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This program has been approved for 3.50 continuing legal education credits by the Washington State Board of Continuing Legal Education.
INTERNET LEGAL RESEARCH: BASIC POWER SEARCHING

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INTERNET LEGAL RESEARCH:
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The Research Process

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THE RESEARCH PROCESS

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Chapter 2
THE PROCESS OF LEGAL RESEARCH
Penny A. Hazleton

1. 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 most efficient and high quality research sources for your problem is no longer a matter of using the only resource published!

For example, in Washington state there are at least ten sources that contain the current statutes of Washington: the officially published Revised Code of Washington (in print and CD ROM format), West's Revised Code of Washington Annotated, the Annotated Revised Code of Washington (Michigan), CD Law, West's Washington CD ROM Library, Michigan's Washington CD ROM Library, Legal Access in Washington Bulletin Board System (LAW BBS), WESTLAW, and LEXIS-NEXIS. How many of these products do you know about?

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 3 million cases have been published in the United States and over 100,000 judicial opinions are issued 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; not the quasi-judicial work handled by federal administrative agencies on an annual basis; add to these the secondary literature—thousands of pages published in monographs and other books, as well as the publication of over 1,000 legal journals and periodicals. These numbers alone suggest the need for every legal researcher to have a plan.

In Section III of this Chapter, an article on integrating computer and manual research has been reproduced. In that article’s table shows the research strategy or process authors of eight different legal research textbooks recommend. Only two of these strategies, however, give the researcher any help in suggesting the type of legal authority to consult at various points during the research process — Rombauer and Price, Bittner & Bysiewicz (PB&B).
Legal research courses taught at the University of Washington have adopted and modified the Rambauer framework in order to encourage students to learn a structured approach to the research process. This is not the only possible framework, but more and more it is essential that every legal researcher have such a framework in mind and understand how to apply it to a variety of legal research problems.

II. Strategies for Effective Legal Research

A. Rambauer Framework

To explain how a good framework can help produce a better legal research product, the Rambauer 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 consciously. Conscious thinking about choices and avenues to explore in research will improve the efficiency and overall quality of your work product. Try the Rambauer method for your next research problem and see if a planned approach can give you confidence and a better result!

Professor Rambauer’s method is more fully explained in her book, Legal Problem Solving, 5th ed. (West 1991). In this classic text, Professor Rambauer 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 Rambauer approach are described below.

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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 analysis: [1] Identify relevant and material facts; [2] Select appropriate words and phrases to use as search terms; [3] Identify preliminary issues
and formulate search query; [4] Identify the jurisdiction(s) involved; and [5] 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 facts which are material? Do you know all of the important facts or will you need some investigator to determine some of them? Am. 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.

The material facts of your problem will help develop the words and phrases you will need to actually perform your research. Whether you use traditional printed research materials or computer-assisted legal research systems, your development of a broad list of words and phrases is crucial here. Some researchers use the TARP rule — things, actions, persons, places — while others 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 you need to resolve. This list should contain specific and general terms, as well as synonyms.

Next, in analyzing the material facts and words and phrases, try to state the issue or issues 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 the researcher on track and remind him of the question she is really trying to resolve.

After identifying the issue(s), query formulation is the next step. The legal researcher needs to identify those words or phrases that, combined, are likely to yield the most helpful information. In other words, formulate a search query. This process will usually involve selecting search words most 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 crucial. 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 good analogies that might be used. The skill needed to formulate the search query for any research problem should not be underrated. Careful thought should go into this process, particularly if full-text electronic tools will be consulted.

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 area of law you must research. Any steps you take from here will reflect your personal knowledge and experience, or lack thereof. What do you know about this area of law? Are you a specialist, so you know a lot about the specific area of law? Or, is this particular problem 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 state the issue. Don't ignore these warning signals.

At this point, if your knowledge of the law is virtually non-existent, research in some secondary materials may be worthwhile to obtain the background and terminology needed to perform effective research. For detail on sources to consult, see Chapter 3, Fundamentals of Legal Research in Washington, Section II. Now you can actually start your research.

Use of texts, treatises, hornbooks, nuts and bolts, legal encyclopedias, ALR, or legal periodicals can help put your problem in context with related law. The legal jargon needed for effective research can also be identified through consultation of secondary materials. Often, a search for general information and background can help the researcher formulate a good statement of the question to be researched, can clarify jurisdictional issues, and can inform the researcher of the possible scope of the project.

Search in secondary sources is not done at this stage so much to locate the exact answer to the legal problem, but rather 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
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ignored at this stage. Use these citations as finding aids once you move to the next stage of your research.

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 your use of 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 that you find hard to understand, 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 relevant facts, creation of a list of relevant words and phrases, clear statement of the issue(s) and formulation of a search query, identification of relevant jurisdiction(s), and an assessment of your knowledge of the area of law all must 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.

However, 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 being governed by legislation. We at least need to eliminate these statutory sources as not containing an answer to the research problem we seek.

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 nothing 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).

Before looking for case law, however, the legal researcher must verify that the statute found is the most current version by checking pocket parts and supplemental pamphlets as well as the most recent legislative or session law service. 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 passed by the legislature. 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? Is this an area of law that has not changed in many years? Are there changes in social or economic structures or in technology that will lead 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 looking for a relevant statute.

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 crosscheck your statute using Shepaerds Washington Citations to locate any case that has declared your statute unconstitutional.

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 state administrative agency rules and regulations that may apply. Research to locate agency rule-making in Washington requires the use of 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? Constant re-evaluation of your analysis is important to keep your research focused and efficient.

By the time you finish this step of your research process, you should have identified the relevant statute of administrative regulations. You will be confident that your statute is current since you have updated through the most recent legislative
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. In legal research we are plagued by the problem of not finding relevant authority. Part of this 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 the annotated code: in Washington, West's Revised Code of Washington Annotated or the McHarg's 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 encyclopedia, 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 volume usually have pocket parts or supplementary pamphlets 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 code database to find the most recent cases. A subject search using the digest in the West reporter and the subject index in the official reports should yield any cases interpreting the statute you have identified. Or, if you use the Pacific Reporter, 2d, the Statutes Table in each volume and advance sheet will lead you to cases in Washington that cite your statute. Cases interpreting your statute
may also be found easily by shepardizing the statutory section you have identified in Shepard's Washington Citations.

If you were unable to locate a relevant statute in step 2 of your research, neither the annotated codes nor Shepard's will help you much. Instead, West's Washington Digest, 2d may be a good source to locate relevant case law. Other sources include: secondary materials, such as periodicals, texts, deskbooks, 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 checked to be certain they are still good law. The most current and reliable of these citation services are Insta-Cite on WESTLAW and Auto-Cite on LEXIS-NEXIS. These databases are several months more current than any unit of Shepard's citators (even the citators online). These services give only limited information, including a full citation with parallel cites, as well as the complete history and negative treatment of the case you are checking. But often you do not want every case that cites your case anyway (what you get when shepardizing); you only want to be sure that the case stands for the proposition for which you are citing it.

A researcher can also shepardize the cases of importance, but must realize that he trades the currency found only in Insta-Cite and Auto-Cite for comprehensive citation information in the not-so-current Shepard's.

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 three million cases for any on point case!

However, 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 Romhauer research process. Searching for persuasive precedent can be a very time-consuming process, and you should plan accordingly.

4. Search for Persuasive Case

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.
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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 the case law in Delaware 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 will cite to other states that have enacted similar or identical language and cite cases decided in those jurisdictions. Sometimes the annotated code itself will cite to other states from which the legislative language was modeled.

If you are unable to limit your research to another jurisdiction or two, secondary materials can really save time. 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 on target. It can be difficult to stay focused. In this stage of the research process, make use of your preliminary analysis, formulate the issue if necessary, and review your list of words and phrases for the most useful terms. Keep reminding yourself how you got to this stage and exactly what it is you are looking for. The search for persuasive precedent can be even more frustrating than your previous work because of the large body of law you need to search through.

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 to discover in court that the best authority you could find to support your view was reversed on appeal! At a minimum, use the Insta-Cite or Auto-Cite services. Also be certain that you have reviewed the most recent cases available. This requires that you use reporter advance sheets or very current computerized databases to confirm your findings.

If no persuasive authority of any kind can be found, a re-evaluation of the research problem and the process used will be necessary. 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 your 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 go back and research again. 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 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 needed 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 painstakingly comprehensive search. There are any number of ways to be certain the authority located is what you should have found: check the law digest volume of the Martindale-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 period of time to write the memorandum or brief, updating your work right before it is filed or submitted is essential. Remember, courts, legislative
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bodies, 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 resources necessary 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 of every case and statute in sight. Shepard's Citators 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 of your case. Depending on the citator you use, you can use Shepard's as a research tool—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. Shepard's should rarely be used for this limited purpose since Insta-Cite on WESTLAW and Auto-Cite on LEXIS-NEXIS are so much more current than Shepard's.

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 in the specific situation at hand. The good legal researcher, then, finds relevant authority by eliminating the erroneous 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 thinking 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 with the many changes we see in the availability and format 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, West's
Washington Legal Researcher's Deskbook, 2d

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.

III. Integrating Manual and Computerized Legal Research Tools

The following article is reprinted here because it discusses the relative advantages and disadvantages of traditional print legal research tools when compared with the newer computerized legal research tools. Few lawyers today can perform effective legal research without using computerized databases, whether in online databases such as WESTLAW and LEXIS-NEXIS or in CD-ROM products such as CD Law. An appreciation of the power and capability of this newer technology is necessary. For an overview of the fundamentals of computerized legal research, you may wish to read the Computer Assisted Legal Research: The Basics (West 1993).
IV. Managing Your Legal Research

A. General Suggestions

In today's more 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. This does not mean that you research to a formula. 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 our common law tradition. It is especially important to remember this. The emphasis on statutory research early in the process as described in the Rombauer method is for a good reason.

If your research problem has several issues, it 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 sidetracked when they are looking for more than one thing at a time.

At your research tool for the first time, be sure you have checked the most recent supplementations. A lot of fruitless research can be avoided if there is a change in your statute or the status of authority of an important case. You may need to update that work again at a later time in the process, 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 some results. Spending several hours with any one research tool should suggest some problems. 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 you have selected. It may be that the research tool you are using contains nothing about the subject of your search. Rethink your analysis; do some additional prelimi-
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pary 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 the one of the most important favors you can do for yourself. How often have you had to repeat research or try to understand the notes scribbled on the back of your grocery list? Doing this well will increase your efficiency and make it possible to see where you got off track.

Keep a research journal or record of your work. Included in these notes should be a statement of the issue you are trying to answer, the results of any preliminary research you conducted in secondary sources, the other research tools you consulted, information you could use now or later in the process (such as key numbers, citations to cases, periodicals, etc., and the like), searches run in electronic databases, and description of updating tools.

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 project 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 journal. Decisions not to use a particular case or statute should be noted so that the authority surfaces again later, previous time is not wasted reading and analyzing the material a second time. Exact quotations should be carefully recorded with all the information needed to give them 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, and printouts from electronic databases, as well as 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 paper 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.

The following article is reprinted here because it gives more detailed advice about how to take good notes. Pay particular attention to the section entitled, 10 Tips for Better Note-Taking in Legal Research.

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DEVELOP THE HABIT: 
NOTE-TAKING IN LEGAL RESEARCH

BY PENNY A. HAZELTON, PEGGY ROSEBCK JARRETT, NANCY McMURREY, AND MARY WHISNER

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Introduction

At some point—perhaps it was for your seventh-grade report on the Pony Express—we were probably all taught to take notes on 3×5 index cards. Each card was supposed to record the source (with full citation) followed by the fact or the quotation we were noting. The writer was to be sure to spot-check the cards, so no more of than a certain number of junior high students were careful to make “proper” notes. But are we 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 professors—many of whom come to the reference desk when they are stuck. We do not see many 3×5 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 3×5 cards interests and concerns us; we believe good note-taking is a habit every attorney should have. In this article we will identify types of notetakers 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 quality 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 cards, article, 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 look 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 how 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 skimmed again to figure out why it was copied in the first place.

Finally, the bulk alone of photocopies and printouts may impede the research process. A 6-inch stack of paper with no order will quickly overwhelm all but the most determined researchers.

Many researchers nowadays combine a tendency to print out or photocopy with a freewheeling use of highlighters. 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 useful and thorough notes:

• Notes recall the researcher’s sources in order to use them, find them again, and cite them.

• Notes record the research path the researcher knows what has been checked.

• Notes help the researcher think about what is being done and keep the focus on the correct issue.
• Notes aid the researcher in communicating
  (with colleagues, supervisors, and the host of
  others the researcher may want to ask for help).
• Notes allow the researcher to document her
  thoroughness, especially when there are less
  than complete answers to the questions posed.
• Notes help the researcher or a reader to
  understand, replicate, and update results.
• Notes serve as a reinforcement to everything
  the researcher learns during a particular
  research project and provide a "sign and
  tricks" resource for future projects.

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
our and-paste features to capture quotations and key
passages. Of course, if note-takers forget to record a
citation, that laptop will not do it for them—
technology cannot solve all our problems.

Wherever technology is used, we suspect the basic style of note-taking has not changed. Most
researchers will undoubtedly identify with one of the
types below.
• Perry Mason: Does not do research, does not
take notes. If he needs notes, he remembers them
for the rest of his career. He always wins.

Drawbacks: This technique works only in fiction.

• Rain Man: Writes everything in his
  notebook, very accurately. Memorizes it
  accurately. (Does not understand it.)

Drawbacks: This method is very time-
consuming.

• 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. "Needs to check the
  citations he cannot remember and to assemble
  and organize notes when he has a bit more
  time." Drawbacks: There is never "a bit more
time" and miscellaneous pieces of paper tend
to gather but to migrate.

• Peppermint Patty: Gets notebook stuck in
  hair. Drawbacks: Information is tariff but limited.

• Dudley Do Right (not here): Sets up a
  system for note-taking so that when he is
  ready to prepare the final product he has
  everything he needs. Drawbacks: Very short
  "plum" assignments than others (who may get
  enough to tie him to the train tracks).

Personal Styles and the
Note-Taker’s Art

If taking notes is so important, why do we see on
legal analysis, research and writing not provide a
blueprint for perfect note-taking? That would be
nice, would it not? We kicked around the idea of a
checklist that could be handed out to associates,
paralegals, law students, etc., listing sources to check
and what information needs to be noted. But
reflection convinced us that legal research projects are
not varied and what needs to be written down depends
on too many factors for one checklist to be appropriate for all projects.

Perhaps even more importantly, note-taking
needs to be adjusted to suit individual work
environments and styles. Consider the following
questions:

How good is the researcher’s memory? Some
people can remember their backs on a set and not
remember whether they were using the Pacific Digest
or Amer. Jl. of Crime whether they looked under
"vicarious liability" as well as "respondent superior.
Other people can keep a tremendous amount of
complex information in their heads while they are
working through a problem. If one is the first sort of
researcher, each source used had better be recorded as
well as every search term tried. To paraphrase
Sanayama, those who do not remember research are
doomed to repeat it.

How much time is available? If it is 9 to 10 and the
partner wants the associate to find case 221 mentioning
a particular statutory provision by 9:30, there is only
one course of action to follow: do a quick search (in
an automated code or online), pull the cases, and give
them to the partner. There is no time to write down
every term checked in the code’s index (although the
associate might want to call attention to the fact that
the pocket part was checked). After handing over the
results, of course, the associate should consider

1 Reprint the Academy Award-winning performance of
2 Inspired by Fred MacMurray’s performance in the 1961
  film The Absent-Minded Professor.
Chapter 2, The Process of Legal Research

asking 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 research, 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 research will be looking at the same times for a long time—so the notes 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 supplements—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 it everything was in the researcher's own hands.

Who will read the notes? If only the researcher will be using the notes, then whatever shorthand words can be used. "L.R. = 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 the Legal Resource Index, an index of legal periodical articles, 1980 to present, using the phrase 'wildlife refuge'; the only articles I found predated the case you asked about."). That would help the requestor understand what the researcher means when reporting that nothing relevant was found—or will give the requestor an opportunity to adjust the scope of the request.

How many projects is the researcher juggling? The busiest the researcher is, the more tempting it is to skip steps. But it is a dangerous temptation. Pay the researcher who is left unseeing, "I know I looked around in the L.N. Library, but was it for that death penalty question or the law of the sea question? Did I look for an A.L.R. annotation on the premises liability question? Or was it the wrongful termination case?"

How many 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 detail will be much harder to remember. Terms of art, specialized words, and specialized sources 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 requestor), its scope and coverage should be noted.

What sorts of similar research will the researcher be doing in the future? How 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 that having all the coordinates 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 routes 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, messy problem might crop up again (and the researcher will be looking at it as the "expert"). As Lou Pautre said, "Chaos 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 and may at first seem like a lot of bother. But good notes help you remember, organize, process, synthesize, and communicate information—which, in the long run, is the point of research. And the first time you find yourself up against a deadline writing up your results, and you realize that everything you need to complete the project is in your notes, you will appreciate having made an effort to form good note-taking habits.

3 Taking note-taking, work environment, and personal style into consideration, we have compiled a list of "Top 10 Tips" for better note-taking. These are designed for individuals in L.R.W. situations and anyone else who might want to sharpen their note-taking skills. (Do we ask a project assistant? We cannot guarantee the tips will lead to perfect note-taking, but at least some positive outcomes, but we hope all note-takers will find a few ideas for improving their research habits."

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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 semicolons and commas 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 CALT 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.

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Chapter 2, The Process of Legal Research

6. ANNOTATE YOUR PHOTOCOPIES

The moment you read or even scan a photocopied, make a note on the copy, or highlight a piece of text, so you can glance at it quickly to tell 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 it up 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. 1995 stub; 12/95 pamph.
2. RCWA 1996 book, p. (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 head 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 one 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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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 you 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 are being misled by irrelevant facts, or the selection of a better research tool. Is your dead end really a trap 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 at this point.

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 in the first place.

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 conclud-
ing 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 ques-
tion. A good research plan with a double-check component should help guide the
researcher to a more identifiable stopping point before more time than necessary is
spent.

Other researchers stop only when they have run out of time and into a dead-
line. 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 feels 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 what 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 you need to
rely on. 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.
INTRODUCTION TO COMPUTER-ASSISTED LEGAL RESEARCH (CALR)
Created by Peggy Roebuck Jarrett and Nancy McMurrey and revised for CLE program

CALR does not replace manual research:
- It requires the same research process that you follow in manual research
- Need to use both together

When is online research preferable?
- Unique search terms
- Unique fact situation
- Question can be narrowly drawn
- Emerging area of the law
- Paper sources can’t easily perform the function you want (e.g., multistate search)
- The information not “published” in paper
- Time is a consideration (would a 5 minute online search take 3 hours manually?)
- Cite checking and verifying

When is manual research preferable?
- To establish general knowledge of an area of law
- To explore complex concepts and legal theories
- To research procedural questions which often rely on common words
- Search terms are too common, ambiguous, or have too many synonyms
- Mandatory authority at point cannot be located and analogous situations must be considered
- To research in documents like statutes or regulations, where terminology is very particular
- To research issues for which very old materials are needed
- You find too much (information overload!) or too little
- To locate graphical materials, though more are found online than a few years ago

Consider when and how to integrate computer and manual tools:
- What resources are available to you
- How good an online researcher are you
- Do you like to find materials by browsing or by pinpointing a specific source
- Do you need to skim or read documents, or do you need to locate a particular word or phrase
- What are the cost considerations
Types of Electronic Resources:

- Commercial online services [accessible via software or via the Internet] like CD LAW (Web version), LEXIS-NEXIS, LOIS (Law Office Information Systems, Incorporated), VersusLaw, WESTLAW.

- Commercial CD ROM products like CD Law (CD Rom version), Shepard’s Citations, King County Bar Association’s Washington Lawyers Practice Manual on CD ROM, West’s Washington Case Law and RCW Unannotated.

- Free internet sites like those linked from the Gallagher Law Library’s Internet Legal Resources Web page <http://lib.law.washington.edu/research/research.html>.

- Supplementary computer disks accompanying books like Webber, Family and Community Property Law (forms included on a computer disk), Norris and Sietsman, How to Take a Case Before the NLRB (4 disks include administrative materials such as regulations and the NLRB Casehandling Manual).

Checklist for Electronic Research (for details, see the chapter Effective Searching on Your Own)

1. Remember, the research process is the same whether you use manual or electronic resources.

2. Plan everything before you go online.

3. Choose the best electronic source for your research.

4. Choose a database in a commercial service or choose a directory or search engine for Internet research.

5. Using the search terms gathered during your preliminary analysis, develop a search strategy.

6. Consider what backup strategies to use if your first search is unproductive.

7. Decide the format and destination of the search results.

8. Update by using the most current electronic resource to which you have access.
I've always thought of myself as a
competent researcher. I'm able to use
paper-based legal research tools efficiently,
quickly, effectively, and flexibly. Ten years
of reference work tend to give anyone a
feeling of confidence and competence.

Paper-based legal research tools aren't
necessarily the end-users' tools of choice
anymore, however. Students ask about
electronic legal resources as soon as they
enter the law school door, knowing that
their legal career is likely to depend on
what they know and how well they can
use those electronic resources. They are
likely to have surfed the Web, used e-mail,
and scanned CD-ROM indexes long
before they entered law school. But, do
they know much more than this when
they leave law school? What can our
profession do to help our students,
attorneys, judges, and paralegals, not to
mention ourselves, gain that same feeling
of competence in using electronic
resources?

A group of four of your colleagues posed
that same question not long ago and
drafted a working document to help
supply an answer. Ill Porter (PLD), Leigh
Sample (LEO-NEB), Faye Jones
(Philips Law School), and I drafted the
discussion document you see below. It
reformulates skills and values found in
the McC racks Report for electronic
research and takes technology-based competencies
from the book
titled Beyond
Westlaw 2000 and
creates from them
skill sets students
and attorneys
should master to
be considered
competent
electronic
information users.

You may also be
interested in
reviewing the
"Compilation of
Core Information
Literacy Competency/Outcome for
Undergraduates" document located
in the May 1996 issue of
C & R News. It
includes some Web
sites to peruse as
you consider the
working document
set out in this
article. Whether you agree with the list
of skills, their arrangement, or their
placement within this structure or not,
I hope you agree that it's time for our
profession to step up and define basic
legal research competencies. The CR & L
News article shows that we are not alone
in forging forward to define basic levels
of competency. Isn't it time to set out
lists of electronic research competencies,
among other research skills, and ask other
organizations that police our profession
to take note?

I'll be interested in your thoughts on this
important issue as discussion groups and
listeners are used to explore the topic.
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Information & Research Competency Skill Sets to Be Acquired before Entering the Profession

Information Awareness and Foundational Skills
- Familiarity with the nature of legal rules and institutions
- Familiarity with the fundamental tools of legal research
- Awareness of the diversity of information sources and technologies available
- Awareness of techniques that will reduce costs, including an understanding of how information is gathered, organized, packaged, published in cycles, and scored
- Ability to transfer skills between platforms and systems
- Awareness of the time-consuming nature of information retrieval
- Understanding of the concepts of intellectual property and other doctrines associated with information creation and provision

Assessment and Selection Skills
- Ability to formulate issues for research after determining the range of issues presented, type of answers sought, degree of confidence in answers required for the purpose, and degree of documentation of answers needed for the purpose
- Ability to determine the levels of legal research required
- Ability to use specialized techniques for reading and using research materials efficiently, including techniques related to alternative formats
- Ability to select from a range of search strategies to create a research design

Searching and Locating Skills
- Ability to choose effective search terms, phrases, and images
- Awareness of database structures and content
- Ability to perform truncated, Boolean, field, and delimited searching
- Ability to use controlled vocabulary when appropriate
- Understanding of the differences between full-text and index searches
- Understanding of how to interpret and use citation formats to locate items

Evaluation and Interpretation Skills
- Ability to evaluate a range of search strategies and choose the proper technology to produce the desired results
- Ability to monitor and, when necessary, modify the results of an implemented design or search strategy
- Ability to determine the degree of risk involved in not conducting thorough research
- Awareness of the degree of thoroughness of legal research required based on the end-user's need for the information and the client's resources
- Ability to create a design that evaluates the degree of thoroughness and time required and the feasibility of completing research in light of other time pressures and client resources
- Ability to distinguish relevant from irrelevant information
- Knowing how to determine and weigh factual accuracy, currency, authority, bias, viewpoints, and assumptions against the need for the information
- Ability to identify and/or troubleshoot problems with the technology chosen

Manipulation and Organizational Skills
- Ability to devise and implement a coherent and effective research design
- Knowledge of how to create a research design
- Ability to provide appropriate documentation of results
- Understanding of how to integrate new information into an existing body of knowledge
- Ability to organize information for practical and counseling applications, including creating documents such as World Wide Web pages
- Understanding of how and when to use document delivery to retrieve documents
- Understanding of the process for saving, downloading, e-mailing, or printing search results

Citation Skills
- Knowing the requirements for legal citation forms, including electronic formats
- Ensuring that sources are up-to-date
- Ability to double check the accuracy of research

Communication Skills
- Understanding how to articulate information needs
- Understanding how to communicate the results of research to clients and others
- Ability to present and interpret information visually using graphs, charts, etc.
- Ability to communicate using visual presentation software such as PowerPoint, WhiteBoard, and others
Effective Searching on Your Own

by
Penny A. Hazelton, Law Librarian and Professor of Law
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EFFECTIVE SEARCHING ON YOUR OWN

Points to Remember:

1. Remember, the research process is the same whether you use manual or electronic resources.
   a. Be sure to develop exhaustive list of search terms.
   b. Start with secondary sources, a good way to develop alternate terms.
   c. Think about whether issue is likely to be controlled by statute, or case law, or both.
   d. Decide which part of the research should be tackled electronically, which manually.
   e. Plan everything before you go online.

2. Choose the best electronic source for your research.
   a. What electronic choices do you have (commercial services, CD ROM, Internet)?
   b. Where is the information likely to be found?
   c. Which electronic source can you use most effectively to keep costs to a minimum?

3. Choose a database or file.
   a. With commercial services, choose the most specific database that will meet your research needs.
   b. If you decide to use a free Internet resource, determine what reliable, authoritative site(s) will have the information you need.
   c. If you do not know which electronic file or Internet site is best, devise a search strategy for locating it online.
      1. Decide whether a directory or a search engine is the best tool to locate your information on the Internet.
      2. Try more than one Internet search tool to make sure you are finding the best information.

4. Using the search terms gathered during your preliminary analysis, develop a search strategy.
   a. Think about whether you need to allow for different spellings of your terms or different endings (marijuana or marijuana, legis to retrieve legislature, legislation, legislator, etc.).
   b. Establish what forms must be used so the search engine will recognize a phrase.
   c. Determine what sort of relationships you wish to establish among the terms using Boolean connectors (and, or, not) or proximity connectors (same sentence, same paragraph, within n words of each other, near).
   d. If necessary, put terms in parentheses to control the order in which they are processed.
   e. Consider searching in particular fields or segments of the documents (look in the name or title of case law to locate the Smith v. Jones case).
   f. Limit by date to eliminate extraneous materials.
   g. Use natural language searches if appropriate.
   h. Look in online help for search tips; each online system is a bit different.

5. Consider backup strategies if your first search is unproductive.
   a. Are there other electronic sources, databases, or websites you should search?
   b. What are other searches you should try?

6. Decide the format and destination of the search results.
   a. Do you need the full text, kwic, or will a list of citations be satisfactory?
   b. Should you print, download, or need the results online?

7. Update by using the most current electronic resource to which you have access.
LEGAL SEARCH ENGINES:

- Findlaw’s LawCrawler — http://lawcrawler.findlaw.com/

LEGAL DIRECTORIES:

- Go to the Gallagher Law Library Homepage — http://lib.law.washington.edu/index.html — and click on the Internet Legal Resources link found in the table of contents list on the left side of the screen. Once at that page, choose Legal Indexes from the list at the top of the page.

GENERAL SEARCH ENGINES AND DIRECTORIES:

- Go to the Gallagher Law Library homepage — http://lib.law.washington.edu/index.html — and click on the Internet Legal Resources link found in the table of contents list on the left side of the screen. Once at that page, choose General Search Engines from among the links at the top of the page.
OPTIONAL EXERCISES

1. A researcher recently read about something called the Working Connections Child Care program designed to help low income families pay for child care to find jobs, keep their jobs and get better jobs. She needs to know if this program has been adopted in Washington State. Where will she find the current regulations including the responsibilities of the parents assisted through this program? How current are the regulations?

2. Your client is an officer in several small corporations located in Washington. They are all "family" businesses and in recent years there has been a lot of discussion about how the businesses are to be run. Your client tells you that one of the family members in the opposing faction is considering running for a position as judge on the local Superior Court. If elected, the client asks, can the family member continue to act as an officer in the corporations, or must she give up those positions? When questioned, the client admits that the family member in question is not an active day-to-day participant in most of the businesses; but, the client adds, she did help negotiate a property lease for one of the businesses two years ago.

Find the applicable ethical rule. In addition, you remember reading about a recent court decision that would provide guidance; locate that decision.

3. A non-profit organization, the Yakima Community College Foundation, offers a $1,006 award to a faculty member at YCC in recognition of outstanding service. Professor Hunter received the award in 1997 but was concerned he was in violation of a state law that limits cash gifts to state employees to $50. Find the state law that limits gifts to a value of $50. Is this cash award a gift received as compensation for official duties? Have there been any ethics opinions that more specifically answer Professor Hunter’s question?

4. In 1999, the Washington State Legislature amended the law regarding modification of a parenting plan or custody decree. What sort of legislative history documents (for example, committee reports, floor debates, bill versions, etc.) can you find that might explain the changes that were made? What other sort of sources would you look for?

5. In August the Washington State Department of Ecology announced that it had signed an agreement with federal and tribal water managers to work as partners when making water management decisions in the Yakima River Basin. The Yakama Nation was heavily involved in more than two years of negotiations with state and federal regulators. Find out more about this agreement. Can you find a copy of it?

6. You've heard that a Washington agency recently issued a report or study on revision of the state's land use laws. You don't have any additional information; how do you start? What is the name of the agency and where can you read the full, final report?

7. On May 17, a Washington internet service provider, Connect Northwest, filed what is believed to be the first suit under the state’s anti-spam laws to involve a Fortune 500 company. Connect is asking for $6 million from a subsidiary of Texas-based Centex Corp. Connect Northwest charges Centex mortgage banking subsidiary CTX Mortgage with flooding Connect's mail system with
nearly 6,000 unsolicited e-mail messages advertising home mortgages. An attorney for Connect said that CTX appears to have used a computer program to generate probate e-mail addresses by combining common names with an ISP's domain name. The resulting "failed message" overload ultimately brought down Connect's mail server.

Connect claims to have evidence of at least 5,800 e-mail messages from CTX that violated nearly every aspect of the state's anti-spam law, starting with a misleading subject line that reads, "A gift for you." Cenex is conducting an internal investigation and says this conduct, if it occurred, is against company policy.

Your client was contemplating an email advertising scheme but comes to you after hearing rumors about this case. The client asks about the suit and about Washington's anti-spam law. You wonder if Connect Northwest has posted information about the suit at its Web site. You also have heard that there is a site Web site discussing Washington's law. In addition, you know there were news articles in the Washington newspapers. What information can you find?
STUDENTS’ HINTS FOR THE OPTIONAL EXERCISES, IF NEEDED:

1. Washington State regulations can be found easily by using Gallagher's Internet Legal Resources link. Start with the searchable code sponsored by the Municipal Research and Services Center. What words might find the regulations you want? Child care, WCCC and others might be used. This site can be cumbersome to use, so take it slow. How current is it? If you get too many or no relevant regulations, you might want to use the state WAC to see where the Department of Social and Health Services regulations are in the WAC by scrolling through the list of titles to 388. Then browse the list of sections under title 388 looking for WCCC or child care subsidies. How current is the official WAC site? When are these regulations effective? What publication contains the most current regulations? How can you update what you have found? You could also search the WAC by going to the searchable BCW site sponsored by the Office of the Code Revisor.

2. A visit to the Washington State Courts Web site should answer this question. There is a recent court decision that discusses the pertinent judicial canon, and even quotes it. Since there are only 90 days of decisions at this site, you may be able to do a very broad search and nevertheless locate the case without having to look through too many false hits. There is also a link to Washington Court Rules at the Courts site. The canons are not searchable, but there is a table of contents, which would allow you to locate the applicable rule should you start from the canons rather than court decisions.

3. When we look for the Washington State law are we looking for legislative materials or court decisions? If court decisions, unless the case was decided in the past 90 days, the web will not be a good search tool. However, the RCW is complete on the web and could be found easily by using the Internet Legal Resources site on the Gallagher Law Library web page. You don’t have good information about the statute for searching purposes, so you might actually want to think about other more specific sites. For example, the law that governs gifts and compensation for state employees are ethical statutes. Is there a state agency charged with the implementation of these laws? Where can you find a list of state agencies? Sometimes the state agency website will contain the full text of the statutes they administer. Is that true in this case? How current are those statutes? Statutes can be interpreted by administrative bodies and by the courts. Can you find the administrative interpretation of your statute on the website? If you did not know this statute exists, can you locate this administrative decision through some other method?

4. This exercise should reinforce what sort of materials one can locate at the Washington Legislature Web site. Go to the Internet Legal Resources page and click on the Washington State Legal Resources and Sites link. There you will find the link for the Legislature’s search page. Look at the tips to find out how to search a phrase, search for plurals, and use connectors. The search is fairly straightforward; it is figuring out what is included in the results that may be confusing.

You may retrieve several pages of results, and several bills and committee reports. For the version of the bill as enacted, look for the letters “sl,” which indicate session law. This is the version passed by the Legislature and signed (or vetoed or partially vetoed) by the Governor. For committee reports, look for the letters “sbr” (senate bill report) or “hbr” (house bill report).
The abbreviations and symbols used by the Legislature can be confusing. The main page for the Legislature and the Legislature’s Bill Information page, both have links to help. Under help, look for Help with Legislative Documents; this includes information on the various abbreviations and symbols.

As an alternative way to begin is to search the RCW for statutes on parenting plans. Once located, you could go to the Internet Legal Resources page, click on the Washington bill link, and use the RCW Sections Affected Table and the Chapter to Bill Table. Once you have the correct bill number, you could use this as your search term. This method can retrieve a much more manageable list of documents.

5. The first step is to decide what kind of a document you want to find. Is this a law? A regulation? A contract? You could decide to use the RCW or WAC database. But because you are uncertain, a more direct route is to go to the website for the Washington State Department of Ecology. A fast link would be to start with the Gallagher Internet Legal Resources page. Once you have found the DOE website, evaluate your impression of this site. Daily maintenance, current topics and a large menu of information is impressive.

How can you now look for information about the agreement? It is usually a good idea to completely scan the first page of the site to get your bearings and see what you can link to. Can you find information about this agreement? If nothing, on the first page seems logical, is there a search function? How does it work? What searches would help you locate relevant information? Does the site have some online help for constructing a search? Can you find the agreement itself? If not, what would you do next?

6. You have only a few key words. But you know it is a Washington document of some sort, so you might start with Washington State’s homepage. Access Washington, http://access. wa.gov/. There’s a link to it from Gallagher’s Internet Legal Resources page. Once there, note the Search button; you could try searching the site for the report. If you do not easily find the report itself, however, then consider searching for the body that might have produced it. If you click on the Government button, you will find an index to state agencies (by name) and a state subject index. Here is a final hint. It may well be, when you follow a link to the body you conclude must have produced the report, that you receive a “file not available” message. Do not give up! Perhaps you can go to the parent department’s home page and find another link that will work.

7. Finding information on pending cases used to depend on what news and current awareness sources reported about them. To get copies of pleadings you then would have to contact the clerk of the court or the attorney for one of the parties. Now, some of that information is being posted to the Internet, especially in high profile cases. There are even subscription sites that have briefs and pleadings available for a fee.

If you did not have precise details about the suit, a newspaper search might be a good place to start. If you have time, try a search in the Seattle Times or PI to see if you can locate an article.
about the suit. However, since you have the name of the plaintiff, Connect Northwest, using a
general search engine to locate its Web site might be the easiest way to start. When you look at
the results of your search for Connect Northwest, look at the Web addresses that were found.
You should be able to recognize the ones for Connect Northwest and eliminate other references.

To locate the Washington State site that provides information about the law, you need to think
about what entity would be likely to provide that coverage. Or, you can go to the Washington
State homepage and try a search of the site.