

“Because of the place the Supreme Court holds in American law, there are a number of reliable Web sites that post opinions, briefs, and other materials for Supreme Court research.”

FINDING LOW-COST SUPREME COURT MATERIALS ON THE WEB

BY BETH YOUNGDALE

Beth Youngdale is the Head of Student Services at the Tarlton Law Library, Jamail Center for Legal Research, at the University of Texas School of Law in Austin.

Teachable Moments for Students ... is designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a “teachable moment,” a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the Teachable Moments for Teachers column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own “teachable moments for students” to the editor of the column: Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.

One of the challenges in teaching law students is encouraging them to think cost-effectively when they are working on legal research projects. No matter how many times we talk about the costliness of certain commercial database providers, the fact remains that, for now, for students, Westlaw® and LexisNexis™ are “free” as well as familiar. Therefore, of course, the commercial vendors will be the default resource for most students. The teachable moment comes

in pointing students toward sources—in this article, Web sites—that will provide the same information, and often additional information, for no cost at all.

A first-year law student approaches the reference desk of the library and hesitantly asks for the phone number or e-mail address of the clerk of the court for the United States Supreme Court. After a little gentle digging, the librarian discovers that the reason the student is interested in contact information is that he wants to call the clerk about the briefs for a case pending before the Court. The research assignment for the first-year class involves the use of federal money to support scholarships for religious studies on campus. Each student is allowed a limited amount of research time on Lexis and Westlaw. This student has just realized, near the end of his project, that legal briefs to the Supreme Court for the case *Locke v. Davey* may provide some helpful information. Unfortunately, he has used all of his allotted Westlaw and Lexis time. He thought that if he contacted the Supreme Court, he might be able to sweet-talk someone into faxing him the briefs he needs. The librarian wisely uses this question as a “teachable moment.”

Because of the place the Supreme Court holds in American law, there are a number of reliable Web sites that post opinions, briefs, and other materials for Supreme Court research. We will look at several of these “obvious” sites and the information they provide. For the sophisticated researcher, though, there are also different ways to expand Supreme Court research beyond the more traditional (if we use the word *traditional* with the Web) Web sites. We’ll explore some other ways to track down Supreme Court information, as well.

There are a number of useful Web sites that provide excellent Supreme Court information. The Court’s own Web site, <www.supremecourtus.gov>, has slip opinions in PDF format, a calendar of oral arguments, orders lists, and a link to the merits briefs through the American Bar Association Preview of United States Supreme Court Cases Web site at <www.abanet.org/publiced/preview

/briefs/home.html>. The ABA site does not have the briefs that were submitted for the jurisdictional phase of the trial, and the merits briefs do not include amicus curiae briefs submitted by third parties. The Supreme Court's Web site has slip opinions back to the 2001 Term, plus complete volumes of the *United States Reports* back to volume 502 (1991). The Supreme Court site does not have opinions online further back than 1991.

The docket list for *Locke v. Davey* is available at <www.supremecourtus.gov/docket/02-1315.htm>, which lists the dates of procedural matters and the different briefs that have been submitted. From the U.S. Supreme Court's main Docket page, you can also find the link to the merits briefs on the ABA Preview site. Our case is not scheduled to be heard for a couple of months, and the briefs are not yet available. So, we'll keep looking.

FindLaw® is an excellent resource for Supreme Court materials. Current opinions are available at <supreme.lp.findlaw.com/supreme_court/decisions/index.html>. Briefs, a feature that is not available on many Web sites with Supreme Court resources, are available at <supreme.lp.findlaw.com/supreme_court/briefs/index.html>. FindLaw has briefs from the jurisdictional phase of the process as well as the merit phase. Amicus briefs, which are not a part of the ABA's collection, can also be found through FindLaw. In our search for information on *Locke v. Davey*, the FindLaw site at <supreme.lp.findlaw.com/supreme_court/docket/2003/december.html#02-1315> proves to be the most helpful so far. Here we find the opinion of the U.S. Court of Appeals for the Ninth Circuit, the Supreme Court's grant of certiorari, and the respondent's brief in opposition to the petition for certiorari (although the link is broken).

The Legal Information Institute (LII) Web site at Cornell Law School, <supct.law.cornell.edu/supct>, is another solid resource for Supreme Court materials, particularly when looking for historical information. In addition to current opinions, LII has historic decisions going back to

the 1700s. While this historical collection does not include every Supreme Court case, it does include "the court's most important decisions through the whole period of its existence." These cases can be browsed by topic, by author, and by party. They can also be searched by key word. For the current Term, the site provides links to an oral arguments calendar that includes questions presented. There are additional links with case status information and the Medill School of Journalism's link for the case, where audio files of oral arguments are available. While the LII Web site does not have briefs, it does provide a link to the FindLaw site where briefs are available, <supreme.lp.findlaw.com/supreme_court/briefs/index.html>.

Using *Locke v. Davey* as a test case, it was interesting to note that some of the links on the LII site, even those that say "this term," do not all reference materials from the current Term (2003–2004). For instance, as of November 2003 the link *Cases argued this term* takes you to "Calendar of Oral Arguments from 1 November 2002 to 3 June 2003." On the other hand, the link *Supreme Court orders this month* does in fact link you to orders from the current month. Briefs and other information for *Locke* were not available through the Cornell site.

The Oyez Web site (U.S. Supreme Court Multimedia) at <www.oyez.org/oyez/frontpage> is unique in its dedication to providing transcripts and audio files of oral arguments before the Supreme Court. Audio files are available back to 2001 and the site is in the process of releasing historical oral arguments as MP3 files at <www.oyez.org/oyez/resource/nitf/273/>. As might be expected in early November 2003, given that *Locke v. Davey* has not yet been heard by the Court, the Oyez site does not have much information. It does list December 2, 2003, as the date for oral arguments.

The Medill School of Journalism at Northwestern University has a Web site called On the Docket at <journalism.medill.northwestern.edu/docket/>. In conjunction with the Oyez site,

“FindLaw has briefs from the jurisdictional phase of the process as well as the merit phase.”

“With the help of the Internet, however, sometimes researchers can find treasure troves of documents and other information.”

.....

this site includes a current listing of the cases pending before the Court, a story on each case, additional feature stories on selected cases, links to Web sites relevant to the cases, information provided by attorneys and parties in the cases, the dates for scheduled oral arguments, the questions presented to the Court, referrals to the attorneys in the cases, and citations (and links) for the lower court opinions. Coverage dates back to the 1998–99 Term. The Docket page for *Locke v. Davey* includes a summary of the case, including relevant facts and the procedural history, the question being presented to the Court, a link to the Ninth Circuit’s opinion, and an article titled “The Faith-Based Legal Landscape.”

In addition to these generally well-known Web sites, sophisticated researchers can find Supreme Court information in less obvious places by thinking strategically about the parties that are involved in the case, and doing a little digging. While many of the Web sites listed above have great materials, often such collections are not comprehensive—there may be gaps in coverage, older briefs may not be available, or amicus briefs may be missing. With the help of the Internet, however, sometimes researchers can find treasure troves of documents and other information.

Here are some suggestions for additional research:

- If the parties to a suit are entities of some kind—companies, government agencies, nonprofit organizations—find their Web sites and see what information they have posted. You may find briefs or other court documents readily available. Enron, for example, has its bankruptcy court documents, special-master reports, etc., posted on its Web site <www.enron.com/corp/por/supporting.html>. While the Enron case is not a Supreme Court case, this does give you an idea of the type of information some entities will post.

For example, in *Locke v. Davey*, the attorney general for the state of Washington asked the Supreme Court to review the Ninth Circuit’s opinion. The Washington attorney general’s Web

site has a page devoted to the case, <atg.wa.gov/davey/>, which includes a link to court documents with a copy of the petition for certiorari. Additionally, while the respondent, Joshua Davey, is an individual, the nonprofit group American Center for Law and Justice is representing him. Its Web site also has a page devoted to the case, <www.aclj.org/news/pressreleases/030908_davey.asp>, which includes the respondent’s brief in opposition to the petition for certiorari.

- By reading newspaper articles or other press coverage of a Supreme Court case you can discover what third parties may be interested in a particular case. If you find the Web site of a third party to the case or a party that is interested in the case, you will find that some groups not directly associated with a case will often post information about it. Some of these parties will submit amicus briefs; some may simply post coverage of the case—articles, court documents, and lower court opinions.

If you will remember, the Web site On the Docket had a feature article on *Locke v. Davey* titled “The Faith-Based Legal Landscape.” That feature referenced several different organizations that have an interest in the litigation—the Cato Institute, <www.cato.org/index.html>; Americans United for Separation of Church and State, <www.au.org/>; and the Heritage Foundation, <www.heritage.org>. By reviewing these organizations’ Web sites, you will find that the Cato Institute has posted the amicus brief it has filed with the Supreme Court at <www.cato.org/pubs/legalbriefs/locke.pdf>. Neither the Americans United for Separation of Church and State nor the Heritage Foundation has posted briefs.

Also think about the types of organizations that might be interested in a case with religious freedom or separation of church and state issues. The American Civil Liberties Union (ACLU) at <www.aclu.org/court/courtmain.cfm> and the Christian Legal Society’s Center for Law and

Religious Freedom (CLRF) at www.clsnet.org/clrfPages/index.php3 often write amicus briefs for or serve as counsel on cases that revolve around these issues. Being aware of organizations and people who litigate or write on particular issues may provide you with additional points of contact for Supreme Court information. In this instance, both the ACLU and the CLRF have amicus briefs available online at www.aclu.org/Files/OpenFile.cfm?id=13416 and www.clsnet.org/clrfPages/amicus/locke_davey.pdf, respectively.

- If a case is small enough not to have generated much news coverage or notable special interest, you may want to try a general Internet search to see what you find. Lesser-known groups or people may have Web sites dedicated even to those cases that are not of interest to a larger audience. Such sites may provide the same type of information in terms of briefs, articles, and transcripts that would be found on more official Web sites.

Doing a general search for *Locke v. Davey* on the Internet pulls up many sites that have additional briefs from some well-known organizations as well as articles and analysis of the case. Some of these sites may provide valuable information for a research project.

Remember to remind students when they use organizations' Web sites or personal Web sites that they need to be aware of bias. While documents that are posted because they were submitted to the Supreme Court should be identical to what was actually submitted, students should be sensitive to citing nonofficial or nonauthoritative Web sites, and should probably note the possible bias of a Web site if referring others to it.

Conclusion

In my mind, this is the type of teachable moment that can show students the creativity and challenge (in a good way) of legal research. It demonstrates that there are good, reliable Web sites with free information available for Supreme

Court cases. It demonstrates that these sources are not always comprehensive, but that there are other ways to find more information, still for free. And while we're not focusing on it for purposes of this article, it might also be used to point out some of the weaknesses of using just the Internet for legal research, and one of the reasons we pay what we do for Lexis and Westlaw—Westlaw has 29 briefs, including the petitioner and respondent briefs.

© 2004 Beth Youngdale

“Remember to remind students when they use organizations' Web sites or personal Web sites that they need to be aware of bias.”