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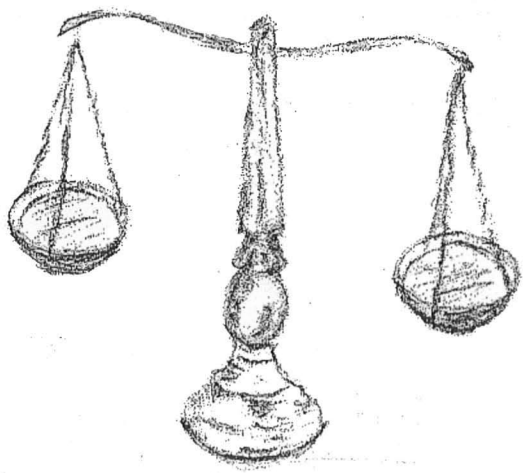

How to use the LAW LIBRARY

and

Write your own LAW WORK

D. Michael Salerno

This booklet is meant to be an educational, instructional work . It contains information about legal research, the court system, information about remedies outside the domestic judicial realm and lists a few helpful addresses

Written and Illustrated by:
D. Michael Salerno
Toledo Ohio, October 2008

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'If you don't enrich the soil in hell it will produce nothing but the devil.'

D.M. Salerno, Feb. 2007

Capital juries and legal-speak

energy verbal

By Ruth Walker

One of the premises of this column is that language is a source of delight, but a serious business, too.

There are, after all, places where language is a matter of life and death. The deliberation room where a jury considers sentencing options in a capital case is one of them.

I was reminded of this a few weeks ago while reporting on a national conference on the death penalty. One of the presenters remarked *en passant* that jurors passing sentence on a defendant found guilty of a capital crime are instructed to consider "mitigating" or "aggravating" factors.

Quite often, he said, jurors don't really know what either of those words means.

Hmm, I thought. I feel some research coming on.

In 1972, the Supreme Court of the United States ruled that the death penalty, as then administered, was imposed so arbitrarily as to constitute "cruel and unusual punishment." As jurisprudence has evolved since, it's become clear that for a state to be "successful," if that's the word, in administering capital punishment, it must follow a very narrow path between arbitrariness on one side and inflexibility on the other hand.

And jury instructions – which tell the citizens in the deliberation room how to consider "mitigating" and "aggravating" factors – have emerged as critically important.

But they can be utterly baffling to jurors, researchers have found.

This, for instance, is from a court in Illinois: "If you do not unanimously find from your consideration of all the evidence there are no mitigating factors sufficient to preclude imposition of a death sentence, then you should sign the verdict requiring the court to impose a sentence other than death."

In lay terms: "To impose the death penalty, all jurors must agree that the defendant did something much worse than just plain murder."

Actually, nationally known jury expert William Bowers told me the other day, jury instructions *are* written in language that is meant to be accessible – to other lawyers, that is. Judges are trying to "insulate themselves against legal challenges," as he put it – to avoid having verdicts overturne in higher courts. Thus they rely on instructions that follow closely the language of statutes themselves and the case law that grows out of them.

But jurors don't know legal-speak, says Richard Wiener, a professor at the University of Nebraska who has studied juries. Perhaps worse, juries may think they know what given words mean when they don't.

"Aggravation," for instance, is widely used to mean "irritation" or "annoyance." My dictionary tags this usage as "informal," though, and in the courtroom, "aggravate" is used in the stricter sense, "to make more serious."

But jurors, considering "aggravating factors" in a capital case, are likely to think they're being asked whether they feel the victim did anything to annoy or provoke the defendant, Mr. Wiener reports.

Similarly, legal experts say "mitigating" (lessening the gravity or culpability, or guilt, of an action) is often misinterpreted as referring to a factor that makes a crime *worse*. Here's how one of Wiener's research subjects defined "mitigating": "Psychologically thought through, like premeditated. Where you think about it beforehand and have it planned out – it's conceived."

Wiener's recommendation: Lose the multiple negatives, cut the extra adjectives, and use flowcharts to show jurors where the case is in the legal process, and what options are available at each step.

The actual language of a set of instructions can go back 50 or 100 years, Wiener notes, and customary usage changes over time. " 'Wantonly vile crime' – who talks like that?" Wiener asks rhetorically. "Maybe a hundred years ago people did, but no one does now."

6-23-06 Christian Science monitor

■ *This weekly column appears with links at* **http://weblogs.csmonitor.com/verbal_energy.**

During a sentencing hearing, a Defendant is asked if he wishes to make a statement. The following is an excerpt of the Author's statement:

'Your Honor, each day that I've walked into this courtroom I've envisioned Lady Justice standing over you in her traditional dress with blindfold and holding her scales slightly tipped.

What happened was certainly a tragedy. Unfortunately, this trial was only superficially about that tragedy, and it was never about closure.

What this trial was about, was the People's representative, Sam Smith, being pressured into a vindictive, selective and malicious prosecution with Your Honor similarly situated to deliver the Coups De Grace of the ultimate hate crime.

....

I hold great contempt fro this court in finding guilt. Perhaps if Your Honor was not too busy E-mailing and instant messaging during trial testimony, the verdict would have been different.

I don't know by what fraternal, backroom, secret handshake agreement was used to convict me, but you have erred, Your Honor, grievously. I have been wrongfully convicted.

The alchemical processes you used to find guilt has produced fools gold, and when put to the tooth test, Your Honor, it will be seen for and smell like the crap that it is.

Oh look, there is Lady Justice next to you. I've often wondered why she's blindfolded and her scales are slightly askew. Now I understand that because you helped me figure that out, Your Honor. The reason is Orwellian Sophistry is alive and well within the bowels of the Ingham County courthouse.

As for everyone who was part of and considered themselves proud to be furthering this prosecution, I have to say... I hope your gods have mercy on your souls

Now, Your Honor, out of protest for being wrongly convicted and against the conspiracy tainting this court, I am going to take a seat at the Defense table because I WILL NOT STAND while this court delivers this sentence.'

CONTENTS

-- Disclaimer --

Nothing in this booklet is intended as legal advice. This booklet is intended for educational purposes only. The Author assumes no liability for actions taken by anyone who may have read this booklet.

PREFACE

I hope this information is enough for anyone to learn not only how to use the law library and prepare a basic legal document, but also to understand a normal path through the courts - from trial through Supreme Court. We should always seek knowledge. Without it we can do nothing.

Regardless of any individual belief of whether the government is viable, necessary, or a detriment to the existence of humankind, the information presented in these pages should be a part of everyone's knowledge base; we are all subject to the law in many ways, all at the same time, whether any of us realize the full extent of it or not. And, unfortunately, given the current course of the 'system' many of us find ourselves imprisoned. As difficult as it is to fathom, a vast number of persons who are not behind prison walls are in prison as well.

Current figures show 7% of the US workforce has been in prison at some point and about 2½ million persons are in prisons across the nation. The State of Ohio, in 2008, has nearly 52 Thousand prisoners housed in prisons with a capacity of 37 Thousand. What will the numbers be in 2010? In 2015?

Nationwide, a mere 8% of all criminal cases go to trial. Eight percent. That means 92% of those charged with a crime took a 'deal.' HHMMmm... The courts are slow enough with the mere 8% going to trial. Is that why the State scares, goads and prods suspects into 'deals?;' Further, is it possible a prosecutor might consider it a badge of honor to have caused the conviction of a person known to be innocent? What sort of games are being played?

A clue is found in the words of former 6th Circuit Federal Judge Nathaniel R. Jones, 'But I am reminded of the observation of Justice Douglas in Furman v Georgia, 408 US 238 [...] (1972) that 'It is the poor, the sick, the ignorant, the powerless and the hated who are

through phone books while on his trucking runs. Phone records also show Michelle and McClanahan were in contact, and records show that McClanahan had hired an investigator from Kentucky to locate Salerno and was given old addresses. He had maps of Ohio and Michigan, had stayed in a Bowling Green Hotel on the weekend of Michelle's birthday when she was in the Bowling Green-Toledo area visiting friends and family and had often spoken of killing people and burying them. He had even given his attorney an envelope with a map and information where he claimed two bodies could be found—to be opened only upon his death.

ATM evidence shows Salerno was at the casinos during the time the state contends he committed the murder. This, combined with the fact that Michelle was found in Ohio, a block from the Bowling Green Hotel where McClanahan had stayed—not at Exit 5 on I-75 in Michigan as Huff testified—is enough to disqualify Huff's testimony. Combined with the fact that there was no water burial, no blocks on Michelle's feet, no trunks in either vehicle, questionable soil evidence, as well as McClanahan's history, bring the question of how Salerno was ever convicted. In fact, ordered soil testing from the Exit 5 area was not carried out. Had it been, it would have been another mark against the tale of Thomas J. Huff. In addition, the facts presented in Howard v. Ohio, support and are probative of Salerno being innocent of Michelle's murder.

Mr. Salerno has no access to Michigan legal material, and the State of Ohio has so far refused assignment of legal aid. He draws his own legal work with no outside support or advice. As of July, 2008, Mr. Salerno is pursuing a Petition for Writ of Certiorari with the United States Supreme Court and an appeal from the denial of a Michigan trial court post-conviction motion. Nearly all court documents and partial discovery materials are in his possession.

Mr. Salerno understands the history and prejudicial nature of the Presumption of Correctness—the honest reality, though, is he did not kill Michelle. No evidence connects him to her murder. He will continue to battle against the State's injustice. Any advice, assessment or assistance offered would be appreciated, as well as a suggestion of someone to contact, or a reference of this correspondence.

Note: The original Michigan trial judge, Houk and the prosecutor Smith, are now retired.

Mr. Salerno may be contacted at:

D. Michael Salerno #412-224
2001 East Central Avenue, Toledo, OH 43608

Mich. App. #290389
US S.Ct. #08-6027

CASE INFORMATION:
Ingham County Michigan Trial No. 02-217-FC
Federal District Court, Western District of Michigan No. 1:05-CV-0344
Federal Appellate Court for the Sixth Circuit Nos. 07-2356; 07-2088

Michael Salerno is actively challenging a wrongful Michigan first degree murder conviction, is imprisoned in Ohio for the self-defense killing of the man responsible, and seeks comments on and help with this case.

Mr. Salerno stayed with the McClanahan family for about four months in the early 1990s. After he left their home he had no contact with any of them until Larry McClanahan hired an investigator to find him in the year 2000. At the time of trial, no one knew why the McClanahan family would want to locate Salerno after all these years. Only lately, a recent, unreported case, Howard v. Ohio Department of Rehabilitation and Corrections (2003) WL 21359356, was located and it answers that question.

Apparently, members of the McClanahan family were convicted of federal crimes. Detective reports state McClanahan had sexually abused his children and the fact that he was a convicted sexual offender was published in local media. "Howard v. Ohio" shows that Mr. Howard had also stayed at the McClanahan residence, had knowledge of the McClanahans' criminal activity, and had sex with McClanahan's wife, Pam. Detective reports show that this information applies to Salerno as well.

When McClanahan and his son David were released from federal prison, the McClanahans placed a contract on Mr. Howard. Howard was located in prison and stabbed multiple times. After the Howard contract, the McClanahans sought Mr. Salerno. Apparently, the McClanahans wanted to silence, or teach a lesson to persons who could have played a role in their conviction and those having knowledge of their crimes.

Salerno was not as easy to find as he had moved when transferring to a new college. The Salernos' college apartment was in East Lansing, MI, where they attended Michigan State University. McClanahan contacted Salerno's wife, Michelle, through letters addressed to Salerno that were forwarded to their new address. Salerno and his wife were arguing, and he was not at the apartment they shared when a letter from McClanahan was forwarded from an old address the investigator had provided. She met with McClanahan, met again, and was killed. McClanahan then met with and tried to kill Salerno, but died with his own knife.

Salerno was convicted for the death of his wife based on the testimony of Thomas J. Huff, who was in the Wood County Jail with Salerno for about 11 days; he claims he and Salerno spoke about the murders. Huff traded testimony for release from his 14-month Ohio fraud sentence. He claimed Salerno murdered his wife in Lansing, and drove around for hours with her in the trunk of his car, then went to Exit 5 on I-75 in Michigan and dumped her into the lake with blocks on her feet.

The story told by Huff is false. Salerno had a van and Michelle had a Reliant K wagon, neither of which has a trunk. There was no testimony of Michelle ever having been in water or of blocks being tied to her when she was found a year later in Ohio. Huff clearly manipulated the system to gain his release at the cost of an innocent man being convicted and sentenced to serve the rest of his life in prison for a murder he did not commit.

Phone records indicate McClanahan had called information numerous times, called numbers in various states listed to Salerno families and his son David stated that he looked

executed.' Id at 251. In re Byrd, 287 F3d at 528 (2002).

I agree, though I would say the persons described within the quote are the ones who are not only killed, by both execution and by time with a sentence of LWOP, but are the ones most likely to be seen as worthless parts of 'society' and therefore an easy target for a conviction - regardless of evidence.

Here's an idea. How about the State not charging as many people with alleged crimes? Yep - that won't happen. Well, how about this... The 'public' schools could begin teaching basic law courses. Why not? What is there to hide? They ARE public schools aren't they? The public is subject to the law. The law mandates taxes by paid to support the 'public' schools... So, why not teach basic law courses to children beginning in Elementary school?

It's doubtful any useful, adequate course would ever be taught. If children became educated on the real nature of the American legal system... Well... People would learn just how unjust it can be. Since viable courses won't enter the curriculum it is upon each person to educate him or herself. We must learn how to use the tools of 'the law' for our benefit - otherwise some of us will surely die in prison. No-one should remain ignorant to the use of tools when those very tools are being used against him. Oppressing him. Keeping that person wrongfully imprisoned.

Once you've learned how to present your claimed wrongs to a court for review you owe it to yourself to do so. When we have become an educated mass the next step is to exercise the new-found knowledge. Wisdom is the application of knowledge. Let's become wise.

The one who lacks the courage to begin has already finished.

Sempre avanti

D. M. Salerno - October 2008

THE

LAW LIBRARY

You don't have to know anything about the 'law' to begin working on your case. Everyone has to start somewhere.

After reading this booklet you won't feel uncomfortable in the law library and will be able to use many of the available books with ease. You may then conduct legal research to learn what your 'rights' are and how to protect them.

Far too often prisoners are left to glean whatever knowledge they can from poorly drawn, general purpose, fill in the blank forms, an inadequate prison law library and seemingly ego-driven, self-proclaimed legal 'beasts' who are most often counter-productive. Such is the struggle for anyone attempting serious litigation from prison.

In prison there is a general lack of knowledge regarding exactly what judicial steps exist for those fending their way through the legal system. In hopes of helping people in attaining a more full, fair and adequate court review, the information herein is offered.

Because no two prison law libraries have the same resources, a focus on the basics is presented with more information on legal writing and the courts. This will prepare you for reading, researching, creating papers to file and enable you teach others as you grow wise.

The following article was published in the September 15, 2008 edition of the Idaho Observer. A similar article appeared in the October issue of the Innocence Denied Newsletter. The article is offered as the author's background as of October 2008 he is litigating in the Michigan State Court of Appeals, the United States Court of Appeals for the Sixth Circuit, and in the Supreme Court of the United States.

September 15, 2008

Michael Salerno: Wrongfully Convicted of Murder

Dennis Michael "Sal" Salerno (see poorly-reproduced prison photo at right) has been corresponding with The IO for several years. He has always been polite, patient and honest with us. He often sends articles he has clipped from other publications because they might be of interest to our readers though his "budget" for stamps is extremely tight. By his own admission, Salerno was not exactly an angel (how many of us are?) before being convicted and sentenced to life for murdering his wife. But, the evidence shows and we believe, Salerno did not murder his wife. He has no family. His friends have long since drifted away. He needs help. There is forensic evidence and new evidence that could reverse his wrongful conviction. Below is our reprint of a trifold flyer Salerno is sending out to anyone who cares. The IO will post Salerno's story to the "Behind the Razorwire" section of our website. If you have it on your heart to write to this very decent man, do so. If you can help in other ways, contact Salerno and/or The IO.

CASE CITATIONS AND BOOKS

If you have a citation for a case, called a 'case cite' for short, write it down and take it to the law library. There are different ways to cite a case; generally, though, it is important to provide enough information so anyone reading your law work will be able to find the case you are citing when they look for it in the law books.

This is an example of a case cite:

Allen v. Redman, 958 F2d 1194 (6th Cir. 1988)

Now let's look at that case cite and find out what each part means:

F2d - - - Is the type of book the case is in; Federal Reporter, Second series.
858 - - - Is the volume of the book the case is in.
1194 - - - Is the page the case starts on.
6th Cir. - Is the Court deciding the case.
1988 - - - Is the year the case was decided.

The underlined names are the parties to the case. At the trial level, the Plaintiff is listed first followed by the Defendant. If a trial is in a State court, the State is the Plaintiff and the person on trial is the Defendant. In the Appellate court, the Appellant, or Petitioner, is listed first followed by the Appellee, or Respondent. The party who is appealing is the Appellant, called the Petitioner in some appellate court actions, and the State would then be the Appellee in an appeal from a trial court conviction, or the Respondent.

The sample cite shows us that the case named Allen versus Redman can be found on page 1194 of Volume 858 of the Federal Reporter books, second series. If you wanted to read this case you would find the shelves having the second series of the Federal Reporter books, then you'd locate the one with the number 858 on it's spine. The case would appear on page 1194 of that book.

Amendment XIV—Citizenship, Due Process, and Equal Protection of the Laws (Ratified on July 9, 1868)

Section 1. 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 laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

There are other casebooks in the law library besides the second series of the Federal Reporter. The Ohio prisons have some of the following:

BOOK TYPE	abbrev.
Supreme Court Reporter	S.Ct.
Reports US Supreme Court cases	
Federal Supplement	F.Supp.
Federal District Court Cases	
Federal Reporter Third Series	F3d
Federal Reporter Second Series	F2d
Federal Appeals Court cases	
Northeast Second Series	NE2d
State appeals from OH,IN,PA,NY,IL	

Federal District Court cases are found in the federal supplement books, which also have a second series. District courts are the lowest federal courts; decisions from them are called 'persuasive authority.'

The Federal Circuit Courts of Appeal: There are 11 numbered Circuits and one additional referred to as the DC Circuit. Cases from these courts appear in the Federal Reporter books. The federal District courts within your Circuit and all courts in your state are supposed to follow cases decided by your Federal Circuit Court of Appeals. Cases decided in these courts are called 'Binding Precedent' because the decision is 'binding,' it must be followed by the lower courts.

Cases decided by the Supreme Court of the United States may be found in three differently named books: The Supreme Court Reporter, The United States Reporter, and the Lawyer's Edition. Ohio prison law libraries have an incomplete set of the Supreme Court Reporter. Decisions of the Supreme Court of the United States are considered 'Precedent' because ALL courts are to abide by the rulings of this Court.

When citing a case from the United States Supreme Court it is best to cite the case using the United States Reporter cite, as follows:

Jackson v. Virginia, 443 US 367 (1979)

Amendment VI—Criminal Court Procedures

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment VII—Trial by Jury in Common-law Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII—Bails, Fines, and Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX—Rights Retained by the People

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X—Rights Reserved to the States

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI—Suits against the States (Ratified February 7, 1795)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced

Amendment I—Religion, Speech, Assembly, Petition

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.

Amendment II—Right to Bear Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III—Quartering of Soldiers

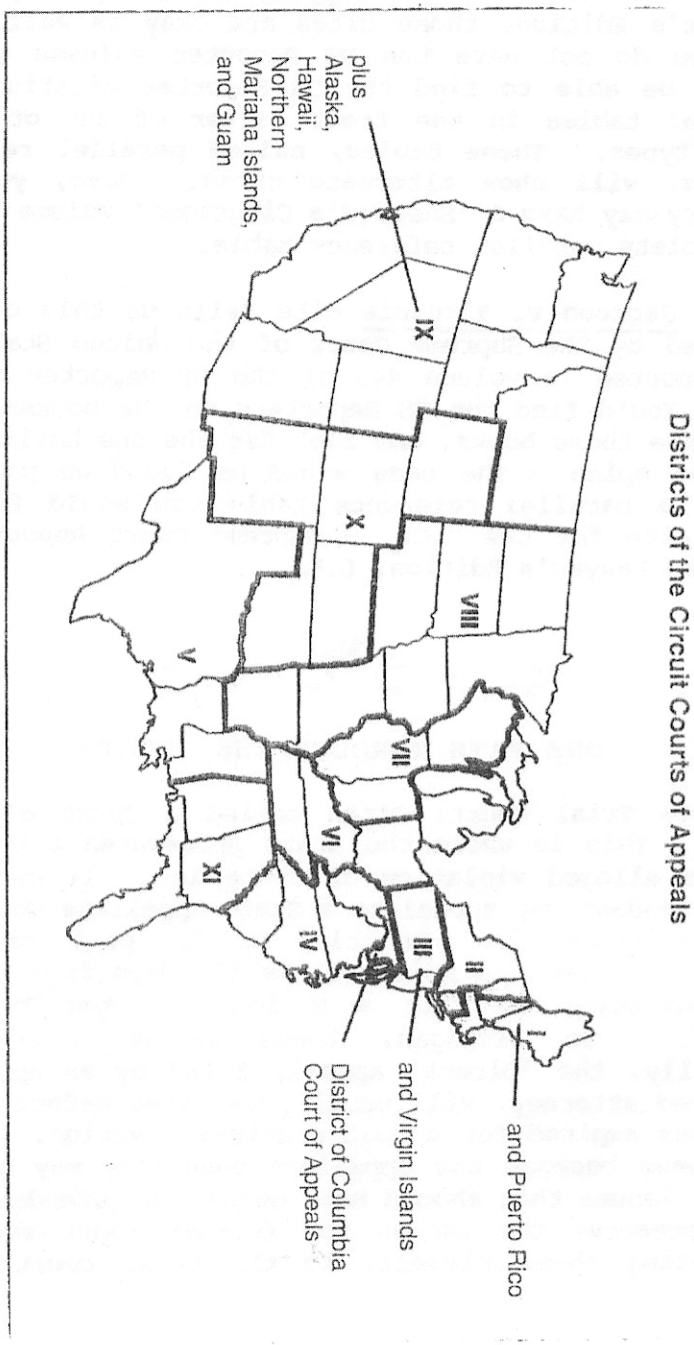
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV—Searches and Seizures

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.

Amendment V—Grand Juries, Double Jeopardy, Self-incrimination, Due Process, Eminent Domain

No person shall be held to answer for a capital, or otherwise 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 offence 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.



Federal courts prefer the US Reporter cite. If you only have access to the Supreme Court Reporter or the Lawyer's Edition, those cites are okay as well. Even if you do not have the US Reporter volumes you may still be able to find the US Reporter citation using special tables in the front matter of the other two book types. These tables, called parallel reference tables, will show alternate cites. Also, your law library may have a 'Shepard's Citations' volume that is a complete parallel reference table.

The Jackson v. Virginia cite tells us this case was decided by the Supreme Court of the United States and is reported in volume 443 of the US Reporter on page 367. You'd find the US Reporters on the bookshelf, if you have those books, and look for the one having '443' on the spine. The case would be found on page 367. Using a parallel reference table you would find the case cite for the S.Ct. - Supreme Court Reporter and for the Lawyer's Edition, L.Ed.

ONE PATH THROUGH THE COURTS

State Trial Court: Often called a Court of Common Pleas. This is where the State prosecutes a Defendant for an alleged violation of State law. If convicted, the Defendant may appeal to a State Appellate Court, may file a motion for new trial or for post conviction relief. In Ohio, a prisoner has 180 days from the date of conviction to file a Motion for Post-Conviction Relief. In Michigan, there is no time limit. Generally, the 'Direct' appeal, filed by an appointed, or hired attorney, will usually be filed before the 180 days has expired for a post conviction action. This is good news because the appellate counselor may not have raised issues that should have been; the Defendant would then preserve the issues for further court review by presenting them, himself, to the trial court in the

(no) knock, knock

I recently read an article in the *Mansfield News Journal* about a SWAT team invading a home in Mansfield, Ohio, killing a man. I wondered at the time if they had served a search warrant? It turns out they had a "NO-KNOCK" search warrant! Now what kind of a search warrant is that? I say it is [UN]Constitutional for sure. The gentleman in question was protecting his home against UNKNOWN invaders, which he had every right to do. It turns out this gentleman's name was not even on the "NO-KNOCK" search warrant, but they still confiscated 10 guns, a pill bottle with nine tablets in it, (heaven forbid that a person would have a pill bottle in one's home), DVDs, compact discs, power tools, two crossbows and baby items. [The Gentleman who died in a fiery shoot-out was Gilbert Rush, Jr. 2619 P.A. E. Mansfield, Ohio.]

I hope and pray, many people will donate money to help this family fight the city of Mansfield, to avenge this gentleman's wrongful death, and to make sure, Mansfield, the State of Ohio, and the U.S. Get rid of all unconstitutional legislation such as the No-Knock Search Warrant. This is just another of our rights gone by the wayside during the Clinton/Bush regimes, but allowed to happen in Mansfield, Ohio by Richland County Sherrif/ Mayor Lydia Reid. [I understand the NO-KNOCK SEARCH WARRANT was instituted under Clinton, but Bush has done nothing to have it revoked, so I hold his regime responsible as well.]

I say to the person or persons who allowed these "NO-KNOCK SEARCH WARRANT'S" to be allowed in any town in Ohio, or the U.S., should be held responsible for any death resulting from such an "Unconstitutional" piece of work. I am horrified that any one of us should not voice our opinions on this act of aggression [murder] against one of our citizens. Don't for one second think this can't or won't happen to a member of your own family or friends.

Virginia Brooks
Ashland, Ohio

Why (no) knock, knock

This letter is written in response to Miss Virginia Brooks' letter ["(no) knock knock"] which appeared in the April 2007 edition of *The IO*: The State of Ohio issues "no knock" warrants under "authority of Ohio State criminal rule 41 (Search Warrants) and pursuant to Ohio Revised Code § 2933.231 (Waiver of precondition nonconsensual entry).

The knock and announce doctrine was firmly entrenched within the Fourth Amendment to the United States constitution, until... the United States Supreme court decided the case of Hudson v. Michigan, 126 S.Ct. 2159 (2006). In Hudson, Detroit police executing a search warrant for narcotics and weapons entered Hudson's home in violation of the Fourth Amendment's "knock and announce" rule. The trial court granted Hudson's motion to suppress the evidence seized, but the Michigan Court of Appeals reversed. Hudson was convicted of drug possession. Hudson's conviction was affirmed in the State Court of Appeals. The Supreme Court ruled that there is no necessity for police to knock and announce their presence when executing a search warrant if circumstances present a threat of physical violence, or if there is reason to believe that evidence would likely be destroyed if advanced notice were given, or if knocking and announcing would be futile (exigent circumstances).

Section 2933.231 of the Ohio Revised Code has been on Ohio's books since 11-20-90, when it was passed as Senate bill 258. This predates the Hudson ruling, and, unfortunately, Hudson, reinforces the Ohio law.

D.M. Salerno 5-15-07
Toledo Ohio 43608 Idaho Observer

Criminal law—Part 1: From theory to conviction

In order to properly learn a discipline, we must first understand its basic principles. Criminal Law is no different. The fact that it is "Criminal Law" and not "How to use a hammer" should have no bearing on learning. It's honestly not that hard to grasp, so let's remove the stigma so we can see how criminal law really works.

When someone is arrested the government begins building a case. This happens through collecting "evidence." Evidence comes in many forms—not all are important for this particular discussion, but may include such things as statements, clothing, and residue.

The prosecuting attorney takes whatever evidence there may be and creates a "theory." This is important to understand. Regardless of the type or amount of evidence, it is the prosecutor's job to prosecute those believed to have committed a crime. Though there is a presumption of innocence ("innocent until proven guilty"), the prosecutor believes the person arrested is guilty.

Now, the prosecutor makes up a theory. He makes it up. This is fiction, like John Saul or Stephen King would write—fiction, falsehood, a tale, a story. He makes up a story that he thinks will convince a jury or judge to convict the accused person.

The defense attorney is also said to have a theory. This is true for all defendants, including those who assert innocence of the charge. It is understandable that a person guilty of the offense charged would make up the best story possible in an attempt to win the trial.

Why, though, is it considered a mere defense "theory" when the defendant states he or she is innocent? Why isn't the defendant considered by the court to be innocent until the government's "theory" proves their guilt?

This is due to the amount of information available to support a defendant's plea of innocence. If the defendant is innocent but does not trust the defense council, not much information is going to be given to the attorney to form the defense to prove innocence. In this scenario, the defense counselor would need to write some fiction as well, based on his client's assertion of innocence. Another reason it is a defense "theory" would be due to the lack of evidence supporting the defendant's story. This could be due to destruction or withholding of evidence, or maybe it is undiscoverable for some reason.

The proceedings at a criminal trial are said to be adversarial. This means that two sides come to the bench to present their side of the story. The stories presented can only be termed "theories" at this point because the jury, or the judge if it is a bench trial, has not yet decided who to believe. The story that is believed by the trier of fact (judge or jury) is then called "truth" even if it is not representative of what really happened.

The judgment of the court is considered a "common law" ruling. Common law means a judicially-created statute, right, or opinion. [**Note:** This is not my understanding of common law. However, upon reviewing *Black's* and *Bouvier's* law dictionaries, I can see how the "judgment" of a statutory/criminal law violation can be construed by the judiciary as a function of common law—a very interesting twist that the author develops further in part two of this article. **~DWH**]

Some refer to the judgments of courts as "legal fiction." This is due to the case being decided upon theories, or fiction.

The books in law libraries containing court cases are termed "case books" because case law (judgments from courts) are shown in them. All those cases are common law.

Because a criminal trial is based upon made up stories judged upon a believability scale, it is imperative that we be able to think as clearly as possible. It is therefore necessary to remove our emotions from the case. Colossal errors occur in life due to emotions acting without the benefit of intellect. In order to confront the government's fictionalized story, you must remove your emotions, think clearly, and pay attention. You can visit your emotions some other time. They are part of you and aren't going anywhere.

If you understand what you just read, stay tuned for discussions on common law vs statutory law vs constitutional law, standards of review, and more.

Sempre Avanti –
D. M. Salerno
Toledo, Ohio

– 35 –

(*"Sal" brings up some very interesting "theories" about common law. We plan to run with part two of his four-part series in the July 2008 edition.*)

post-conviction motion.

What must be included in any court filing is defined by court rule and statutes in the State where you are litigating. Generally, a post-conviction action will consist of a Motion and a supporting brief, along with any additional paperwork you feel should be reviewed by the court before rendering its decision. Review of a post-conviction claim is a bit different than review of an appellate claim, though, and you should learn the vagaries of review for your jurisdiction.

State Court of Appeal: A convicted person would challenge a conviction or post-conviction denial by filing a set of papers called an appellate brief. The brief is a written statement of various Constitutional violations, should list the way the court is to review the claims and is to have argument supporting each claimed violation. When a brief is completed, and other appellate papers by court rule are prepared, it is all submitted to the court for review. If the appeal is denied the Appellant may ask for permission to appeal to the State Supreme Court.

In Ohio there is an action, under Appellate rule 26(B), to re-open an appeal. There are certain rule and law based hurdles to overcome but it may be accomplished especially where there were obvious issues left out of the appellate counselor's brief on direct appeal. In Michigan there is no such rule to re-open an appeal. Rather, the post-conviction motion, under Michigan Court Rule 6.5 et seq., would receive the same sort of review as the Ohio motion to re-open and for post conviction relief, and if granted the conviction would be reversed. Your research would better inform you of its intricacies. Also in Michigan, there is a 'Ginther' hearing request which is meant to inquire into conduct and effectiveness of appellate counsel.

State Supreme Court: Generally, a State Supreme Court does not automatically hear an appeal. The first step would be for the appellant to prepare and file, In Ohio, a 'Memorandun In Support of Jurisdiction,' or in Michigan, for example, the filing is termed, 'Request For Leave To Appeal.' The appeal to this court is discretionary - which means the court does not have to hear the appeal if it doesn't want to. Your request for permission to appeal is like a key to the door of the court. If the Court likes your argument for why it should hear your appeal, the door to the court will open and you will be allowed to file an appeal. If the Court does this, it is called 'accepting jurisdiction' and the appeal you will then need to file will be heard on its merits. If the court denies jurisdiction to hear an appeal, or denies an actual appeal, the Appellant has at least two courses of action: Either file a Petition for Writ of Certiorari with the Supreme Court of the United States, or skip that step and file a Petition for Writ of Federal Habeas Corpus with the Federal District Court.

Federal District Court: someone challenging a wrongful State-court, criminal conviction who has been by the State Supreme Court could now file a federal petition for writ of habeas corpus. There are easy to complete, fill-in-the-blank forms available from the federal district court clerk for this filing. You do not have to cite any case law in the actual Petition - if you wish, you may file a supporting brief along with the completed habeas corpus forms. If you choose to file a supporting brief it will contain written reasons why, for each one of your claims, the court should grant your petition for relief. These written reasons would be considered the argument.

Along with the habeas corpus forms, you absolutely should file a 'Request To Proceed Without Prepayment Of Costs', or request for In Forma Pauperis Status. These are different titles for basically the same thing. The filing fee is only 5 dollars; but, if you pay the 5

Prison Library Project
PMB 128
915 - C Foothill Boulevard
Claremont California 91711
- FREE resource list with hundreds of addresses. Also sends FREE books to prisoners.

CPR Newsletter
Coalition For Prisoner Rights
P.O. Box 1911
Santa Fe New Mexico 87504
- FREE newsletter of prisoner issues

Innocence Denied
P.O. Box 18477
Pittsburgh PA 15236
- Good Newsletter regarding the law and wrongfully convicted prisoners. It costs 6 Dollars per year.

Human Kindness Foundation
Bo and Sita Lozoff
P.O. Box 61619
Durham North Carolina 27715
- FREE newsletter, and FREE books. Ask for the free book, 'We're all doing time' and a list of free books.

Mumhall Magazines
P.O. Box 2107
San Marcos California 92079
- Excellent Discount magazine subscription service. The lowest rates I have seen. Honestly.

November Coalition
282 West Astor
Colville Washington 99114
- Excellent Magazine covering prisoner issues and mostly convictions and laws for drug related crimes. The cost for prisoners is 6 dollars for one year.

ADDRESSES

Maybe you'll find something useful here:

Fortune News
29-76 Northern Boulevard
Long Island City, NY 11101
- Free Magazine that deals with prisoner issues.

Imprimis
Hillsdale College
33 East College Street
Hillsdale Michigan 49242
- Free review of current speeches at their college. Hillsdale College does NOT accept any federal funding which makes some of the speeches interesting.

the Catholic Worker
36 East First Street
New York, NY 10003
- Free Socialist-type newspaper

The Idaho Observer
P.O. Box 457
Spirit Lake Idaho 83869
- Excellent monthly newspaper. This prisoner friendly paper has a special prisoner section titled, 'Behind the Razorwire.' Prisoners may send Four stamps or embossed envelopes for each issue they wish to receive, or may send a 20 dollar prison check for a one year subscription. The Idaho Observer ran a story, on page 25 of its September 2003 edition, regarding the wrongful murder conviction of the D.M.Salerno - the author of this Criminal Law booklet.

Radio Liberty
1201 Connecticut Ave., NW
Washington D.C. 20008

you will miss the opportunity to be ruled indigent, thereby bypassing the right, by federal statute, to receive a FREE copy of all papers filed in your case by anyone. This would include discovery materials. If you ask for indigent status and are denied then you must pay 5 dollars, and then you would not receive a FREE copy of papers filed. You would still receive any papers the state has to serve on you, though, without cost.

Once your petition is filed, the court will give it a prima facie review to determine if the claims you present have been properly 'exhausted' and to see if your claims are frivolous. Any claim you present to the Federal District court must have been presented to each of the lower State courts first, so that each one had the opportunity to correct the violation you are complaining of. This is called 'exhausting' available remedies. If you haven't submitted some, or all, of your claims to each of the lower courts before you file them with the Federal District court in your habeas corpus petition, the court will dismiss your petition because it is 'mixed.' A mixed Petition is one that contains both exhausted and unexhausted claims. If that happens, and if you have time remaining in the time constraint, you would need to either remove the unexhausted claims and re-file the petition, or, you would need to attempt to remedy the lack of exhaustion in the lower courts and then re-file the petition.

If the Federal District Court believes the claims have been exhausted and that claims presented aren't frivolous, the State Attorney General will be ordered to file a response within a certain number of days, and you will be given the opportunity to file a reply, called a 'traverse.' Before the State files its response it will file Rule 5 discovery materials which contain, among other things, the transcripts to your case.

After the State response and your traverse have been filed you will be waiting for between a few months and a few years for the magistrate to review the case. The magistrate judge will then issue what is termed as a 'report and recommendation' that tells you what relief is recommended or if it is believed the case should be denied. After you receive the Report and Recommendation, it is IMPERATIVE for you to write and file a list of 'objections' to everything in the R&R that you disagree with - even unfavorable parts of a favorable point may be objected to. If you do not file objections you will not be able to file an appeal if the court denies your habeas corpus petition. Your case would be over right then and there. File Objections.

If no objections were filed, the judge would simply adopt whatever the magistrate recommended, and will issue an Order disposing of the case in that manner. If you did file Objections the judge must undertake what is called a 'de novo' review. This means the judge must review the entire case, as if it had not yet been reviewed by anyone, but the judge will be able to review the R&R and your objections. 'De novo' means anew, afresh. Now you wait while the judge reviews the filings and then makes a ruling. A court Order and Opinion will be sent to you when a decision has been made.

If the Federal District court denies your habeas corpus petition, you may file a Rule 60(B) motion for Relief From Judgment. Generally, a rule 60(B) motion exists to correct mistakes, oversights and clerical errors. Your research on this rule, which is found in the Federal Rules of Civil Procedure, will be extremely useful and may enable you to gain relief you thought was lost. In shepardizing and researching Rule 60(B) you will learn what the court wants to see in the motion and how it works. It is an interesting tool.

The American Declaration Of The Rights And Duties Of Man is an International Human Rights Treaty which states your basic human rights. This treaty, adopted in 1948, is founded upon principles of spiritual development and preservation of one's culture. There is nothing like this in the law of the United States. It is a wholly separate idea all together. Write and ask for the information and you will see just how interesting and easy it is.

Another International Treaty you may file an International Claim under is available from the United Nations. To receive this information, write:

> Office of the United Nations
> High Commissioner for Human Rights
> United Nations
> New York, NY 10017
>
> -Date-
>
> Dear High Commissioner:
>
> Please send me a copy of:
>
> FACT SHEET 1 - The International Bill of Human Rights;
> FACT SHEET 7 - Complaint Procedures; and
> FACT SHEET 15 - Civil and Political Rights: The Human Rights Committee.
>
> Thank you,
>
> - Name and address -
> - sign your letters -

These materials will open your mind and, indeed, your eyes, to an entire universe of review you didn't know was there. Please request this information and work on writing a Human Rights Complaint. It may save your life.

Many states do not provide access to International law or the Treaties your claim will be based upon. That's okay, though, because The International Court of Justice and the United Nations will send the information to you free of charge. The information includes a simple how to guide, the treaties themselves and simple, short complaint forms.

Normally, all 'domestic' courts should have been given the opportunity to hear your claimed violations before you would proceed to the international arena. You may, though, still file your international complaint even if it has been quite awhile since you've been in any court.

An International Complaint is based upon Human Rights violations. Your Human Rights are spelled out very plainly within the booklets and information you will receive from your request. Your Internationally recognized Human Rights are found in, inter alia, the American Declaration of The Rights and Duties of Man, which is an International Treaty that the United States is bound by. A copy of this is available from the Organization of American States. To receive information, write:

Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington D.C. 20006

- Date -

IACHR:

Please send me a copy of the 'Basic Documents Pertaining To Human rights In The Inter-American System,' along with forms and instructions necessary for preparing and filing an actual Human Rights Complaint.

Sincerely,

Name And Address
- Sign your letters -

Once there is a Final Order denying the habeas corpus, or 60(B) motion, you will need to request a certificate of appealability - 'COA.' By law, your first request must be to the Federal District court that denied your habeas petition; the request is to gain Judicial certification of issues you want to raise on appeal from the District Court Order denying the habeas corpus. If you are appealing a denial of a Federal habeas petition you should present issues in the COA request relating to the habeas denial - do not include issues challenging the state trial court as that is not the purpose of your appeal at this point. You are now trying to appeal the denial of the habeas corpus petition that challenged the state trial court conviction. Understandably, this may be a bit confusing at first. Maybe thinking that the State appellate court handles appeals from actions of the State trial court and that the Federal Appellate court handles appeals of actions of the Federal trial court - which is the federal district court, would help guide someone attempting to write issues for a COA. If the Federal District Court denies the COA request, in whole or part, the COA request would now be filed with the United States Court of Appeals for your Circuit.

Within your COA request you must present a list of issues you intend to bring on appeal supported by an argument as to why the court should agree to hear those issues on appeal. The issues are errors you claim the Federal District court made during the habeas corpus proceeding and when denying your petition.

The Federal Circuit Court of Appeals may grant certification on one, all or none of your presented issues, and might even request the State to brief the court on whether an issue you did not present should be considered instead. If COA is granted you may be sent a pro se appeal form for preparing your appeal, which gives simple to follow instructions for brief preparation. Court forms change frequently so you cannot rely on old forms. If COA is denied you may now file a new Petition for Writ of Certiorari with the Supreme Court of the United States.

COURT FORMS

Fax Number—513-564-7090

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case Number: _____

Case Name: _____

PRO SE APPELLANT'S BRIEF

Directions: Answer the following questions about the appeal to the best of your ability. Use additional sheets of paper, if necessary, not to exceed 30 pages. Please print or write legibly, or type your answers double-spaced. You need not limit your brief solely to this form, but you should be certain that the document you file contains answers to the questions below. The Court prefers short and direct statements.

Within the date specified in the briefing letter, you should return your completed brief to:

United States Court of Appeals For The Sixth Circuit

540 Potter Stewart U.S. Courthouse

100 East Fifth Street

Cincinnati, Ohio 45202-3988

1. Did the District court incorrectly decide the facts? _____ If so, what facts?

2. Do you think the District Court applied the wrong law? _____ If so, what law do you want applied?

3. Do you feel that there are any others reasons why the District Court's judgment was wrong? _____ If so, what are they?

4. What action do you want the Court to take in this case?

5. What specific issues do you wish to raise on appeal?

I certify that a copy of this brief was sent to opposing counsel via U.S. Mail on the ___ day of _____, 20 _____.

Signature (Notary not required)

_____

wishing to apply would write:

Ohio Adult Parole Authority
770 West Broad Street
Columbus Ohio 43222

- Date -

Dear APA:

Please send me the forms and instructions necessary for filing a request for Clemency.

Thank you,

- Name and Address

Michigan has at least two different forms available depending on whether the person wishing to apply is imprisoned or has been released already. The address in Michigan to request a Clemency application is:

Office of the Parole Board
Grandview Plaza Building
P.O. Box 30003
Lansing Michigan 48909

THE INTERNATIONAL COURTS

If you have filed all normal and proper pleadings with the various 'domestic' courts here in the United States - similar to the path through the courts described earlier - but have not received the relief you requested, and even if you have received some sort of relief, you may now file a complaint with the International Courts.

A habeas corpus denial is reviewed de novo. Harris v. Stovall, 212 F3d 940, 942 (6th Cir. 2000)

Any factual findings made without benefit of an evidentiary hearing are reviewed de novo. Northropp v Trippett, 265 F3d 372, 377 (6th Cir. 2001)

The decision whether to stay the proceedings pending exhaustion is reviewed for abuse of discretion. Evans v Smith, 220 F3d 306, 322 (4th Cir. 2000); also Hill v Mitchell, 30 F.Supp.2d 997, 1000-01 (S.D.Ohio 1998).

In reviewing habeas corpus proceedings, the Sixth Circuit reviews the district court's decision de novo and the findings of fact for clear error. Cook v Stegall, 295 F3d 517, 519 (6th Cir. 2006); Williams v Bagley, 166 F.A. 176, 179 (6th Cir. 2006).

CLEMENCY

All states have a provision for Clemency; 31 of them give the governor the final decision. In most states the parole board first reviews the application and will then make a recommendation. The remaining states basically have a special Clemency board within the parole board structure. Clemency consists of the reprieve, Commutation and Pardon.

A reprieve is for those unfortunate ones sentenced to death by execution.

Commutation is a modification of sentence to the benefit of the prisoner.

A pardon restores civil and political rights and removes disabilities from previous convictions.

Supreme Court of the United States: This is the highest domestic court in this country. On average, the Supreme Court accepts only 1% of all cases submitted to it for review. All courts in the nation are supposed to follow decisions of this Court. The decisions, though, are sometimes interpreted differently by the lower courts. One of the purposes of US Supreme Court review is to resolve the conflicts of the lower courts. If you are able to show the federal Circuit courts have reached differing opinions in cases having the same, or similar, issues, the Supreme Court should accept your case for review as you have shown a 'conflict.'

If you were convicted after 1996, you have only one year from the date of conviction to file your federal habeas corpus petition. This is subject to a few tolling allowances which you'll discover through research. If, for some unfortunate reason, you have been unable to present some of your issues to the federal courts for review - due to failure to exhaust, State imposed impediment, procedural error, or other reason - such as newly discovered evidence, you may still be able to have them reviewed by the courts, even if you are wall past the statutory one year time frame. In order to do so, you must file a request with the United States Court of Appeals for your Circuit, requesting Authorization to File a Second, or successive, Habeas Corpus Petition. This request is assigned to a three judge panel, as was any previous request for COA.

There are many other possible routes through the various State and Federal courts from a challenge to a State trial court conviction. There are also many, many other motions, than have been listed, which could be filed. What sort of motion is filed, and in which court, is determined by the topic and your need. The rules for the courts you are litigating within and the statutes for the state will state most of what may be filed. Research will show the rest.

LEGAL RESEARCH

Research by Topic: If you don't have a case cite to start with you would be able to begin your research by thinking of a topic you want to know more about. Some topics might be: homicide, evidence, search, seizure, warrant, habeas corpus, quo warranto, audita querela, Rule 15 of the federal rules of civil procedure, section 2953.23 of the Ohio Revised Code, etc.... Once you have a topic, you would then look in the law library for the 'legal encyclopedias' or 'legal digests.' Though they each have quirks they aren't too difficult to use. In general, you would find the volume that contains the topic you are looking for and then turn to the listing for that topic. The volumes are alphabetical and topic sections usually offer short summaries with case cites. You may then use the cite to shepardize or continue research otherwise.

Research by Case Cite: Is probably the easiest as you only need a case cite to begin. If you need a cite that deals with some of your issues look first in any trial court motions or court briefs you may have. Case law should appear in those papers.

What you would do is:

1. Write down the case cite;
2. Find the correct volume of the Shepard's Citations book you need for the case, rule or amendment, etc... that you are researching. The spine of the volume will tell you what will be found in that book. Also, get the paperback updates to the Shepard's Citator if your library has one.
3. Flip through the book until you find the case, statute, rule, or amendment you are looking for; it will also be shown in the upper page corners.
4. Then locate the listing for your cite on the face of the page. It will appear in bold print and is where the information you want begins.

An unpreserved claim of prosecutorial misconduct is reviewed for plain error affecting substantial rights. People v Rodriguez, 650 NWW2d 96 (2002). In such cases reversal is proper only when the Defendant is actually innocent, or the error so seriously affected the fairness, integrity, or public reputation of judicial proceedings. People v. Carines, 597 NW2d 130 (1999).

It is well established that we review a trial court's grant of relief from judgment for an abuse of discretion and that we review a trial court's findings of fact supporting its ruling for clear error. People v. McSwain, 676 NW2d 236 (2003)

The appellate court reviews legal conclusions de novo and a trial court's findings of fact at a suppression hearing for clear error. People v. Williams, 696 NW2d 636 (2005).

For all:

The Sixth Circuit Court of Appeals has concluded that the legal finding that a seizure occurred is reviewed de novo; The underlying factual findings are reviewed for clear error. See U.S. v. Buchanan, 72 F3d 1217, 1222-23 (CA 6 1995)

It is prosecutorial misconduct if prosecutor statements, when reviewed in light of the entire trial, deprive the Defendant of his due process rights. Kincaid v Sparkman, 175 F3d 444, 445-46 (6th Cir. 1999)

The Sixth Circuit will reverse on the basis of insufficiency of the evidence only if the judgment is not supported by substantial and competent evidence, whether direct or circumstantial, upon the record as a whole. U.S. v Beddow, 957 F2d 1330, 1334 (6th Cir. 1992)

elements of the offense charged, as you will see during your research. Further, Venue is also an element of every alleged offense. One standard for a Great Weight claim might be:

'In determining whether a verdict is against the manifest weight of the evidence, the reviewing court sits as the 'thirteenth juror' and '...weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the trier of fact lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. State v Martin, 128 NE2d 7 (1955); State v Otten, 515 NE2d 1009 (1986); State v Thompkins, 678 NE2d 541 (1997); See also Tibbs v Florida, 102 S.Ct 2211 (1982).'

Note the Great Weight standard is written for the State of Ohio. Research would show whether this claim is viable in your jurisdiction.

For Michigan:

An abuse of discretion may be found only where an unprejudiced person, considering the facts on which the trial court relied, would find no justification or excuse for the ruling made. People v McSwain, 676 NW2d 236 (2003).

A trial court's findings of fact are clearly erroneous if, after review of the entire record, the appellate court is left without definite and firm conviction that a mistake has been made. People v McSwain, 676 NW2d 387 (2003)

5. Under your bold faced cite heading you will see a list of case citations. These citations are the place in other cases where the case you shepardized id mentioned.

6. There are notation letters beside some of the cites; for their meanings look on the inside cover or at the reference table in the first few pages of the volume you are using. For example, cites listed that explain the case you shepardized will have a lower case 'e' next to them.

The first cases listed usually have 'ss' beside them. this notation tells you those sites are cites for the same case you are looking up - in the lower court or a parallel reference. After those, the first cases listed will be from the highest federal courts. The cite listing will continue in descending court order. Once you have found your heading, you should get the books the listed cites appear in so you may review them.

REVIEWING A CASE

State and federal cases have a similar layout. Each will have these parts:

Caption: Shows the name of the parties, inter alia;

synopsis: summarizes the case;

Headnotes: Paragraphs explaining how the portions of the case relate to the bold face digest topics above them. Numbers appear with the headnotes and refer to specific parts of the case text. If you want to read about the topic addressed in headnote 2, find the '[2]' in the case text.

OTHER BOOKS

The Georgetown Law Jopurnal is EXTREMELY useful. It is an annual Law Journal that is usually around one thousand pages long and has tens of thousands of case citations. It covers Criminal Procedure ffrom

SAMPLE MOTION

In The Court Of Common Pleas
For Whatever County Ohio

Caption

State of Ohio Plaintiff	:	Case No.: ——— Judge: Judge's name
v.	:	
Your name Defendant	:	Evidentiary Hearing Requested

Intro. Title

Motion For Post Conviction Relief

COMES NOW, the Defendant, in pro se, who respectfully requests this Honorable Court grant post conviction relief in this case as follows:

Body / Argument

This is where various claims and supporting argument would be written. To find what exactly your state requires to be mentioned in your specific motions you should read the court rules and your state statutes. Generally, though, it is necessary to give a short history of the case, referred to as a statement of the case, and then state your first claim, followed by a standard of review, in some instances, and the supporting argument. Repeat this until you have written about each of your claims.

Conclusion

WHEREFORE, this Honorable Court is urged to reverse the Defendant's conviction as the foregoing argument and authorities demonstrate it is Constitutionally infirm.

Respectfully,

Date: —/—/—

Your name and address
- sign your motions

a court, in some venue, should grant the relief you request.

Standards of review evolve over time with new decisions by the courts regarding legal issues. Similar to cookie recipes - the recipe is altered slightly now and then in attempts too make it better. It's the same with new decisions of the courts which affect standards of review through a new interpretation and application of law. This is one reason why continued research on your legal issues is necessary.

We've already seen a few standards of review. Let's list what another one might look like with a possible requisite claim:

XX. THE GOVERNMENT FAILED TO PRODUCE SUFFICIENT, SUBSTANTIAL, COMPETENT, RELIABLE EVIDENCE ON ALL ELEMENTS OF THE OFFENSE AS CHARGED

Standard of Review: The due process clause requires the government to prove beyond reasonable doubt every element of the crime for which a Defendant is charged. Before a charge can be submitted to a fact-finder, the prosecutor must have produced sufficient evidence from which a reasonable fact-finder can find all elements of the charge beyond a reasonable doubt. In re Winship, 90 S.Ct 1068 (1970) ; Jackson v. Virginia, 99 S.Ct 2781 (1979) ; Fiore v. White, 121 S.Ct 712 (2001); Sullivan v. Louisiana, 113 S.Ct 2078 (1993).

There would be no way to list every Standard of Review that exists for each possible Constitutional claim. Standards of Review would be discovered through research. Reading caselaw will enable you to find the ones you need for your own filings.

While not all inclusive, here are a few standards you may use for your research:

Withheld evidence: Cumulative prejudice analysis is required on claims of the prosecution failure to disclose exculpatory or impeaching evidence. Kyles v. Whitley, 514 US 419 (1995), Castleberry v. Brigano, 349

investigation and arrest through trial, appeal and habeas corpus proceedings. there is also a section on actions brought under Title 42 U.S.C. § 1983. If something happened and you only had access to this single book it would prove its worth many times over. It cannot take the place of an adequate law library but is quite a valuable tool. As of 2008, it costs prisoners 15 dollars and is available from: The Georgetown Law Journal, 600 New Jersey Ave., N.W., Washington D.C. 20001.

Ohio prison law libraries have a four volume set of Katz-Gianelli OhioCriminal Law. Volume four has an easy to use index for finding topics in all four books.

For Michigan law, there is a single volume work entitled 'Michigan Criminal Law Deskbook' by Glenn C. Gillespie and Timothy A. Boughman. there's a LOT in there. It covers nearly everything. It'd be nice to have if you have a case from Michigan.

WRITING YOUR OWN LAW WORK

Now you've been able to find your way through the law library and have found a few case cites. You've done some research and want to file something in hopes of being given some sort of relief. How do you do this? One way is to write a 'motion.'

A motion is nothing more than a request for something. This request is formatted so it will be accepted by the court. There are many ways to write a motion. Papers filed with the courts should be type-written if possible but if you are unable to get to a typewriter, the courts will accept a legibly printed filing. Generally, a motion must have a few basic components: a Caption, Title, Introduction, Body - also called the Argument, Conclusion - including Relief.

F3d 286 (6th Cir. 2003). The Brady doctrine assesses prejudice under precisely the same standard as ineffective assistance of counsel claims (reasonable probability of a different result), Brady v Maryland, 373 US 83 (1963); U.S. v Bagley, 473 US 667 (1985), and both look ultimately to the question of whether a court can have confidence in the verdict, all claims of ineffective assistance of counsel and all claims of failure to disclose evidence must be judged cumulatively on the prejudice prong. Kyles, 514 US at 442-45, Banks v. Dretke4, 540 US 668 (2004).

Ineffective assistance of counsel: In determining a claim of ineffective assistance of counsel an Appellant must show that counsel's performance was deficient and that deficiencies in performance prejudiced his defense; Strickland v Washington, 466 US 668 (1984); Woodford v Visciotti, 537 US 19 (2002): If no single deficient performance claim amounts to prejudice, the reviewing court must assess the cumulative impact of all deficient performance claims. Williams v Taylor, 529 US 362 (2000); Washington v Smith, 219 F3d 620, 634-35 (7th Cir. 2000).

there is a vast difference between a claim that a State trial court conviction is against the great weight of the evidence and a claim of there being insufficient evidence. The claim of conviction against the great weight of the evidence is based upon a finding of fact, and is, therefore, only cognizable in the State courts. A federal court won't hear the claim of State court conviction being against the weight of the evidence.

The claim of insufficiency of evidence is a finding of law and may be heard in the federal courts when challenging a State conviction. The claim of insufficient evidence, as seen in the standard of review, speaks of a lack of evidence to prove something called 'elements.' The elements of an offense are found by reading the statute a person is charged with allegedly violating. There are other ways to find the

There are only a few types of filings you will not have to serve on the State. To 'serve' means to send them a copy. Anything mentioned in the path through the court, supra, you would need to serve on the State. Therefore, along with the thing you are filing with the court, you must also write and send what is called a 'Certificate of Service.' the following is an example:

In the Court of Common Pleas
For Whatever County Ohio

State of Ohio	:	Case No.:
Plaintiff	:	Judge:
v.	:	
Your Name	:	
Defendant	:	
	/	

CERTIFICATE OF SERVICE

I sent a copy of the attached motion for Post Conviction Relief to the Whatever County prosecutor's office at: 123 Main St., that town, Ohio 44---, by way of pre-paid, regular U.S. Mail, on the ----- day of ---- 2008.

Respectfully,

Your name and address
-- sign the things you file

It is not always necessary to write a wholly separate 'caption' sheet for a certificate of service. sometimes it is okay to simply write the certificate of service after the conclusion and your signature of the actual motion. In Ohio it is called a Certificate of Service. In Michigan it is referred to as 'Proof of Service,' but is the same thing.

Motions and Certificates of Service do NOT get notarized - Affidavits get notarized.

don't need to use eight syllable words.

If you are writing a claim and don't know what something is 'legally' referred to, well, explain it the best way you are able. For example, if you don't know what the paper is called that the police need in order to arrest you but you know, with certainty, they did not have it, you could say just that - the police didn't have the papers they were supposed to have that said they could arrest me; they are supposed to have that legal paper that gives them the authority to arrest me.

Is that 'perfect?' NO it is not. Will it work? Will it inform the court of what you are claiming? YES it will. If you didn't know the document is called an arrest warrant you would need to do your best to describe it so the court would figure out what your claim is. If you don't at least try, you won't be able to bring up the issue in the future. You are trying to save your life. You are trying to regain your freedom, to right a wrong, to be released from prison, and to be reunited with a family. You owe it to yourself to try. You cannot rely on anyone but yourself to save your life.

STANDARDS OF REVIEW

A Standard of Review is similar to a recipe. If you have various ingredients measured out and sitting on a table in front of you, and you wanted to make cookies, you'd compare the ingredients to those listed in recipes for making different cookies. If you claim you have all the ingredients for chocolate chip cookies and someone compares your ingredients to those on the chocolate chip cookie recipe card and finds you have no chocolate chips, then you cannot make those cookies. You simply don't have the ingredients. The reviewing court uses the standard of review to compare the ingredients in your case against. If your case has the ingredients listed in a standard of review for a particular claim,

645 (1997) ; Boyd v. U.S., 12 S.Ct 292 (1892). ...etc... You would continue along with writing about the law regarding the claim, as you see it, and then tie in what actually happened in your case that caused you to present this claim. In this instance, what bad character evidence was used?

Above, we see the Claim, the Standard of Review, and the Analysis, also known as the actual argument in support of your claim.

8. Conclusion: Many Courts want you to call the conclusion, 'Relief Sought.' An example might be:

RELIEF SOUGHT: The numerous reinforcing errors in the State Trial court proceedings deprived the Appellant of his Constitutional right to a fair trial. Viewed individually or collectively, the violations caused overwhelming prejudice and allowed a conviction based on insufficient evidence through the government assertion of a purported 'bad' character. At a minimum, this Court is respectfully urged to hold an evidentiary hearing at which the government will shoulder the burden for claims of .... etc ...

Based on the foregoing arguments and authorities, this Honorable Court is respectfully urged to reverse the conviction.

Respectfully submitted,

Date:

Your name and address
- sign what you file

9. Certificate of Service. As discussed above. Some Court rules mandate this be a separate sheet.

That describes a basic appellate brief.

When writing any legal paper you should write the way you would properly speak and use only those words you honestly know the meanings of. If you write the way you speak you will be able to convey your idea. No special words are necessary, no Latin needs to be used and you

Maybe you're not filing any motions at this stage of the game. Maybe you no longer have an attorney and are trying to figure out how to prepare some sort of appellate action on your own. An appeal certainly is not a typical motion; so, what's in an appellate brief and how do you write one?

WRITING THE APPEAL

You must review the rules and statutes for the State in which you are litigating. Generally, though, an appellate brief has the following components:

1. Cover Page: has the name of the Court, case caption, names and addresses of the parties involved, date and signature of the person filing the document:
2. Table of Contents; Table of Authorities
3. Statement of Jurisdiction: This tells the Court which rule or statute confers jurisdiction upon it for hearing your type of appeal, and should mention from what lower court action you are seeking an appeal.;
4. Statement of Questions Involved: This is a listing of questions you are presenting to the reviewing court. These are questions that remain improperly decided upon, or were created, by the lower court, in the decision.

If you have been presenting a claim of Actual Innocence, your question in an appellate venue might look like: Whether No Reasonable Juror Would Have Convicted The Appellant As Constitutional Error Resulted In The Conviction Of One Who Is Actually Innocent. Below the question you would write, 'Trial Court Answers:' and then respond as it did - either with 'No,' 'Yes,' or 'no response' depending on how the lower court ruled on the issue, or by not addressing it at all.

An additional example of a Question would be for a claim of conviction based upon insufficient evidence. The question might look like: Whether The Government Produced Sufficient Evidence On Every Element Of The Offense As Charged. In this instance, the trial court would have answered, 'Yes.'

Now enter how the 'Appellant Answers.'

The two questions illustrated above might appear this way on the Questions Presented page:

WHETHER THE GOVERNMENT PRESENTED SUFFICIENT EVIDENCE ON EVERY ELEMENT OF THE OFFENSE AS CHARGED
Trial Court Answers: YES
Appellant Answers: NO

WHETHER NO REASONABLE JUROR WOULD HAVE CONVICTED THE APPELLANT AS CONSTITUTIONAL ERROR RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT
Trial Court Answers: NO
Appellant Answers: YES

You might think the second example is improperly 'Answered' by the Court and Appellant. In legal writing it is necessary to pay closer attention to how ideas are worded and presented. If something sounds confusing, or is not fully understood, we should, look closer. In this instance we should make the question a statement by removing the word, 'WHETHER':

NO REASONABLE JUROR WOULD HAVE CONVICTED THE APPELLANT....

Now that the question has been made into a statement we can see if we agree with the statement - which would be an 'Answer' of 'YES,' or if we disagree, resulting in an answer of 'NO.'

5. Statement of Facts: Basically, the facts of the case are whatever is part of the lower court record. when you write a statement of facts you are writing the story of the case by using what is part of the court record. whenever you state something that is in the record you must reference the place in the record, either by footnote later defined, or by page number and title of what you are referencing, which is usually the trial transcript.

6. Statement of the Case: This is a general case history listing what courts your case has been in and what motions and other actions have been filed

7. Argument: An appellate Argument should begin with the claim, should then list the Standard of Review the court is suggested to use for measuring your claim, and would continue to the actual supporting argument. Some jurisdictions, or specific actions, require the appellant list, under the standard and before the argument, how the presented claim was exhausted. this is answered with a simple sentence stating the claim was presented to the lower court in whatever filing.

One possible way of writing an appellate argument could be:

XIV. APPELLANT WAS DENIED DUE PROCESS WHEN THE PROSECUTOR USED BAD CHARACTER EVIDENCE

STANDARD OF REVIEW: In determining whether there was prosecutorial misconduct, a reviewing court must find the prosecutor's conduct to be improper, and, that the misconduct, taken in the context of the trial as a whole, violated the Defendant's due process rights. U.S. v. Beverly, 369 F3d 516, 543 (6th Cir. 2004) ; U.S. v. Flaherty, 295 F3d 182, 202 (2nd Cir 2002). If the use of improper methods by the prosecutor 'so [infects] the trial with unfairness to make the resulting conviction a denial of due process,' a reversal is justified. Darden v Wainwright, 477 US 168, 181 (1986), Quoting Donnelly v. DeChristoforo, 416 US 637, 643 (1974) ; See also, Mason v. Mitchell, 320 F3d 604, 635 (6th Cir. 2003).

ANALYSIS: the significance of the bad character evidence becomes apparent in the context of the legal principles that govern the ... use of character evidence. the Supreme Court has long held that the Constitution's guarantee of Due Process does not allow a Defendant to be convicted of a crime based on evidence of his 'bad character.' Old Chief v. U.S., 117 S.Ct 644-