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Research Strategies

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■ ■ ■

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CHAPTER 22

RESEARCH STRATEGIES

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By Maureen Moran

A. WHO NEEDS A RESEARCH PLAN?

It is 3 a.m. and you are up, prepping for class. Again. You have reading to do for Torts, for Contracts, and for Civil Procedure, and if you fall behind even one day, you will be spending hours late at night for the next few days trying to catch up. Or, worse, you will be unprepared and that will be the day your professor will call on you. And to add to your stress, you have a research project for your legal writing class due in less than two days, and you have not even started. Your professor told you to draft a research plan before you set foot in the library or signed onto your legal research database. But with so much going on in your other classes—not to mention how very strung-out you feel from the late nights and intense workload of a first-year law student—you do not see why you should spend the time on a research plan when that research plan will not be turned in, and you will not even be graded on it.

So you decide to skip the research plan and just dive in. You get results. But there seem to be a lot of them, and they don't seem to be what you want. You try again, but you still aren't finding what you are looking for. This research project seems overwhelming now, and the clock is ticking. Over the next couple of days, you find yourself having to put off reading for your other classes. Your level of panic starts rising. Why is this taking so long? Why can't you find what you're looking for? Are you just not cut out for law school? Maybe you don't really want to do this after all.

Ultimately, you turn in your research project after burning the midnight oil several nights in a row. You are not confident in your results, and you are pretty sure you hate your life—and law school. You spend the next few days catching up with your reading for your other classes, and soon enough, it's time to do the next research project, which, of course, is a more complex one.

So, how did skipping the research plan on that last assignment work out for you? Not so great, right? Since you want to sleep again sometime, you need to change your strategy for the next assignment. You need a good research plan.

While it seems tempting to skip a research plan you do not have to turn in, you will save yourself a lot of time and effort and agony if you take the time to plan your research before you jump in, especially if you have a complex issue to research (and you will, eventually, have to research complex issues). A research plan can help you:

- Keep your research focused and organized
- Save time
- Prevent duplication of effort
- Prevent frustration
- Save money

This chapter will discuss these benefits of a good research plan, explain why a research plan saves you time, and help you formulate a research plan that can help you get through any research project without tearing your hair out.

B. RESEARCH COSTS MONEY, AND RESEARCH TAKES TIME: A GOOD PLAN CAN HELP YOU SAVE BOTH

It probably seems strange to hear that research costs money, because you have probably heard that research is free while you are in law school. But it is not free—someone's paid for all those books in the library and the subscription databases you use. And guess what? *That someone is you.* Your tuition is what covers the cost of legal research while you are in school. The cost is hidden from you now, but soon enough, you will be in practice and you will have to start thinking about how much your research costs because the connection between the cost of research and who has to pay for it will be more direct, and might be coming out of the pocket of someone who can make decisions about your future employment. And if there's one thing you should learn while you are in law school, it's this: Legal research is very expensive.

An anecdote: when I was a first-year associate in a litigation firm, I spent a weekend at the office with several other attorneys finalizing an important appellate brief. While the other attorneys made revisions, I was tasked with doing last-minute research and checking the citations to be sure that the cases we cited were still good law. The problem I had was that my preferred legal research database had recently been dropped by the firm as a cost-cutting measure, so I had to use the other database, which I had never developed great fluency with because I had simply defaulted to the other one when both had been available. I finished my cite-checking, we filed the brief, and I never thought about my research on that brief again.

Well, not until the next month, when the managing partner of my firm came into my office, shut the door, and showed me the bill from the database I had used. I had managed to rack up *four thousand dollars* in charges because of the way I had done the cite-checking (the bill should have been a couple hundred at most). I did not realize—and had not asked my colleagues—how this database was priced; I had simply assumed it was on a timed basis, like the database I usually used. And I was really good at searching quickly! But this database was billed on a per-search basis, and because I had retrieved each case prior to using the citator rather than just putting the citations directly into the citator, each retrieval was charged as a new search, and then an additional charge was incurred for the citator. The managing partner, as you might imagine, was not happy with me because he could not pass those charges on to the client, but the bill had to be paid—and it was coming out of his pocket and the pockets of the other partners in my firm.

While I never made that mistake again—and, really, it is the kind of mistake you can make *once* but is better not to make *at all* if you would like to keep your job—I learned a few lessons from that experience about being aware of how much research costs and how it is priced. I learned a lesson about relying on one resource and letting my skills in others go slack. And I also learned a lesson about planning my research.

There are two main things that make legal research very expensive: The cost of the materials and the cost of the researcher's time. Legal research materials are usually very pricey. You probably already got a shock when you had to buy your casebooks. Print resources can be quite expensive, and they have to be updated frequently, which not only involves paying for the pocket parts and supplements and updated volumes, but also the staff time to get all of those materials into the books.

Subscription databases are also quite expensive, though many law firms, law schools, government agencies, law libraries, and courts work out pricing arrangements tailored to their usage patterns and needs. However, there are three basic pricing models in use: (1) flat monthly fees, (2) pricing by the hour, and (3) pricing per search. These basic models may vary from database to database, so you should be familiar with all three pricing models and be prepared to tailor your research plan to the pricing model of the database you are using.

Even when you are using free or low-cost materials (and there are many available, from government resources to collections maintained by public law libraries), you need to understand that the researcher's time costs money as well. This is true even when you are not billing your time directly to a client (who may not be willing to pay for the cost of using a database on top of the cost of your billable rate to use that database). Just spending time on research means that you cannot spend your time on other tasks that need to get done. The more efficient and effective you can

become at performing legal research, the more you will be able to control your time and manage your workload, thus controlling your costs.

You also need to know that not every employer will have the range of research options available to you in law school for your use in practice. Your employer may require you to use print resources or free resources to get started, or you may have to use a subscription database you do not prefer because your employer has decided to only pay for one. You may be sent off to a public, law school, or court law library to use a resource that your employer needs only occasionally. You may have a client who balks at being presented with a legal research bill showing a database charge or a fee the client thinks is excessive, and if that client will not pay, the partners in your law firm will have to eat the cost. If you work in-house, or for a court or government agency, any time you spend flailing around on ineffective research is time you do not have to devote to the other hundred things you need to take care of, and you will be stuck at the office late into the night. And if you have your own practice, you will be the one seeing diminishing returns in both time and money if you do not learn to research efficiently and effectively.

So how can you save time and money doing legal research? Have a research plan.

C. HOW TO BUILD A RESEARCH PLAN: ESSENTIALS

Now that you know why you should have a research plan, the question becomes how to build one. First, consider in greater depth the goals of a research plan, as outlined briefly above. Any research plan should help you:

- **Keep your research focused and organized**—By plotting out your issues, research terms, sources, and strategies in advance, you can keep your research on track and on task, especially as your research gets more complex.

- **Save time**—Putting in the time to plan your research will save you time down the road, by keeping your efforts focused and providing a means of checking your progress.

- **Prevent duplication of effort**—Having a research plan can help you avoid the problem of going over the same ground more than once because you have forgotten where you have already been.

- **Prevent frustration**—A research plan that builds in alternatives and variations can help you avoid the frustration of a too-narrow or too-broad search, or one that yields no results at all.

- **Save money**—Learning how to develop a research plan that can be adapted for a variety of pricing models can help you avoid costly errors in the "real world."

So, what are the essential components of a good research plan?

- Identifying the issue(s)
    - o Creating search terms
    - o Choosing your approach
- Choice of materials
    - o Secondary or primary sources?
    - o Print or electronic?
    - o Using finding aids
- Updating your research
- Closing the loop: how and when to stop

Each of these are discussed in more detail below.

1. IDENTIFYING ISSUES

The first thing you have to do in any research project is figure out what, exactly, you have to research. In order to do that, you need to figure out the legal issue or issues presented by your facts. Identifying the issue you want to research is the foundation for all that comes after, so you want to take your time and do a thorough job here.

To identify the issues, read your fact pattern and the call of the question carefully. Pick it apart in whatever way works for you—highlighting, cutting and pasting words, creating flash cards, using a whiteboard. It may help to use the "five W's and an H" method used by journalists to report the news and ask yourself a few related questions:

Who—Who are the players? People? Entities? What are their relationships? Does the conflict arise out of these relationships, or does it come from outside? Who has been harmed, and who might be responsible for the harm? Who is your client? Who benefits by what happened, and who is harmed?

What—What is the nature of the dispute? What kind of action is this—tort, contract, criminal, civil rights? What happened? What is the nature of the harm? What does your client want to accomplish? What is the relief sought?

Where—Where did the events giving rise to the dispute occur? Where is the case filed? Which state's law will govern? What is the jurisdiction? Where did the money (or goods, or papers, etc.) go?

When—When did the events giving rise to the dispute occur? When was the case filed? When does the statute of limitations run out?

Why—Why did this happen?

How—How did this happen? How would your client like for things to be fixed?

You might consider, as well, a catchall "W"—"What else?" This will help you capture any ideas from your brainstorming that do not fit any of the above categories.

Once you have identified your issue, you can begin generating search terms.

a. Creating Search Terms

Now that you have identified your issue or issues, you need to figure out how you are going to find legal authority that will help you analyze the issues. Since you will be using some kind of finding aid—whether electronic or paper-based—to find your legal authority, you will need to create search terms to locate the law relevant to your issue. Here are some guidelines for creating search terms.

Brainstorm—Use your fact pattern, the call of the question, and the answers to your issue-identification questions to come up with as many potential search terms and variations as you can think of. Do not limit yourself to legal issues—be sure to include factual terms as well, since the law is always applied to facts and the outcome of a case often turns on factual questions.

Be Flexible—The law is vast, and the language used to describe and find it varies over time and from authority to authority. If you take a rigid approach, you may miss entire swaths of the law. You may have noticed that legal terms of art are not necessarily based on common sense or even the English language. The terms used in statutes or cases are selected by the legislators who drafted the laws, the judges who wrote the opinions, or even by the attorneys who wrote the briefs on appeal and whose terminology was adopted by the court. Moreover, sometimes the terminology used may not reflect the subject matter of a case but may reflect a controlling statute or rule. So, for example, a case involving text messages may not refer to "texting" but may refer to "electronic communications" instead if the statute at issue deals with electronic communications. "Wiretapping" may be used even if the device at issue had no wires.

Use Synonyms and Alternate Terms—Terminology may vary from source to source, even if the issue is the same. If you are using a keyword search rather than a subject search, you may miss good law on your issue if you cling too tightly to the exact wording in your problem.

Example: You want to research an issue regarding the theft of items from a motel room. The events giving rise to the suit occurred at a motel, but the issue of responsibility for theft applies to other types of lodging.

- If you limit your search terms to "motel," you will miss out on any source that does not use that term, but that might be relevant to your issue because a database using a keyword search will only return hits on the specific term it is asked to look for.

- If you expand your search to include synonyms, such as "lodging," "motor inn," "motor lodge," "hotel," "inn," "accommodation," you will pick up many more results.

Use Both Broad Categories and Narrow Terms to Capture Legal Significance—When generating search terms, ask yourself what is legally significant about the facts you have been presented with. When you have determined that, broaden your search terms to capture facts which may be legally related to your issue; or, if you feel that your search may be too broad and capture too many results, use narrower categories to refine your search.

Example: You have a fact pattern involving a horse bite.

If you focus only on horse bites, you may miss authority that discusses the issue of animal bites of some broader category than horses. Broaden your authority in steps in order to sweep in legally relevant authority involving other animals. In this case, the fact that *an animal* bit someone is more legally significant than the fact that it was a *horse*. However, the particular category of animal you use that is broader than "horse" but narrower than "animal" may affect the results you get. What categories of animals do horses belong to?

- Farm animals: This will sweep in results relating to all farm animals, but what if the bite took place in an urban area or the horse was a racehorse or family pet?

- Domesticated animals: This will bring in the family pet, but the category of "domesticated animal" also brings in dogs, which may be considered more dangerous than horses and thus have different rules applied.

- Working animals: This may include therapy animals, police horses, racehorses, draft horses, or even horse actors and show ponies. It may also include working dogs.

- Circus animals: If a circus horse bites an audience member or performer, are there different rules than when a police horse bites a member of the public? Similarly, are all bites from circus animals treated the same, or are tiger bites considered different from (and more serious than) horse bites?

- Wild animals: How is the bite of a wild horse legally different than the bite from a farm horse?

- Animals: This is a very broad category, and is best when discussing animal bites in general rather than that of a particular species or category of animal, or when you are having a hard time finding authority at all with a narrower approach.

Use Boolean Syntax to Maximize Results—While many databases allow for natural language searching that will pick up significant terms from what you type into the search box (similar to a Google-style search), Boolean syntax is a powerful tool for finding what you want in a database and eliminating what you do not. Many databases use some form of Boolean syntax (and there are variations from database to database) to search for specified terms in a certain order, within a certain proximity to another term, only with another search term, in all potential variations, or by eliminating results containing a specified term. Boolean connectors can be combined.

Since each database has its own variations, you should be sure to check the search term glossary (usually found on the Search page or an Advanced Search page) for any rules or idiosyncrasies of your database's Boolean syntax. For example, HeinOnline requires Boolean terms to be in all caps, while many other databases, such as Lexis, Westlaw and Bloomberg Law, do not. Westlaw, Lexis and Bloomberg use slightly different forms of syntax on certain commands, and some databases allow the substitution of symbols for words ("&" for "and"; a space for "or"; "%" for "but not"). Even on a simplified searching system such as WestlawNext or Lexis Advance, Boolean syntax may be used (generally from the Advanced Search page).

Here are some examples of Boolean syntax.

Connectors: and, or, but not

Example: *sexual AND abuse BUT NOT assault* will find results which contain both the terms "sexual" and "abuse" but eliminate any results which also contain the term "assault."

Proximity Limiters: /n, w/n (where "n" is a number); /s, w/s; /p, w/p

Example: *"voting rights" /s enforcement* will only return results which contain the phrase "voting rights" within the same sentence as the word "enforcement."

Example: *assumption /3 risk /p liability* will find results which contain the term "assumption" within three words of the term "risk" AND will only return results which ALSO contain the term "liability" within the same paragraph of any result which contains the term "assumption" within three words of the term "risk."

Root Expanders and Universal Characters: ! and *

Root expanders will find all variations of a term past a truncated point; this search method is especially helpful when a relevant term may differ depending on whether it is used as a verb, noun, adjective or adverb; in the singular or plural; and which verb tense is being used. Universal characters substitute for a character in the middle of a word and can pick up irregular plurals, misspellings, or variations.

Example: *statut!* = statute, statutes, statutory

Example: *wom*n* = woman, women, womyn

Quotation Marks: Enclose an Exact Phrase

Example: *"assumption of the risk"* will return results where the exact phrase "assumption of the risk" is used.

When using quotation marks to enclose an exact phrase, keep in mind the following tips:

Tip #1: If you are not sure that the phrase will always be phrased exactly the same way, if a change in verb tense allows for a variation, or if your database ignores common words such as "the," use a proximity limiter and/or a root expander or universal character to capture variations. So while *"assumption of the risk"* will return only those results in which the exact phrase "assumption of the risk" appears, *assum! /3 risk* will pick up "assumption of the risk" as well as "assumed the risk," "assumes a risk," "risk assumed," and other variations which might be relevant.

Tip #2: Some of the newer search platforms, such as WestlawNext, allow you to use different types of searching, either a Boolean search or a "Google-esque" search. Be aware that, at least on WestlawNext as of this writing, quotation marks can be used to find an exact phrase ONLY when using Boolean syntax (usually from the Advanced Search page). The "Google-esque" search from the main search bar will interpret quotation marks around a phrase as a proximity limiter, so *"res ipsa loquitur"* will be interpreted as *res /3 ipsa /3 loquitur*.

Field Searching allows you to limit your search to certain fields in the document, such as subject, caption, title, text, author, judge, and attorneys. Appearances of your search term in other parts of the document will be ignored. Some databases use drop-down menus, and some use abbreviations. Check your database's glossary or advanced search menu.

Example: A classic example of why field searching can be a good idea is the term "copyright." In some databases, if you do a search containing the term "copyright," and you do not restrict your search to fields, you are likely to get results in which the only occurrence of the term "copyright" is in the copyright notice of the document. Using field searching to restrict your search to only the title, subject, and/or text of a document will eliminate this problem.

Tip #3: Experiment with your search terms. Be creative. String to-gether different queries and try to guess which will yield many results, and which will yield a more focused selection. Write them down some-where in your research plan and leave a space where you can track how many results you get when you try them out. Now is the time to learn how to build your search terms and search queries to best fit your ap-proach, which will be discussed in the next section. Keeping track of which strategies worked well and which needed work—as well as noting any changes or adjustments you made as your research progressed—will not only help keep your current research project organized, it will also help you learn how to research more efficiently as you develop your skills.

Even the most experienced legal researchers strike out frequently; it is perfectly normal to have to run through multiple variations on a search before you get the results you need. Part of the learning process is learn-ing patience and not getting discouraged when your query does not yield the results you had hoped for.

The most important thing you can learn about generating search terms, though, is that you should generate them *before* you sign on to any subscription database or pick up any print resource. You will find addi-tional search terms (and eliminate others) as you research, but unless you have worked them out before you have signed on, you are wasting time—and since you may be getting charged by the hour, that wasted time can be costly.

b. Choosing Your Approach

Now that you have generated your search terms, you should give some thought to your approach. Probably the approach with the greatest applicability across research platforms is the inverted pyramid: in other words, starting with a broad search and using filters to narrow down to particular issues. This approach encompasses both materials and search terms: start both with broad, general sources (such as secondary authori-ty, which will be discussed in the next section) and broad, general search terms. A too-narrow search risks missing something crucial on a related issue or similar issue that does not use your particular search term; how-ever, a too-broad search can be unwieldy. For example, if you are inter-ested in finding law related to parental-consent laws for abortion, you should make your search narrower than "abortion" but broader than "pa-rental consent," because you may be interested in parental notification or other restrictions on minors seeking an abortion that do not involve pa-rental consent.

Keep in mind that many electronic databases allow you to narrow your search from the search results page without incurring an additional charge, using a feature such as Edit, Focus, or Locate. You can use this feature more than once, so you can search different permutations or com-

binations of search terms without any additional charges. So, to use the abortion example above, if your initial search is for abortion restrictions generally, you could search within those results for parental consent, spousal notification, parental notification, and waiting periods, all without incurring an additional charge. In addition, editing a search allows you to use restrictors such as jurisdiction, topic, or other parameters to get precisely what you want.

2. CHOOSING YOUR MATERIALS

Now that you have identified your issues, you need to consider where you intend to start looking for answers. In other words, it is time to choose your materials.

a. Know Your Materials

It is important to know your materials. Do you want to use an electronic source, or one in print? What are secondary sources, anyway? What are primary sources?

b. Print vs. Electronic

Print, despite what you may hear, is not yet dead. It is also, surprisingly enough, sometimes easier to use and more current than the electronic version of the same resource. A lot will depend on the demand for one particular source over another (and so, the version that is in greater demand will be the one the publisher will pay more attention to in terms of updating), and which resources are in demand depends a lot on the topic. Real estate lawyers may prefer print, but tax lawyers may prefer electronic. Follow the money to find the most-current version of a resource—or, alternatively, check the currency information in the individual database or print resource.

While most people have their strong preferences for print vs. electronic, there are advantages and disadvantages to both, and those relative advantages may change by publisher, by resource, and by form. For example, indexing might be better in print, but while you can search only one title at a time in a print source, you can select multiple databases on most subscription legal research platforms. To find out which sources you like in print and which in electronic format, try running the same search across platforms to get a feel for which you prefer. This strategy has a side benefit: since you can never predict once you leave law school which resources will be available to you, learning how to use both print and electronic resources now will help you down the road.

c. Secondary Sources

Secondary sources can be described as any source that is not "the law." Primary sources are "the law." Secondary sources explain, locate,

analyze, index, and otherwise make "the law" intelligible and findable. Examples of secondary sources include these reference materials:

- **Law reviews and journals:** Provide in-depth, often scholarly, analyses of current issues in the law and arguments for the creation of new laws or the extension of existing laws to new situations;

- **Treatises:** Provide in-depth treatment of the state of the law as it currently exists, with citations to leading cases and statutes. May be single-volume or multi-volume. Often referred to by publisher name or author name, even if the original author has long since passed away;

- **Legal encyclopedias**: Provide short articles summarizing the current state of the law and usually include leading cases, legislation and rules;

- **Practice guides**: Provide practical, how-to-do-it advice for practicing attorneys, including procedural steps, forms, and judges' commentary. Assumes a level of knowledge of the material that a student may not have; and

- **Legal dictionaries**: Provide definitions and citations for terms of art used in law.

As you will see, secondary sources are your first stop for most legal research questions. Familiarize yourself with the secondary sources available to you, whether online or in print, and ask law librarians, professors, and attorneys which are the leading authorities in the practice areas most of interest to you.

d. Primary Sources

As noted above, primary sources are "the law." As discussed below, your best course of action is to resist the temptation to simply dive right into a primary-authority database and start searching; instead, use a secondary source to lead you to the leading primary authority on the topic you are interested in. In other words, let someone else get your research started for you.

- **Constitutions:** Usually published as part of a collection of statutes or codes.

- **Statutes**

  ○ **Annotated Codes:** Usually published by a private publisher and unofficial (though sometimes designated as the "official" version of a code; check your jurisdiction to be sure), these contain research aids such as case annotations, cross-references, legislative history, research topics, references to secondary sources, and other helpful re-

sources for finding additional authority. The text of the statute will be the same as the official version, but the finding aids will vary from publisher to publisher.

- o **Unannotated Codes:** This is the version that is put out by the state or federal government as codified. There are no finding aids included. Some state governments use a private publisher for their official codes, and some issue only an electronic version on a state website.

- Case Reporters

  - o **Official and unofficial**: Some jurisdictions have an official version of their case reporter and an unofficial version. Some have only one version. There are often differences between publishers' versions, particularly when it comes to finding aids, cross references and annotations; the text should be the same. Check your jurisdiction for the official reporter.

  - o **Regional reporters:** Regional reporters collect the reported cases from a group of states' highest courts and publish them together in one of several regional reporters: Atlantic Reports, Pacific Reports, North Eastern Reports, North Western Reports, South Eastern Reports, and Southern Reports.

  - o **Unreported cases:** Back when case reporters only existed in paper, only certain cases were selected for publication. Now, unreported cases are routinely put into online databases, though without headnotes or other references. Check your jurisdiction for special rules regarding the use of unreported cases; some forbid it entirely, while others allow the cases to be used as persuasive authority. In any event, unreported cases can be a very useful research tool, even in jurisdictions which forbid the citation of unreported cases, because they can lead you to reported cases related to your issue.

- **Administrative Materials**: These are laws created by an executive-branch agency of the government which is tasked with carrying out the legislature's statutory directives.

  - o **Rules and Regulations:** Agencies create rules and regulations to enforce their authority. Both the authority and the ability to promulgate rules and regulations are granted by statute, usually known as an enabling statute.

  - o **Administrative Decisions:** These are decisions by administrative tribunals which interpret administrative

rules and regulations, operating in much the same way as case law.

    ○ **Attorney General/Legal Counsel Opinions:** These are advisory opinions from administrative lawyers; they are not binding, but they give an indication of the agency counsel's interpretation of the law.

• Legislative Materials

    ○ **Bills and Drafts**: Valuable for compiling legislative history.

    ○ **Committee Reports:** Often used to assist in statutory interpretation and in legislative history.

So now that you know what materials are out there, how will you decide which of them to use? The answer will depend on how much you know about the law before you start, and whether you have any primary authority to get you started. Remember that the purpose of this chapter is not to teach you how to use the sources you select; rather, it is to help you build a strategy that you can use with any legal research resources you have available. Consult your legal research text, your lawyering skills professor, or a law librarian for instruction on using and evaluating individual resources.

e.   Starting With Secondary Sources

Unless you have a leading statute or case identified, your best bet is to start with secondary sources, such as law reviews and journals, legal encyclopedias, legal dictionaries, treatises, Restatements, practice guides, and other materials that explain the law in varying levels of detail. You undoubtedly are eager to get right into your research and pull up primary authority—after all, you have spent so much time getting ready, identifying your issues, choosing your search terms, and determining your approach—but consider the following benefits of starting off with secondary sources when you do not know the law:

• You *don't* know the law. So let someone who does—and has done all the work for you—give you the big picture;

• Secondary sources can give you an overview of your legal issue as well as identify the leading statutes, cases, and primary authority;

• Secondary sources can give you additional search terms in the form of terms of art used in that particular area of the law that you might not have thought of because your fact pattern did not raise them;

• Secondary sources can save you time and money by helping you understand the legal issue and taking you straight to the leading

primary authority on that issue rather than trying to figure out if the cases and statutes you find are the most-cited or most-followed.

There are two caveats to using secondary sources; however.

- When using electronic resources, you can search more databases at once than you can with print sources. However, the more databases you include (and the broader the scope of those databases), the more you will be charged. Make sure you keep this in mind when you chose your database(s);

- ALWAYS UPDATE. Secondary sources are not updated as frequently as primary authority and may be out of date. Check currency information in your print materials or electronic database. You may be surprised—often, print materials are more current than the electronic versions of the same resource.

Once you have located a good secondary authority for your issue, you can begin looking for primary authority. There are two alternative ways to begin.

- You can start with a *case, statute, or other primary authority* mentioned in the secondary source. In that case, you can follow the "One Good Case" or "One Good Statute" approach outlined below, which is the same you would use if you had to find law on one case or statute that, for example, appeared in a complaint or indictment;

- You can use a *finding aid*, discussed further below, to find primary authority on a particular topic (or by using keywords). You may find this approach most useful if the cases or statutes found in your secondary source are all very old, or if there are none in your jurisdiction.

Before you go any further, however, it is time to check back in with your research plan. Are there any terms you need to add or delete from your list of search terms based on what you found in the secondary sources? How are your strategies working for you? Be sure to make notes so that you do not go over the same ground again.

f.   Starting With a Case or Statute

If you have a leading case or a statute to get you started, this is an easy step for you; you can start with a citator to find authority that mentions your case or statute. This is sometimes called the "One Good Case" or "One Good Statute" approach. However, you should not rely solely on your case or statute to help you find results; at some point, you will need to think about how to create an additional search to find other materials as you continue your research, or to narrow your search should your lead-

ing case or statute have been cited thousands upon thousands of times. That's when you should circle back to a secondary authority—which you can find through a citator or a topic search—to see if there are other issues or other developments which you might have missed by just looking at primary authority.

To get you started, though, here are some strategies for researching using One Good Statute and One Good Case:

One Good Statute:

- Run the citation through a citator to find additional authority (primary or secondary) that mentions your statute (you can use the restrictors on a citator to limit your results to a particular subsection);

- Use the notes of decision in an annotated code to find cases and other authority, such as statutes, administrative rules and decisions, and secondary authority;

- Use the table of contents, index, browsing features, tables, Key Numbers, and other finding aids in the annotated code to find additional, related authority; and

- If you have the name of an act but not the citation, you can find a cite through the popular name table.

One Good Case:

- Run the citation through a citator to find additional authority that relies on or mentions your case (you can use restrictors to limit your results by jurisdiction, level of court, depth of treatment, or topic);

- Use a Table of Authorities feature to get a list of the cases and other authorities that your case cites within it;

- Use headnotes and Key Numbers/Topics to find additional authority that may not cite your case directly but that addresses the same legal issues;

- Many databases have suggestions for related sources in their sidebars from the results page—it may be worth looking at those suggestions;

- Many systems will also suggest additional search terms or topics which may help either broaden or narrow your search query, as needed.

Remember, these tips are just to get you started. Once you have some results, you will need to return to your research plan to see what your next steps will be. You may, for example, have to use some finding aids to find further results.

g.   Finding Aids

If you have spent any time in your law school's library, you will be aware that the resources available for researching the law are impressively (or perhaps intimidatingly) vast—and that is just what you can see out on the shelves. Law libraries typically have hundreds of thousands of volumes and volume-equivalents available for use. So how do you find your way around the law?

Finding aids are just what the name suggests—tools to help you find what you are looking for. If you look at an annotated code section, you will see that it is much, much longer and contains more information than the same section from an unannotated code. Indeed, the text of the statute itself may be only a few words or a sentence, but the annotations may go on for pages. All of the information in that annotated code is designed to help you conduct research—to find the law.

The beginning of this chapter discussed the cost of legal research. What you may be wondering is why it costs so much when the cases and statutes and rules and regulations and other government information is made available free of charge. Why wouldn't law schools and lawyers simply use the government-issued, free versions? The short answer is, again, finding aids. People pay a lot of money to legal publishers not for the content of the law—which they could get for free—but for the finding aids that the publishers add to allow users to find the right case, the right statute, on the right topic, from the right jurisdiction, from the right time frame. Finding aids are the value-add that makes it worth paying a lot for legal research resources. They're also going to make your job much, much easier.

You might be tempted to ignore finding aids, and simply type in a few keywords to get started. After all, it works on Google, doesn't it? But keyword searching can only find what you type in; while some algorithms will suggest related topics, you should not rely on them to think for you. Finding aids are typically topic-or subject-based, and will thus help you find the right subject or topic areas before you start trying to use keyword searching. In other words, they help narrow the search for you. Finding aids are distinct from keyword searching, using a search engine, and Boolean search syntax, discussed above; they include West's Key Number and Digest system, Headnotes, Indexes, Tables of Contents and other tables, and Annotated Codes.

h.   West's Key Number and Digest System

For many years, West Publishing was the dominant publisher of case reporters and codes in the U.S. One of the reasons West became so popular was its Digest and Key Number system, which breaks down the law in to topics and subtopics, assigns a topic name and number to them (a Key Number), then collects all the references to Key Numbers in an extensive

index known as a Digest. There are currently over 450 main topics, and thousands of subtopics and sub-subtopics. This system has been used for years by attorneys and other legal researchers to find case law on specific topics quickly and accurately.

West employs reference attorneys who read each new published case it receives, assign a Key Number or Key Numbers to each paragraph where a point or points of law are discussed, and write a headnote, or a short summary of the point of law in the relevant paragraph, which is placed at the top of the opinion. The headnotes are then collected in the Digests, which exist in both print and electronic forms; in the Digests, all the headnotes from all the cases pertaining to a particular Key Number are collected together and arranged by jurisdiction.

One thing to keep in mind about Digests and the citations found in them: the citations you find in a Digest are in a space-saving format, not a format that is acceptable for citing in a legal research and writing exercise. Moreover, your legal writing professor will know at a glance that you just copied your cite out of the Digest and never looked at the case. Be sure to look up the case itself to get all the necessary information, and use your Bluebook, ALWD manual, or other citation manual to get the proper citation form.

i.   Headnotes

Headnotes are short, topical summaries of the points of law in a case written by the legal publisher and inserted at the top of the case in the reporter. Headnotes are not part of the court's opinion for a case and so cannot be cited.

All private legal publishers have their own system of headnotes, though only West's reporters use the Key Number system. If you have a case available in print from two different publishers (or even from the same publisher in two different versions, such as Official California Reports and West's California Reporter, both published by West), compare the headnotes. How are they different? What does one publisher include that the other leaves out? Why would attorneys prefer one version over the other?

j.   Indexes

An index can tell you where in a document, volume, treatise, or collection a particular word, phrase, subject, or topic occurs. Indexes in print are usually found at the back of a single volume or in separate volumes at the end of a multi-volume set. Indexes in electronic resources may be an entirely separate database or may be accessible from a document page to find further results. You may find subject indexes, A–Z indexes, or topical indexes. You may find cross-references within an index showing you where to find what you are looking for if you have used an outdated or

archaic term, or if the topic is more appropriately indexed under a separate subject heading.

k.   Tables

Tables come in many forms and usually provide a map to the contents of a work or a section, or may provide even more basic information.

- **Table of Contents:** Usually found at the beginning of a volume or section, the Table of Contents shows you the contents to be found in the particular volume or section you have in front of you.

- **Table of Authorities:** Briefs filed with a court include a Table of Authorities, which is a listing of all the law and other authorities cited therein and where to find them within the document. Many electronic databases will allow you to generate your own Table of Authorities for a case.

- **Table of Cases:** Usually an alphabetical listing of all the cases, by name, contained in a set of reporters or digest. This finding tool can be very helpful when you have a case name but not a specific citation.

- **Conversion Tables**: Sometimes code sections or Key Numbers are changed, or an act, once codified, is scattered among titles in the code. A conversion table can help you track any such changes and find out where your information can now be found.

- **Popular Name Tables**: You know you have to find the USA PATRIOT Act, or Sarbanes–Oxley, but you do not have the slightest notion where to start looking—and searching for these acts by name is just giving you references to the acts, but not the citations. You can go to the Popular Name Table, look up the acts by their popular names, and get the code sections. (You may have to take the extra step of consulting a conversion table as well).

l.   Annotated Codes and Regulations

As discussed briefly under statutes, annotated codes provide more than just the bare (and sometimes, very brief) text of a statute or administrative regulation. The publishers have added several types of finding aids, including the following:

- Case annotations, which help you find cases that have analyzed your code section or regulation;

- Judges' and practitioners' commentaries, which help you understand how they are used in practice;

- Cross-references to other statutes and rules;

- Legislative history and history of amendments, so you can see how the section may have changed over time (particularly important when you have an older case discussing the statute, or your client's case arose prior to an amendment);

- References to secondary sources; and

- Currency information.

3. HOW FRESH IS YOUR RESEARCH? UPDATING AND USING CITATORS

As discussed briefly above, citators can be used to help you find the law using the One Good Case/One Good Statute approach, but their chief use is to update your research—to make sure that your authority is still "good law" and has not been overturned, amended, declared unconstitutional, or had its validity otherwise called into doubt.

The one rule you should always follow is to ALWAYS UPDATE YOUR RESEARCH. You do not want to be the one caught relying on a statute that has just been declared unconstitutional, or a case that has been thoroughly overruled. Using a citator as a last-minute check can save you a lot of embarrassment down the road.

If you enjoy using electronic tools, you will be happy to note that for all intents and purposes, the only citators worth using are online citators. Lexis has Shepard's, which was the leading print citator for many decades, and West developed its own online tool, KeyCite. Other systems, such as Bloomberg Law, have their own citators, but for right now, Shepard's and KeyCite are the standard-bearers. And both tools will give you basically the same features: a signal indicating whether any of the cases or statutes citing your authority has affected your authority negatively, and to what degree; the depth of analysis in the citing authority; filters that allow you to sort your results by type of source, jurisdiction, level of court, depth of treatment, topic, type of treatment, date, or a combination of these; cites to your authority in secondary decisions and administrative authority; and other tools that allow you to find other authorities, such as the Table of Authorities feature in Shepard's.

When you are using a citator for validation purposes, the thing you will want to pay most attention to is the visual signal the citator uses to indicate whether there is any negative treatment. No signal *usually* means that there is no negative treatment, and probably no history and no citing references at all. (One major exception is KeyCite for statutes in WestlawNext, which does not display a signal on the statute page even if there is negative treatment. Get in the habit of checking the negative treatment tabs regardless of the signaling, because the signaling could be misleading). Each system also has indicators when there are citing refer-

ences or direct history (such as an appeal, or a petition for review), but the signals you want to watch for are in green, yellow and red.

A green flag or green circle means that the case has been cited and there is no negative treatment by a later authority. A yellow flag or yellow triangle means that there has been some negative treatment, but it does not affect the validity of the authority—for example, the holding of a case may have been questioned by a court in another jurisdiction, or a statute might have proposed amending legislation. If you see either of those signals, you'll want to look at the citator's report, but you should be able to proceed.

A red flag or red stop sign? That is when you need to sit up and pay attention. Despite what you might think, a red signal does not automatically mean you cannot cite to the authority. It means you need to open up the full report on the citator, pull the negative citing authority, and *read it with care*. It could be that your case has been depublished, or your statute has been rescinded, in which case you absolutely cannot use it. Or it could be that a reviewing court has overturned your case on one point of law but left intact the lower court's ruling that you were relying on. In the case of a statute, there may have been an amendment on one subsection but not another, or part of an act may have been unconstitutional, but not the section relevant to your matter.

Another thing that might happen when you use a citator is that you may find an even better, more recent authority on the same subject. And, yes, you should absolutely take a look at that authority, and then repeat your research steps as necessary.

4.　CLOSING THE LOOP: HOW DO YOU KNOW WHEN TO STOP?

Legal research may seem like an endless process, with stops and starts and returns and do-overs and checking the same ground seemingly forever. And it is hard to know when to walk away. But you will need to figure out when and how to stop your research.

Think of the legal research process as a series of loops, the kind you probably practiced when you were learning cursive, proceeding forward across the page but doubling back on themselves as well. You will have to repeat the process for each new resource you find, but you will also come to a point where you realize that you are seeing the same few cases over and over, you are seeing the same statutes, the annotations are all pointing you to the same few secondary sources, and you do not seem to be making the same kind of progress you did at first. There is a reason you keep seeing the same cases if you are on the right track: when you have a common-law system that builds on precedent, the cases with precedential value tend to be cited a lot.

If you are finding yourself running into the same authority time and again, try adjusting your search terms to broaden or narrow them, and see if your results change markedly. Try a different approach, or a different finding aid or research tool. If your results are substantially different, you probably still have some work to do (and you may want to look back over your notes). If your results look pretty much the same, however, you can start the process of closing the loop.

Before you put your research down, take a few minutes and make some notations on your research plan. What worked? What did not? What might you try differently next time? Sort your research into Yes, No, and Maybe categories. What worked with the Yes pile? What didn't work with the No pile? Take a last pass at the citator to be sure you haven't missed anything.

Congratulations. You have finished your research. Do not be alarmed if it took more time than you wanted it to—that is very common, even with seasoned researchers. The research process by its nature takes a lot of time. What you want to do is make sure that that time is used effectively and productively.

CHAPTER 23

FOREIGN AND INTERNATIONAL LEGAL RESEARCH

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By Maureen Moran[1]

A. INTRODUCTION

As you have been learning, the American legal system is only one of hundreds in the world. Each of those legal systems has its own rules, sources, and authorities. But these systems do not exist in a vacuum.

What rules govern when two or more States or entities interact? What are the enforcement mechanisms? The study of these questions comprises the fields of foreign law and international law. The purpose of this chapter is not to give you a comprehensive review of all the resources available for researching this vast field of law. Rather, the goal is to give you enough of an overview to get you pointed in the right direction when faced with an issue of foreign or international law.

B. CATEGORIES OF EXTRA–TERRITORIAL LAW

When presented with an issue involving extra-territorial, or non-domestic U.S. law, it is helpful to understand the different categories into which this law is divided.

Foreign Law. The domestic law of any State other than the United States is considered "foreign law." This is the law that applies within the borders of that State, just as domestic U.S. law applies within the U.S. However, just as U.S. law may apply in some instances outside of the country's borders, so may foreign law sometimes be applied in U.S. courts.

For example, in a case involving an international shipping contract, the contract may specify that the substantive law of a foreign nation controls in any action brought to enforce the terms of the contract. So where a U.S. party and a Greek party enter into a shipping contract, which may be adjudicated in any court in either country but which specifies that

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[1] This chapter relies on the research guides written by Paul Howard and Jack Schroeder of the McGeorge School of Law, Law Library. Special thanks to Jennifer Wertkin of the Columbia Law School, Law Library for her work reviewing the chapter.