Washington Legal Researcher’s Deskbook 3d

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Introduction

The Washington Legal Researcher’s Deskbook 3d has been written to assist lawyers, students, librarians, legal assistants, legal secretaries, and members of the public in the complex task of researching legal problems. This book focuses on the law of Washington State and the legal materials that are available to the Washington practitioner. The reader will not find answers to legal questions but rather will find a rich array of information that can help in the process of reaching the law.

The importance of legal research certainly cannot be overstated. Lawyers want to give good advice to their clients. If the client’s problem is new to the practitioner, chances are good that a review of the legal issues and authority will be necessary. This may plague the researcher into unfamiliar areas of law.

If it were not enough to want to give good advice, Rule 1.1 of the Washington Rules of Professional Conduct (RPC) requires that a practitioner “shall provide competent representation to a client.” This rule requires familiarity with the relevant law through previous knowledge or through conducting adequate research. No Washington State Bar Association ethics opinions interpret this rule regarding the standards for performing competent legal research.

A 1975 California Supreme Court case, Smith v. Lewis, 10 Cal.3d 349, 530 P2d 589 (1975), articulates a standard of care for legal research. The standard requires (1) sufficient research (2) using standard research techniques (3) to obtain readily available authority. The Court found that the defendant lawyer failed to meet this standard of care. Cases in other jurisdictions have reached a similar result.

The Washington Court of Appeals has apparently applied this standard in Halsem v. Ferguson, 46 Wash. App. 708, 718, 735 P2d 675, 681 (1986).

A study commissioned by the ABA Section of Legal Education and Admission to the Bar listed legal research among ten skills necessary for the practice of law. The Task Force identified these specific skills needed for thorough and efficient research:

3.1 Knowledge of the Nature of Legal Rules and Institutions;
3.2 Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research;
3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design


The legal researcher of the twenty-first century cannot rest on the knowledge of legal research tools acquired while in law school or even as recently as two years ago. The computerization of legal information has completely changed the world of legal research and the practice of law. Some recent commentators have even suggested that computerized research is required in order for practitioners to avoid malpractice. See David M. Sandhaus, "Computers Are Required for the Practitioner to Avoid Malpractice," Wash. St. B. News, Nov. 1993, at 51;


The purpose of this Deskbook is to provide a broad spectrum of information that would be helpful to the person who must research Washington State law. In the first chapter, Ann Hemmens describes how to use a law library. From using law li-
Introduction

braries in person to using law libraries without leaving the comfort of your home or office, the tips provided in this chapter will be useful to all legal researchers.

In the second chapter, I review the formats of legal information and outline a strategy to help the legal researcher design a research process or framework. Practical tips for efficient use of legal tools are discussed. If you must research an area of law you know nothing about, the article reprinted in Appendix II will be extremely useful. If taking good notes is your downfall, be sure to read the note-taking article found in Chapter 2, Appendix III. This piece is full of practical hints that can help any researcher create a fine research product.

Chapter 3, written by Mary Whisner, is an excellent review of the most basic and important legal research tools used for researching Washington law. Ms. Whisner reviews secondary sources, statutes, administrative regulations, case law, case-finding tools, attorney general opinions, citator services, and basic citation formats. She includes information about electronic versions of these information tools as well as the printed texts. Every legal researcher should be familiar with the contents of this chapter.

Using one or more of the many excellent handbooks and deskbooks available on Washington law can help the legal researcher quickly and efficiently define the problem and locate the primary sources to answer the question. In Chapter 4, Nancy McMurrer provides annotated descriptions of both broad, multi-topic sources and other, more specific titles listed by subject. This chapter is crucial for the researcher who is not intimately familiar with the wealth of secondary literature available in Washington.

Washington State agencies promulgate a variety of administrative decisions or actions. These are ably discussed in Chapter 5 by Cheryl Rae Nyberg. Pay particular attention to the description of the Administrative Procedure Act and its requirements. Ms. Nyberg discusses each state agency that issues administrative determinations and even provides a summary chart of the various sources of agency quasi-judicial actions in order to speed your research.

Never compiled a Washington legislative history? Follow the clear step-by-step directions written by Peggy Roebuck Jarrett in Chapter 6 on legislative history and bill tracking. Clearly, our author has had some experience with this awesome task!

Ms. Jarrett shows the novice exactly how to follow the Legislature's process and includes important tips for accomplishing this research chore efficiently and competently. Researching state initiatives can also be problematic; see the tips included by the author.

A completely new chapter on local government law has been researched and written by Mary Ann Hyatt. After an excellent background of the authority and role played by local governments, Ms. Hyatt analyzes the primary and secondary materials for cities, counties, and special districts.

Historical and archival sources of legal information are new in this edition of the Deskbook. In Chapter 8, Cheryl Nyberg and Ann Hemmens have tracked down nearly everything you might need from official documents in the territorial and early statehood periods in Washington.

Chapter 9 is also new to the Deskbook. With 36 Indian tribes in Washington State, 6 percent of the state's land held by Indians or Indian tribes, and a growth in tribal self-government, every Washington practitioner should know the basics of Indian law. The chapter reviews federal Indian policy and includes a minimal list of federal, state, and tribal resources that can be used in legal research projects.

"Nonlegal Resources" is the title of Chapter 10 written by Peggy Roebuck Jarrett. In a clear and direct style, the author covers sources that will help you find information about people and organizations, locate factual information, and improve your writing skills.

In the final chapter, Jonathan Franklin compiles information about legal resources in Washington.
Included here are tips on how to manage your library, hire a librarian, and select materials and research tools for your library. Directories of filing and library service organizations, document delivery services, legal publishers, and Washington legal periodicals complete the informative material found in this section. This chapter will be a great help to those trying to keep their law libraries current and properly managed, to those making decisions about purchases for office libraries, and to those trying to locate legal materials available in the local area.

The Deskbook’s appendix presents acronyms and abbreviations used throughout this book and that frequently appear in Washington legal materials.

I am very pleased with the high quality of the material you will find within this Deskbook. Many thanks to the authors for their tireless work. Special thanks to the general editor, Cheryl Nyberg, who edited all the chapters, created the book’s index, and provided the consistency and standard of excellence so necessary for a work like this. Therese Knier worked many hours to put our draft material into a final form with a professional touch—thank you! Thanks also to Reba Turnquist who helped update information about publishers, prices, and the like; to the Gallagher Law Library staff for being supportive and helpful; to the law librarianship graduate interns who helped cover the Reference Office when we needed extra time to write; to various colleagues around the state who responded cheerfully to our requests for information, and, finally, to our library patrons for asking us questions and helping us learn what legal researchers in Washington need to know.

Readers and Washington legal researchers are invited to send comments and suggestions via email to deskbook@uwashington.edu.

Penny A. Hazelton
Seattle, Washington
January 2002

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Notes on Using This Book

This section explains citations and references used throughout this book.

Books, Articles, and Legal Citations

The Deskbook contains many references to other publications. The authors have used several formats to distinguish categories of material.

Titles of books, periodicals, looseleaf services, CD-ROM products, and similar items generally appear in italics. Authors, editors, and compilers are often named and the publisher and year of publication are given. For periodicals and other publications that are issued or updated on a regular basis, the initial year of publication is followed by an open hyphen (e.g., Washington State Environmental Reporter (Book Publishing Co., 1974-)).

References to articles include the author(s), the title of the article in quotation marks, and the abbreviated title of the periodical in italics. These abbreviations are spelled out in the Appendix: Acronyms and Abbreviations. If the issues of a volume are paginated consecutively, the volume number appears before the title of the publication and the first page number follows the title, with the year of publication in parentheses (e.g., William R. Andreassen, "The 1988 Washington Administrative Procedure Act: An Introduction," 64 Wash. L. Rev. 781 (1989)). If the issues of a volume are not paginated consecutively, the citation identifies the issue and then the beginning page number (e.g., Nancy Carol Carter, "American Indian Tribal Governments, Law, and Courts," Legal Ref. Serv. Q., No. 1, 2000, at 7). For articles that are available for free on the Internet, their citations include the Uniform Resource Locators (URLs) (e.g., Eron Berg "Unpublished Decisions: Routine Cases or Shadow Precedents?", Wash. St. B. News, Dec. 2000, at 28, available at http://www.wsba.org/barnews/2000/12/berg.htm).

Citations to some legal sources (such as statutes and cases) follow rules set out in The Bluebook: A Uniform System of Citation, 17th ed. (Harvard Law Review Association, 2000), with exceptions recommended by the Washington Office of the Reporter of Decisions Style Sheet. The Bluebook and the Style Sheet are described in Chapter 3, Fundamentals of Legal Research in Washington, Section X, Citation Format.

Internet Websites

In less than a decade, the Internet has become a major legal research tool. Thousands of academic, commercial, governmental, organization, and personal websites contain the text of legal materials and/or guides, indexes, and commentaries on the law. Government agencies at all levels have quickly made the Internet a primary means for communicating with the public.

Throughout this book, URLs identify websites that contain Washington State legal materials. In many cases, "deep links" to pages buried several layers beneath an agency's main homepage have been used to direct readers to the specific location of legal documents and databases. These URLs and the descriptions of website contents were accurate in fall 2001.

Website addresses and contents change frequently, however. If a website address fails and the source is part of the Washington State government, use the "State Agency Index" on Access Washington, http://access.wa.gov/, to locate the agency's new URL. Then look for navigation links, a site index, or a search feature to locate specific material. If the source of the website is not part of the Washington State government, bare back the URL to the first slash after the domain name (ending with .com, .edu, or .org). This shortened URL should...
take you to the website homepage. For example, the URL for the Gallagher Law Library's collection of legal research guides is http://lib.law.washington.edu/ref/guides.html. If you eliminate "ref/guides.html", you will go to http://lib.law.washington.edu, the Law Library's homepage.

The University of Washington Gallagher Law Library maintains an Internet Legal Resources page, http://lib.law.washington.edu/research/research.html, that links to free websites providing Washington State primary law sources, including the constitution, bills, statutes, court opinions, court rules, regulations, administrative agency decisions, and municipal codes. Comparable links for U.S. government sources are also provided. Internet Legal Resources is updated regularly.

**LexisNexis and Westlaw**

Many chapters describe files and databases found on the two major commercial legal research services, LexisNexis and Westlaw. In some cases, specific libraries and file names are mentioned. For example, Chapter 5, Administrative Decisions and Materials, includes a list of LexisNexis libraries and files containing administrative agency decisions. The reference to "WASH/WAGMHB" includes the LexisNexis library name for Washington (WASH) and a specific file within that library for the decisions of the Growth Management Hearings Boards (WAGMHB). The comparable database on Westlaw is called WA-GMHB.

When no library, file name, or database identifier is given, the researcher may explore several options for finding relevant material. Both services maintain extensive directories of their concerts and those directories are available in print and online. The Westlaw Database Directory is published annually; the 2001 edition is 842 pages. The online edition is found at http://directory.cwestlaw.com/. The LexisNexis Directory of Online Services is also published annually; the 2001 edition is 136 pages. The "Searchable Directory of Online Sources" is at http://web.lexis.com/soucesi. The directories are organized by jurisdiction (Washington), type of legal material (Legislation), and subject or practice area (Environmental Law). They also include indexes by title (Washington Administrative Code). Users may also contact the customer service representatives to ask about the availability of particular sources and get advice on constructing effective searches. LexisNexis customers may dial (800) 543-6862. The Westlaw Reference Attorneys may be reached at (800) 253-2889.

Because of their expense and complexity, these services are most often used by members of the legal community. Few public law libraries can afford to make these services available. Faculty and students at some colleges and universities may have access to a version of LexisNexis called Lexis-Nexis Academic Universe or a version of Westlaw called Westlaw Campus. These services offer an abbreviated list of certain legal sources, including full-text federal and state cases, statutes, and law reviews. Other users may take advantage of the vendors' credit card options. LexisNexis by Credit Card, http://www.lexis.com/exchange/cubscc/creditcard.asp, is available on a "pay as you go" basis. A user may search legal materials (including federal and state cases, constitutions, statutes, court rules, and law reviews). Westlaw's WestDoc program, http://www.westdoc.com, allows users with citations to obtain documents by credit card.

**Email the Authors**

The authors are interested in readers' comments and suggestions. Please contact us by electronic mail at deskbook@u.washington.edu.
Author Biographies

Penny A. Hazelton. Professor Hazelton has been the Director of the Marian Gould Gallagher Law Library at the University of Washington School of Law since 1985. Teaching, legal research to law students, law librarianship students (lawyers training to be law librarians), library students, attorneys and judges, legal secretaries, and paralegals has occupied a good part of Professor Hazelton's twenty-five year career. She earned her JD from Northwestern School of Law of Lewis & Clark College and received a Masters in Law Librarianship from the University of Washington in 1976. Professor Hazelton is a member of the Washington State Bar Association and has served as a member and Chair of its Editorial Advisory Board Committee. Professor Hazelton spent five years at the University of Maine and four at the U.S. Supreme Court Library as head of the research services department.

Jonathan Franklin. Jonathan Franklin received an AB in Values, Technology, Science, and Society and an AM in Anthropology, both from Stanford University in 1988, a JD from Stanford Law School in 1993, and an MLL from the University of Washington in 1994. Mr. Franklin spent five years as the foreign and comparative law librarian at the University of Michigan Law Library before coming to the University of Washington. Gallagher Law Library as Assistant Librarian for Library Services in 1999. As of 2001, he became Associate Law Librarian at the Gallagher Law Library. He has written and spoken on issues related to format selection, library materials, library organizational structures, and copyright issues. He is an active member of the American Association of Law Librarians and the Law Librarians of Puget Sound.

Ann Hemmens. Ann Hemmens received a BA in Psychology from the University of Illinois at Urbana-Champaign in 1988 and a JD from the University of North Carolina at Chapel Hill in 1993. She worked at the Center for Disease Control's National HIV/AIDS Hotline and the North Carolina Department of Health and Human Services Division of Medical Assistance. She earned her MS in Library Science from the University of North Carolina in 2000. She has been a Reference Librarian at the University of Washington Marian Gould Gallagher Law Library since June 2000. Previously, she worked as a reference assistant at the University of North Carolina Law Library and the Law Library of Congress. She is a member of the American Association of Law Libraries, the Law Librarians of Puget Sound, and the North Carolina State Bar Association.

Mary Ann Hyatt. Mary Ann Hyatt received a BA in English from Rhodes College in 1979 and an MLS from Emory University in 1980. She taught research in academic libraries in Georgia and Texas for ten years before attending the University of Washington School of Law. Ms. Hyatt earned her JD in 1993. She headed research services at a large Seattle law firm for three years before coming to Gallagher Law Library as Assistant Librarian for Access Services. Ms. Hyatt serves on the King County Law Library Board of Trustees. She is a member of the Washington State Bar Association, the American Association of Law Libraries, and the Law Librarians of Puget Sound.

Peggy Roebuck Jarrett. Peggy Jarrett received a BA in Economics from the University of California, Davis, in 1981 and an MLS from the Catholic University of America in 1984. She spent seven years working in private law firm libraries in Washington, D.C., and Seattle before joining the Gallagher Law Library staff in 1990. Ms. Jarrett
works as the Library's Government Documents Librarian and as a member of the reference staff. She is active in the Law Libraries of Puget Sound and the American Association of Law Libraries.

Nancy M. McMurrer. Nancy McMurrer received a BA in History/Political Science from Furman University in 1966 and a JD from the University of Virginia Law School in 1969. She practiced with the Office of Chief Counsel, Internal Revenue Service from 1969 until moving to Germany in 1976. She earned her Masters of Librarianship with Law Librarianship Certificate from the University of Washington in 1990. Ms. McMurrer was a Reference Librarian with a law firm in Seattle before joining the reference staff at the University of Washington in 1994. Nancy McMurrer is a member of the Virginia State Bar Association, the American Association of Law Libraries, and the Law Librarians of Puget Sound.

Cheryl Rac Nyberg. Cheryl Nyberg received her BA cum laude in English in 1977 and her MS in Library Science in 1979, both from the University of Illinois at Urbana-Champaign. Before joining the Gallagher Law Library reference staff in 1995, she worked at the University of Illinois Law Library for fifteen years, principally as government documents and reference librarian. Since 1985, she has authored the Subject Compliations of State Laws bibliography series. Her latest book is entitled State Administrative Law Bibliography: Print and Electronic Sources (2000). She was given the Marta Lange/CQ Award for "distinguished contribution to bibliography and information service in law/political science" by the Association of College and Research Libraries in June 2001. Cheryl Nyberg is a member of the American Association of Law Libraries and currently chairs its Access to Electronic Legal Information Committee.

Mary Whisner. Mary Whisner received a BA in Philosophy from the University of Washington in 1977, a JD from Harvard Law School in 1982, and an MLIS from Louisiana State University in 1987. Ms. Whisner clerked for Judge Stephanie K. Seymour of the U.S. Court of Appeals, Tenth Circuit, and practiced law for two years in Washington, D.C. She has been on the reference staff of the Gallagher Law Library at the University of Washington since 1988. Mary Whisner is a member of the American Association of Law Libraries, the Law Librarians of Puget Sound, and the Washington State Bar Association.
The Process of Legal Research

Penny A. Hazelton

- Introduction
- Formats of Legal Materials
- Integrating the Use of Print and Electronic Tools in Legal Research Projects
- Strategies for Effective Legal Research
- Managing Your Legal Research
- Comparison of Major Legal Research Texts
- "Here There Be Dragons": How to Do Research in an Area You Know Nothing About"
- "Develop the Habit: Note-Taking in Legal Research"
I. Introduction

Do you have a strategy or framework for research projects? Or do you jump into sources without thinking about or analyzing the rationale for using a particular tool? Technology has created and enhanced many more tools for legal research than we could have imagined even ten years ago. Selecting the best research tool for your problem is no longer a matter of using the only resource published!

Designing a research process or framework is one of the most important skills a legal researcher can develop. Given the importance of doing efficient, high-quality research, a researcher must learn to fit legal research problems into a strategic framework.

Only then will the researcher have the structure necessary to work efficiently and effectively through the mass of legal information available today.

Consider these staggering numbers: Over five million cases have been published in the United States and over 100,000 new judicial opinions are added each year. Nearly 20,000 laws are passed every year amending and adding to the hundreds of thousands of legislative acts that are already in force. No one has even tried to estimate the number of administrative regulations proposed and finalized every year nor the quasi-judicial work handled by administrative agencies on an annual basis. Add the secondary literature—thousands of pages published in treatises and other books, as well as the publication of over 1,000 legal journals and periodicals, and these numbers alone suggest the need for every legal researcher to have a plan.

The volume of legal materials continues to grow ever larger but so has the number of ways you can access this information. For example, in Washington state there are more than a dozen sources that contain the current statutes of Washington: the officially published Revised Code of Washington (in print, CD-ROM, and on Westlaw), LexisNexis, Westlaw, and on Internet websites such as the official Washington legislative site, LawSite, Findlaw, and LexiONE, West's Revised Code of Washington Annotated (in print, CD-ROM, and on Westlaw), and the Annotated Revised Code of Washington (Lexis Publishing) (in print, CD-ROM, and on LexisNexis). How many of these products do you know about?

No research project can be competently answered using just one format of information today. The legal researcher of the 21st century must be able to select the right tool in the right format for each project. An understanding of the characteristics—the strengths and weaknesses—of each source will help researchers find the best tool for the job.

II. Formats of Legal Materials

A. Electronic Legal Information Systems

Legal materials are available in two quite different formats—print and electronic. There are two primary types of electronic legal information tools: online systems (like those found on Internet websites, Westlaw, or LexisNexis) and CD-ROM. LexisNexis and Westlaw, developed in the 1970s, provided the first powerful access to legal material in electronic form. Primarily through databases that supported the complex needs of practicing attorneys and an aggressive and virtually free marketing program to law students, Westlaw and LexisNexis dominated electronic access to legal information for more than two decades. Powerful and sophisticated search engines; access 24 hours a day, 7 days a week; strong customer support; comprehensive, historical, and up-to-the-minute databases; and a very broad range of law and related materials made these systems the Cadillac of the electronic legal information marketplace.

CD-ROM (Compact Disk, Read Only Memory) products were introduced at the beginning of the 1990s. CD-ROM technology stores data on disks that can be read on the user's own computer. These products flourished particularly before the Internet explosion of the mid-1990s as a less expensive alternative to Westlaw and LexisNexis. Because the CD-ROMs have legal information copied onto them, they are never current (similar to print sources). However, they share the
powerful search capability of electronic tools. The continued viability of CD-ROM legal products is in question as even less expensive and more sophisticated electronic products crowd the Internet marketplace.

The Internet became an important resource in the legal researcher's arsenal in the late 1990s when the federal government and most state governments put new laws, court opinions, rules and regulations, and administrative decisions on official government websites. The parallel development of free Internet sites containing much legal information challenged the legal researcher by adding another level of information resources to access in solving legal problems. Even Westlaw and LexisNexis added Internet interfaces to their already well-developed software versions. Recent development of hypertext links (the ability to click on a citation or other part of a document or directory and be taken to that document) truly bring electronic resources to the user's fingertips.

Despite the differences between online systems and CD-ROM legal materials, these electronic tools have several characteristics in common. First, with a strong and powerful search engine, the user can access virtually every word in the documents that are in the database. Second, the documents are usually available in full text. That is, once specific documents (opinions, rules, statutes) are identified through user-created computer searches, the user can skim, read, or print out relevant documents. There is no longer a need to go to a library to find various volumes of codes or reporters in order to read a statute or case: Third, appropriate hardware and access to a telecommunications line (for online systems only) is essential. Fourth, the user can access these systems anywhere there is a personal computer and an Internet connection. Fifth, material in electronic form can be easily cut and pasted from one document to another.

Despite all the wonders of the legal information systems that are in electronic format, there remain reasons not to completely abandon print tools.

### Strengths of Print Tools
- Easy to read
- Irrelevant material easily eliminated
- Hierarchy of legal tools easier to use because of relationship to surrounding material
- Legal concepts are well covered
- Procedural questions
- Analogies are easier to locate

### Strengths of Electronic Tools
- May be very current
- Access every word with powerful search engines
- Entire document at your desktop
- Convenient access
- User is the index: retrieval more flexible than print
- Access with partial information

### B. Print Tools
Primary legal information is still published in print form as it has been for over a century. Court opinions, legislative enactments, agency rules and decisions, constitutions, and chancers are found in print tools that have been refined over the years—reporters, daily agency registers, annotated codes, administrative codes, and loose-leaf services.

The publication of secondary sources in print does not seem to have slowed down. The number of academic law reviews published in print is now over 525; major scholarly treatises are revised and updated regularly; and finding tools such as American Law Reports (ALR), the digests, and legal encyclopedias are still being published.

Of course, most primary legal information is also found in electronic databases. Commercial and Internet sources have rich current and historical material. Recently, many secondary sources such as legal encyclopedias, looseleaf services, state practice materials, and the West digests are making their way into electronic form, usually as fee-based, not free, services.

Why should we even think about using print legal research tools? Print tools are out of date as
soon as they are published. You have to locate and go to them; they are not at your desktop. Print tools can be cumbersome to use and if you have limited information, you may not find what you seek.

On the other hand, print tools have been refined for years and provide users with several features that make their use quite appropriate in certain circumstances. First, they are easy to read. Second, a lot of irrelevant material has been automatically eliminated through the use of an index or table of contents. Third, legal materials organized in a hierarchical manner (statutes, administrative codes, law review articles, treaties, looseleaf services, and the Restatements) are easier to use in print since reference to previous and later sections is almost always necessary. Fourth, human creation of indexes means that most legal concepts are very well covered and accessible.

III. Integrating the Use of Print and Electronic Tools in Legal Research Projects

Selecting the right research tool in the right format can be a challenge. However, if you know the characteristics of the tools available as well as their individual strengths and weaknesses, your research project will be more efficient and the advice you give your client of higher quality. Before selecting a research tool, see if you can answer these questions about it:

• How current is the database or print tool?
  Annual pocket parts may be fine for a treatise or encyclopedia, but inadequate for a comprehensive search of Washington State caselaw.

• Where is the tool located and do I have access to it?
  On my desktop computer will be convenient for certain types of information, but the print Revised Code of Washington may be easier to use and is located just down the hall.

• What is the coverage of the tool?

Do the cases go back to the first volume of reports or does the database just contain cases from 1945?

Does the Washington Administrative Code contain the most recent changes published in the Washington State Register?

• What are the strengths and weaknesses of the tool?
  What is the best use to make of it? Will legal concepts be easy to locate? Can I find a case with facts just like mine?

• What result do I need?
  How quickly do I need the answer? Do I need comprehensive, careful research or just a quick look at the statute?

• What is your experience with the tool?
  Do you know how to effectively use the database? Is that looseleaf service a mystery?

• What is your general understanding of the area of law to be researched?
  A practitioner with expertise in patent law will at least start with different tools than the neophyte patent researcher.

• What will be the cost of using this tool?
  Can the client afford your time using the expensive legal information systems or can you use a free or less expensive resource in less time?

The strengths and weaknesses of tools will vary with your sophistication in using them and your access to them. Some general rules to follow when deciding what format to use appear in the box on the opposite page.

IV. Strategies for Effective Legal Research

There is no one right way to approach a research project. Every project will be different and even two people working on the same project will use different methods. However, every legal researcher will
perform more efficient and high quality research with a plan or strategy. See Appendix 1, Research Process: Comparison of Major Legal Research Texts, below, for ideas generated by several legal research scholars.

Legal research courses taught at the University of Washington School of Law have modified and adopted the Rombauer framework to encourage students to learn a structured approach to the research process. While the Rombauer method is not the only possible framework, it provides a very workable model to illustrate the process by which legal research problems are solved.

A. Rombauer Framework

To explain how a good framework can help produce a better legal research product, the Rombauer method will be used to illustrate a way of thinking about a research plan. Undoubtedly you already perform many of these steps, but may not do so consistently. Conscious thinking about research choices and avenues to explore will improve the efficiency and overall quality of your work product. Try the Rombauer method for your next research problem and see if a planned approach can give you confidence and a better result.

Professor Marjorie Rombauer’s method is more fully explained in her book, Legal Problem Solving, 5th ed. (West, 1991). In this classic text, Professor Rombauer weaves the primary tasks of analysis, research, and writing into an integrated whole. Legal analysis, legal research, and legal writing are all skills identified and analyzed by the MacCrone Report (cited in the Introduction to this book). Isolation of the research component permits concentration on this one skill. But do not forget that research is part of a larger, coherent set of problem-solving skills.

The five steps in the Rombauer approach are described below.

1. Preliminary Analysis
Preliminary analysis is undoubtedly the most important step in solving any legal research problem. You do not need a law library at your fingertips to conduct this portion of your work. Writing down all of this information can help you focus and plan your work. Your preliminary assessment of a problem should include at least the following steps:

- Identify relevant and material facts.
- Select appropriate words and phrases to use as search terms.
- Identify preliminary issues and formulate search query.
- Identify the jurisdiction(s) involved.
- Identify what you know about the area of law.

What are the relevant facts of your research problem? If you are unfamiliar with the law in this area, will you be able to identify material facts? Do you know all of the important facts or do you need additional information? Arm yourself with the facts, as many as you can, before attempting your research. Good factual development can go a long way toward a high quality research project, completed with maximum efficiency.

Knowing the material facts of the problem will help you develop the words and phrases needed to conduct research. Whether you use traditional print research materials or electronic legal research systems, your development of a broad list of words and phrases is crucial. Some researchers use the TARP rule—things, actions, persons, places. Some like the TARP rule—things, actions, relationships, places. Use whatever method you like, but create a list of words and phrases that might be used in documents discussing the legal issues in question. This list should contain specific and general terms, as well as synonyms. Also list legal concepts that you think might apply.
Next, in analyzing the material facts, words, and phrases, try to state the issue(s) you must resolve. Expressing the issue in written form can be helpful, even at this early stage. Often the issue changes as research progresses and must be reformulated. But having the issue expressed in writing early on can help keep your research on track and remind you of the questions at hand.

After identifying the issue(s), query formulation is the next step. The legal researcher needs to identify those words or phrases that, when combined, are likely to yield the most helpful information. In other words, formulate a search query. This process will usually involve selecting search words that are likely to yield results.

Whether the researcher is using electronic or print tools, this ability to combine the right words and phrases into an appropriate search query is extremely important. Does the researcher use the most general or most specific words that can be identified? For example, is the best term tort or false imprisonment; contract or specific performance? How do you decide whether to use fact words (like banana peel, swimming pool, or widget) or legal concepts (like tort, attractive nuisance, or offer and acceptance)?

The choices made by the legal researcher at this juncture are crucial. If the search query terms selected are too general, the risk of being overwhelmed by too much irrelevant information is very great. If the search terms selected are too specific, the researcher may find nothing relevant at all and miss useful material. The skill needed to formulate the search query for any research problem should not be understated. Careful thought should go into this process, particularly if full-text electronic tools will be consulted.

Computer-assisted legal research sources offer several options. First, will you use a Boolean or natural language query? Boolean searches are created by combining words with connectors. The most common connectors are: and, or, within a number of words (in or win), within the same sentence (s), and within the same paragraph (p). A good Boolean search using the correct words puts the legal researcher in the driver’s seat. The user controls the search and the search results.

Natural language searching puts the computer in charge of the search and results. The user simply types in a natural language sentence or a series of words. This type of search takes less time to construct, but the results can be very excellent or extremely useless.

When constructing a Boolean search, the legal researcher must make some other important choices. Selection of the right connectors is important and often depends on the size of the database and the organizational structure of the documents in the database. What synonyms should be added?

Do any of the words come in so many variations that the truncation symbols should be added to particular words for broader retrieval? Does the electronic system recognize plurals and can phrase searching be done? For a somewhat dated but useful guide to the construction of Boolean searches (primarily for Westlaw and LexisNexis, but applicable to many free and fee legal databases on the Internet), see Penny A. Hazelton, Computer-Assisted Legal Research: The Basics 18-38 (West, 1993).

Also during preliminary analysis, the researcher must identify the jurisdiction(s) involved. Is the issue resolved under federal or state law? Which state? Limiting the jurisdiction of your research will help focus your effort on research tools that have specific application to your problem. If choice of law is the real issue to be resolved, obviously your selection of jurisdiction will be tentative. Or if the area of law is unfamiliar to you, you may need to perform some research to determine this question with certainty.

Throughout this preliminary process, you should be assessing your actual knowledge of the

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Preliminary Analysis

- Relevant Facts
- Words and Phrases
- Issue(s)
- Jurisdiction(s)
- What Do You Know?

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area of law you must research. Any steps you have taken will reflect your personal knowledge and experience, or lack thereof. What do you know about this area of law? Are you a specialist in this area of law? Or, is this particular area completely unknown to you?

Clues that you need to develop more expertise in this area before launching your research ship (moving to step 2 of the Rombauer method) will include the inability to develop a comprehensive list of words and phrases, total ignorance about whether the problem invokes federal, state, or local law, or an inability to relate the issue. Don't ignore these warning signs!

At this point, if your knowledge of the law is virtually nonexistent, research in secondary materials may help you obtain the background and terminology needed to perform effective research. See Appendix II, "Have There Be Dragons": How To Do Research in an Area You Know Nothing About. For details on specific sources to consult, see Chapter 3, Fundamentals of Legal Research in Washington, Section II, and Chapter 4, Washington Practice Materials.

Now you can actually start your research! Use of texts, treatises, hornbooks, nushells, legal encyclopedias, ALR, or legal periodicals can help put your problem in context. The legal journal needed for effective research can also be identified through secondary materials. Often, a search for general information and background can help the researcher formulate a good statement of the question, clarify jurisdictional issues, and inform the researcher of the possible scope of the project.

An extremely useful research tool has become more accessible with the Internet. The legal research guide or pathfinder (more experienced researchers may remember the bibliographies) can lead a researcher quickly to relevant research tools and give tips on the use of these tools in the context of the specific research problem. Many of these have been published in print sources, for example, Penny A. Hazelton, ed., Specialized Legal Research (Aspen, 1997.) (comprehensive guides to the print and electronic literature in tax, labor, copyright, admiralty, military law, banking, securities, etc.).

Many law librarians create pathfinders and research guides for classes and other library users and then post these guides on library websites. Often these guides integrate print and electronic tools (with hypertext links to Internet-based information resources), citing major statutes, cases, and regulations as well as important secondary sources. At this time the Callaghan Law Library website includes 63 research guides. Check out the subject index to these guides at http://lib.law.washington.edu/ref-guides.html. Many law library and other websites include research guides on broad and narrow topics. See http://lib.law.washington.edu/ref/guides.html#Portals for links to some of the larger directories and sites on the Web.

Consulting secondary sources is not done at this stage so much to locate the exact answer to the legal problems as to reveal background and related information that should help when research in primary authorities begins. Of course, finding references to cases, statutes, or regulations in your jurisdiction should not be ignored at this stage. Use these citations when you move to the next research stage.

If you answer the "What do you know?" question with the response, "A lot," you are probably familiar with the legal terminology and the likely sources of the law that answer the question as well as the exact issue(s). Then using secondary literature to get background and context may not be necessary. Remember, however, that sometimes we think we know more than we really do.

Secondary literature can be consulted at any stage in your research. Research in secondary materials can, among other things, provide the analysis of a specifically relevant case, explain the history of a legislative enactment, synthesize a body of case law, or criticize a current interpretation of the law. A good legal researcher will use the research product of others as often as possible!
To reiterate, preliminary analysis should be done thoughtfully and with an eye to formulating a research plan or strategy. Identification of material facts, creation of a list of relevant words and phrases, clear statement of the issue(s), formulation of a search query, identification of relevant jurisdictions, and an assessment of your knowledge of the area of law must all be accomplished in order to set the stage for continuing the research process.

2. Search for Statutes

After you have answered the questions posed in your analysis of the problem and done some background research, you are ready to begin a search in primary materials. Because of the emphasis in law school on judicial opinions as an important source of law and because of the difficulty some perceive in the use of statutory sources, many researchers automatically look for case authority first. This tendency would be fine except that many attorneys forget to also look for statutory authority cited in the cases or that might change a long line of case law.

A search for statutes should really be done first. Why? The relationship between the legislative process and the judicial branch provides the answer. It will not matter much what the common law rule is if a statute has been enacted that changes the rule! Thus, legislation will take precedence over judicial rules and should be searched before looking for case law. In addition, more and more of our daily activities are governed by legislation. Thus, checking the statutes to be sure new law has not been enacted is an important step in the process.

Three possibilities can occur when statutes have been searched. First, the researcher may find a relevant statute that squarely and clearly answers the problem. Second, a relevant statute may be located, but the statute is ambiguous when applied to the problem being researched. Third, the researcher may find no statute that helps resolve the legal problem under scrutiny.

Even if a relevant, clear, and unambiguous statute is found, a good researcher may wish to go to step three in the process to be certain that case law is consistent with her interpretation of the statute. However, finding an ambiguous statute or no statute at all definitely requires a search for mandatory case precedent (step 3 of the Rombauer method).

Before looking for case law, however, the legal researcher must verify that the statute found is current. Print statutes can be updated by pocket parts, supplemental pamphlets, and legislative or session law services. These current pamphlets will contain laws recently enacted by the legislature but not yet incorporated into the statutes themselves. Even if no statute was found, checking the session law service is also necessary in case a very recent law on the subject has been enacted.

If you have selected an electronic tool for your statutory research, be sure you know how current the database is. Just because the code is online does not necessarily mean that it is as current or more current than the print resources. For details on updating statutes, see Chapter 3, Fundamentals of Legal Research in Washington.

Is the area of law you are researching changing through statutory enactment? Or have the rules changed primarily because of new court decisions? Has this area of law remained unchanged? Have changes in social or economic structures or in technology led to changes in the law? A careful researcher is likely to have determined the answers to these questions during her preliminary analysis. And, depending on the answers, she will decide how carefully the statutes should be searched.

During this stage of your research, the constitutionality of your statute should be checked. If researching Washington law, use the Revised Code of Washington Annotated or the Annotated Revised Code of Washington to check for cases that declared your statute unconstitutional. Or Shepardize your statute on LexisNexis or KeyCite it on Westlaw to locate any cases that may have ruled on the statute's constitutionality.

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You should also look for relevant administrative regulations that may affect your issue during this statutory phase of your work. Either your knowledge of the area of law or your preliminary research in secondary sources should alert you to relevant state administrative agency rules and regulations. In Washington, consult the Washington Administrative Code and the Washington State Register. See Chapter 3, Fundamentals of Legal Research in Washington, for a discussion of these sources.

You may wish to review your preliminary analysis at this point. Have you stated the proper question? Are some facts more important than you originally thought? Have you added other more precise words and phrases to your original list? Constantly re-evaluate your analysis to keep your research focused and efficient.

By the time you finish this step of your research process, you should have identified relevant statutes or administrative regulations. You will be confident that your statute is current since you have updated it through the most recent public laws available. And you will know whether your statute has been held unconstitutional. You are ready to move on.

If you find no statute, there are at least two possibilities: there is no statute to find on this subject or there is a relevant statute but you have not found it. Legal researchers are often concerned about missing relevant authority. Part of this fear is psychological: that is, we are worried about not finding something that exists and needs to be found in order to answer the question. But the other part is very real. Sometimes the source we use does not include anything helpful or relevant on the subject we research because there is nothing to find. Only experience and good preliminary analysis will help distinguish one from the other. Be prepared for this possibility.

3. Search for Mandatory Case Precedent

This step can be skipped completely only if you have located a relevant statute and it clearly and unambiguously answers your question. Even then, some researchers will skim cases that interpret the statute in an annotated code just to be sure their reading of the statute is correct when applied to their problem.

However, the search for mandatory case authority must follow next if you have found an ambiguous statute or no statute at all. Searching for cases that must be followed (in the court in which your action will be heard) is the kind of legal research most lawyers know best. Mandatory cases that apply to your problem will have similar or analogous facts, will have occurred in your jurisdiction, and will interpret either your statute or state common law rules.

Many resources are available for this search, but one of the best, if you have found a statute, is an annotated code. In Washington, consult West’s Revised Code of Washington Annotated or the Annotated Revised Code of Washington. The annotations contain short digests of cases related to the statute they follow. Usually gathered by topic or subject, these annotations are an excellent way to locate cases to answer the question you are researching. In addition, of course, you may find history notes, cross references, and citations to legal encyclopedias, legal periodical articles, West key numbers, practice texts, and other useful secondary materials.

It is very important to be sure that all relevant cases are found. The annotated code volumes usually have pocket parts or supplements that include more recent cases. However, these supplements will still be three to six months out of date. The thorough researcher will also check the paper advance sheets of the Pacific Reporter, 2d or Washington Reports, 2d and Washington Appellate Reports, or use a current electronic case database (Westlaw, Lexis/Nexis, or the Internet) to find the most recent cases. A subject search using the digest in the West reporter or the Cumulated Index to the official reports should yield any cases interpreting the appropriate statute. Cases interpreting your statute may also be found easily by
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Shepardizing or KeyCiting the statutory section you have identified.

If you were unable to locate a relevant statute in step 2 of your research, neither the annotated code nor case verification systems like Shepard's and KeyCite will help you much. Instead, West's Washington Digest, 2d (or the Key Number Service on Westlaw) may be a good source to locate relevant case law. Other sources include secondary materials, such as periodicals, texts, textbooks, ALR, and legal encyclopedias. In this circumstance (you did not find a statute), use a wide variety of resources to verify that no statute is relevant.

All cases to be relied upon should be verified to determine if they are still good law. The most current and reliable of these citator services are KeyCite on Westlaw and Shepard's on LexisNexis. These databases are several months more current than any unit of the print Shepard's citators. These services provide the complete history and negative treatment of the case you are checking. In addition, secondary authority of all kinds can be located by Shepardizing or KeyCiting your cases.

A researcher can also Shepardize key cases in print tools, but must realize that the print tools are just not as current as the electronic ones. At this time, many expert researchers believe that print citators do not satisfy the standard for providing clients with competent, effective legal research.

If you identify mandatory precedent, you may be able to skip step 4, looking for persuasive authority. Obviously, looking only for mandatory precedent is a much more limited search than looking for any relevant case in any jurisdiction. That is why the search for mandatory case law should always be done before looking through over five million cases for any on-point case!

A question often arises in Washington about the weight of authority of Washington Court of Appeals decisions since there are three divisions of this court. Specifically, when are Court of Appeals decisions binding (or mandatory authority) on other divisions of the same court? There is no clear rule or decision on this matter. Though great deference is usually given by one division to another, the court opinions of Division I are not mandatory authority in Division II or III. For a helpful analysis of this issue, see Kelly Kunisch, "Stare Decisis: Everything You Rejected You Need To Know," Wash. St. B. News, Oct. 1998, at 31, http://www.wsba.org/barnews/archive98/stare.html.


If you are unable to locate court decisions that must be followed in your jurisdiction, you will need to proceed to the fourth step in the Bomhauer research process. Searching for persuasive precedent can be a very time-consuming process, and you should plan accordingly.

4. Search for Persuasive Case Precedent

If you are successful in locating one or more authorities during step 2 or 3 of this research process, you may not need to look for persuasive authority. However, if no cases can be found in your jurisdiction, persuasive case authority may be the only way to support a particular position. Even if you find what you consider to be good mandatory authority, some researchers will look at contrary authority within and even outside their jurisdiction.

When looking for persuasive precedent, try to limit your search to particular jurisdictions likely to have more cases in the subject area you are researching. For example, if you have a corporation issue that has not been resolved in your jurisdiction, you might first look at Delaware case law since so many companies are incorporated there. Or an
oil and gas question might be easier to research in states with large oil and gas fields and where more litigation in oil and gas law has occurred.

Another way to help limit your persuasive case law research to particular jurisdictions is if the relevant statute you find in step 2 is modeled after a uniform law. If there are no mandatory cases interpreting your statute, Uniform Laws Annotated, Master Edition (West Group, 1973- ) will cite to other states that have enacted similar or identical language and cite cases from those jurisdictions. Sometimes the annotated code itself will cite to other state statutes on which the legislative language was modeled.

If you are unable to limit your research to another jurisdiction or two, secondary materials can again be time-savers. Finding a law review article, ALR annotation, or book on the topic of your inquiry will permit you to gain an overview of the subject as well as give you a survey of the law in a variety of jurisdictions. This tactic may lead you to a line of cases the court may find persuasive.

Work of this sort is hard to keep focused. In this stage of the research process, make use of your preliminary analysis, reformulate the issue if necessary, and review your list of words and phrases for the most useful terms. How did you get to this stage and exactly what are you seeking? The search for persuasive precedent can be even more frustrating than your previous work because of the huge body of law available.

If you find persuasive authority, be sure you check the authority of any cases on which you wish to rely. Nothing is more embarrassing than discovering in court that the best authority you could find to support your view was reversed on appeal! At a minimum, use the online Shepard's or KeyCite services. Also be certain that you have reviewed the most recent cases available. This step requires that you use LexisNexis, Westlaw, or various Internet websites to confirm your findings.

If no persuasive authority of any kind can be found, re-evaluate the research problem and your process. Have you focused too narrowly? Have you failed to find proper analogies? Did you state the issue to be researched and then fail to actually focus on that question? Did you forget to check the pocket parts or most current cases? Caught in this situation, a complete review of your preliminary analysis is necessary. Try to determine whether the difficulty is one of process and use of legal materials or whether you simply have done a poor job in stating the question.

You may decide to begin your research anew. If so, try different resources this time. No one source is absolutely comprehensive and complete. Some research tools work better for some problems than for others. A decision about whether to continue researching at this point must be informed by an understanding of the cost to the client and the chance of finding relevant authority.

Regardless of what you find, the last step in the research process is very important. No project should be deemed finished until this step has been accomplished.

5. Refine, Double-Check, and Update

You may come to this last step by skipping steps 3 and 4 or only after having worked through all four stages of your research. You may actually incorporate this step into each of the others, so you are constantly refining your analysis of the question and the authority you have located. Regardless of the point in the process at which you focus on the steps noted here, be sure you actually do them!

At this last stage the researcher wants to be sure that no relevant authority has been missed. Check your research process to be sure you did not overlook an important source or forget to check the most recent supplementation. This latter problem can be overcome by having a good research plan and a thorough understanding of how the research tools can be used to provide comprehensive coverage.

One of the best ways to feel confident in the research you do and the authority you have found is to
verify your result through a second, independent search of the literature. Obviously, this will take more time and likely result in additional cost to your client. However, this need not be a painstaking comprehensive search. Consider the following options: check the law-digest volume of the Martinusn-Hubbell Law Directory for the jurisdiction in question; read one current law review article; search the index to a different published (or electronic) code; or phone a colleague who regularly practices in the area. Confidence in your research ability will come with experience and a careful plan.

Did you actually find an answer to the question? Or did the real question change as you investigated and researched the law? Do you have the information you need to locate and correctly cite all relevant authority?

If your work has been done over a period of more than a week, then all updating done in earlier stages needs to be brought completely up-to-date.

Similarly, if you take a long time to write the memorandum or brief, updating your work right before it is filed or submitted is essential. Remember: courts, legislatures, and administrative agencies are constantly changing the rules and applying the law.

Don't get caught flat-footed!

Take the time to reflect on the research project you have been given and what you have done to try to answer the question. Many legal researchers do a lot more work than they have to do because they worry about not finding everything. Better to spend some of this energy thinking about an efficient plan, one that covers the necessary resources but will not take endless amounts of time. Use of various legal tools should not be random. Think about exactly what you are looking for at each turn and select the best tool for the job.

For example, one of the most egregious mistakes made by many legal researchers is the compulsive Shepardizing or KeyCiting of every case and statute in sight. Case verification systems are marvelous research tools. You can find something as simple as the parallel citation to a case or something as complex as all the cases from another jurisdiction that cite your case for the proposition stated in headnote 3. Depending on the system you use, you can use case verification systems as a way to locate law review articles, ALR annotations, or texts on a particular case or subject. Rarely, however, does anyone want to do all of these things when Shepardizing! Most of the time the researcher simply wants to know whether the case on which they want to rely is still good law or good authority.

B. Conclusion

Legal research may be viewed as the process of elimination; elimination of bodies of law that are not applicable and elimination of authority that does not apply to the specific situation at hand. The good legal researcher, then, finds relevant authority by eliminating the extraneous and inapplicable, not just by looking for the relevant. The legal researcher classifies groups of materials or sources and authorities that are not likely to help solve the problem and eliminates them from consideration. Good legal research is the product of a thoughtful process that understands the nature and power of research tools, the weight of authority, and the specific question being researched.

Working with a research plan can save time, promote efficiency, and result in a higher quality research product. No single research framework will work for everyone, especially given the many changes in the availability and formats of legal information. But some type of research design should be developed by every legal researcher.

Your strategic framework must be flexible so it applies to all types of research questions. A research strategy that dictates the exact set of books to look at first in every situation will fail. Every problem is different and what you know about that problem will be different. It follows that the tools you choose for each problem should vary. The researcher who automatically uses, for example, LexisNexis or West's Washington Digest, 2d, for every legal research question is bound to be stymied.
when faced with a question that cannot be answered by using this favorite tool.

V. Managing Your Legal Research

A. General Suggestions

In today's complicated research environment, keeping your research under control is no easy matter. A research strategy or plan will help. But you will need more than just a plan. Your research should be done consciously. That is, you need to think about what you are doing at each step and then identify an appropriate research tool to accomplish your objective. Your process must be flexible and enable you to take advantage of available shortcuts and relevant avenues of inquiry that you may not have considered.

Never assume the absence of relevant legislation. While it is true that much of our conduct is not yet regulated by written or statutory law, legislative bodies have codified and changed whole bodies of law that were once part of the common law tradition. The emphasis on statutory research early in the Bombaum process is for a good reason.

If your research problem has several issues, a most common situation, you should plan to research each question separately. Trying to research several issues at once in the name of efficiency is likely to prolong the time it takes to complete the project. Experience shows this phenomenon to be true because keeping track of exactly what has been researched is confusing and because many researchers lose their focus and get side-tracked when they are looking for more than one thing at a time.

As you use a research tool for the first time, be sure you check the most recent supplementation. A lot of fruitless research can be avoided if there is a change in your statute or the status or authority of an important case. You may need to update that work again, but at least you are working with the most current information available at the time.

Don't be afraid to stop using a research tool if it is not yielding results. Spending several hours with any one research tool suggests a problem. Perhaps your question has not been well-framed. Perhaps you know too little about the legal jargon in this area of law to successfully use the research tool. It may be that the research tool you are using contains nothing about the subject of your search. Re-think your analysis to do some additional preliminary research. Don't give up too quickly, however. The problem may be in your process and use of the tool and not a difficulty in your statement of the issue or preliminary analysis.

B. Note-Taking

Taking good notes while doing legal research is one of the most important things you can do for yourself. How often have you had to repeat research or tried to understand notes scribbled on the back of a grocery list? Taking good notes will increase your efficiency and enable you to see where you got off track.

Keep a research journal or record of your work. Include a statement of the issue; the results of preliminary research in secondary sources; research tools you consulted; information about key numbers, cases, periodicals, texts, and the like; searches run in electronic databases; and descriptions of updating tasks.

Of particular importance is the need to check the dates of coverage of the various sets of books or electronic legal materials used. Later updating can only be handled efficiently if your notes are clear about what you have already checked. Confidence in the quality of your research product will be the
result of this heightened awareness and careful record-keeping.

Opinion and statutory analysis and evaluation of the sources consulted are important parts of the research journey. Decisions not to use a particular case or statute should be noted so if that authority surfaces again later, precious time is not wasted reading and reanalyzing the material. Exact quotations should be carefully recorded with all the information needed to provide full and complete citations.

Keeping track of research is a more complicated job than it used to be. Throughout the course of any research project the researcher is likely to have personal copies of cases and statutes, lists of law review articles or books to look at, printouts from electronic databases, and notes taken from the research process itself. Managing all of this paper can be quite a challenge! But remember that a little time taken to organize this flood of information may increase the speed with which you can accomplish your goal. With such easy access to personal copies of legal information, sometimes we may forget the need to read and analyze what we find! Copying a case does not automatically make it relevant. Don’t forget that reading and synthesizing the information is an essential part of the research process.

More detailed advice about how to take good notes can be found in Appendix III, “Develop the Habit: Note-Taking in Legal Research,” below. Pay particular attention to the section entitled, “Top 10 Tips for Better Note-Taking in Legal Research.”

C. Help! A Dead End!

Perhaps reaching a dead end in a project before you located a good answer has never happened to you. But for those of us who have suffered this humiliation, what do we do? First, try to analyze whether the problem lies with your inability to use the research tool. Do you need to back up and read the guide or introduction to the set? Do you need more information about how to conduct a particular search in an electronic database? Have you used the wrong terminology in indexes and databases? Have you checked the pocket parts and other supplemental material?

If you conclude that you are using the research tool properly, then you undoubtedly need to focus on issues such as your analysis of the problem, the possibility that you were misled by irrelevant facts, or the selection of a better research tool. Is your dead end really a trail you should stop following anyway?

Re-evaluate the process you used to get to this point. Be flexible about choosing another research tool if you determine that more research is necessary. Consider your client’s pocketbook and the likely results of spending more time on this problem. Don’t assume that the problem is your poor research skills (unless it is!). But look carefully at your analysis. Sometimes going back to the preliminary analysis stage of your research is very helpful.

D. When to Stop the Search

The best time to stop researching is when you have found the answer! However, many researchers lack the confidence to know exactly when that time has arrived. And, certainly, finding a relevant statute that seems to answer the question—and then forgetting to check the most recent public laws, thus failing to locate the crucial amendment—would tend to make a researcher feel uncomfortable in future research projects. The trick is to have a strategy in place that does not allow this oversight to occur.

When working on a research project, others say that you should stop when the research cost exceeds its expected benefits. This point of view is supported in The MacCrate Report which suggests that:

An assessment of the feasibility of conducting research of the desired degree of thoroughness [should] take[e] into account:

... (B) The extent of the client’s resources that can be allocated to the process of legal research;... MacCrate Report at 161.
Some researchers will tell you to stop researching when you begin to see the same authorities cited over and over again. They claim that if you are seeing the same cases and statutes cited again and again, then you are probably safe in concluding your research. This is a good strategy, but, by the time you see authorities cited again and again, you may have spent more time than necessary to answer the question. A good research plan with a double-check component should help guide the researcher to a more identifiable stopping point before spending more time than necessary.

Other researchers stop only when they have run out of time and into a deadline. Sometimes this is appropriate. However, most of the time the researcher who must stop researching under these circumstances has not worked with a research plan or design. The researcher who finds herself in this situation may be someone who assumes that there is always an answer to be found as long as she looks hard enough. These people research more by feel than by thinking about what they are trying to accomplish and which research tools will be most likely to yield good results.

Some subscribe to the view that you should do some research then start to write and see what is missing. At that point, you go back and fill in the blanks. This may work, but, again, if you have a game plan for your research, nothing should be left out!

Whatever method you use to determine when to stop, keep two things in mind. Never forget to update all the statutes, cases, and other authority on which you need to rely. And use common sense. Don't let the flurry and pressure of meeting deadlines cause you to spin your wheels. Keep some perspective on the process. Just like with writing, leave research alone for a short time. The perspective you gain may have a very positive effect on your work.
# Appendix I: Research Process: Comparison of Major Legal Research Texts

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<td>2. Search for statutes</td>
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<td>2. Finding the law</td>
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<td>5. Refine analysis; update the law</td>
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<td>1. Factual analysis &amp; generate terms</td>
<td>1. Identify &amp; analyze relevant facts</td>
<td>1. Analysis of problem</td>
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<td>4. Research in statutory law</td>
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<td>9. Appraise authorities</td>
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2. Larry L. Teply, *Legal Research and Citation* 79-84, 5th ed. (West Group, 1999)
Appendix 11

"HERE THERE BE DRAGONS": HOW TO DO RESEARCH IN AN AREA YOU KNOW NOTHING ABOUT

by Peggy Roebuck Jarrett and Mary Whisen

Peggy Roebuck Jarrett is Documents and Reference Librarian and Mary Whisen is Head of Reference at the Galghway Law Library, University of Washington Law School, in Seattle, Washington.

tera incognita. 1. An unknown land; an unexplored region. 2. A new or unexplored field of knowledge.

Introduction

Early seafarers were justifiedly frightened of terra incognita. Maps covered known areas; unknown areas were marked “Here there be dragons.” Perhaps some legal researchers feel similarly. One of us remembers with pain the securities assignment she had as a summer associate—she might as well have been sailing without chart or compass for all she knew about securities terminology and sources. But, happily, researchers seldom need to venture into territory that is totally unexplored. Others have explored most areas of legal research and left behind signposts and maps to guide those who follow. This article provides advice for getting started in an area you know nothing about.

Ask Questions

The person who gives you the assignment could know a great deal about the area and appropriate sources. You might feel embarrassed about revealing that you do not know the area, but you might also be surprised at how often the person assigning the project is eager to share his or her expertise.

For example, a summer associate faced with a first securities project might say to the assigning attorney: “I haven’t taken Securities Regulation, and I am not familiar with what you are asking me to research. Could you give me some quick background? What sources do you think will be useful?” In a few minutes, the attorney could give the summer associate a great start. Even if the attorney does not have the time or inclination to do the researching, he or she might offer the summer associate to someone else: “Chris Smith, a second-year associate, has been working with me on this project. Go see Chris to get up to speed.”

Use Secondary Sources

Before you plunge into primary sources, use secondary tools to get an overview of the area. You will gain valuable information, including vocabulary, leading cases, citations to statutes, and checklists.

For example, someone asked to research sexual harassment law for the first time could consult a book, such as Barbara Lindemans and David D. Kadue’s Sexual Harassment in Employment Law (1992) or William Petroski and Barbara Kate Pego’s Sexual Harassment on the Job (2d ed. national ed., 1994), and in a short time find the following:

- statutes of art (“quid pro quo harassment” versus “hostile or abusive work environment”)
- citations to applicable statutes (Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-21a (1994), and state fair-employment statues)
- citations to federal regulations (29 C.F.R. § 1604.11 (1996))
- discussion of leading cases (e.g., Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986))
- analysis of alternative causes of action (e.g., fair-employment statutes versus common law tort claims)

A researcher who did not begin with secondary sources and instead were directly to statutes or cases might waste a lot of time. For instance, Title VII is clearly important in sexual-harassment law, but the phrase “sexual harassment” does not appear in the statute and a careless researcher might not find this key piece of legislation. Some researchers might assume that the area is entirely federal and, without the guidance provided by secondary sources, neglect the state law issues (or vice versa). And researchers who begin simply by searching for cases might be overwhelmed by the sheer number they find.

Secondary sources covered in law school legal research and writing classes are great places to start, but look beyond sermons, encyclopedias, ALEP, and law review articles. Practice materials, which include "deskbooks," manuals, and continuing legal education materials, can be gold mines of information. In Washington state, for example, researchers can choose among a variety of sources including the encyclopedia Washington Partner, the multivolume Loudale (Washington Lawyer) (American Heritage Dictionary of the English Language 1953 6th ed. 1992).
Avoid Fishing Online

It is usually best to avoid using online services to find primary sources until you are familiar with the area of law. Online research is more effectively done with a specific issue in mind, and knowledge of the specific vocabulary, leading cases, and applicable statutes. The computer is literal—it cannot tell you the meaning of what it retrieves. One can easily waste precious time (and a significant amount of money) browsing electronic sources without clear direction. Beware the seductive call of "free" online time or "free" Internet access. Nothing is ever really free, and at the very least, your time, even when you are a new researcher, is always valuable.

One exception to this suggestion is the use of online resources to find secondary sources. LEXIS-NEI GIS and WESTLAW both offer the Legal Resource Index, ALR, legal encyclopedia, and a variety of treatises (WESTLAW also has Practising Law Institute handbooks). If your library does not have a good collection of secondary sources and you do not have access to one, it might be appropriate to go online for background information.

Use a Research Guide

Many areas of law have such specialized bodies of literature that people have produced research guides, pathfinders, or bibliographies guiding researchers through the sources. If you are going to spend your summer working on tax, first look at a research guide in the field, such as Gail Levin Rickman's Federal Tax Research: Guide to Materials and Techniques (5th ed. 1997). If you are writing a law review article about United Nations human rights enforcement, get a running start on your research with a guide such as Jack Tobin and Jennifer Green's Guide to Human Rights Research (1994) or Marii Hoffman's chapter on human rights in the ASIL Guide to Electronic Resources for International Law, <http://www.asil.org/resource/human.html>. And if you are preparing briefing papers on passive smoking for a public health group, it will save you a lot of effort if you start with Maria Chamaaka's Legal Aspects of Passive Smoking: An Annotated Bibliography, 86 Law Libr., J. 445 (1994).

How can you find research guides? First, try your library's catalog. Search for your topic and either "research" or "bibliography." (Catalogers often use the term "bibliography" in the subject heading: "legal research" is another common subheading.) A search of the catalog will turn up bibliographies that are separately published books. Similarly, checking periodical indexes, such as Legal Resource Index, will help you find bibliographies and pathfinders that are published as articles in law reviews and bar journals. You should also check Leah Chastin, ed., Specialized Legal Research (1987-date), which has chapters on 13 topics ranging from admiralty to securities regulation, and government contracts to tax. If your topic is covered, you will find a wealth of information.

If you are researching an issue in a particular state, check to see whether there is a legal research guide for that state. You might find a section discussing practice tools or a bibliography that might include just the right secondary source.

For foreign and international research, a good place to start is German's Tax Law Research (1991-date). Like Specialized Legal Research, German's is a collection of research guides. Procedural issues, such as service of process abroad and recognition and enforcement of judgments and arbitral awards, are covered along with 39 subjects (antitrust, commercial law, immigration, intellectual property, etc.) and 17 countries.

Look For a Looseleaf Service

Many areas of law are covered by comprehensive looseleaf services that provide access to statutes, case law, regulations and administrative decisions, as well as some analysis and explanation. Looselseaf services can be hard to figure out and, again, it is often best to start digging in one with a little bit of background knowledge and some vocabulary in order to use the
Read the Directions

Once you identify a source that is new to you, take a few moments to figure it out. Does it have a table of contents? An index? A table of statutes cited? How about an appendix of primary documents? How is it updated? You will find that many sets include sections such as “How to Use This Service.”

You might be the sort of person who learns well by trial and error—then, after 20 minutes of trial and error you might find it helpful to give the instructions a try.

If you are using electronic tools, take advantage of the resources you have. Read the help screens, read the documentation, call the 800 numbers.

On WESTLAW, read the Scope screens, and in LEXIS-NEXIS, check Guide, to find out how current the material is and whether there are any special tricks for searching.

Talk to an Expert

Maybe there is an expert in your organization—an experienced attorney or a law professor—who can give you a quick run-through of a subject area and its sources. Many knowledgeable people like to share information, especially when asked.

Or maybe you need to find people outside your organization who follow your interest. If you have found a useful book or law review article, you might try talking to the author. Someone you met at a CLE might be a good contact. Or use the Encyclopedia of Associations (in print or on WESTLAW) and other directories to find trade associations or advocacy groups that would track your area. A call to the American Bankers Association, the American Hospital Organization or the Stern Club might be an effective way to gain background information on a specialized topic.

Use Librarians

Librarians spend great deal of time guiding researchers toward sources “to get them started.” If you are having trouble finding a secondary source or research guide, or you just want to talk about strategy, or asking your librarian, Librarians are always happy to share their knowledge.

Conclusion

Researching in a new area of law need not be as terrifying as sailing into uncharted seas. The tips we have listed will help you find your way. Soon you will be able to guide others into your new area.
**Appendix III**

DEVELOP THE HABIT: NOTE-TAKING IN LEGAL RESEARCH

BY PENNY A. HAZELTON, PEGGY ROEBUCK JARRETT, NANCY MCMURRER, AND MARY WHISNER

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Introduction

As some point—perhaps it was for that seventh-grade report on the Pony Express—we were probably all taught to take notes on 3x5 index cards. Each card was supposed to record the source (with full citation) followed by the fact or the quotation we were noting. The teacher was sure to spot-check the cards, so most of us earnest junior high students were careful to make "proper" notes. But we are still as careful, now that we research and teach research as adults?

We librarians take notes ourselves when we do research, whether it be our own research, or projects for faculty, attorneys, or judges. We also have had the opportunity to observe many other researchers—students, professors, partners, and pro se patrons—many of whom come to the reference desk when they are stuck. We do not see many 3x5 cards. Instead, we see a wide assortment of legal pads, three-ring binders, scrap paper, Post-it notes, laptops, and (too often) nothing at all.

This lack of organized 3x5 card interests and concerns us; we believe good note-taking is a habit every attorney should have. In this article we will identify types of note-takers and some personal factors researchers should consider, and then we will present our top 10 tips for effective note-taking. Our "Top 10" are addressed to the researchers themselves, so we encourage teachers of legal research to make photocopies and pass them out in class (with attribution, please!)

Why Take Notes?

To begin, why take notes? Why be concerned about the purity of index cards? After all, it makes sense that few use them now; there have been a lot of technological changes since junior high! Rather than taking any sort of notes on cases, articles, or book chapters, many researchers today make a copy—either by photocopying from a book or printing a document from an electronic source.

Making a copy of the information has several advantages over taking notes: speed, reliability, and completeness. However, it also has disadvantages. When one photocopies an entire case or law review article, she may not read it, but instead may just tack it in a briefcase or backpack to read at some later time—which might never arrive. If the researcher does read it, but does not take notes, the material might not be understood as well, or have the pieces fit together might not be perceived. Note-taking allows one's mind to process the information in a different way. If the researcher goes back to the case or article several weeks later, it might be difficult to remember what was important about it, and perhaps the whole thing will have to be skinned again to figure out why it was copied in the first place. Finally, the bulk alone of photocopies and printouts may impede the research project. A 6-inch stack of paper with no order will quickly overwhelm all but the most determined researcher.

Many researchers nowadays combine a tendency to print out or photocopy with a fastidiousness about highlighting. Using colored markers to identify important or relevant text can be an effective note-taking tool. However, some seem unable to avoid the propensity to highlight every line on a page. Because, on first reading, everything seems like it might be important. Often one must read the entire case or article before the truly relevant portions can be successfully highlighted.

It does take time and self-discipline to be a systematic note-taker, and sometimes researchers decide that note-taking, that is good note-taking, is just not that important. Why do we disagree? We see several good reasons for taking careful and thorough notes:

- Notes record the researcher's sources in order to use them, find them again, and cite them.
- Notes record the research path so the researcher knows what has been checked.
- Notes help the researcher to think about what is being done and keeps the focus on the correct issue.
Note-Taking Types

Recently we have begun seeing law students and lawyers taking notes on laptop computers. That surely will change some people's habits. Perhaps their note-taking will be faster and more accurate (if they are fast typists). Perhaps they will be able to use outline features to organize their notes better, and cut-and-paste features to capture questions and key passages. Of course, if note-takers forget to record a citation, that lapsing will not do it for them—technology cannot solve all our problems.

One type of note-taking has not changed. Most researchers will undoubtedly identify with one of the types below:

- **Perry Mason:** Does not do much, does not take notes. If he reads something, he remembers it for the rest of his own. He always wins.
- **Rain Man:** Writes everything in his notebook very accurately. Memorizes it anyway. (Does not understand it.)
- **Absent-Minded Professor:** Takes concise notes on whatever paper is at hand but does not record sources since he is sure that he will remember them. Insists to check the citations he cannot remember and to assemble and organize notes when he has a bit more time. 
- **Peppermint Patty:** Gets notebook stuck in hair. Draws shots. Information retrieval is limited.

**Dudley Do Right (sort-of):** Sets up a system for note-taking so that when he is ready to prepare the final product he has everything he needs. Draws shots. Gets more "plum" judgments than others who may get away with it because he is the main "plum."
Taking a few minutes to write down what was done and what was found. Several weeks later the partner may ask a follow-up question.

How long will the project take? The longer the researcher thinks a project will be around, the more important it is to take good notes. If the task is to work on a law review article or a seminar paper or an appellate brief, it is likely the researcher will be looking at the same issues for a long time—or will be coming back to them after thinking about something else for a few weeks. The better the notes are—listing what was checked, what headings were used, the dates of the supplementation, and so on—the more efficient the researcher will be.

How many people are working on the project? If more than one person is working on a project, the researcher cannot rely on memory as much as if everything was in the researcher’s own hands. Somebody else might need to know whether the researcher checked a citation on a list; the researcher, on the other hand, might need to know whether a coworker checked CIS for committee reports or relied on USCAN.

Who will read the notes? If only the researcher will be using the notes, then whatever shorthand works can be used. "LiK + o" might be an adequate reminder that Legal Resource Index was checked but nothing useful was found. But if the researcher is reporting the results to someone who does not do as much of the same kind of research as the researcher does, it might help to explain what the database is and something about the searches that were tried, (e.g., "I searched Legal Resource Index, an index of legal periodical articles, 1980 to present, using the phrase ‘wildlife refuge’, the only article I found predated the cases you asked about."). This would help the requester understand what the researcher meant when reporting that nothing relevant was found—as well as give the requester an opportunity to adjust the scope of the request.

How many projects does the researcher juggle? The busier the researcher is, the more tempting it is to skip steps. But it is a dangerous temptation. Pay the researcher who is left monitoring. “I know I looked around in the UN Gopher, but was it for that death penalty question or the law of the sea question? Did I look for an ALR annotation on the premature liability question? Or was it the wrongful termination case?”

How much is the subject? If the researcher is trying to find information in an unfamiliar area, much better notes need to be taken. Both the terminology and the sources may be unfamiliar and details will be much harder to remember. Terms of art, variant spellings, and specialized resources should all be particularly well documented. Even in a familiar area, if the researcher is using an unfamiliar source (or a source that may be unfamiliar to the requester), its scope and coverage should be noted.

What sort of similar research will the researcher be doing in the future? Any time future research in the same area is envisioned, taking careful and thorough notes in the present is a wise course. There is no better gift researchers can give themselves than having all the comradely solved when the need to revisit the same area of research occurs. Notes will show the researcher the best sources to try first, perhaps provide leads that took days to develop in the former project, and suggest effective terms for searching. If the researcher cannot imagine ever doing research on a particular topic again, good note-taking is still a boon. One never really knows when an odd, money problem might crop up again (and the researcher will be looking to the notes as the "export"). As Louis Pasteur said, “Chance favors only the mind that is prepared.”

Conclusion

Research, no matter how interesting and rewarding, is hard work. Taking notes, good notes, may not come naturally to you. But it is not hard...
Top 10 Tips for Better Note-Taking in Legal Research

BY PENNY A. HAZELTON, PEGGY ROEBUCK JARRETT, NANCY MCMURRER, AND MARY WHISNER

1. DO A REFERENCE INTERVIEW
   If you are doing research for another person, be sure you summarize what you think the person has asked you to do, determine when the project is due, ask if there is a financial limit on the project, and find out what kind of product you must produce (e.g., a client letter, a memo, a bibliography, a list). In many cases it may be appropriate to solicit strategies, sources, or search terms. The more information you can gather the better. Reference interviews, which are the process of finding out this information, are not just for librarians!

2. PREPARE TO CITE
   Keep track of what you will need in order to cite whatever you find. It is not necessary to have all the seminal works and cases in place, but you do need to know enough about citation format to know, for example, whether you need the author's first name, or a book's copyright date or edition. You will be wise to take a minute to check a citation manual if you are citing a source you do not use often. Get in this habit and ALWAYS write down citation information—regardless of whether you are excited about what you have found or you think it will not be used. You do NOT want to be staring at a deadline and then realize you have a number of gaps to fill in!

3. NOTE SEARCH TERMS
   Before you turn on your computer or start pulling books off the shelves, note the key terms and phrases that characterize your research problem. Think about which ones to try in the various paper sources and which might be useful in various computer databases. This is a particularly important step for anyone who is doing research for another person. As you go through your research, write down new terms you find. Of course, it can be tedious to write down every single term you try in every index. You might have a list of terms, and quickly check them off. Or write down the terms that work. Or the ones that fail. Highlight the ones that seem to work the best, but do not limit your research to them since what works in one source may not work in another.

4. NOTE YOUR CONTACTS
   To whom have you talked? Record names, titles, organizations, and phone numbers. Were they helpful? Will they be sending you something? When? Will you want to use that contact again (should you add them to your Rolodex)?

5. TAKE GOOD CALL NOTES, TOO
   If the databases you use frequently have a built-in way to keep track of what searches you have done, always remember to exercise that option. Use all the technology at your disposal! Every printout should contain a notation of the search you performed, the database you worked in and the date of your search. If the system cannot automatically add this information, be sure you write it on the printout itself.
6. ANNOTATE YOUR PHOTOCOPIES

The moment you read or even scan a photocopy, make a note on the copy, or highlight a piece of text, so you can glance at it quickly to see where it fits into your research project. And, of course, get in the habit of checking to see that all the elements of a complete citation appear on the copy. If not, take a minute to write down all the pertinent information. Copying only a portion of a case, an article, or a book can really cause identification problems later. It does you little good to know the citation to the case you copied is 654 N.E.2d 35 if you do not also know the date of decision, court, and parties, particularly if you cannot get back to the library or into the online database to look at it again to verify the correct information.

7. REMEMBER TIME IS OF THE ESSENCE

Be sensitive to how current each source you use is. If you will be working on the project for a while (or someone else will be looking at your research results next month or next year), you need to note coverage information, for example:

1. shelf thru 12/95 pamph.
2. RCWA 1996 pt. (covers '95 reg. legis. sess.)
3. WESTLAW searches 12/29/95

8. KEEP THE REQUESTER INFORMED

Should the project take more time than anticipated, do not hesitate to get back to the requester and find out if you should stop or spend more time. Be ready to explain (from your excellent notes) what you have done and what you have left to do. Make a note of the conversation and date it.

9. ORGANIZE YOUR NOTES

Once the project is complete, resist the tendency to load for the recycle bin, or, more likely, to toss the notes in a pile on your office floor. Take a few moments to spruce them up. If there was a cover memo, attach it on top of the notes. If there was not, write a quick note to the file, so you can tell at a glance what the project was about. File your research notes by requester or by topic or by whatever system will enable you to find them again.

10. CONSIDER DESIGNING YOUR OWN TEMPLATE

If you tend to have a number of projects going on at the same time, you may want to design your own research cover sheet. A cover sheet can be the place for your general, summary notes; using colored paper prevents a request from becoming intermingled with the research on another project. Decide what sorts of information you need for most of your assignments and make yourself a form. Possibilities for the form include:

1. dates (when the research was assigned and when it is due)
2. requester’s name, telephone number and e-mail address
3. description of the request
4. how to charge costs (to a client, to a particular account)
5. what form the results should take (e.g., citations list, memo, telephone call)
6. method of delivery and destination (e.g., put on desk, chair, mailbox)

The rest of the page is left blank so you can note contacts you have made, terms for searching, databases or sources already tried, etc. If you now need to contact the requester, all the basic information about the project is at your fingertips without your having to shuffle through papers.

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Indian Law Research in Washington

Peany A. Hazelton

- Introduction
- Federal Indian Policy
- Indian Law Terminology
- Scope of Federal, Tribal, and State Power over Indians
- Practitioner's Checklist
- Research Tools
- Conclusion
- Washington State Tribal Directory
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Indian Law Research in Washington

Penny A. Hazelton

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## I. Introduction

This chapter has been added to the third edition of this Deskbook because practice of law in the State of Washington will very likely bring you into contact with native people or Indian tribal governments. Today, 28 of the 36 Indian tribes in Washington State are recognized by the federal government.1 Tribal land in Washington State totals 2.6 million acres or 6% of the state. In addition, tribes in Washington have significant off-reservation treaty rights to hunt and fish. The U.S. Census Bureau has estimated there are 104,819 American Indians and Alaska Natives in Washington State, ranking it 5th among states with Native American populations.2 Native Americans comprise 1.8% of Washington State’s population. Over half of the Native American population in Washington reside in urban areas.

The purpose of this chapter is to inform Washington lawyers about the background and unique characteristics of law relating to Indians in Washington. Depending on the subject of inquiry, federal, state, and/or tribal law may be implicated. Armed with the necessary background, legal research projects involving individual Indian clients or issues with Indian tribes or tribal land can be more focused and efficient.

Practitioners in Washington State who are faced with a legal dispute involving Indians, an Indian tribe, or Indian trust lands must be mindful that the legal doctrine developed to cope with Indian issues is primarily a body of federal law, interlaced with tribal and state responsibilities. Thus, resort to Washington State law alone will never be enough to solve Indian legal problems. The complexity of the jurisdictional issues (does state, federal, or tribal law apply?) is the primary reason that this chapter contains a short history of federal Indian policy. Also included are definitions of important Indian law terms; a discussion of the scope of powers of the tribal, state, and federal governments; a practitioner’s checklist; and a list of federal, Washington, and tribal research tools.
II. Federal Indian Policy

In no area of law does the effect of 200 years of federal policy play such an important role in the legal regime as in Indian law. The government’s attempt to deal with Native Americans has seen so many changes that the laws governing Indian affairs reflect these inconsistent policies. Understanding the federal government policies that have shaped this unique body of law is essential.

Indian law scholars divide federal Indian policy into several different eras, each with defining characteristics. The following sections are designed to give the reader a very brief overview of the tumult within which Indian law has been crafted. Excellent, more detailed discussions of the history of federal Indian policy can be found in Felix S. Cohen’s Handbook of Federal Indian Law, 1982 ed., at 47-206 (Michie, 1982) (hereinafter, Cohen); William C. Canby, American Indian Law in a Nutshell, 3d ed., at 10-32 (West Group, 1998) (hereinafter, Canby); and Stephen L. Pevar, The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights, 2d ed., at 1-11 (SIU Press, 1992) (hereinafter, Pevar).

A. Pre-Revolutionary War (Before 1776)

Prior to the Revolution: War, each of the more than 400 Indian tribes of North America governed themselves and had their own language and culture. In essence, North American Indian tribes were independent governments. Pevar at 2-3. European nations followed the “doctrine of discovery” which recognized Native American rights to occupy traditional territory subject to the jurisdiction of the nation claiming the area as against other nations. The British Colonies began the practice of signing treaties with Indian tribes.

B. Treaty-Making and Federal Authority (1776-1828)

The Articles of Confederation and, later, the U.S. Constitution both recognized federal authority in the regulation of Indian affairs. "Treaty-making with Indian tribes continued through the Articles of Confederation and the adoption of our new Constitution and was a recognized method of dealing with equals. In this nation’s infancy, Congress enacted several laws designed to bring peace between the whites and the American Indians by regulating trade and intercourse (i.e., traders with Indians must have a federal license, non-Indians needed U.S. consent to obtain Indian land, Indians were exempt from complying with state trade regulations)."

C. Removal, the End of Treaty-Making, and the Move to Reservations (1828-1887)

Indian policy took an abrupt turn in 1838 when Andrew Johnson was elected President. By 1830, President Jackson’s desire to move the Indians from the East to the West took shape in the Indian Removal Act, 4 Stat. 411 (1830). Over the next sixty years, hundreds of Indian tribes were removed to new lands; some more than once. In 1871, Congress eliminated the practice of making treaties with the Indians, but guaranteed the validity of all prior treaties. Thereafter, land cessions were negotiated with tribes and confirmed by statutes or executive orders. Negotiations between Indian tribes and the federal government were called agreements after 1871. For sources of treaties and agreements, see Section VI.D.1.a., below.

D. Allotment and Assimilation (1887-1934)

In 1887 Congress passed the Dawes Act, also called the General Allotment Act, 24 Stat. 388, as amended, 25 U.S.C. §§331-58 (1994). The purpose of this new law was “to break up tribal governments, abolish Indian reservations, and force Indians to assimilate into white society.” Pevar at 5. On many reservations, land held communally by Indians was divided among tribal members and non-Indians were allowed to settle on land not reserved to the tribe or to tribal members. Congress felt the sooner Indians adopted the white man’s civilized ways, the better. The amount of land held by Indians and Indian tribes declined from 138 million acres in 1887 to 48 million acres in 1934. Canby at 22. With a greatly
Reduced land base, tribal governments were much less effective and tribal culture suffered. Public criticism of the impact of this federal policy led to the next significant era for federal Indian policy.

E. Indian Reorganization (1934-1953)

Partially in response to the Meriam Report, which documented the failure of federal Indian policy during the allotment period, the Indian Reorganization Act (IRA) was passed in 1934. 48 Stat. 984, codified as 25 U.S.C. §§461 et seq. (1994). The purpose of this new federal policy was that Indian tribes and tribal government should continue to exist and be encouraged in self-government. The practice of allotment was ended and the Secretary of the Interior was authorized to acquire lands and water rights for tribes and to create new reservations. Tribes were encouraged to adopt constitutions and by-laws for self-government, though these had to be approved by the Secretary of the Interior. While not all of the statute had the desired effect, the IRA did provide a framework for increased tribal self-government and did stop the further erosion of the tribal land base.

F. Termination (1953-1968)

But, the Indian Reorganization Act had many critics and after a decade of cuts to the U.S. Bureau of Indian Affairs (BIA) budget and attempts to repeal or substantially amend the IRA, Congress adopted a general statement of policy which dominated Indian affairs for more than a decade. The purpose of this policy was to terminate the relationship of Indian tribes with the federal government by transferring responsibility for the tribes to the states. Specific statutes were passed by Congress terminating various Indian tribes. Federal programs were discontinued; state jurisdiction was imposed in place of federal and tribal jurisdiction over such things as adoption, taxation, and land use; and federal trusteeship over Indian lands was ended. Although the termination acts did not expressly extinguish the governmental authority of the tribe, without a land base, most terminated tribes were not able to exercise their sovereignty. In some cases, however, treaty rights to hunt and fish were found to survive "termination."

Termination of federal responsibility over Indian affairs was aided by the passage in 1953 of Public Law 280. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588. This new law transferred civil and criminal jurisdiction over Indian lands from the federal to state governments in six states (Alaska, California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin (except the Menominee Reservation)) and permitted assumption of jurisdiction over Indians by other states in the future. A 1960 amendment permits state assumption of jurisdiction only if the tribe consents. The State of Washington was not a mandatory PL 280 state, but it enacted enabling legislation that permits assumption of state jurisdiction in certain circumstances. RCW §§86.12.010-150 (2000). In fact, Washington did assert PL 280 jurisdiction in a piecemeal fashion. See Washington v. Confederated Bands and Tribes of the Yakima Indian Nation, 439 U.S. 463 (1979).

G. Tribal Self-Determination (1948 to Present)

The Indian Civil Rights Act (ICRA) was passed in 1968, signaling an end to the termination policies of the previous fifteen years. 82 Stat. 77, 25 U.S.C. §§1301 et seq. (1994). Traditionally, tribal government activities were not restricted by constitutional mandates applicable to the federal government through the Bill of Rights or to the states through the 14th Amendment. Though representing a federal incursion upon the sovereignty of the tribes, at least this law, which imposed on the tribes most of the requirements of the Bill of Rights, assumed the continued existence of tribal governments. Many other federal laws were enacted during this period, permitting tribes to manage their own affairs with the greatest degree of autonomy and reinforcing the trust relationship between the
federal government and Native American tribes. Tribal sovereignty and self-government have led to more systematic law-making by Indian tribes and to an assertion of control and jurisdiction over many aspects of the life of tribal members and activities taking place on tribal lands.

III. Indian Law Terminology
All areas of law have their own language, and this is certainly true of Indian law. Even seemingly simple words have a specialized meaning that must be understood by the legal researcher. Where definitions are not completely clear, knowing this uncertainty may help the researcher think of a strategy or argument that will be useful to the client. The following list is not comprehensive, but it can help identify terms of art used in Indian law.

A. Who Is an Indian?
Indian tribes have the power to determine membership in the tribe. "Indian" may also be defined by federal statute, treaty, executive order, or proclamation. In rare circumstances, individual Indians could be entitled to certain federal programs and not meet the requirements for tribal enrollment and vice versa. All Indians are U.S. citizens and may also be enrolled members of Indian tribes. Throughout this chapter, the word Indian is used interchangeably with Native American.

B. What Is an Indian Tribe?
In everyday use, Indian tribe refers to a group of Indians who share a common heritage and speak a distinct language. Any group of Indians can call themselves a tribe and be recognized by other Indian tribes. The terms Indian band or nation are often used by the tribe itself and are used synonymously here with Indian tribe. An Indian tribe's legal status depends on federal recognition.

C. What Is a Federally Recognized Tribe?
The legal definition of an Indian tribe ordinarily rests on whether the tribe has been officially recognized by the federal government. Federally recognized tribes with powers of self-government are required by statute to be named on a list maintained by the Secretary of the Interior. 25 U.S.C. § 479a-1 (1994). The current list is at 65 Fed. Reg. 13,298-13,303 (March 13, 2000), available at http://www.doi.gov/bia/tribes/311fr.pdf. However, other federal statutes may define other Indian groups or tribes for certain purposes.

Federal recognition acknowledges a government-to-government relationship between the Indian tribe and the federal government. Regulations that govern application for federal recognition can be found at 25 C.F.R. Part 83. The U.S. Bureau of Indian Affairs has an excellent website that answers many questions about the process. The "Acknowledgement Guidelines" can be found at http://www.doi.gov/bia/bar/arguide.html. See Appendix I, below, for a list of federally recognized Indian tribes in Washington and of tribes that do not have federal recognition.

D. What Is Indian Country?
The phrase "Indian country" has a special meaning in Indian law. Determination that the action in question took place on land defined as Indian country may well determine which government (federal, state, or tribal) has jurisdiction. Codified in 1948 in federal criminal statutes (18 U.S.C. §1151 (1994)), the statutory definition of Indian country applies to civil matters, as noted in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). Indian country includes reservation land, allotted land, and dependent Indian communities, even when the latter two types of land are located outside the bounds of the reservation. Thus, the phrases "Indian country" and "Indian reservation" do not have an identical meaning.

Land that has been set aside by the federal government or reserved by the tribe in treaty, statute,
executive order, or agreement for the use, possession, and benefit of an Indian tribe is called a reservation. All land within the bounds of a reservation is Indian country—including land owned in fee simple by non-Indians as of rights of way.

Some Indians reside on allotments located outside of the reservation. These lands are of two kinds—trust allotments and restricted-fee allotments. Both types of land are Indian country, whether located on the reservation or not. The only difference between trust and restricted fee allotments is that legal title to trust allotments is held by the United States for the benefit of the individual Indian, while restricted-fee allotments are held by individual Indians subject to restrictions on alienation.

It is critical to note that the jurisdictional consequences that arise from the fact that an area is Indian country can vary considerably depending on the subject matter of a dispute and whether the governmental actors are tribal, state, or federal. Research in this area nearly always requires a review of federal case law, treaties, statutes, or agreements that may be peculiar to the tribe involved, or general in their application.

E. What is the Federal Trust Responsibility?

A most important underpinning of Indian law is that the federal government owes a duty or responsibility to Indians to keep the promises made by the government in treaties and other dealings with Native Americans. This federal trust responsibility is a fundamental principle of Indian law and has been articulated in hundreds of Indian law cases, beginning with Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

Though the doctrine of the federal trust responsibility was originally created to enforce trust commitments, later case law found that federal laws, agreements, and executive orders can also create trust obligations. Extension of the trust responsibility may also include implied, not just express, commitments. Also arising from the trust responsibility is an independent obligation upon the federal government to protect and promote the interests of Native American tribes, including their interests in self-government.

F. What Is Tribal Sovereignty or Tribal Self-Government?

Woven into the fabric of Indian law is the inherent right to tribal self-government. First articulated in the famous case of Worcester v. Georgia, 31 U.S. 515 (1832), this principle is essential to understanding the basis of the Indian power of self-government. The key notion here is inherent rights to self-determination or self-government are not delegated to the tribes by the federal government, but are an inherent attribute of being a distinct political group.

The federal government can limit or abolish tribal powers but unless Congress acts, the tribe retains all powers of self-government. In fact, over the years Congress has acted to limit the sovereignty of tribes in many ways (see Section II, Federal Indian Policy, above). But most tribes still have inherent rights to self-government in many activities. The consequence of this rule creates the division of power between the tribes, the state, and the federal government which in turn makes research in Indian law so complex. In addition, Congress has delegated authority to tribes in some areas such as liquor regulation and certain environmental issues.

G. What is PL 280?

In 1953 during the period of termination, Congress passed a law giving certain states criminal jurisdiction over Indian country and making state courts available to hear civil cases. Act of Aug. 15, 1953, ch. 505, 67 Stat. 568. Popularly called PL 280, this act was mandatory in some states and discretionary in others. PL 280 was eventually amended to require tribal consent to state jurisdiction. Washington was not a mandatory state, but it did enact legislation that assumed full civil and criminal jurisdiction over eight subjects: compulsory

However, many tribes in Washington have exclusive or concurrent jurisdiction with the state over some or all of these eight issues. Washington State's assertion of regulatory authority in the civil arena is limited to hearing civil causes of action. Some tribes were excluded from this assumption of jurisdiction by Washington statute, and some tribes have retroceded from state jurisdiction. 25 U.S.C. §1323 (1994). Retrocession of jurisdiction is the process by which a state gives back jurisdiction to the tribe and/or federal government. Most recently the Tulalip Tribe has been granted retrocession by the State of Washington and the federal government so the tribe, not Snohomish County, will handle all major crimes committed by Indians on the Tulalip reservations. Where major criminal cases were once handled in county and state courts, they will now be handled by the Tulalip tribal court or federal court. Retrocession notices must be published in the Federal Register.

IV. Scope of Federal, Tribal, and State Power over Indians

The most difficult problem facing the Washington practitioner handling an Indian law case is determining what governmental unit has jurisdiction over the subject matter of the case. Is the matter under exclusive tribal, state, or federal jurisdiction? Or does some combination of concurrent jurisdiction among the three governmental units exist? Jurisdiction is the threshold question in most Indian law cases.

Unfortunately at this time, there is no publication in Washington that articulates the black letter law for each tribe and each type of subject matter. The difficulty in determining jurisdiction is compounded by the fact that with some subject matter and some tribes the rules are not yet settled. The question of jurisdiction may well be the pivotal issue in your case.

A good, general overview of Washington law related to Indians is very hard to find. However, Robert McCarthy's 1999 article from the Washington State Bar News may be a good place to start. A handout prepared by the Washington Association of Prosecuting Attorneys for federal and state law enforcement officials (also given to tribal law enforcement personnel) outlining the basic rules of jurisdiction for crimes committed in Indian country is included as Appendix II, below. Please note that in many areas of Indian law, jurisdictional questions are unsettled. Read material written about Indian law critically and evaluate the interests and possible bias of the author.

Many Indian law cases in Washington have been over the question of jurisdiction. Because of the importance of the jurisdictional question, knowing the facts about the Native American client, defendant, or the Indian tribe involved is essential.

V. Practitioner's Checklist

Should you have an Indian client, an Indian party in a case, or have dealings with an Indian tribe, several facts must be established. Answers to the questions below can help the researcher understand the jurisdictional issues.

- Is the person an enrolled member of an Indian tribe?
- What tribe?
- Are there treaties, executive orders, proclamations, regulations, or federal or state legislation regarding this tribe?
- Is the tribe federally recognized?
- Where did the activity subject to legal scrutiny occur—on reservation land or on trust or fee land within or outside the boundaries of the reservation?
- Is this situation a civil or criminal matter?
VI. Research Tools

Research in Indian law involves federal, state, local, and tribal resources. This chapter is aimed primarily at the Washington practitioner and after reference to important, selected sources of national scope, this section will describe tools with a specific Washington focus. But even the Washington practitioner will need to use federal materials for most Indian law questions.

A. Research Guides


This comprehensive bibliography is an essential tool for legal researchers who are new to the Indian law area. Excellent annotations for primary, secondary, and nonlegal sources listed. Though dated, this guide references virtually all the print materials available, except individual periodical articles and books published since the mid-1980s. Includes an explanation of each type of authority, in historical context, coverage of the research tool, and tips for using the material. Professor Carter has a new book coming out on this subject.


This research guide focuses on tribal law with citations to tribal constitutional, codes, court reports, and secondary sources.


Eclectic collection of short essays on Indian tribal legal systems and Indian and non-Indian people (for example, Governors of Indian law cases, statutes, and treaties. Extensive footnotes to references. Covers some Washington tribes.
B. Treatises, National in Scope

Hundreds of books have been written on the subject of American Indian law. Identifying appropriate titles in library catalogs can be done by looking for books with the Library of Congress subject heading, "Indians of North America," or under the name of the tribe. Note that the spelling of tribal names can vary tremendously. To locate everything, include all spelling variations (for example, the Yakama Nation was for years named the Yakima Nation).

In libraries using the Library of Congress classification system, American Indian law materials will be found from KF8201 to KF8230. The following three titles are extremely important and can help answer many questions for the researcher new to Indian law.


A quick easy introduction to American Indian law. Discusses prominent cases and legislation. Includes some citation to relevant legal materials, but not extensive.


The only comprehensive treatise on the subject of Indian law. Cohen is the essential book on this complex subject. Revises the 1942 classic written by Felix Cohen. A new edition is in the drafting stage. The original Felix Cohen handbook published in 1942 was reprinted, but not updated, in 1986. An electronic version of the 1942 work can be found on the Internet, http://thorpe.cs.rr.edu/cohen.html. An official government update of the 1942 Cohen work was published in 1958 and should be avoided due to poor scholarship and bias.


This American Civil Liberties Union handbook is an excellent starting point for Indian law legal research. Written in question and answer format, with extensive citations to cases, statutes, and other legal materials, a new edition is due in 2002.

C. Periodical Literature

A wealth of periodical literature on the subject of Native American law has been published. From case notes and comments to professional articles, many Indian law topics are covered. The only print academic law journal devoted exclusively to Indian law is the American Indian Law Review from the University of Oklahoma Law School. However, the University of New Mexico Law School began publication in 2000 of a new online-only journal, the Tribal Law Journal, http://tribal.law.unm.edu/.

The Index to Legal Periodicals (ILP) and LegalTrac (Current Law Index in print; Legal Resource Index on Westlaw and LexisNexis) both use "Indians of North America" as their subject heading for articles about Native American law. The Current Index to Legal Periodicals (CILP) (http://liblaw.washington.edu/cilp/cilp.html) is a weekly index of legal periodical literature and uses the subject heading "Indian Law." These indexes may be found in print, on Westlaw and LexisNexis, and on the Internet for a fee.

Many full-text law reviews are available on LexisNexis, Westlaw, and sometimes on the Internet for free. Searches in the full-text articles will often yield too many hits. The researcher is advised to limit the search to the title field or segment of the database. Finding one, good, current article will lead the researcher to other secondary and primary legal materials.

D. Primary Law Sources

Locating the primary sources—codes, court decisions, and administrative rules and decisions—for Indian law is similar to research for any other area of law with some important additions. First, as noted above, treaties often govern Indian and non-Indian relationships; thus Indian treaty sources must be reviewed. Second, tribal-state agreements or compacts are often used to settle jurisdictional questions between state, local, and tribal governments. These compacts may be relevant to specific situations. Third, for most projects, research in federal and/or state law (sometimes city or county law) is usually enough. But cases involving Indian law may also require access to tribal constitutions, legislation, court opinions, and administrative rules and decisions.

1. Treaties and Tribal-State Compacts

a. Treaties

Indian treaties are negotiated between the federal government and Indian tribes. Congress abolished treaty-making in 1871, so all subsequent dealings with Indian tribes are called agreements. Most agreements after 1871 were issued as executive orders or proclamations or enacted as federal law. Traditional treaty sources exclude Indian treaties.

However, most treaties and agreements can be found in one of the print sources noted below. Several free Internet websites also contain Indian treaty collections. The collections below contain most Indian treaties and agreements. Check the Carter bibliography (Section VI.A, Research Guides, above) if these sources do not include the treaty you need.


The classic work in this field includes treaties, agreements, statutes, and other official government documents pertaining to the American Indian.

Most are reprinted from the U.S. Statutes at Large. Not comprehensive. The 1979 volumes include materials from 1938 to 1970 and the last volume in the series includes federal regulations (based on the 1973 Code of Federal Regulations) relating to Indians. The first three volumes are in electronic form at http://thorpe.csu.edu/treaties.html.

American Indian Treaties Series, 9 vols. (Institute for the Development of Indian Law, 1973-).

An alternative to the well-known Kappler. Includes some treaties and agreements not in Kappler. Includes a separately published index, A Chronological List of Treaties and Agreements Made By Indian Tribes with the United States (Institute for the Development of Indian Law, 1973).

United States Statutes at Large.

Volume 7 contains many but not all treaties.

b. Tribal-State Compacts

More cooperation between tribal governments and states in the past ten years has resulted in the negotiation of many tribal-state compacts to settle issues in environmental and other regulatory areas. Some of these compacts must be approved by the U.S. Bureau of Indian Affairs (gaming is one area
where this is required); others require no federal approval or oversight. Compacts are not regularly published.


An overview of American Indian law from the point of view of the Attorneys General of the Western states. Excellent chapter on cooperative agreements between the state and the tribe, including examples of how compacts have been used.


Notice of approval but not the full text of gaming compacts between the states and tribes must be published in the Federal Register. The Bureau publishes a summary of each compact on this website.

2. Constitutions and Statutes
   a. Federal

   Most federal statutes about Indians and Indian tribes are collected in Title 25 of the United States Code. Criminal statutes are found in Title 18.

   Check the subject index (including the name of the tribe) to locate other statutes of interest codified in other titles. Besides the print United States Code and the annotated versions (U.S.C.A. and U.S.C.S.), federal law can be found on LexisNexis, Westlaw, and any number of free and low-cost Internet sites. For links to the free sites, see the Internet Legal Resources page of the University of Washington Gallagher Law Library website, [http://lib.law.washington.edu/research/research.html](http://lib.law.washington.edu/research/research.html).

   b. Tribal

   Not all tribal codes and constitutions are available in a print or electronic form. Contact the tribal attorney if you are unable to locate a copy or are concerned about the currency of the copy of the code or constitution you have located. Some tribal codes have been published and can be purchased, such as the Navajo Tribal Code, and can be located by checking library catalogs. Some are only available from the tribe itself. Various collections of tribal codes have been published or posted on the Internet. Always check with the tribe for currency!

Charters, Constitutions and By-laws of the Indian Tribes of North America (Colorado State College, 1967-72).

Published in 18 parts, part 15 includes materials for tribes in Washington and Oregon.


Fifty-six tribal codes and constitutions with introduction and analysis. Indexes specific subject codifications within individual codes. Seventy-one page manual with codes in microfiche format. Updates, but does not replace, the 1981 edition. To view the list of tribes represented or to purchase this historical collection, see [http://lib.law.washington.edu/pubs/ind1968.html](http://lib.law.washington.edu/pubs/ind1968.html).


Tribal Law and Policy Institute, Tribal Court Clearinghouse, [http://www.tribal-institute.org/its/codes.htm](http://www.tribal-institute.org/its/codes.htm).

Links to sites containing tribal codes, including tribal, educational, and organization websites. Important collections of tribal codes can be found on
the following websites. None of these websites is comprehensive at this time.

  Large collection of environmental codes and regulations of U.S. Indian tribes is full-text searchable. For a list of codes included in the database, see http://environext.eh.doe.gov/data/trlaw/tl_toc.html.

  Links to several Native American tribal codes and constitutions. Also search the National Indian Law Library catalog to locate other in-print tribal codes and constitutions.

  Contains constitutions from only seven tribes, none from Washington State. May not be current. Searchable.

  Incorporated in 1983 as an independent national resource for tribal courts, the NJJC site includes many training manuals, several model codes, and links to other code sites.

  A very complete set of original constitutions and charters of Indian tribes is located at http://thorpe.ou.edu/IndianA.html. At present there are a few tribal codes available on this site with more to be added, http://thorpe.ou.edu/codes.html.


  Prepared for the U.S. Department of Housing and Urban Development, Office of Native American Programs by the Tribal Law and Policy Institute, this site includes model codes, especially in those areas related to housing. Includes model codes for housing, land use, zoning, building, commercial, corporation, environmental, and probate.

3. Court Opinions

a. State and Federal Cases

  State and federal cases involving Native American law can be found in the national reporter system and official state reports. These cases are also found on Westlaw, LexisNexis, Lexislaw, VenusLaw, and other electronic databases as well as in CD-ROM products. Subject access to cases is through the West Digest topic "Indians." Westlaw also has a practice database called Native Americans Law (FNAM) that includes cases; statutes; administrative materials; treaties; and selected legal newspapers, periodicals, and journals.

  The best way to keep up on important Indian law cases across the country is with the Indian Law Reporter (American Indian Lawyer Training Program, 1974- ), which reproduces all federal and state court cases.

b. Tribal Court Cases

  There is no comprehensive publication of Indian tribal court cases. Some tribes have begun to publish their own opinions in tribal court reporters, such as the Navajo Reporter. The Indian Law Reporter contains selected tribal court opinions. Check with the clerk of the tribal court or tribal attorney to obtain a copy of a specific opinion.

  Westlaw contains Oklahoma Indian tribal courts decisions in the OKTRIB-CS database.

4. Administrative Rules and Decisions
The U.S. Department of the Interior, Bureau of Indian Affairs (BIA), has oversight of Indian matters. Their mission:

...is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. We will accomplish this through the delivery of quality services, maintaining government-to-government relationships within the spirit of Indian self-determination. http://www.doi.gov/bia/mission.htm.

The BIA's excellent website includes information about Indian tribes and their governments and details about the services offered by the BIA and other government agencies, http://www.doi.gov/bureau-indian-affairs.html. Note that the BIA has created websites for some of the specific laws that it is responsible for implementing. For example, the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. §450) website includes the full text of the law, regulations, and other agency materials, http://www.doi.gov/bia/indian-affairs/resources.html.

BIA regulations are published at Title 25 of the Code of Federal Regulations, updated daily with the Federal Register. Both of these titles can be found in print, on the Internet, and on Westlaw and LexisNexis. See the Gallagher Law Library Internet Legal Resources page for links to current free Internet sites containing these titles, http://lib.law.washington.edu/research/research.html#fedrules.

For administrative decisions and actions by the BIA that have a legal impact on Native Americans and Indian tribes (e.g., federal recognition of an Indian tribe) check its website, http://www.doi.gov/bureau-indian-affairs.html.

E. Directories and Reference Materials
The best source of current information about governmental and private organizations with an interest in Indian law can be found on the National American Indian Court Judges Association, National Tribal Justice Resource Center webpage, http://www.tribalresourcecenter.org/pages/resources.htm. The researcher will find links to tribal organizations, legal services groups, and a myriad of other relevant websites.

A somewhat dated directory, Native Americans Information Directory, 2d ed. (Coble, 1998) is a comprehensive guide to organizations, agencies, institutions, programs, publications, and services concerning indigenous people in the U.S. and Canada. Web addresses are included when known.

To keep up on news and about Indian issues, Indianz.com, http://indianz.com/, collects current news stories and other information of interest to Indian law researchers.

F. Research Tools for Washington Tribes
Official Washington State policy regarding Indian affairs is memorialized in the 1999 Tribal and State Leader's Summit, http://www.goia.wa.gov/goet歌舞/agreement.html. The agreement reached at the Summit builds on the 1989 Centennial Accord, http://www.goia.wa.gov/goet歌舞/centennial.html, which recognized a government-to-government relationship between the state and the various Indian tribes. This policy does not solve the many jurisdictional issues that are a part of Indian law research in Washington State, but it does set a course of dealing with Native American tribes that may well encourage more tribal self-governance and less state action.

Remember that the Washington-specific materials must be used in conjunction with the federal materials. Citations have not been duplicated, so it
may be necessary to check Sections VI-A-E, above, for more references.

1. Research Guide

- West's Washington Law Finder (West, annual). An annual index to federal and Washington law, locate references under topics "Indian Reservations" and "Native Americans." Cites to federal and state statutes, West practitioner publications (Washington Practice), West treaties, and C.J.S. Does not cite to cases or administrative rules and regulations.

- Note that there are two entries for Native Americans, one primarily for federal references and the second citing primarily Washington-specific statutes and treaties.

2. Treatises and Books

- There is no book that covers just the law of Washington State Indian tribes. Search the University of Washington Gallagher Law Library's online catalog, http://marian.law.washington.edu, using the name of the tribe (remember spelling variations) to find specific works on individual tribes. The following materials may help locate useful analysis of Indian law issues in Washington and cite to relevant treaties, statutes, executive orders, and other secondary sources.


- A useful description of the tribal government of the Yakima (now, Yakama) Nation at pages 29-33 and 181-96.


- Written to help nonlawyers involved in family law matters in tribal court. Chapters cover procedures, dissolution, paternity, child custody, child support, and domestic violence. Questions and answer format. Cites authorities. Chart of Washington tribes with various tribal codes in force. Chapter VIII includes legal references to important cases and statutes.


- Background on Indian tribal courts. Cites authorities. Profiles the court systems of each of the federally recognized tribes.

- Washington Practice (West Group).

- This series contains few references to help the Washington attorney with an Indian client or Indian tribe. However, check these volumes for some helpful information, particularly the volumes dealing with environmental law and Indian tribes.

Adoption


- Chapter 22 includes information on the Indian Child Welfare Act and when it applies to adoption of Indian children. See especially sections 22.20 and 22.49-22.51. Includes forms.

Child Support


- Jurisdiction for child support issues may be state or tribal. Describes efforts under RCW §26.25.020 of the Washington State Department of Social and Health Services and tribes to enter cooperative agreements to establish, modify, and enforce child support orders.

Criminal Law

- Royce A. Ferguson, Jr., 12 Washington Practice: Criminal Practice and Procedure with Forms, 2d ed. §1602 (West, 1997).
Notes that the state may lack jurisdiction over crimes committed on Indian reservations with citations to a few authorities.

Dissolution

Inaccurately states that Washington State courts have exclusive jurisdiction over dissolution proceedings. History of Superior Court Civil Rule 82.5 is more complete than in other Washington Practice volumes (see tribal court jurisdiction below).

Environmental and Natural Resources Law

Chapter 3, "Environmental Law and Tribal Rights," provides good background and overview with many citations. Covert tribal regulation of clean air and water as well as tribal control of land use and natural resources, such as fish and water rights.

Paternity

Jurisdiction for questions of paternity may be state or tribal. Notes efforts under RCW §26.25 .020 of the Washington State Department of Social and Health Services and tribes to enter cooperative agreements to establish paternity. References further discussion at §39.19.

Termination of Parental Rights

Explanatory notes under Evidence Rule 702 (testimony by experts), references federal Indian Child Welfare Act and notes that expert testimony required for termination of Indian parent rights.

Torts: Tribal Immunity from Suit


Native American tribes are not subject to garnishment.

Tribal Court Jurisdiction
Superior Court Civil Rule 82.5 was adopted and became effective September 1, 1995 without a published purpose statement. This rule assumes federal statutes confer exclusive and/or concurrent jurisdiction on tribal courts in certain cases. Cases where exclusive jurisdiction rests with the tribal courts are to be dismissed from state superior courts. Cases with concurrent jurisdiction can be removed to tribal court after the superior court has considered specific factors. The rule also requires that superior courts recognize and enforce judgments and orders of tribal courts. Analysis of this rule can be found in the following places:


Includes the most complete history of this court rule.


This annual continuing education program sponsored by the University of Washington School of Law is an excellent way to keep up-to-date on law as it affects Indian tribes in Washington and throughout the West. Outstanding faculty of tribal
attorneys and judges, private attorneys who specialize in Indian law, state and federal government attorneys who work with Native American tribes, and legal scholars. Identify experts from speakers. Subject and author access to this collection of presentations can be found on the University of Washington, Gallagher Law Library website, http://lib.law.washington.edu/ref/indianlawc.html.

3. Periodical Literature

It is challenging to identify articles that just deal with legal issues of Washington tribes whether using full-text databases or periodical indexes. This problem is created primarily because of the difficulty in limiting any search to articles about Washington Indian law only. Washington State Indian tribes have been involved in nationally significant litigation in almost every area of Indian law.

The electronic versions of ILP and LegalTrax permit the researcher to retrieve all articles written specifically about a particular case or statute. Or KeyCite or Shepardize the cases to find relevant periodical articles.


4. Primary Law

In addition to the national sources described in Section VI.D, above, the following items focus on material relating to Indian tribes in Washington State.

a. Treaties and Tribal-State Compacts


Contains six treaties with Washington State Indian tribes (1854-1856).

b. Constitutions and Statutes

i. State

The most important state statute dealing with Indians is RCW §37.12.010-150 (2000). This is the statute pursuant to PL 280 (see Section III.C, above) in which the state declared its intention to take jurisdiction over Indian tribes in Washington from the federal government. There are several United States Supreme Court decisions and scores of lower federal court decisions construing the statute.

Other statutes relating to Indians in Washington can be located by looking in the Code's index under "Indians," "Native Americans," or the name of the tribe. Some statutes will be easier to identify if the researcher checks the subject (such as probate or domestic relations) first, then, looks for sections that apply specifically to Native Americans.

ii. Tribal

To locate tribal laws see Section VI.D.2.a, above. Also check the catalog of the Gallagher Law Library, http://marian.law.washington.edu/using the name of the tribe. The Library has a large number of Washington State Indian tribal codes in print.

c. Court Opinions

i. State

Access to both federal and Washington state case law is important when researching an Indian law issue. See Section VI.D.3.a, above. Remember that West's Washington Digest 2d provides subject access (topic is "Indians") to Washington State court cases and federal cases arising from Washington. Thus, important court opinions of the U.S. Supreme Court and from other federal circuits and district courts would be missed.
For access to Washington court opinions alone, check the Washington Report: 2001 Cumulative Subject Index, covering Supreme Court and Court of Appeals cases from 1979 to February 2001. This index is published in a new edition each year.

ii. Tribal

The Indian Law Reporter publishes Indian law cases from all state and federal courts as well as selected tribal appellate court opinions. Tribal court opinions from Washington tribes can also be found in the following source on a selected basis:


Currently includes opinions from the Colville Confederated Tribes Court of Appeals. Other Washington tribal courts may publish here in the future.

d. Administrative Rules and Decisions

i. State

In Washington State, the Governor's Office of Indian Affairs serves as liaison to tribal governments in an advisory, resource, consultation, and educational capacity. Their website, [website: http://www.goiia.wa.gov/directory/top.html], contains a current tribal directory, resources for tribal development, some treaties, and other information for tribes.

Many agencies, from the Department of Social and Health Services to the Department of Ecology, promulgate rules and regulations that affect Indian and Indian tribes. For easy access to Washington state administrative agency websites, go to [website: http://access.wa.gov] and click on Index.

Administrative regulations are published in the Washington Administrative Code (WAC) and updated by the twice monthly Washington State Register. Regulations relating to Indians will be found under the subject heading "Indian." However, the print index to the WAC does a poor job of indexing the many regulations about Indians. Full-text searches in an electronic version of the WAC on the Internet (http://iiw.law.washington.edu/research/research.html#rules), Westlaw, or LexisNexis are advisable. Or carefully review all regulations of the agency you believe may be relevant. Chapter 3, Fundamentals of Legal Research in Washington, describes print and electronic sources for Washington regulations.

ii. Federal

As noted in Section IV.D.4 above, federal authority over Indians has been primarily delegated to the U.S. Department of the Interior, Bureau of Indian Affairs. The BIA has field offices called agencies.

The Puget Sound Agency (PSA) of the U.S. Bureau of Indian Affairs, [website: http://www.port-bia.gov/agencies/pugetsound/index.html], provides services to fourteen federally recognized tribes in the area. Direct services and technical assistance in the areas of contracts administration, education, forestry, environmental issues, law enforcement, real estate services, roads, social services, and Tribal Government Services. Primary emphasis is on federal trust responsibilities and on the protection and enhancement of trust resources. The website is under construction and has little content at this point.

5. Directories and Reference Materials

The Tribal Directory prepared by the Governor's Office of Indian Affairs has an excellent list of organizations interested in Indian matters, [website: http://www.goiia.wa.gov/directory/top.html].

The Seattle Indian Services Commission has published the American Indian/Alaska Native Directory for Western Washington and the Puget Sound. The most recent edition, 1997/98, includes individual, business, publication, cultural, and tribal contact information.

The Washington State Bar Association has an Indian Law Section, [website: http://www.wsba.org/indianlawdefault.htm]. The membership list is also printed in the annual Resources. Many members of the Washington Bar work with Indian law issues on a regular basis, and many will be happy to share their expertise.

The Native American Law Center at the University of Washington School of Law began opera-
tion in 2000 under the leadership of Professor Robert Anderson, [http://www.law.washington.edu/IndianLaw](http://www.law.washington.edu/IndianLaw/).


**VII. Conclusion**

Every lawyer in Washington needs to be aware of the complex web of laws and rules that govern transactions and dealings with individual Indians, Indian tribes, or Indian tribal organizations. The growth of Native American self-government will require that more practitioners understand how to find authorities that answer client questions.

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1 Thanks to Professor Robert Anderson for his careful review of and many corrections to this chapter. Peggy Roeback Jarrett and Cheryl Nyberg also made very useful suggestions. Any errors are mine alone.


4 U.S. Const. art. I, §8, cl. 3 gives Congress the authority “to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.” In addition, Article VI of the Constitution approved all treaties made and declared all existing and future treaties to be “the supreme Law of the Land.” U.S. Const. art. VI.

5 Institute for Government Research, *The Problem of Indian Administration* (1928).


8 A comprehensive list of tribal attorneys could not be located. However, contact information for tribes can be located easily. See Sections VII.E and VII.F.5 for possible sources.

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# Washington State Federally Recognized Indian Tribes

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Address</th>
<th>Contact Person</th>
<th>Telephone</th>
<th>Fax</th>
<th>Email</th>
<th>Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chehalis Confederated Tribes</td>
<td>The Honorable David Youckton, Chair</td>
<td>Chehalis Business Council</td>
<td>PO Box 536</td>
<td>Oakville, WA 98658</td>
<td>(360) 273-3031</td>
<td>(360) 273-5914</td>
</tr>
<tr>
<td>Makah Tribe</td>
<td>The Honorable Greg Arnold, Chair</td>
<td>Makah Tribal Council</td>
<td>PO Box 115</td>
<td>Neah Bay, WA 98557</td>
<td>(360) 645-2201</td>
<td>(360) 645-2788</td>
</tr>
<tr>
<td>Colville Confederated Tribes</td>
<td>The Honorable Colleen Carson, Chair</td>
<td>Colville Business Council</td>
<td>PO Box 150</td>
<td>Nespelem, WA 99155</td>
<td>(509) 634-4711</td>
<td>(509) 634-4116</td>
</tr>
<tr>
<td>Muckleshoot Tribe</td>
<td>The Honorable John Daniels, Jr., Chair</td>
<td>Muckleshoot Tribal Council</td>
<td>39615 172nd Avenue SE</td>
<td>Auburn, WA 98002</td>
<td>(253) 939-3311</td>
<td>(253) 939-5311</td>
</tr>
<tr>
<td>Hoquiam Tribe</td>
<td>The Honorable Alvin Penn, Chair</td>
<td>Hoquiam Business Committee</td>
<td>2464 Lower Hoquiam Road</td>
<td>Forks, WA 98331</td>
<td>(360) 374-6582</td>
<td>(360) 374-6540</td>
</tr>
<tr>
<td>Nisqually Tribe</td>
<td>The Honorable John Simmons, Chair</td>
<td>Nisqually Indian Tribe</td>
<td>4302 She-Nah-Num Drive SE</td>
<td>Olympia, WA 98511</td>
<td>(360) 456-5221</td>
<td>(360) 407-0125</td>
</tr>
<tr>
<td>Jamestown S'Klallam Tribe</td>
<td>The Honorable W. Ron Allen, Chair</td>
<td>Jamestown S'Klallam Indian Tribe</td>
<td>1033 Old Hwy 20</td>
<td>Sequim, WA 98382</td>
<td>(360) 683-1109</td>
<td>(360) 681-4643</td>
</tr>
<tr>
<td>Nooaksic Tribe</td>
<td>The Honorable Art George, Chair</td>
<td>Nooaksic Indian Tribal Council</td>
<td>PO Box 157</td>
<td>Deming, WA 98244</td>
<td>(360) 592-5716</td>
<td>(360) 592-5721</td>
</tr>
<tr>
<td>Kalispel Tribe</td>
<td>The Honorable Glen Nenema, Chair</td>
<td>Kalispel Business Committee</td>
<td>PO Box 39</td>
<td>Usk, WA 99180</td>
<td>(509) 445-1147</td>
<td>(509) 445-1705</td>
</tr>
<tr>
<td>Port Gamble S'Klallam Tribe</td>
<td>The Honorable Ronald Charles, Chair</td>
<td>Port Gamble Business Committee</td>
<td>33912 Little Boston Road NE</td>
<td>Kingston, WA 98346</td>
<td>(360) 297-2646</td>
<td>(360) 297-7097</td>
</tr>
<tr>
<td>Lower Elwha Klallam Tribe</td>
<td>The Honorable Rust Hepfer, Chair</td>
<td>Elwha Klallam Business Council</td>
<td>2851 Lower Elwha Road</td>
<td>Port Angeles, WA 98363</td>
<td>(360) 452-8471</td>
<td>(360) 452-3428</td>
</tr>
<tr>
<td>Puyallup Tribe</td>
<td>The Honorable Herman Ditton, Sr., Chair</td>
<td>Puyallup Tribal Council</td>
<td>2002 East 28th Street</td>
<td>Tacoma, WA 98404</td>
<td>(253) 573-7990</td>
<td>(253) 573-7929</td>
</tr>
<tr>
<td>Lummi Nation</td>
<td>The Honorable William E. Jones, Sr., Chair</td>
<td>Lummi Business Council</td>
<td>2616 Knick Road</td>
<td>Bellingham, WA 98226-9298</td>
<td>County: Whatcom</td>
<td>County: Whatcom</td>
</tr>
<tr>
<td>Quileute Tribe</td>
<td>The Honorable Russell Woodruff, Sr., Chair</td>
<td>Quileute Tribal Council</td>
<td>PO Box 279</td>
<td>La Push, WA 98350</td>
<td>(360) 374-6163</td>
<td>(360) 374-6311</td>
</tr>
</tbody>
</table>

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April 2001
QUINAULT NATION
The Honorable Pearl Capoeman-Jaller, Chair
Quinault Business Committee
PO Box 189
Taholah, WA 98587
(360) 276-8211 FAX (360) 276-4191
County: Grays Harbor

SQUAXIN ISLAND TRIBE
The Honorable David Lopez, Chair
Squaxin Island Tribal Council
SE 70 Squaxin Lane
Shelton, WA 98584
(360) 426-9781 FAX (360) 426-6577
County: Mason

SAMISH NATION
The Honorable Kenneth Hansen, Chair
Samish Tribe of Indians
PO Box 217
Anacortes, WA 98221
(360) 293-6404 FAX (360) 299-0790
County: Skagit

STILLGUAMISH TRIBE
The Honorable Edward L. Goodmige, Sr.
Stillaguamish Board of Directors
3439 Stoluckquawmin Lane
Arlington, WA 98223
(360) 652-7362 FAX (360) 435-7689
County: Snohomish

SAUK-SUATTEL TRIBE
The Honorable Jason L. Joseph, Chair
Sauk-Suattle Indian Tribe
5338 Chief Brown Lane
Darrington, WA 98241
(360) 436-0313 FAX (360) 436-1511
County: Skagit

SUQUAMISH TRIBE
The Honorable Bennie J. Armstrong, Chair
Suquamish Tribal Council
PO Box 491
Suquamish, WA 98392
(360) 598-3311 FAX (360) 598-6295
County: Kitsap

SNOQUALMIE TRIBE
The Honorable Herbert Whittla, Chair
Snoqualmie Tribe
PO Box 130
Tekolka, WA 98980
(360) 267-6766 FAX (360) 267-6778
County: Pacific

SNOHOMISH TRIBE
The Honorable Dennis Hurtado, Chair
Snohomish Tribal Council
N. 80 Tribal Center Road
Shelton, WA 98584
(360) 426-4232 FAX (360) 877-5943
County: Whatcom

TULALIP TRIBES
The Honorable Herman Williams, Jr., Chair
Tulalip Board of Directors
6700 Towne Beach Road
Marysville, WA 98270-9644
(360) 651-4000 FAX (360) 651-4032
County: Snohomish

SPokane NATION
The Honorable Alfred Peone, Chair
Skanin-chimž-Teh-business Council
PO Box 100
Wellpinit, WA 99040
(509) 258-4581 FAX (509) 258-9243
County: Stevens

UPPER SAGIT TRIBE
The Honorable Marilyn Scott, Chair
Upper Skagit Tribal Council
25944 Community Plaza
Sedo Woolley, WA 98284
(360) 856-3550 FAX (360) 856-3175
County: Skagit

YAKIMA NATION
The Honorable Lonnie Selam Sr., Chair
Yakama Tribal Council
PO Box 151
Toppenish, WA 98948
(509) 865-5131 FAX (509) 865-5528
County: Yakima

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## NON-FEDERALLY RECOGNIZED INDIAN TRIBES

Note: Washington State does not have state-recognized tribes, as some states do. The following tribes are landless, non-federally recognized. Some are categorized as non-profit corporations; some are pending federal recognition. All have requested inclusion on this list.

<table>
<thead>
<tr>
<th>Tribe Name</th>
<th>Contact Person</th>
<th>Address</th>
<th>Phone</th>
<th>Fax</th>
<th>Email</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinook Tribe*</td>
<td>The Honorable Gary Johnson, Chair</td>
<td>Chinook Indian Tribe Box 228</td>
<td>Chinoe, WA 98614</td>
<td>360/777-9303</td>
<td>360/777-8100</td>
<td></td>
</tr>
<tr>
<td>Cowitz Tribe*</td>
<td>The Honorable John Barnett, Chair</td>
<td>Cowitz Indian Tribe PO Box 2547</td>
<td>Longview, WA 98632-8594</td>
<td>360/577-8140</td>
<td>360/577-7432</td>
<td></td>
</tr>
<tr>
<td>Duwamish Tribe*</td>
<td>The Honorable Cecile Hansen, Chair</td>
<td>Duwamish Tribe</td>
<td>15235 Ambrose Blvd SW</td>
<td>206 431-1582</td>
<td>206/431-1962</td>
<td></td>
</tr>
<tr>
<td>Klickitat Indian Nation</td>
<td>The Honorable Douglas Paul Lavan, Chief</td>
<td>Klickitat Indian Nation</td>
<td>3973 Bigley Avenue N.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marietta Band of Nooksack Tribe</td>
<td>The Honourable Robert Davis, Jr., Chair</td>
<td>Marietta Band of Nooksack Indian</td>
<td>1827 Marine Drive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Snohomish Tribe</td>
<td>The Honorable William E. Matheson, Chair</td>
<td>Snohomish Tribe of Indians</td>
<td>144 Railroad Avenue, Suite 201</td>
<td>425/744-1555</td>
<td>425/744-1971</td>
<td></td>
</tr>
</tbody>
</table>

*Snoqualmie Tribe* | Snoqualmie Tribe of Indians | PO Box 463 | Coupeville, WA 98239 |  |
| Steilacoom Tribe* | The Honorable Joan K. Onez, Chair | Steilacoom Indian Tribe PO Box 8149 | Steilacoom, WA 98388 | 253/884-6508 | 253/884-8224 |  |

**Pending Federal Recognition**

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April 2001
**Appendix II: Basic Rules of Jurisdiction in Indian Country (Criminal)**

<table>
<thead>
<tr>
<th>Character of Land on Which Offense Was Committed</th>
<th>Trust Property**</th>
<th>Fee Simple Property**</th>
<th>Public Road</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Defendant</td>
<td>State jurisdiction exists for all crimes committed by an Indian juvenile. State jurisdiction exists for all crimes committed by an Indian adult on trust land located outside the geographic boundaries of the reservation.</td>
<td>State jurisdiction exists for all offenses committed by an Indian adult or Indian juvenile.</td>
<td>State jurisdiction exists for all crimes committed on a state, city, or county road by an Indian adult or Indian juvenile. A civil traffic infraction may only be issued if the Tribe does not have a comprehensive traffic code. If the Tribe has a comprehensive traffic code, then a report should be forwarded to the tribal prosecutor for any action the Tribe should wish to take.</td>
</tr>
<tr>
<td>Tribal court jurisdiction exists for all offenses committed by an Indian adult or Indian juvenile on public roads located within the exterior boundary of the reservation.</td>
<td>Tribal court jurisdiction exists for all offenses committed by an Indian adult or Indian juvenile or for简单 property located within the exterior boundary of the reservation.</td>
<td>Tribal court jurisdiction exists for all offenses committed by an Indian adult or Indian juvenile on public roads located within the exterior boundary of the reservation.</td>
<td></td>
</tr>
<tr>
<td>Non-Indian Defendant</td>
<td>State court jurisdiction exists for all crimes committed by non-Indian adults and non-Indian juveniles.</td>
<td>No tribal court jurisdiction over an non-Indian. Tribal officers may detain non-Indian law breakers until a state officer can report to the scene.</td>
<td>No tribal court jurisdiction over an non-Indian. Tribal officers may detain non-Indians who have committed a crime until a State commissioned officer can report to the scene.</td>
</tr>
<tr>
<td>No tribal court jurisdiction over an non-Indian. Tribal officers may detain non-Indian law breakers until a state officer can report to the scene.</td>
<td>No tribal court jurisdiction over an non-Indian. Tribal officers may detain non-Indian law breakers until a state officer can report to the scene.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Under these rules, more than one entity (i.e. Tribal and State) may have jurisdiction over a particular individual and crime at the same time. Also, these rules do not apply to some reservations.

**The easiest way to determine whether a piece of property is fee or trust is to contact the county auditor. Trust property is exempt from taxes and the auditor will reflect that. Tulalip Reservation has a special class of the property that is subject to the basic rules at trust property.**

Prepared by the Washington Association of Prosecuting Attorneys (August 2001)
## ARREST WARRANTS

<table>
<thead>
<tr>
<th>TRUST PROPERTY WITHIN RESERVATION</th>
<th>FEE SIMPLE PROPERTY WITHIN RESERVATION</th>
<th>PROPERTY OUTSIDE RESERVATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TRIBAL COURT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State officers may not serve tribal court arrest warrants on Indians or non-Indians.</td>
<td>State officers may not serve tribal court arrest warrants on Indians or non-Indians.</td>
<td>State officers may not serve tribal court arrest warrants on Indians or non-Indians.</td>
</tr>
<tr>
<td>State officers may serve arrest warrants upon non-Indians or Indians in accordance with normal procedures if the warrant is related to an off-reservation violation of state laws or to a crime committed within the reservation at a location where the state exercises criminal jurisdiction. If the subject of the warrant is an Indian who is currently in tribal custody, the State may have to follow the extradition procedure established by the Tribe to obtain custody of the individual.</td>
<td>State officers may serve arrest warrants upon non-Indians or Indians in accordance with normal procedures.</td>
<td>State officers may serve arrest warrants upon non-Indians or Indians in accordance with normal procedures regardless of whether the property is owned in fee or trust.</td>
</tr>
</tbody>
</table>

## SEARCH WARRANTS

<table>
<thead>
<tr>
<th>TRUST PROPERTY WITHIN RESERVATION</th>
<th>FEE SIMPLE PROPERTY WITHIN RESERVATION</th>
<th>PROPERTY OUTSIDE RESERVATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TRIBAL COURT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State officers may not assist in the service of a tribal search warrant. State officers may respond to the scene to take into custody any non-Indians who are found on site and who were found to be engaged in a violation of state law.</td>
<td>State officers may not assist in the service of a tribal search warrant. State officers may assist tribal officers in obtaining a parallel state court search warrant and state officers may serve such a warrant. State officers may respond to the scene to take into custody any non-Indians who are found on site and who were found to be engaged in a violation of state law.</td>
<td>State officers may not assist in the service of a tribal search warrant. State officers may assist tribal officers in obtaining a parallel state court search warrant and state officers may serve the parallel state court warrant.</td>
</tr>
<tr>
<td>State officers may serve state search warrants without obtaining a parallel tribal search warrant or a federal search warrant if the warrant is related to an off-reservation violation of state laws or to a crime committed within the reservation at a location where the state exercises criminal jurisdiction.</td>
<td>State officers may serve state search warrants without obtaining a parallel tribal search warrant or a federal search warrant.</td>
<td>State officers may serve state search warrants on all property located outside the exterior boundary of a reservation regardless of whether the property is owned in fee or trust, by an Indian or a non-Indian.</td>
</tr>
<tr>
<td><strong>STATE COURT</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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