clerk's Office
P.O. Box 124
Columbus, GA 31902

Macon Division: Baldwin, Bibb, Bleckley, Butts, Crawford, Dooly, Hancock, Houston, Jasper, Jones, Lamar, Macon, Monroe, Peach, Putnam, Twiggs, Upson, Washington, Wilcox, Wilkinson

U.S. District Court
Clerk's Office
P.O. Box 128
Macon, GA 31202

Thomasville Division**:** Brooks, Colquitt, Decatur, Grady, Seminole, Thomas.
Thomasville is not staffed, so file all complaints for the Thomasville Division in the Valdosta Courthouse, address below.

Valdosta Division: Berrien, Clinch, Cook, Echols, Irwin, Lanier, Lowndes, Tift

U.S. District Court
Clerk's Office
P.O. Box 68
Valdosta, GA 31601

Southern District of Georgia - *The Southern District of Georgia consists of six divisions. You can bring your case in the division where the defendant lives or the actions occurred.*

Augusta Division: Burke, Columbia, Glascock, Jefferson, Lincoln, McDuffie, Richmond, Tauaferro, Warren, Wilkes
Dublin Division: Dodge, Johnson, Laurens, Montgomery, Telfair, Treutlen, Wheeler
All cases in the Augusta and Dublin divisions should be filed at:

Clerk's Office, U.S. Courthouse
500 East Ford Street
Augusta, GA 30901

Savannah Division: Bryan, Chatham, Effingham, Liberty
Waycross Division: Atkinson, Bacon, Brantley, Charlton, Coffee, Pierce, Ware

Statesboro Division: Bulloch, Candler, Emanuel, Evans, Jenkins, Screven, Toombs, Tatnall
All cases in Savannah, Waycross and Statesboro divisions should be filed in:

Clerk's Office, U.S. Courthouse
125 Bull Street, Room 304
Savannah, GA 31401

Brunswick Division: Appling, Glynn, Jeff Davis, Long, McIntosh, Wayne
All cases in the Brunswick Division should be filed in:

Clerk's Office, U.S. Courthouse
801 Gloucester Street, Suite 220
Brunswick, GA 31520

GUAM (9th Circuit)
District of Guam

U.S. Courthouse, 4th floor
520 West Soledad Avenue
Hagåtña, Guam 96910

HAWAII (9th Circuit)
District of Hawaii

U.S. Courthouse
300 Ala Moana Blvd., Room C338
Honolulu, HI 96813

IDAHO (9th Circuit)
District of Idaho - *There are four divisions in the District of Idaho, but you can file your case in any of the following divisions:*

Southern Division: Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington

James A McClure Federal Building and United States Courthouse
550 W. Fort St.
Boise, ID 83724

Northern Division: Benewah, Bonner, Boundary, Kootenai, Shoshone

U.S. Courthouse
205 N 4th St - Rm 202
Coeur d'Alene, ID 83814

Central Division: Clearwater, Idaho, Latah, Lewis, Nez Perce

U.S. Courthouse
220 E 5th St - Rm 304
Moscow, ID 83843

Eastern Division: Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas,Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding, Jefferson, Jerome, Lincoln, Lemhi, Madison, Minidoka, Oneida, Power, Teton, Twin Falls

U.S. Courthouse
801 E Sherman St.
Pocatello, ID 83201

ILLINOIS (7th Circuit)
Northern District of Illinois - *There are two divisions in the Northern District of Illinois. You can send your complaint to either division, but you should write on the complaint the name of the division in which your case arose.*

Western Division: Boone, Carroll, DeKalb, Jo Davies, Lee, McHenry, Ogle, Stephenson, Whiteside, Winnebago

United States Courthouse
211 South Court Street
Rockford, Illinois 61101

Eastern Division: Cook, Dupage, Grundy, Kane, Kendall, Lake, Lasalle, Will

Everett McKinley Dirksen Building
219 South Dearborn Street
Chicago, Illinois 60604

Central District of Illinois – *There are four divisions in the Central District of Illinois. You must file your case in the division in which the claim arose.*

Peoria Division: Bureau, Fulton, Hancock, Knox, Livingston, Marshall, McDonough, McLean, Pedria, Putnam, Stark, Tazewell, Woodford

309 U.S. Courthouse
100 N.E. Monroe Street
Peoria IL 61602

Rock Island Division: Henderson, Henry, Mercer, Rock Island, Warren

40 U.S. Courthouse
211 19th Street
Rock Island IL 61201

Springfield Division: Adams, Brown, Cass, Christian, DeWitt, Greene, Logan, Macoupin, Mason, Menard, Montgomery, Pike Calhoun, Sangamon, Schuyler, Scott, Shelby

151 U.S. Courthouse
600 E. Monroe Street
Springfield IL 62701

Urbana Division: Champaign, Coles, Douglas, Edgar, Ford, Iroquois, Kankakee, Macon, Moultrie, Piatt

218 U.S. Courthouse
201 S. Vine Street
Urbana IL 61802

Southern District of Illinois: Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Marshall, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, Williamson

There are two courthouse locations in the Southern District of Illinois, but prisoners can file cases in either one.

U.S. Courthouse
301 West Main Street
Benton, IL 62812

U.S. Courthouse
750 Missouri Avenue
East St. Louis, IL 62201

INDIANA (7th Circuit)
Northern District of Indiana – *There are four divisions in the Northern District of Indiana. You can file in the division where your claim arose.*

Fort Wayne Division**:** Adams, Allen, Blackford, DeKalb, Grant, Huntington, Jay, LaGrange, Noble, Steuben, Wells and Whitley counties.

U.S. Courthouse
1300 S. Harrison St.
Fort Wayne, IN 46802

Hammond Division**:** Lake and Porter counties

U.S. Courthouse
5400 Federal Plaza
Hammond, IN 46320

Lafayette Division**:** Benton, Carroll, Jasper, Newton, Tippecanoe, Warren and White counties

U.S. Courthouse
230 N. Fourth St.
Lafayette, IN 47901

South Bend Division: Cass, Elkhart, Fulton, Kosciusko, LaPorte, Marshall, Miami, Pulaski, St. Joseph, Starke and Wabash Counties

U.S. Courthouse
204 S Main St
South Bend, IN 46601

Southern District of Indiana – *There are four divisions in the Southern District of Indiana. File where your claim arose.*

Indianapolis Division: Bartholomew, Boone, Brown, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Howard, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Randolph, Rush, Shelby, Tipton, Union, Wayne

Birch Bay Federal Building and United States Courthouse
46 East Ohio Street, Room 105
Indianapolis, IN 46204

Terre Haute Division: Clay, Greene, Knox, Owen, Parke, Putnam, Sullivan, Vermillion, Vigo

207 Federal building
30 North Seventh Street
Terre Haute IN 47808

Evansville Division: Daviess, Dubois, Gibson, Martin, Perry, Pike, Posey, Spencer, Vanderburgh, Warrick

304 Federal Building
101 Northwest MLK Boulevard
Evansville, IN 47708

New Albany Division: Clark, Crawford, Dearborn, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland, Washington

210 Federal Building
121 West Spring Street
New Albany, IN 47150

IOWA (8th Circuit)
Northern District of Iowa – *There are four different divisions in the Northern District of Iowa, and two different locations to file papers.*

Cedar Rapids Division: Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linn, Tama,
Eastern Division: Allamakee, Blackhawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Floyd, Howard, Jackson, Mitchell, Winneshiek
Cases arising in either the Cedar Rapids or the Eastern Division should be filed with the clerk of the court at the Cedar Rapids location:

U.S. District Court for the Northern District of Iowa
PO Box 74710
Cedar Rapids, IA 52407-4710

Western Division: Buena Vista, Cherokee, Clay, Crawford, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux, Woodbury
Central Division: Butler, Calhoun, Carroll, Cerro Gordo, Emmet, Franklin, Hamilton, Hancock, Humboldt, Kossuth, Palo Alto, Pocahontas, Webster, Winnebago, Worth, Wright,
Cases arising in the Western or Central Division should be filed in Sioux City:

US District Court for the Northern District of Iowa
320 Sixth Street
Sioux City, IA 51101

Southern District of Iowa – *There are three different divisions in the Southern District of Iowa, and you should file your case at the division in which your claims arose.*

Central Division: Adaire, Adams, Appanoose, Boone, Clarke, Dallas, Davis, Decatur, Greene, Guthri, Jasper, Jefferson, Keokuk, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Polk, Poweshiek, Ringgold, Story, Taylor, Union, Wapello, Warren, Wayne

U.S. Courthouse
123 E. Walnut St., Room 300
P. O. Box 9344
Des Moines, IA 50306-9344

Western Division: Audubon, Cass, Freemont, Harrison, Mills, Montgomery, Page, Pottawattamie, Shelby

Clerk, U. S. District Court
6th & Broadway, Room 313
P. O. Box 307
Council Bluffs, IA 51502

Davenport Division: Clinton, Des Moines, Henry, Johnson, Lee, Louisa, Muscatine, Scott, Van Buren, Washington

Clerk, U. S. District Court
211 19th Street
Rock Island, IL 61201

KANSAS (10th Circuit)
District of Kansas – *You can file your case at any of the following courthouses.*

500 State Ave
259 U.S. Courthouse
Kansas City, Kansas 66101

444 S.E. Quincy
490 U.S. Courthouse
Topeka, Kansas 66683

401 N. Market
204 U.S. Courthouse
Wichita, Kansas 67202

KENTUCKY (6th Circuit)
Eastern District of Kentucky – *The Eastern District of Kentucky has several divisions, but you can file all pleadings in the main office. The District includes the following counties:* Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carroll, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Harlan, Harrison, Henry, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Trimble, Wayne, Whitley, Wolfe, Woodford.

Leslie G. Whitmer, Clerk
101 Barr St. Room 206
P.O. Drawer 3074
Lexington, KY 40588

Western District of Kentucky – *The Western District of Kentucky has several divisions, but you can file at any of the following locations.*

Bowling Green Division: Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, Metcalf, Monroe, Russell, Simpson, Taylor, Todd, Warren

Clerks Office
241 East Main Street, Suite 120
Bowling Green, KY 42101-2175

Louisville Division: Breckinridge, Bullitt, Hardin, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Spencer, Washington

Clerks Office
601 W. Broadway, Rm 106
Gene Snyder Courthouse
Louisville, KY 40202

Owensboro Division: Daviess, Grayson, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Union, Webster

Clerks Office
423 Frederica Street, Suite 126
Owensboro, KY 42301-3013

Paducah Division: Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, McCracken, Marshall, Trigg

Clerks Office
501 Broadway, Suite 127
Paducah, KY 42001-6801

LOUISIANA (5th Circuit)
Eastern District of Louisiana – *This district has several divisions, but all documents may be filed in New Orleans or Houma. The Eastern District of Louisiana includes the following counties:* Assumption, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Tammany, Tangipahoa, Terrebonne, Washington.

U.S. District Court
500 Camp Street, Room C-151
New Orleans, LA 70130

U.S. District Court
8046 Main St.
Houma, LA 70360

Middle District of Louisiana – *There is only one courthouse in the Middle District of Louisiana, and it*

covers the following counties: Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, West Feliciana.

U.S. District Court
777 Florida Street, Suite 139
Baton Rouge, LA 70801

Western District of Louisiana – *There are several divisions in the Western District, but all pleadings should be filed at the below address. The district includes the following counties*: Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, Winn.

Robert H. Shemwell, Clerk
300 Fannin St., Ste. 1167
Shreveport, LA 71101-3083

MAINE (1st Circuit)
District of Maine – *There are two divisions in Maine, you should file in the appropriate division, as explained below*.

Bangor Division: Arronstrook, Franklin, Hancock, Kennebec, Penobscot, Piscataquis, Somerset, Waldo, Washington. *Cases from one of these counties, file at:*

Clerk, U.S. District Court
202 Harlow Street, Room 357
P.O. Box 1007
Bangor, Maine 04330

Portland Division: Androscoggin, Cumberland, Knox, Lincoln, Oxford, Sagadahoc, York. *Cases that arise in these counties should be filed at the Portland Courthouse, except if you are in prison at Thomaston or Warren, in which case you should file at the above Bangor location,*

Clerk, U.S. District Court
156 Federal Street
Portland, Maine 04101

MARYLAND (4th Circuit)
District of Maryland – *There are two divisions in the District of Maryland, and you can file in either location*.

U.S. Courthouse
101 W. Lombard Street
Baltimore, MD 21201

U.S. Courthouse
6500 Cherrywood Lane
Greenbelt, MD 20770

MASSACHUSETTS (1st Circuit)
District of Massachusetts – *There are three divisions in the District of Massachusetts*.

Eastern Division: Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk

John Joseph Moakley
United States Courthouse
1 Courthouse Way – Suite 2300
Boston, MA 02210

Central Division: Worcester County

Harold D. Donohue Federal Building & Courthouse
595 Main Street – Rm 502
Worcester, MA 01608

Western Division: Berkshire, Franklin, Hampden, Hampshire

Federal Building & Courthouse
1550 Main Street
Springfield, MA 01103

MICHIGAN (6th Circuit)
Eastern District of Michigan – *There are several divisions in this district, but you can file in whichever courthouse you want. The Eastern District of Michigan includes the following counties:* Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Montmorency, Oakland, Ogemaw, Oscodo, Otsego, Presque Isle, Roscommon, Saginaw, Saint Clair, Sanilac, Shiawassee, Tuscola, Washtenaw, Wayne.

U.S. District Courthouse
200 E. Liberty Street
Ann Arbor, MI 48104

U.S. District Courthouse
1000 Washington Ave., R. 304
P.O. Box 913
Bay City, Michigan 48707

Theodore Levin
U.S. Courthouse
231 W. Lafayette Blvd.
Detroit, Michigan 48226

U.S. District Courthouse
600 Church Street
Flint, Michigan 48502

United States District Courthouse
526 Water Street
Port Huron, Michigan 48060

Western District of Michigan – *there is a Northern and a Southern Division in the Western District of Michigan, but you can file your complaint at the headquarters in Grand Rapids. The Western District includes the following counties*: Alger, Allegan, Antrim, Baraga, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Charlevioux, Chippewa, Clinton, Delta, Dickinson, Eaton, Emmet, Gogebic, Grand Traverse, Hillsdale, Houghton, Ingham, Ionia, Iron, Kalamazoo, Kalkaska, Kent, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Ontonagon, Osceola, Ottawa, Saint Joseph, Schoolcraft, Van Buren, Wexford.

United States District Court
Western District of Michigan

399 Federal Building
110 Michigan St NW
Grand Rapids, MI 49503

MINNESOTA (8th Circuit)
District of Minnesota – *There are several different courthouses in the District of Minnesota, and you can file in whichever one you want.*

202 U.S. Courthouse
300 S. 4th Street
Minneapolis, MN 55415

700 Federal Building
316 North Robert St.
St. Paul, MN 55101

417 Federal Building
515 W. 1st Street
Duluth, MN 55802-1397

205 USPO Building
118 S. Mill Street
Fergus Falls, MN 56537

MISSISSIPPI (5th Circuit)
Northern District of Mississippi – *There are four divisions in the Northern District of Mississippi, and three courthouses where you can file papers.*

Aberdeen Division: Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Prentiss, Tismomingo, Winston. *In these counties, file at:*

Room 310 Federal Building
301 West Commerce Street
P.O. Box 704
Aberdeen, Mississippi 39730

Greenville Division: Carroll, Humphreys, Leflore, Sunflower, Washington. *In these counties, file at:*

U.S. District Court
305 Main Street, Room 329
Greenville, Mississippi 38701-4006

Delta Division: Bolivar, Coahoma, DeSoto, Panola, Quitman, Tallahatchie, Tate, Tunica
Western Division: Benton, Calhoun, Grenada, Lafayette, Marshall, Montgomery, Pontotoc, Tippah, Union, Webster, Yalobusha. *Prisoners in the Delta OR Western Division, file at:*

Room 369 Federal Building
911 Jackson Avenue
Oxford, MS 38655

Southern District of Mississippi – *There are three court locations in the Southern District of Mississippi, but you can file your case in the Jackson Courthouse. The District covers the following counties:* Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Nashoba, Newton, Noxubee, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Yazoo.

U. S. District Court
245 East Capitol Street
Suite 316
Jackson, MS 39201

MISSOURI (8th Circuit)
Eastern District of Missouri – *There are three divisions in the Eastern District of Missouri, and you should file based on what county your prison is in.*
Eastern Division: Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Phelps, Saint Charles, Saint Francois, Sanit Genevieve, Saint Louis, Warren, Washington, City of St. Louis
Northern Division: Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland, Shelby
Eastern or Northern Division, file at:

Thomas F. Eagleton Courthouse
111 South 10th Street, Suite 3.300
St. Louis, MO 63102

Southeastern Division: Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, Wayne

U.S. Courthouse
339 Broadway
Cape Girardeau, MO 63701

Western District of Missouri – *There are several division in the Western District of Missouri, but prisoners from all counties in the district can file their complaint in Kansas City. The District covers the following counties:* Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Livingston, McDonald, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Oregon, Osage, Ozark, Pettis, Platte, Polk, Pulaski, Putnam, Ray, Saint Clair, Saline, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, Wright.

Charles Evans Whittaker Courthouse
400 E. 9th Street
Kansas City, Missouri 64106

MONTANA (9th Circuit)
District of Montana – *There are several divisions in the District of Montana, but all prisoners can send their complaint to the Billings Courthouse.*

Federal Building, Room 5405
316 North 26th Street

Billings, MT 59101

NEBRASKA (8th Circuit)
District of Nebraska

Persons in Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo Burt, Butler, Cass, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dakota, Dawes, Dawson, Deuel, Dixon, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lancaster, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York *counties should file at the following address:*

Clerk of the Court
U.S. District Court – Nebraska
PO Box 83468
Lincoln, NE 68501-3468

Persons in Dodge, Douglas, Sarpy, and Washington *counties should file at the following address:*

Clerk of the Court
U.S. District Court – Nebraska
111 South 18th Plaza
Suite 1152
Omaha, NE 68102

NEVADA (9th Circuit)
District of Nevada

Persons in Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, Washoe and White Pine *Counties should file at the following address:*

Clerk of the Court
U.S. District Court of Nevada,
Northern Division
400 S. Virginia St.
Reno, NV 89501

Persons in Clark, Esmeralda, Lincoln and Nye Counties *should file at the following address:*

Clerk of the Court
U.S. District Court of Nevada,
Southern Division
333 S. Las Vegas Blvd.
Las Vegas, NV 89101

NEW HAMPSHIRE (1st Circuit)
District of New Hampshire

Clerk of the Court
U.S. District Court – New Hampshire
Warren B. Rudman U.S. Courthouse
55 Pleasant Street, Room 110
Concord, NH 03301-3941

NEW JERSEY (3d Circuit)
District of New Jersey

Martin Luther King U.S. Courthouse
50 Walnut Street, Rm. 4015
Newark, NJ 07101

NEW MEXICO (10th Circuit)
District of New Mexico

U.S. District Courthouse
33 Lomas N.W.
Albuquerque, NM 87102

NEW YORK (2d Circuit)
Northern District of New York: Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otesgo, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Tioga, Tompkins, Ulster, Warren, and Washington counties *should file at the following address:*

United States District Court for the
Northern District of New York
U.S. Courthouse & Federal Bldg.
P.O. Box 7367
100 South Clinton Street
Syracuse, NY 13261-7367

Southern District of New York: Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester counties *should file at the following address*:

United States District Court for the
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Eastern District of New York: Kings, Nassau, Queens, Richmond, and Suffolk *counties should file at the following address:*

U. S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Western District of New York:

Buffalo Division: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming counties *should file at the following address:*

United States District Court for the
Western Division of New York
Office of the Clerk
304 United States Courthouse
68 Court Street
Buffalo, New York 14202

Rochester Division: *Persons in* Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates counties *should file at the following address*:

United States District Court for the
Western Division of New York
Office of the Clerk
2120 United States Courthouse
100 State Street
Rochester, New York 14614-1387

NORTH CAROLINA (4th Circuit)
Eastern District of North Carolina: Beaufort, Betrie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties *in North Carolina should file at the following address:*

Clerk of the Court
United States District Court for the
Eastern District of North Carolina
Terry Sanford Federal Building and Courthouse
310 New Bern Avenue
Raleigh, North Carolina 27601

Middle District of North Carolina: Alamance, Alleghany, Ashe, Cabarrus, Caswell, Chatham, Davidson, Davie, Durham, Forsyth, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Surry, Watauga, and Yadkin counties *should file at the following address*:

Office of the Clerk,
U.S. District Court,
Middle District of North Carolina,
P.O. Box 2708,
Greensboro, NC 27402-2708

Western District of North Carolina

Asheville Division: *Persons in* Haywood Madison, Yancey, Watuaga, Avery, Buncombe, McDowell, Burke, Transylvania, Henderson, Polk, Rutherford, Cleveland, Cherokee, Clay, Graham, Jackson, Macon and Swain counties in the Western District of North Carolina *should file at the following address:*

U.S. District Court
100 Otis St.
Asheville, NC 28801

Charlotte Division *Persons in* Gaston, Mecklenburg, Union, and Anson *should file their cases at the following address:*

U.S. District Court
Room 212
401 W. Trade St.
Charlotte, NC 28202

Statesville Division: *Persons in* Watauga, Ashe, Alleghany, Caldwell, Wilkes, Alexander, Iredell, Catawba, and Lincoln counties *should file at the following address:*

U.S. District Court
200 W. Broad St.
Statesville, NC 28677

NORTH DAKOTA (8th Circuit)
District of North Dakota

U.S. District Court
220 East Rosse Avenue
PO Box 1193
Bismarck, ND 58502

NORTHERN MARIANA ISLANDS (9th Circuit)
District for the Northern Marina Islands

U.S. District Court for the Northern Mariana Islands
2nd Floor, Horiguchi Building, Garapan
P.O. Box 500687
Saipan, MP 96950 USA

OHIO (6th Circuit)
Northern District of Ohio

Eastern Division: Ashland, Ashtabula, Carroll, Clumbiana, Crawford, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne counties
File in one of the following three locations:

U.S. District Court for the
Northern District of Ohio
2 South Main Street
Akron, OH 44308

U.S. District Court for the
Northern District of Ohio
801 West Superior Avenue
Cleveland, OH 44113

United States District Court for the
Northern District of Ohio
125 Market Street
Youngstown, OH 44503

Western Division: For persons in Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood, and Wyandot:

United States District Court for the
Northern District of Ohio
1716 Spielbusch Avenue
Toledo, OH 43624

Southern District of Ohio

Persons in Athens, Belmont, Coschocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington counties *file in*:

United Stated District Court for the
Southern District of Ohio
Joseph P. Kinneary U.S. Courthouse, Room 260
85 Marconi Boulevard
Columbus, OH 43215

Persons in Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Lawrence, Scioto, and Warren counties, *file in:*

United Stated District Court for the
Southern District of Ohio
Potter Stewart U.S. Courthouse, Room 324
100 East Fifth Street
Cincinnati, OH 45202

Persons in Champaign, Clark, Darke, Greene, Miami, Montgomery, Preble, and Shelby counties, *file in:*

United Stated District Court for the
Southern District of Ohio
Federal Building, Room 712
200 West Second Street
Dayton, OH 45402

OKLAHOMA (10th Circuit)
Northern District of Oklahoma: Craig, Creek, Delaware, Mayes, Nowata, Osage, Ottawa, Pawnee, Rogers, Tulsa and Washington counties:

United States District Court for the
Northern District of Oklahoma
333 W. 4th St.
Room 411
Tulsa, OK 74103

Eastern District of Oklahoma: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Haskell, Hughes, Johnston, Latimer, Le Flore, Love, Marshall, McCurtain, McIntosh, Murray, Muskogee, Okfuskee, Okmulgee, Pittsburg, Ponotoc, Pushmataha, Seminole, Sequoyah, Wagoner counties:

United States District Court for the
Eastern District of Ohio
101 N. 5th Street
P.O. Box 607
Muskogee, OK 74402-0607

Western District of Oklahoma: Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, McClain, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Stephens, Texas, Tillman, Washita, Woods, Woodward counties:

United States District Court for the
Western District of Oklahoma
200 NW 4th Street, Room 1210
Oklahoma City, OK 73102

OREGON (9th Circuit)
District of Oregon

Portland Division: Persons in Baker, Clackamas, Clatsop, Columbia, Crook, Gilliam, Grant, Harney, Hood River, Jefferson, Malheur, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Washington, Wheeler, and Yamhill counties:

United States District Court for the District of Oregon
Mark O. Hatfield U.S. Courthouse, Room 740
1000 S.W. Third Avenue
Portland, OR 97204

Eugene Division: Persons in Benton, Coos, Deschutes, Douglas, Lane, Lincoln, Linn, and Marion counties:

United States District Court for the District of Oregon,
United States Courthouse, Room 100
211 E. Seventh Avenue
Eugene, OR 97401

Medford Division: Persons in Curry, Jackson, Josephine, Klamath, Lake counties:

United States District Court for the District of Oregon,
James A. Redden U.S. Courthouse, Room 213
310 W. Sixth Avenue
Medford, OR 97501

PENNSYLVANIA (3d Circuit)
Eastern District of Pennsylvania: Persons in Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, and Philadelphia counties:

United States District Court for the
Eastern District of Pennsylvania

U.S. Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797

Middle District of Pennsylvania: Persons in Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, York counties:

United States District Court for the
Middle District of Pennsylvania
William J. Nealon Federal Building & U.S. Courthouse
235 N. Washington Ave.
P.O. Box 1148
Scranton, PA 18501

Western District of Pennsylvania

Persons in Allegheny, Armstrong, Beaver, Butler, Clarion, Fayette, Greene, Indiana, Jefferson Lawrence, Mercer, Washington, and Westmoreland counties:

United States District Court for the
Western District of Pennsylvania
P. O. Box 1805
Pittsburgh, PA 15230

Persons in Crawford, Elk, Erie, Forest, McKean, Venango, and Warren counties:

United States District Court for the
Western District of Pennsylvania
P.O. Box 1820
Erie, PA 16507

Persons in Bedford, Blair, Cambria, Clearfield, and Somerset counties:

United States District Court for the
Western District of Pennsylvania
Penn Traffic Building
3l9 Washington Street
Johnstown, PA l590l

PUERTO RICO (1st Circuit)
District of Puerto Rico

Clemente Ruiz-Nazario U.S. Courthouse
& Federico Degetau Federal Building
150 Carlos Chardon Street
Hato Rey, PR 00918

RHODE ISLAND (1st Circuit)
District of Rhode Island

United States District Court for the
District of Rhode Island
One Exchange Terrace
Federal Building and Courthouse
Providence, RI 02903

SOUTH CAROLINA (4th Circuit)
District of South Carolina

Persons in Aiken, Barnwell, Allendale, Kershaw, Lee, Sumter, Richland, Lexington, Aiken, Barnwell, Allendale, York, Chester, Lancaster, and Fairfield counties

United States District Court for the
District of South Carolina
Matthew J. Perry, Jr. Courthouse
901 Richland Street
Columbia, South Carolina 29201

Persons in Oconee, Pickens, Anderson, Greenville, Laurens, Abbeville, Greenwood, Newberry, McCormick, Edgefield, Saluda, Spartanburg, Union, and Cherokee counties

United States District Court for the
District of South Carolina
Clement F. Haynsworth Federal Building
300 East Washington Street
Greenville, South Carolina 29601

Persons in Chesterfield, Marlboro, Darlington, Dillon, Florence, Marion, Horry, and Williamsburg counties

United States District Court for the
District of South Carolina
McMillan Federal Building
401 West Evans Street
Florence, South Carolina 29501

Persons in Jasper, Hampton, Beaufort Clarendon, Georgetown, Charleston, Berkeley, Dorchester, and Colleton counties

United States District Court for the
District of South Carolina
Hollings Judicial Center
Meeting Street at Broad
Charleston, South Carolina 29401

SOUTH DAKOTA (8th Circuit)
District of South Dakota

United States District Court for the
District of South Dakota
Rm 128 United States Courthouse
400 So. Phillips Avenue
Sioux Falls, SD 57104

TENNESSEE (6th Circuit)
Eastern District of Tennessee

Greeneville Division: Persons in Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi and Washington counties:

United States District Court for the
Eastern District of Tennessee
220 West Depot Street, Suite 200
Greeneville, TN 37743

Knoxville Division: Persons in Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier and Union counties:

United States District Court for the
Eastern District of Tennessee
800 Market Street, Suite 130
Knoxville, TN 37902

Chattanooga Division: Persons in Bledsoe, Bradley, Hamilton, McMinn, Marion, Meigs, Polk, Rhea and Sequatchie counties:

United States District Court for the
Eastern District of Tennessee
900 Georgia Avenue
Chattanooga, TN 37402

Winchester Division: Persons in Bedford, Coffee, Franklin, Grundy, Lincoln, Moore, Warren and Van Buren counties:

United States District Court for the
Eastern District of Tennessee
200 South Jefferson Street
Winchester, TN 37398

Middle District of Tennessee: Persons in Cannon, Cheatham, Clay, Cumberland, Davidson, De Kalb, Dickson, Fentress, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Montgomery, Overton, Pickett, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Wayne, White, Williamson, Wilson counties:

United States District Court for the
Middle District of Tennessee
Nashville Clerk's Office
801 Broadway, Room 800
Nashville, TN 37203

Western District of Tennessee

Persons in Dyer, Fayette, Lauderdale, Shelby, and Tipton counties:

United States District Court for the
Western District of Tennessee
Room 242, Federal Building
167 North Main Street
Memphis, TN 38103

Persons in Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley.

United States District Court for the
Western District of Tennessee
Room 262, U. S. Courthouse
111 South Highland Avenue
Jackson, TN 38301

TEXAS (5th Circuit)
Northern District of Texas

Abilene Division: Persons in Jones, Nolan, Stephens, Throckmorton, Fisher, Haskell, Howard, Shackelford, Stonewall, Taylor, Callahan, Eastland, and Mitchell counties

United States District Court for the
Northern District of Texas
341 Pine Street, 2008
Abilene, TX 79601

Amarillo Division: Persons in Carson, Deaf Smith, Gray, Hutchinson, Swisher, Armstrong, Brisco, Castro, Dallam, Hartley, Moore, Ochiltree, Parmer, Roberts, Childress, Donley, Hall, Lipscomb, Oldham, Potter, Wheeler, Collingsworth, Hansford, Hemphill, Randall, and Sherman counties:

United States District Court for the
Northern District of Texas
205 E. Fifth Street, 133
Amarillo, TX 79101-1559

Dallas Division: Persons in Ellis, Kaufman, Dallas, Rockwall, Hunt, Johnson, and Navarro counties:

United States District Court for the
Northern District of Texas
1100 Commerce St., 1452
Dallas, TX 75242

Fort Worth Division: Persons in Commanche, Perker, Erath, Hood, Tarrant, Wise, Jack, and Palo Pinto counties:

United States District Court for the
Northern District of Texas
501 West 10th Street, 310
Fort Worth, TX 76102-3673

Lubbock Division: Persons in Borden, Cochran, Crosby, Hockley, Lynn, Dickens, Gaines, Hale, Lamb, Scurry, Bailey, Garza, Kent, Motley, Yoakum, Dawson, Floyd, Lubbock, and Terry counties:

United States District Court for the
Northern District of Texas
1205 Texas Avenue, C-221
Lubbock, TX 79401-4091

San Angelo Division: Persons in Reagan, Schleicher, Coke, Concho, Irion, Menard, Sterling, Tom Green, Brown, Coleman, Mills, Crockett, Glasscock, Runnels, and Sutton counties:

United States District Court for the
Northern District of Texas
33 E. Twohig Street, 202
San Angelo, TX 76903-6451

Wichita Falls Division: Persons in Archer, Hardeman, Knox, Montague, Wilbarger, Cottle, Baylor, Clay, King, Wichita, and Young counties:

United States District Court for the
Northern District of Texas
1000 Lamar Street, 203
Wichita Falls, TX 76301

Eastern District of Texas

Beaumont Division: Persons in Hardin, Jasper, Jefferson, Liberty, Newton and Orange counties:

United States District Court for the
Eastern District of Texas
300 Willow Street
Beaumont, TX 77701

Marshall Division: Persons in Camp, Cass, Harrison, Marion, Morris and Upshur counties:

United States District Court for the
Eastern District of Texas
U.S. District Clerk
100 E. Houston, Room 125
Marshall, TX 75670

Sherman Division: Persons in Collin, Cooke, Denton, Grayson, Delta, Fannin, Hopkins and Lamar counties:

United States District Court for the
Eastern District of Texas
U.S. District Clerk
101 E. Pecan St. Room 112
Sherman, TX 75090

Texarkana Division: Persons in Bowie, Franklin, Titus and Red River counties:

United States District Court for the
Eastern District of Texas
U.S. District Clerk
301 U.S. Courthouse
500 Stateline Avenue
Texarkana, TX 75501

Tyler Division: Persons in Anderson, Cherokee, Gregg, Henderson, Panola, Rains, Rusk, Smith, Van Zandt and Wood counties:

United States District Court for the
Eastern District of Texas
211 W. Ferguson Room 106
Tyler, TX 75702

Lufkin Division: Persons in Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, Shelby, Trinity and Tyler counties:

United States District Court for the
Eastern District of Texas
104 N. Third Street
Lufkin, TX 75901

Southern District of Texas

Brownsville Division: Persons in Cameron and Willacy counties:

United States District Court for the
Southern District of Texas
600 East Harrison Street, Room 101
Brownsville, TX 78520

Corpus Christi Division: Persons in Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, and San Patricio counties:

United States District Court for the
Southern District of Texas
1133 North Shoreline Blvd.
Corpus Christi, TX 78401

Galveston Division: Persons in Brazoria, Chambers, Galveston, and Matagorda counties:

United States District Court for the
Southern District of Texas
P.O. Box 2300
Galveston, TX 77550

Houston Division: Persons in Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton counties:

United States District Court for the
Southern District of Texas
P.O. Box 61010
Houston, TX 77002

Laredo Division: Persons in Jim Hogg, LaSalle, McMullen, Webb, and Zapata counties:

United States District Court for the

Southern District of Texas
P.O. Box 597
Laredo, TX 78042

McAllen Division: Persons in Hidalgo and Starr counties:

United States District Court for the
Southern District of Texas
1701 West Business Highway 83
Suite 1011
McAllen, TX 78501

Victoria Division: Persons in Calhoun, De Witt, Goliad, Jackson, Lavaca, Refugio, and Victoria counties

United States District Court for the
Southern District of Texas
P.O. Pox 1638
Victoria, TX 77902

Western District of Texas

Persons in Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington and Williamson counties:

United States District Court for the
Western District of Texas
U.S. District Clerk's Office
200 West 8th St., Room 130
Austin, Texas 78701

Persons in Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde and Zavala counties:

United States District Court for the
Western District of Texas
U.S. District Clerk's Office
111 East Broadway, Room L100
Del Rio, Texas 78840

Persons in El Paso County:

United States District Court for the
Western District of Texas
U.S. District Clerk's Office
511 East San Antonio Ave., Room 350
El Paso, Texas 79901

Persons in Andrews, Crane, Ector, Martin, Midland and Upton counties

United States District Court for the
Western District of Texas
U.S. District Clerk's Office
200 East Wall, Room 107
Midland, Texas 79701

Persons in Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward and Winkler counties:

United States District Court for the
Western District of Texas
U.S. District Clerk's Office
410 South Cedar
Pecos, Texas 79772

Persons in Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real and Wilson counties:

United States District Court for the
Western District of Texas
U.S. District Clerk's Office
655 East Durango Blvd., Room G65
San Antonio, Texas 78206

Persons in Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson and Somervell counties:

United States District Court for the
Western District of Texas
U.S. District Clerk's Office
800 Franklin Ave.
Waco, Texas 76701

UTAH (10th Circuit)
District of Utah

United States District Court for the
District of Utah
350 South Main Street
Salt Lake City, UT 84101

VERMONT (2d Circuit)
District of Vermont

United States District Court for the
District of Vermont
P.O. Box 945
Burlington, VT 05402-0945

VIRGIN ISLANDS (3d Circuit)
District of the Virgin Islands

United States District Court for the
District of the Virgin Islands
5500 Veterans Drive, Rm 310
St. Thomas, VI 00802

VIRGINIA (4th Circuit)
Eastern District of Virginia

Persons in the city of Alexandria and the counties of Loudoun, Fairfax, Fauquier, Arlington, Prince William, and Stafford:

United States District Court for the
Eastern District of Virginia
Albert V. Bryan U.S. Courthouse
401 Courthouse Square
Alexandria, VA 22314

Persons in the Cities of Newport News, Hampton and Williamsburg, and the Counties of York, James City, Gloucester, Mathews:

United States District Court for the
Eastern District of Virginia
U.S. Postal Office & Courthouse Building
101 25th Street
P.O. Box 494
Newport News, VA 23607

Persons in the Cities of Norfolk, Portsmouth, Suffolk, Franklin, Virginia Beach, Chesapeake, and Cape Charles, and the counties of Accomack, Northampton, Isle of Wight, and Southampton:

United States District Court for the
Eastern District of Virginia
Walter E. Hoffman, U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Persons in the Cities of Richmond, Petersburg, Hopewell, Colonial Heights and Fredericksburg, and the Counties of Amelia, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Essex, Goochland, Greensville, Hanover, Henrico, King and Queen, King George, King William, Lancaster, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Spotsylvania, Surry, Sussex, Westmoreland:

United States District Court for the
Eastern District of Virginia
Lewis F. Powell Jr., U.S. Courthouse
1000 E. Main Street
Richmond, VA 23219

Western District of Virginia

Persons in the city of Bristol or the counties of Buchanan, Russel, Smyth, Tazewell, and Washington:

United States District Court for the
Western District of Virginia
P.O. Box 398
Abingdon, VA 24212

Persons in the city of Norton or the counties of Dickenson, Lee, Scott, and Wise:

United States District Court for the
Western District of Virginia
P.O. Box 490
Big Stone Gap, VA 24219

Persons in the city of Charlottesville or the counties or Albemarle, Culpeper, Fluvanna, Greene, Louisa, Madison, Nelson, Orange, Rappahonnock:

United States District Court for the
Western District of Virginia
255 W. Main Street, Room 304
Charlottesville, VA 22902

Persons in the cities of Danville, Martinsville, South Boston or the counties of Charlotte, Halifax, Henry, Patrick, and Pittsylvania:

United States District Court for the
Western District of Virginia
P.O. Box 1400
Danville, VA 24543

Persons in the cities of Harrisonburg, Staunton, Waynesboro, and Winchester or the counties of Augusta, Bath, Clarke, Frederick, Highland, Page, Rockingham, Shenandoah, and Warren:

United States District Court for the
Western District of Virginia
116 N. Main Street, Room 314
Harrisonburg, VA 22802

Persons in the cities of Bedford, Buena Vista, Lexington, and Lynchburg or the counties of Amherst, Appomattox, Bedford, Buckingham, Campbell, Cumberland and Rockbridge:

United States District Court for the
Western District of Virginia
P.O. Box 744
Lynchburg, VA 24505

Persons in the cities of Clifton Forge, Covington, Galax, Radford, Roanoke, and Salem or the counties of Alleghany, Bland, Botetourt, Carroll, Craig, Floyd, Franklin, Giles, Grayson, Montgomery, Pulaski, Roanoke, and Wythe:

United States District Court for the
Western District of Virginia
P.O. Box 1234
Roanoke, VA 24006

WASHINGTON (9th Circuit)
Eastern District of Washington: Persons in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties:

United States District Court for the

Eastern District of Washington
Clerk of the Court
P.O. Box 1493
Spokane, WA 99210

Western District of Washington

Persons in Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston and Wahkiakum counties:

United States District Court for the
Western District of Washington
1717 Pacific Avenue
Tacoma, WA 98402

Persons in Island, King, San Juan, Skagit, Snohomish, and Whatcom counties:

United States District Court for the
Western District of Washington
William Kenzo Nakamura
US Courthouse
1010 Fifth Avenue
Seattle, WA 98104

WEST VIRGINIA (4th Circuit)
Northern District of West Virginia

Persons in Brooke, Hancock, Marshall, Ohio, and Wetzel counties:

United States District Court for the
Northern District of West Virginia
12th & Chapline Streets
P.O. Box 471
Wheeling, WV 26003

Persons in Braxton, Calhoun, Doddridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Pleasants, Ritchie, Taylor, Tyler counties:

United States District Court for the
Northern District of West Virginia
500 West Pike Street, Room 301
P.O. Box 2857
Clarksburg, WV 26302

Persons in Barbour, Grant, Hardy, Mineral, Pendleton, Pocahontas, Preston, Randolph, Tucker, Webster counties:

United States District Court for the
Northern District of West Virginia
P.O. Box 1518
300 Third Street
Elkins, WV 26241

Persons in Berkeley, Hampshire, Jefferson, and Morgan counties:

United States District Court for the
Northern District of West Virginia
217 W. King Street, Room 207
Martinsburg, WV 25401

Southern District of West Virginia

Beckley Division: Persons in Fayette, Greenbrier, Summers, Raleigh, and Wyoming counties:

United States District Court for the
Southern District of West Virginia
Federal Building and Courthouse
P. O. Drawer 5009
Beckley, WV 25801

Bluefield Division: Persons in Mercer, Monroe, McDowell counties:

United States District Court for the
Southern District of West Virginia
Federal Station, P.O. Box 4128
Bluefield, WV 24702

Charleston Division: Persons in Boone, Clay, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas, Putnam and Roane counties:

United States District Court for the
Southern District of West Virginia
United States Courthouse
P. O. Box 2546
Charleston, WV 25329

Huntington Division: Persons in Cabell, Mason and Wayne counties:

United States District Court for the
Southern District of West Virginia
Sidney L. Christie Federal Building
P. O. Box 1570
Huntington, WV 25716

Parkersburg Division: Persons in Wirt and Wood counties:

United States District Court for the
Southern District of West Virginia
Federal Building and Courthouse
P.O. Box 1526
Parkersburg, WV 26102

WISCONSIN (7th Circuit)
Eastern District of Wisconsin: Persons in Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties:

United States District Court for the
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362 United States Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202

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U.S. District Court for the
Western District of Wisconsin
120 North Henry Street, Room 320
P. O. Box 432
Madison, WI 53701-0432

WYOMING (10th Circuit)
District of Wyoming

United States District Court for the
District of Wyoming
2120 Capitol Avenue, 2nd Floor
Cheyenne, WY 82001-3658

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A JAILHOUSE LAWYER'S MANUAL FIFTH EDITION
& 2002 Supplement to the Fifth Edition

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