

# Organizing Legal Research and Delegating Tasks

Legal research is a way of thinking. It is an approach. It is a process. It is not about finding the “perfect” search term. However, once the process is mastered, the rest falls into place.

Research also is the backbone of working with the law. This is true whether you simply are researching the facts of a case to plug into a well-worked formula that you often use in your field of law or whether it is the more encompassing research that must be conducted to meet the unique particulars that most cases require. Furthermore, irrespective of your task or role, you also almost always are working within the twin constraints of allotted resources and available time. Thus, efficiency is the premium. The process outlined below will show you how to operate at your peak efficiency.

## A. Setting Up General Research Guidelines

### 1) Measure your available resources

Just as former United States President Bill Clinton was forced to say to himself, “It’s about the economy, stupid” to keep on point during the 1992 presidential campaign, you should not forget that things also most often come down to pocketbook issues regarding legal research. You *must* determine what the client can afford. While there is a certain amount of research necessary in any case, there are layers of further research that can be conducted to buttress a position, seek alternative sources, or ensure that *all* other avenues have been ruled out. It is the client who determines this level of research after you have informed him of the minimum level you feel is necessary. If this issue is not discussed in advance with the client, billing disputes do arise and the client also can later feel there is not enough money left to pursue what he sees as the “meat” of the case. What invariably happens then is that you end up absorbing research costs.

### 2) Delegating

Unless you are an expert in either research or a particular field’s body of law, delegating research often makes sense. You need to ask yourself how the research can most efficiently be conducted. Are you the best party to do it? If it is a toss-up between someone else and yourself, ask yourself whose time is more valuable? Are there people to whom you can delegate even part of the task or the heavy lifting? Usually there are. There are several things to keep in mind, however.

Whether you are delegating to a partner, associate, paralegal or legal assistant, or some outside source, the key is to be *very* specific with your directions. In my experience I have found people invariably mistakenly assume a level of knowledge in others about a particular area of law or especially about the case-at-issue. The more information you provide, the more efficient the research. You do not want to have to say, “That is great, but what I really was looking for

was . . . .” Furthermore, too often a person is assigned research with no firm idea of the timeline or available resources. Thus, the researcher has no way to budget his time among various layers of research. In the end what he produces is truncated at best.

In addition, if you are delegating to a paralegal or legal assistant, there are limits to what that person should be expected to do. The best paralegal or legal assistant seldom has gone through the type of rigorous training and shaping-of-thinking that takes place in a law school setting. Still, good paralegals and legal assistants are capable of conducting quality legal research if properly trained. The onus, however, is on the supervising attorney.

Another facet of delegating is the issue of outsourcing. The legal profession is turning more and more to outsourcing. Legal research outsources well. It can be conducted by anyone with the right training and access to the proper sources, regardless of their location. Furthermore, the cost of paying even the newest associate to conduct research will most often exceed the cost of outsourcing legal research. For example, delegating just the foundational portion of the research will not only often save you money but also put you in a position where you then can focus on the finishing touches yourself.

Lastly, even if you are doing the research yourself, never be afraid to seek help with an area of research with which you are not comfortable. The best source for this kind of short-term, very specific help is law librarians. Research is what they do for a living and most are waiting for the opportunity to help someone. Really. In fact, treat a librarian well and you will find, at times, that they have conducted the meat of your research before you know what has happened. Do not abuse this, though.

## B. Determining the Goal(s) of the Search

Never lose sight of your goals. Are you conducting a broad or narrower search? If you know little about the research topic, you will be conducting a broad search. You must start from square one by accessing secondary and background resources such as those discussed below in Section D—“Choosing the Right Tool for the Search”. Trying to conduct an encompassing search by neglecting the foundation will lead to wasted time later and potentially mistaken conclusions.

If you are conducting a narrower search because, perhaps, you already know much about the area of law-at-issue, then your goals are different and you probably need not conduct more encompassing foundational research. Still, rarely will even an expert know everything and so it never hurts to do at least some new background research.

In addition, whether your search is broad or narrower, it always helps to outline or make a flowchart of the topic. Then it becomes much easier to keep track of where you are going and where you have been. Sometimes we can lose sight of the big picture and our goals as we become immersed in more detailed research.

Also, always keep in mind for whom you are doing the research. What exactly do they want? If you are doing this for a senior partner or supervising attorney, it is safe to assume he or she will want the information in a format with which you probably already are familiar. If you are conducting research directly for a client who does not have legal training, you will need to present the information in a simpler format. Too often I have seen clients appear more confused

after speaking to an attorney than they were when they walked in. Cases are lost over such things.

### C. Narrowing the Scope (Narrowing down the search parameters)

Legal research is a process of elimination. A good way to narrow the scope of your search is to follow a few simple steps:

#### 1) Analyze your facts and frame the question.

Make sure you have a firm grasp of the case facts. If need be, ask more questions. Nothing is worse than conducting research only to discover later that your findings are at best only marginally relevant because of missing information. And rarely can you go back to a client and ask for more research resources because you did not go about it properly the first time.

Once you have the facts, fuse your facts to the law to frame the legal question. Do not be afraid to get others' opinions. There may be more than one legal issue or question. As any seasoned appellate attorney can tell you, a judge or group of judges often times has a much wider opinion than an advocate regarding what the issues are.

#### 2) Get an overview of the subject area. Learn the jargon.

Your next step is to get an overview of the subject area and learn the jargon. The first place you might start is with a dictionary or two, legal and otherwise. Find out what your key terms really mean. Too often we have a general idea of what we think something means rather than a clear definition. If you do not know the true definition of the basic terms at the core of your research your research will be off-center from the start. After you have an idea of what the terms-at-issue mean you can move on to legal encyclopedias, hornbooks, treatises, and other sources such as those discussed below in Section D —“Choosing the Right Tool for the Search”. Many of these sources also will have citations to cases and other sources of legal authority, thus acting like a pyramid for your research, with each source providing you with further sources.

#### 3) Conduct an in-depth search for legal authority.

If you have done your background and foundational research well, you now can expand your search to specific or primary legal authority. These days much of the search for primary authority is done on the internet using legal databases. While books and hardcover sources also can be used, internet research is often more efficient and will expose you to a wider array of authority in your search for cases and other primary authority. Furthermore, these days there is a good chance your opponent, if you have one, will be using the internet and you do not want to be operating at a disadvantage.

When using the internet to search for primary authority it often times helps to start out using broader search terms or concepts. Then you can narrow your search terms as your search progresses. This also is how most databases operate most efficiently. Let the database do the heavy lifting. If you start out too narrow you may find yourself boxed into a particular line of cases or authority that does not really answer your question.

4) Evaluate your primary authority and bring your law up-to-date.

Once you have some primary authority, it is time to pick the best. The best authority obviously addresses facts similar to your case while also answering your legal question. Unfortunately, as many of you know already, the world of law often brings new and unique fact patterns and legal questions and so you will have to decide which authority is the closest fit. The most important thing is that the authority addresses your legal question. Finding authority that addresses the facts of your case is less important and rarely will occur anyway.

After you have settled on your primary authority you still must ensure that it is current. Shepardize or Keycite or check the pocket-parts of your books. Do this again right before you file your brief or argue in court. There is nothing more embarrassing than having a judge or opponent point out that the brilliant legal argument you are sure you are making is actually based on authority that was recently overturned or superseded. And if you are an associate or paralegal doing research for someone else in your firm, nothing will cast you in a less-authoritative light than presenting outdated information. Ensuring that your authority is current is probably the easiest part of the process but do not overlook it.

#### D. Choosing the Right Tool for the Search (Matching the Sources/Methods to the Type of Info You Need—Depending on the Goal)

Choosing the right tools for your search is essential. Today, especially with the advent of the internet, the potential sources are unlimited. So choosing the right ones is the key to maximizing your resources. There are two categories of sources I will outline and both, as I already alluded, have their strengths: books/hardcopy sources and internet-based sources.

1) Books/hardcopy sources.

Books are an excellent place to start and also see the big picture. They will provide you with background and overview as well as build your foundation and direct you to more specific or primary legal authority. There are several types of hardcover sources. Some of these now also can be accessed on-line.

a) Legal Encyclopedias

Legal Encyclopedias set out general rules not particular to any jurisdiction. However, because of their very generalized nature they should not typically be cited as authority. There are two main legal encyclopedias—Corpus Juris Secundum (C.J.S.), which provides cross-

reference to other West Publications, and American Jurisprudence (Am. Jur. 2d), which provides cross-reference to American Law Reports and other publications in the American Jurisprudence series.

b) Hornbooks

Hornbooks are similar to a textbook and, in fact, at times are intended to supplement a law-school textbook. Typically they are a better resource than legal encyclopedias and also can be cited as authority for history of a rule or policy.

c) Deskbooks

Deskbooks are one of my favorites. These are designed for the practitioner and are practical and jurisdiction-specific. While they are not great to use as authority, they will give you a good grounding in your jurisdiction.

d) Treatises

Treatises are good secondary authority. Almost dissertation-like in many respects, you will find in-depth analysis by respected authors. Treatises are what got me over the hump in Contracts during law school.

e) Restatements

These are the best kind of persuasive authority. The comments are written by very respected authors, the types of authors upon whose opinions wide swaths of locals obviously model the texts of their laws. If you can find a good comment in a Restatement that supports your position, you cannot go wrong.

f) Law Reviews

Law reviews are typically published by law schools and are a collaboration of faculty and top students. The subjects are usually addressed in narrow fashion. Law reviews are almost always well written and can be cited as persuasive authority.

2) Internet-based research.

Electronic research is efficient once you have an idea where you want to go. However, it can be a very expensive way to go on a fishing expedition. Thus, it is best to have both background knowledge regarding your topic as well as some search terms ready to go before you start. The choices for electronic research are many. Some sources of note are the following:

a) Westlaw

Westlaw currently is the most popular and widely used legal database by those in the field. It constantly is working at upgrading its product and making it easier to use. In 2010 WestlawNext was introduced which now allows a user, among other things, to start a search without selecting a database.

b) Lexis

Together with Westlaw, Lexis is one of the most noted legal databases. In addition to presenting most of what Westlaw does, albeit in a different format, Lexis has its own strengths. It generally is strong in international law. There also are several online Lexis publications of note including “Washington Criminal Practice in Courts of Limited Jurisdiction,” “Washington Administrative Law Practice Manual,” and “Defending DUIs in Washington”.

c) Loislaw

LoisLaw perhaps best can be described as the poorer cousin of Westlaw or Lexis. LoisLaw delivers a good value and while it does not offer the breadth of coverage that Westlaw or Lexis does, it is well worth checking out. LoisLaw also contains Washington State Deskbooks and Washington State Bar Association material.

- d) VersusLaw—Very inexpensive and contains good tribal material.
- e) Hein Online—Good selection of Law Reviews and Journals.
- f) Zimmerman Guide—On-line encyclopedia of legal resources—put together by law librarians.
- g) Fastcase—Newer. In partnership with many bar associations.
- h) Countless free resources—See Appendix A (Free Online Legal Resources).

## E. Identifying Key Focal Points

Identifying key focal points helps ensure you do not spend more time in certain areas than needed. The trick to identifying key focal points is following your plan and trusting your findings. Have the confidence in your ability to know you have crossed a threshold. If you have outlined the facts of your case and framed your legal question then it is time to move on to foundational research. If you are grounded in secondary authority and have done your foundational research it is time to move on to primary authority. If your primary authority answers your legal question and is as up-to-date as possible, you have reached another focal point. At this juncture the facts of your case have intersected with the relevant case law. You truly can say that you need go no further.

## F. Setting Timelines

If you do not budget your time, you will not research at peak efficiency and your other projects will suffer as well. Setting a timeline should be the easiest part of the task because it is the one thing we really can control—how much time we put into something—but setting a timeline is often the first thing we neglect to do.

It is a matter of breaking things down into the components of your research plan and determining how much time to allot to each component. First you set aside time for the foundational and background research, then for the primary research. If necessary, it is better to err on the side of leaving a little more time for primary research. Then, if you find your foundational knowledge lacking, you always can go back and spend a little more time in that area. The ideal is to be in a position where you have all the authority you need and still have time for further research, if necessary. As you begin to brief your case or get into it further, it almost is guaranteed that you will discover you need to do more research.

Perhaps the most important part of setting timelines, however, is knowing when you are done. You know you are done when you keep running into the same resources and citations over and over again, when you are on top of the material, when the allowable resources are expended, and when the deadline has arrived. Any or all of these signal that you have gone as far as you can go.

## G. Keeping Track of Work Done and Time Spent

### 1. Tracking your work

The best and safest thing is to track your work and search terms *as you go along*. It is easy to get caught up in research and forget to note the crucial links along the way. Nothing is more frustrating than trying to go back and reconstruct your line-of-thinking from scratch to see what led you down a fruitful path. That is why it is essential to keep track of every step along the way—every source, every case, everything. Furthermore, while Westlaw, Lexis, and other similar databases go a long way toward helping you track your steps, even these databases only do so much and often only capture your final destinations, not all the steps, especially the internal ones, that it took you to get there. Thus, the key is to have a system of recording that is yours—not one dependent upon what an electronic database like Westlaw or Lexis manifests was going on in your head.

### 2. Tracking your time

It is very easy to fail to properly record the time you have put into legal research. Among other things, research often is conducted while other tasks are being started and stopped, making it difficult to go back later and reconstruct exactly how much time was spent on research. This

invariably leads to underbilling for the research. Either keep track of your time manually in nothing larger than fifteen-minute increments or get some help.

Case-tracking software is becoming more widely used for this purpose. Furthermore, it enables you to see exactly, down to the minute, how effectively you are using your time. There are many different types of case-tracking software. Three respected examples are listed below.

- 1) [Client Profiles](http://www.clientprofiles.com/default.asp)--<http://www.clientprofiles.com/default.asp>. This system includes case management software designed to manage the entire case, accounting and time & billing software, and document management solutions.
- 2) [AbacusLaw](http://www.abacuslaw.com/forms/freedemo/freedemo.php)--<http://www.abacuslaw.com/forms/freedemo/freedemo.php>. Contains legal calendaring software, contact management, case management, document handling, document production, conflict checks, phone messaging, time capture, and law office billing and accounting.
- 3) [Amicus Attorney](http://www.amicusattorney.com/products/prod_overview.html)--[http://www.amicusattorney.com/products/prod\\_overview.html](http://www.amicusattorney.com/products/prod_overview.html). Provides several different software packages including “Amicus Attorney 2010 Premium Edition,” “Amicus Attorney 2010 Small Firm Edition,” “Amicus Accounting 2010,” and “Amicus Mobile 2010”.

## H. Conclusion

As you can see, there are many components that comprise successful research. Following the steps outlined above will guide you toward successfully mastering the relevant components. Whether you are after a small piece of a puzzle or must create a mosaic from scratch, the realm of legal research is fascinating and challenging. Few undertake legal tasks because they do not like the rewards that accompany challenge. We all are seeking truth. The pursuit of truth starts with laying the groundwork and building the steps. That is legal research.