

## HOW MANY CASES DO I NEED?

BY MARY DUNNEWOLD

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Every year, I can see it coming. Tension builds as my students work on their first major research project. They are confused. They resent the time that the research “steals” from their already overburdened schedules. They are sure this process will never become second nature to them, despite my claims to the contrary. Finally, in the second or third class hour devoted to discussing the research, a brave student raises a hand. “How many cases do I need?” the student asks. The entire class sighs with relief because someone dared ask *the Question*.

This question incorporates, I think, an extensive array of sub-questions: Why can't I find a case exactly like my case that answers this question easily? Am I missing a case? Am I missing 10 cases? How do I know if I have the right cases? Which cases should I use? Isn't there an easier way to find an answer to this problem?

The question usually makes me quite impatient. When will they understand, I fume, that there is no magic number of cases, that the results of legal research are different in every instance, that they should trust the research process we've taught them because it will lead them to the relevant authority? But I've tried to stop fuming and instead develop a better understanding about what the students need to know to calm their anxieties about their competence as legal researchers and analysts. I've also tried to see this question as a particularly useful teachable moment that I should seize. So I've developed a three-part answer to the question.

First, I review the realities of legal research: no matter how thorough your research, you don't always find a case exactly on point. Some research problems lead you to volumes of case law; others lead you to a few cases. If you go through the steps of the research process you've been taught, you can be fairly confident that you have found all the

authority available on your topic. Real life is not like TV, where the junior attorney runs into the courtroom with the definitive case at the last minute.

Second, I give the students a practical answer: I tell them how many cases they need. That is, I tell them exactly how many cases I used when I wrote a sample memo on this particular topic. If they are using some number of cases within the same range, I assure them, they're probably on the right track. Then, however, I tell them that the answer to this question is different for every memo and it's not possible to predict from one memo to the next. So knowing the answer for this memo doesn't really help them know the answer for the next memo. Which is why they need to know how to decide for themselves which cases to use and how many cases are enough.

Finally, I try to address what I think is the larger and most important question raised by “how many cases do I need?": Of all the many cases I can find out there, which ones should I be using to develop my analysis? To address this question, I use a dartboard analogy to help the students think about how to evaluate the precedent they have unearthed in their research. Their goal is to find and use cases as close to a “bull's-eye” on the dartboards as they can.

First, I ask the students to imagine two dartboards, which I draw on the chalkboard and embellish as I talk. I label one dartboard “Authority” and the other “Issues.” Then I explain that the bull's-eye on the Authority dartboard would be an on-point case in the controlling jurisdiction, preferably from the highest court in that jurisdiction. If they have found such a case in their research, they should definitely rely on it. An on-point statute from the controlling jurisdiction would also belong here. I then move to the first circle out from the center of the dartboard. In this 50-point circle, I explain, belong on-point primary authorities from other jurisdictions that the court would be likely to rely on. Here, for instance, I might place cases from the federal circuit in which a state court sits, cases from other states in the circuit, and cases from larger states whose courts are well respected and frequently cited. Moving out, in the 25-point circle, I place cases from

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smaller states and distant states that are cited less often. Finally, in the 10-point outermost ring, I place secondary authority and other sources, which may be helpful for interpreting and understanding the law but do not establish what the law is.

I then shift to my Issues dartboard. On this dartboard, I place cases according to how similar the law and facts are to the law and facts in my research problem. The bull's-eye on this dartboard, then, is a case involving exactly the same legal issue and exactly the same facts. For instance, if our research issue is whether injuries sustained as a result of a recreational dog sled accident are covered by the state's dog bite statute, we would look for a case addressing that issue exactly. (I note that usually we are unlikely to find such a case, especially when working on a legal writing assignment.) In the 50-point circle on this board, then, I would place cases involving the same area of law but slightly different facts. So for the dog bite statute issue, I would place in this circle a case discussing whether the statute covers injuries caused by a dog running into the road in front of a car. I tell the students that if at this level they find plenty of authority that helps them analyze and predict an outcome in their case, they may not need to go any further.

I suggest that if the authority in the 50-point circle is sparse, however, they need to look at and perhaps rely on authority arising in a slightly different legal context or very different factual context but generally within the same area of law. Thus, using the example of the dog bite statute issue (a strict liability issue), if no authority interpreted this particular strict liability statute, we might look to cases discussing other strict liability statutes or nonstatutory strict liability. Or we might look to cases involving the imposition of liability on animal owners through common law rather than the statute. These authorities belong in the 25-point circle.

Finally, in the 10-point circle on the Issues dartboard, I place cases that involve a different legal idea and different factual context but that might contain clues about the policy that governs this particular area of the law. For the dog bite statute issue, these might be cases about general

responsibilities of animal owners or responsibilities of recreational service vendors.

After I've explained and illustrated the two dartboards, I tell the students that they should then envision the two boards suspended over one another. If their "dart," a found case, would hit both bull's-eyes, they have found better authority than most of us expect to find. If their dart hits the bull's-eye on one dartboard and the 50-point circle on the other, that's a good case. They should then evaluate each case according to these criteria.

Finally, I explain that this thought process is meant to help them sort out which cases to use once they have found a body of authority and are attempting to evaluate it. It does not describe the research process they should go through to initially generate the body of authority to work with. That, of course, is another class period and another essay.

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