

Tackling Legal Research in the Real World

Strategies and Tips

Beatrice A. Tice, Foreign and Comparative Law Librarian
University of Michigan Law Library
btice@umich.edu; (734) 764-6151

Updated March 23, 2004

Learning good research skills is one of the best ways you can prepare yourself for any type of legal career. You can't know all of the law on a particular topic at any given point in time...but you *can* know how to *find* it! If you develop excellent research habits now, they will stand you in good stead for the rest of your legal life...(even better than getting an A+ on your contracts exam...no kidding!)

There are five essential steps in the legal research process, which are laid out and discussed below. Although the discussion of "steps" may make legal research appear to be a linear process, in reality it is a spiral progression, with continual loops back to earlier steps as new information is uncovered. With practice (and you'll get plenty of it, in your job!) you will soon learn to navigate the process in an orderly, time-efficient, cost-efficient, and effective manner. And they're gonna love you for it!

Step 1: Preparation for Research

- *Take time to think about your topic before starting research.* Even a few minutes spent planning and strategizing before you dive in will save you time and frustration in the long run.
- *Consult research guides to plan your research strategy, if necessary.* Don't forget about these, as they can provide a useful list of sources on particular topics. Look for them in print and especially online, through sites such as Findlaw <<http://www.findlaw.com>>, LLRX <<http://www.llrx.com>>, and websites of various academic law libraries. The *Internet Hot List of Legal Guides & Pathfinders* <<http://www3.uakron.edu/law/richert/index1.html>> provides a list of links to legal research guides and pathfinders covering a wide variety of basic and specialized topics.
- *Set preliminary boundaries for your topic.* Remind yourself which issues you will *not* be looking at, to avoid chasing red herrings in the process of research.
- *Note some important keywords and phrases.* Although you will be revising these as you proceed with research, making an initial list will save you time.
- *Promise yourself to keep a research log.* Somewhere, *anywhere!*, note down enough information for each source consulted to be able to cite it completely. This will save you the heartbreak of having to redo your research in order to find a source.

Step 2: Consult Secondary Sources

- *Secondary sources* contain commentary on the law; they do not constitute the law itself. Secondary sources include legal encyclopedias, periodicals, treatises, ALRs, restatements, and other sources. Anything that describes, explains and/or analyzes the law is a secondary source.
- *Secondary sources introduce you to the law.* This is particularly important if you are researching an area of law that is unfamiliar to you. It will also help you focus your research, as you discover which issues are most significant.
- *Why reinvent the wheel?* Secondary sources synthesize the law for you and place it in an analytical framework, which would be difficult and time-consuming to do on your own. The name of the research game in legal practice is efficiency and accuracy; use any source you can to achieve this!
- *Secondary sources are finding tools for primary sources.* Since they discuss the law, secondary sources cannot help but cite it for you. Use these citations to locate relevant primary authority.
- "[I]t is easier to locate a pertinent portion of a treatise...than it is to locate a pertinent case, if you are starting from scratch." Kunz, et al. *The Process of Legal Research* (4th ed. 1996), at 11. Take this to heart. Engrave it in your memory. In practical terms, it means that you DO NOT jump on Lexis or Westlaw at the beginning of a research project and immediately start doing searches to find cases. Such an approach is inefficient, frustrating, and confusing, not to mention expensive, which your clients will not appreciate. Don't do it; start with secondary sources instead.

Step 3: Consult Primary Sources

- *Primary sources* are the law itself, including statutes, court opinions, administrative decisions, treaties, etc.
- *Start by researching statutes, because they also lead to cases.* If a statute is relevant to your research, find it using an annotated source if possible. This will lead you to relevant cases. In addition, you can use the statute's citation as a keyword when you start doing your case research.
- *When researching case law, follow the citations.* Each case will include cites; look these up for further support. Then shepardize your case (do it online...this is the easiest, quickest and most current method) to find other cases that cite it.
- *How do you know when you're done?* You'll know it's time to call it quits when you start seeing citations to the same cases, statutes and other sources, over and over again, until there are no new leads to follow up.

Step 4: Consult Specialized Sources

- *Specialized sources* are non-legal and other sources that may be appropriate to consult for your research issue. These could be medical journals, scientific reports, non-legal books, or any of a myriad of published information, in print or online.
- *People can be specialized sources.* Don't forget that people can be a specialized source, too! Telephone calls or e-mails to knowledgeable people or experts in a particular field can yield valuable information.

Step 5: Update Your Research

- *Updating your research* means making sure that your conclusions regarding your research problem are based on the most current, reliable law.
- *Updating doesn't have to wait until last, BUT NEVER FORGET TO DO IT.* This is a key principle of the practice of law. Malpractice claims have been based on an attorney's reliance on superseded law!
- *Always look at the pocket part!* Don't forget that little paper pamphlet at the back of most statute books and some other sources. If there isn't a pocket part, find out why! Don't assume that there haven't been any updates; it is the exception, not the rule, that a volume is recent enough to include all updates.
- *Online updating services are the easiest, most consistent, most accurate method of updating primary law.* Use LEXIS (Shepard's) or WESTLAW (KeyCite); avoid paper shepardizing if possible (it is confusing, not as current, and simply unnecessary in the modern world of computer-assisted legal research).

What to Do If You're Stumped?

- *If you can't find The Answer, maybe there isn't one.* Sometimes, despite your best efforts to implement the legal research process, issues remain unclear. This happens very often, in fact, simply because the law doesn't lend itself to easy answers. Nobody will expect you to find The Perfect Answer every time; frequently, there isn't one. The most you will be expected to do, in that situation, is articulate intelligent arguments for and/or against possible answers.

- *Never hesitate to ask questions.* If you don't understand the issues you are being asked to research, ask. If you don't understand how to use a source, ask. If there is anything you don't understand, ask. No one will ever fault you for seeking clarification. (They may well fault you for spending time and billing a client for a project that wasn't what they intended in the first place.)
- ***DO NOT FORGET TO ASK A LIBRARIAN!*** Librarianship is a service profession; since we live to serve, allow us to fulfill that mission by asking us questions. If you are working for a firm or other legal employer that retains one or more librarians on staff, helping you is part of those librarians' job...it is part of *your* job to take advantage of their assistance! If your firm or legal employer does not have its own librarians, don't hesitate to call or visit the local county law library's reference desk. Likewise, don't hesitate to call or visit any nearby academic law school library (like us!) for assistance with reference questions. Never feel that you must struggle with legal research on your own...we're here for YOU!!

For Further Reading...

If you are interested in doing some "research" about legal research, here are a few sources to get you started (including call numbers so you can find them in our University of Michigan Law Library collection):

- Mersky, R. and D. Dunn. *Fundamentals of Legal Research* (8th ed. 2002) [Ref Coll: Bibliog Mersky].
-
- Kunz, C. et al. *The Process of Legal Research* (5th ed. 2000) [Bibliog Process].
- Cohen, M. and K. Olson. *Legal Research in a Nutshell* (7th ed. 2000) [Main Desk: Bibliog Cohen].
- Berring, R. and E. Edinger. *Finding the Law* (11th ed. 1999) [Ref Coll: Bibliog Berring].
- Doyle, F. et al. *Searching the Law* (2nd ed. 1999) [Ref Coll: Bibliog Searchin].

ADDENDUM: LEGAL RESEARCH ON THE INTERNET

Things to Remember About Legal Research on the Internet

- **Complete legal research requires the use of both print and electronic resources!**
- Like with traditional print research as well as Lexis/Westlaw, you need to know what your research strategy is going to be at the start - the WWW is too disorganized to try to find things hit and miss.
- Like with Lexis and Westlaw, **not everything you need will be available via the WWW** - the usefulness of the WWW will depend on what it is you are looking for.
- Your research strategy will depend on what you are looking for and are hoping to find. The Internet is best used to find specific information, materials, or documents, or to fill in gaps in your print research.
- **Primary material is more likely to be available via the WWW than secondary material.** The U.S. federal government has especially made a point of trying to get official documents available online. Secondary material is less likely to be online (for copyright, use, and cost issues) although more and more journals are beginning to be published in both paper and electronic format and there are even some projects that have digitized old law and non-law journals.
- **It is important to evaluate the web sites where you find information.** How current is the information on that site (is there a date saying when the site was last updated)? Is the information, or web site likely to disappear (important for citation purposes)? Is the web site authoritative (.gov vs. .com)? Does the web site attribute the source of the information? Is the information also given in a document format (like PDF)?
- **Books, Lexis, and Westlaw are still superior to the Web for broad and in depth legal research because of coverage, search accuracy, and authority.**
- Web research is ideal for facts, current news, and recent documents (especially government documents). If you need a single document or piece of information the Web is great - it is when you need the "best dozen cases" that you realize that the Web leaves much to be desired.
- Once you find a site you like, there is nothing wrong with returning time after time. Bookmarks. Bookmarks. Bookmarks.
- **Documents, databases, and even entire web sites can disappear.** The web is nothing if not ephemeral - there is no guarantee that what is there today will still be there tomorrow.
- There are no free citators to make sure that the cases or laws that you found for free on the web are still good law.
- Good places to start legal research on a given topic are online research guides and gateway and database web sites:
 - Good Sources of Online Research Guides
 - University of Michigan Law Library: <http://www.law.umich.edu/library/refres/researchguides.htm>
 - Georgetown University Law Library: <http://www.ll.georgetown.edu/guides/index.cfm>
 - Cornell Legal Information Institute: <http://www.law.cornell.edu/topics/topic1.html>
 - Major Gateway Web Sites
 - Findlaw: <http://www.findlaw.com/>
 - CataLaw: <http://www.catalaw.com/>
 - Washlaw: <http://www.washlaw.edu/>

- Useful Database and Legal Information Web Sites
 - Thomas (Library of Congress): <http://thomas.loc.gov/>
 - Catalog of U.S. Government Publications: http://www.access.gpo.gov/su_docs/locators/cgp/index.html
 - EDGAR (SEC): <http://www.sec.gov/edgar/searchedgar/webusers.htm>
 - USPTO Patent Database: <http://www.uspto.gov/patft/index.html>
 - ICLE (Michigan Legal Information): <http://www.icle.org/michlaw/>
 - Law Library of Congress' *Nations of the World*: <http://www.loc.gov/law/guide/nations.html>
 - Cornell Legal Information Institute: <http://www.law.cornell.edu/index.html>
 - Seattle Public Library's Municipal Codes Online: <http://www.spl.org/selectedsites/municode.html>