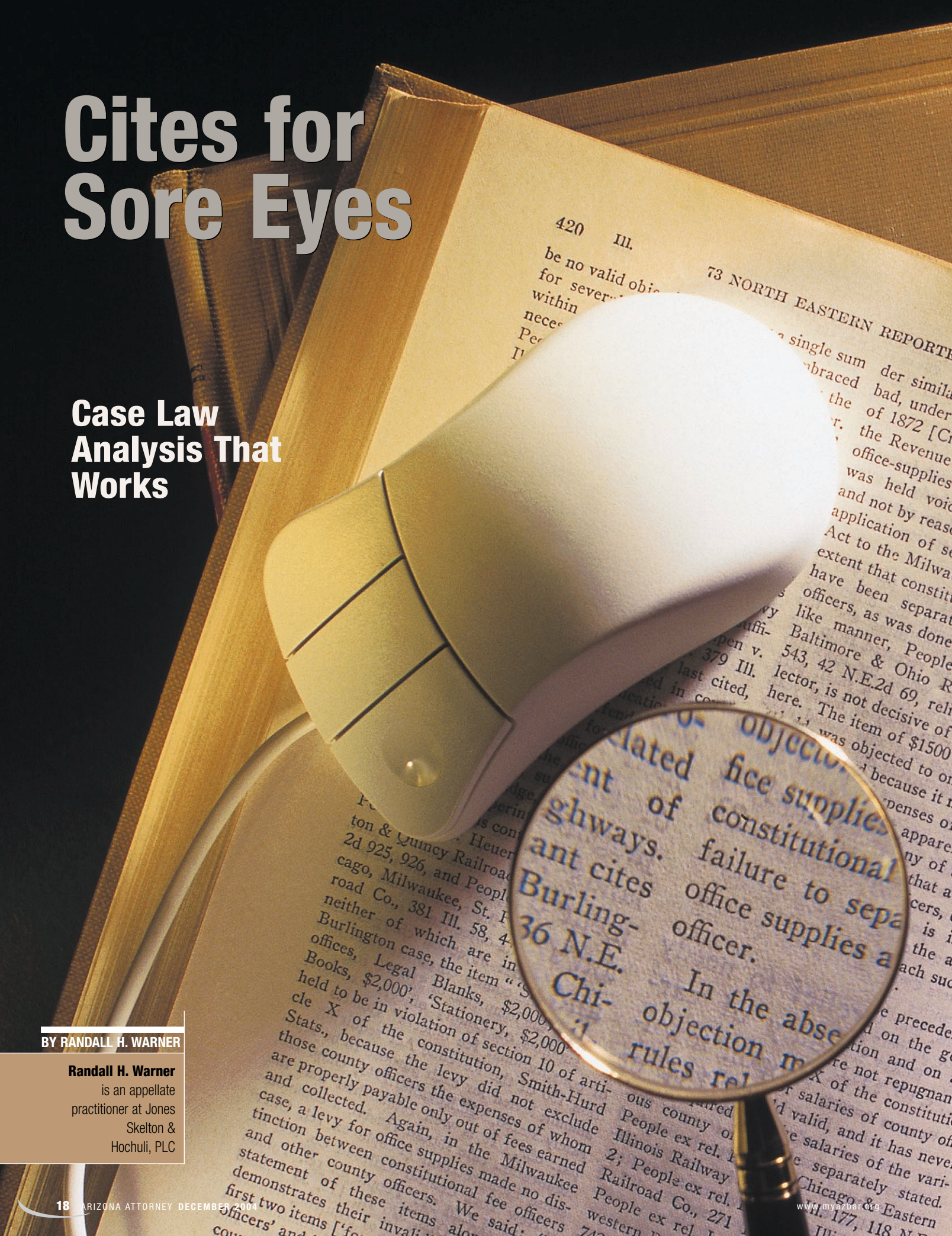
Cites for Sore Eyes

Case Law Analysis That Works



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Analyzing and citing case law is one of the first things we learned to do in law school. We learned to sift material facts from those that have no bearing on the issue at hand. We learned how to tell good law from bad. We learned the trusty "IRAC" formula—issue, rule, analysis, conclusion. And, more than anything, we learned the fine art of distinguishing cases that don't go our way.

Having mastered these skills, we give them little thought anymore. Sure, we use case analysis skills intuitively in briefs and legal memoranda, just as we use what we learned in Driver's Ed when we're behind the wheel. But who couldn't improve their driving with a course at the Bondurant school? This article goes beyond the ABCs of case citation. Here are some specific tools for using case law to your best advantage. ➙

When To Cite, and How Much?

Lawyers typically have two problems when it comes to citing case law: citing too much and citing too little.

Some lawyers never cite cases. They state the law as if it were self-evident. Others insist on a case citation for every proposition. Their writing is full of string citations that interrupt the flow of the argument. Still other lawyers insist on going through IRAC for every case they or their opponent cites, no matter how important the case or the proposition for which it stands.

The judge's interest may well be exhausted before the page limit is.

Thus, the first rule of case citation: Know when to say when.

A good rule of thumb is that you need a case for every legal proposition a judge might question. For example, in a motion for summary judgment, you rarely need to cite *Orme School* for the summary judgment standard. I'd bet dollars against doughnuts that the judge has heard of that case before, so you are just wasting his or her scarce time. By contrast, the judge may not know that Arizona generally follows the Corbin approach to contract formation. A citation for that proposition would be in order.

How much detail should you go into about the case? That depends on three factors: (a) how important the proposition is, (b) how well established the proposition is and (c) how intuitive (or counter-intuitive) the proposition is.

For example, if the rule you are citing is really important and somewhat debatable, you should probably go into some detail about the case law that supports it. A detailed discussion also might be appropriate if the proposition is somewhat important but contrary to what most lawyers think, if for no other reason than to convince the court you're not just making it up.

On the other hand, if the rule is not really in dispute, there may be little reason to give the case full treatment, even if the point is critical. Or if the point is minor, a simple citation with a parenthetical might be in order even if the proposition is not that well established.

The One-Liner

So now you've decided a case citation is necessary. How much detail should you provide about the case?

I tend to catagorize case citation into three levels of increasing detail: the One-Liner, the Half Monty and the Full Monty.

The One-Liner consists only of a one-line description of the rule for which you are citing the case. That one line can be in the text before the citation or in a parenthetical after the citation. For example:

- *Zamalloa v. Hart*, 31 F.3d 911, 913 (9th Cir. 1994) (a motor carrier lessee is vicariously liable for lessor's negligence as a "statutory employer").
- Battery requires an intent to cause a harmful or offensive contact. *Johnson v. Pankratz*, 196 Ariz. 621, 623, 2 P.3d 1266, 1268 (App. 2000).

The essence of the One-Liner is that it contains no description of the case and nothing about its facts or its reasoning. It is simply a citation of the case for a single legal proposition that is stated somewhere in it. For this reason, the one-liner is most appropriately used for points of law that are relatively undisputed, uncomplicated or of minor significance to the pleading.

A One-Liner citation should always include a "jump cite" or "pin cite"—a citation to the page on which your proposition may be found. Making the judge search the whole case to figure out why you cited it is rude and unwise.

The "Full Monty"

When thorough case treatment is warranted, I use an approach I call the "Full Monty."

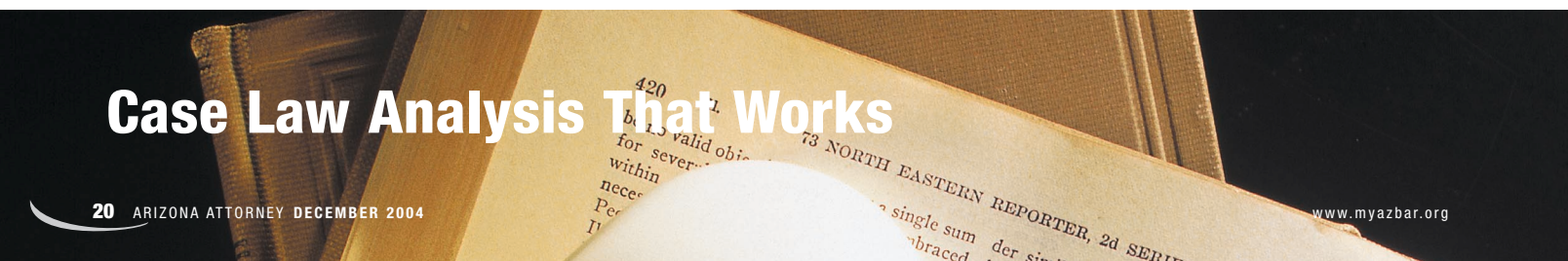
The Full Monty has nothing to do with frontal nudity. It is a tried-and-true recipe for addressing case authority completely and concisely in legal pleadings. That is not to say there is no craft in discussing case authority; there is. And it is no crime to deviate from the formula when appropriate. But you will never go wrong using the Full Monty.

The elements of the Full Monty are:

(a) a transition statement,
(b) a brief recitation of facts,
(c) the procedural posture of the case,
(d) the case's disposition,
(e) the court's holding and reasoning, and
(f) a juxtaposition with your case.

The following is an example:

> *Horner v. Kentucky High School Athletic Ass'n*, 43 F.3d 265 (6th Cir. 1994), is on point. The plaintiffs in that case were female high school students who claimed the school district discriminated against girls because there were more sanctioned boys sports than girls sports. The trial court dismissed their Section 1983 claim, finding no evidence of intentional discrimination. The Sixth Circuit affirmed. It noted that the inequity between boys and girls resulted from a neutral policy requiring a certain level of interest before a sport would be sanctioned. Thus, there was no evidence that the school district created that policy with the purpose of discriminating against girls. 43 F.3d at 276.



> Like the rule in *Horner*, the single restroom at Fire Station B favors neither men nor women. For this reason, the Court should grant summary judgment.

Let's examine that discussion.

First, there is a transitional statement: "*Horner* is on point." A transition like this is critical but often overlooked. It makes no sense to launch into a case discussion without first telling the judge why you are doing so. The transitional statement—"*Horner* is on point," "An analogous case is *Horner v. Kentucky*," or "The *Horner* case is inapposite"—tells the judge where you are going and gives him or her a reason to pay attention to what you are about to say.

Next, you have to tell the court what the case is about in one or two sentences. Here, the tendency of most lawyers is to be over-inclusive, but you have to pare it down to the bare essentials. The judge has limited time to devote to your pleading. It is hard enough for him or her to keep straight all the facts of your case; don't confuse the judge with excessive facts about all the cases you are discussing. Dates are usually unimportant, as are names. The shorter and more vivid your description of the facts, the easier time the judge will have comprehending and remembering them.

Third and fourth, you almost always have to include a short statement of the procedural posture and disposition of the case. The holding of the case depends, for example, on whether the trial court decided the issue on a motion to dismiss, a motion for summary judgment or after a bench trial. It matters whether the appellate court was affirming a grant of summary judgment or a denial of a motion for judgment as a matter of law.

The statements of the procedural posture and appellate disposition need not be long and often can be combined. For example, they may be simple: "Affirming summary judgment for the plaintiff, the court held … ." That tells the judge succinctly that it is a summary judgment case, that the trial court granted summary judg-

ment for the plaintiff, and that the appellate court is affirming that grant of summary judgment.

Fifth, you must describe the court's holding and reasoning. Most lawyers are best at this part. In the *Horner* case described above, the narrow holding is that the facts of that case did not state a Section 1983 claim. The broader reasoning—which is why that particular case was cited—is that a neutral policy does not suffice to show purposeful discrimination, which is required to prove an equal protection violation. Again, it is important to state the holding and reasoning as concisely as possible. The opinion may contain a half-dozen policy reasons why it reached that result, but you've got to figure out a way to encapsulate it so that a busy trial court judge can grasp it immediately and remember it.

Finally, if you've gone to the trouble to Full Monty the case, it is often useful to juxtapose the case you are describing with your case. Don't assume the judge will connect the dots. You have to tell the judge exactly why the case you have just described is on point—or why not. You can do this with a simple transition statement: "Like the *Horner* case …" or "This case differs from *Horner* because … ."

The "Half Monty"

Somewhere between the One-Liner and the Full Monty is the Half Monty.

Sometimes the particulars of a case are important enough to describe, but not so important that the case justifies a full paragraph of Full Monty treatment. After all, most courts have page limitations, and the judge's interest may well be exhausted before the page limit is.

The Half Monty is a way of describing a case in one or two sentences. It tells the reader just enough about the case to get a gist of its holding and reasoning without going into great detail. For example:

- *See Pinder v. Johnson*, 54 F.3d 1169, 1176 (4th Cir. 1995) (failure to safeguard children from ex-boyfriend was not due process violation; no "special relationship" existed).
- *State v. Clary*, 196 Ariz. 610, 2 P.3d 1255 (App. 2000), provides additional support by holding that restraining a suspect on the floor during a blood draw did not violate due process. Although only the forcible nature of the blood draw was at issue, the court noted that a phlebotomist took the blood at a police station. 196 Ariz. at 611, 2 P.3d at 1256.

The Half Monty is ideal for citing or distinguishing a number of cases in rapid succession.

Foreign Authority: The "One-Two Punch"

So far, we have talked about how to cite a case with the appropriate level of detail. We now turn to the problem—encountered by anyone who has ever tried to find an Arizona case right on point—of how best to cite non-Arizona cases.

The problem with foreign authority is that your opponent can always say the case is not controlling in Arizona. The solution to that problem is the "One–Two Punch." That involves citing a non-Arizona case that is factually or legally on point in tandem with an Arizona case that, while not on point, relies on the same legal principle as the non-Arizona case. Take the following example:

> The rule in Arizona is that a plaintiff cannot recover lost profits based on speculation or conjecture. *Rancho Pescado, Inc. v. Northwestern Mut. Life Ins. Co.*, 140 Ariz. 174, 186, 680 P.2d 1235, 1247 (App. 1984). Applying the same rule, the Texas Supreme Court recently refused to allow lost profits in a case indistinguishable from this one. *See Flying Bob's Armadillo Farm v. The Texas Roadkill Ass'n*, 838 S.W.2d 901, 903 (Tex. App. 1998) (affirming judgment as a matter of law on lost profits claim where plaintiffs based damages only on *pro forma* projections).

The *Rancho Pescado* rule regarding lost profits is well established. Although that case was not factually on point in the example, a Texas case relying on the exact same rule was on point. In this way, the Texas case becomes almost as good as an Arizona case, because it is an example of how a court applied an established Arizona rule to facts just like ours.

This is the One–Two Punch. Note that, in the example, the Arizona case is cited as a One-Liner (there is no detail about the facts of *Rancho Pescado*), whereas the Texas case is cited as a Half-Monty. Were the issue important enough, the discussion of the Texas case could have been expanded to Full Monty treatment.

You sometimes hear lawyers say that a certain jurisdiction's case law is persuasive in Arizona because of that jurisdiction's proximity to Arizona. This is not exactly right. If cases from a nearby jurisdiction are persuasive, it is not because of the proximity to Arizona but because of the similarity of that state's law. The best foreign case is one that applies the same rule of law that Arizona applies, be it from California or Connecticut. That's what the One–Two Punch is all about: It is a way of connecting non-Arizona authority to Arizona law.

Of course, there are issues for which there is no controlling legal principle in Arizona. In that case, you may end up arguing whether Arizona should adopt the Wisconsin approach or the California approach. But there is almost always a way to link the good non-Arizona authority to Arizona law. The more you can do that, the more persuasive your non-Arizona cases will be.

When and How To Quote

Okay, you have now used the Full Monty effectively and concisely, One-Liners where appropriate, and the One–Two Punch to

connect your non-Arizona cases to Arizona law. When, if at all, should you quote the cases?

Some lawyers over-quote. If your brief contains one or more block quotes on every page, you are over-quoting. And if your case discussion consists of 15 lines of a block quote, followed by the sentence "The court went on to hold," followed by 20 more lines of block quote, you are unquestionably abusing your quoting privileges.

Quotations should be used sparingly to maximize their effect. A good rule of thumb is that you should quote only when the court might doubt that your description of the case is accurate, or when the opinion's language is just so juicy and on point that you could not say it better or more concisely yourself.

As to the first reason, a quotation is a way of saying to the court, "Don't take my word for it, here's what the opinion actually says."

As to the second, you should always look for a way to encapsulate the court's holding more concisely. Quote too often, and you just look lazy.

When you do quote, don't leave something critical solely in the quotation. It is human nature that many of our eyes gloss over quotations, especially block quotes, and by leaving a critical point inside the quote you take a chance that the judge might not read it. Instead, state the point in the text, and then follow it up with a quotation that adds authority to it.

Accuracy, Accuracy, Accuracy

One final point must be made. When citing case law (actually, when citing anything), the importance of being accurate cannot be over-emphasized. The judge may not read all your cases, but then again he or she might. It doesn't matter how many cases you describe accurately; the one they'll remember is the one you got wrong. AZAT