

PERSPECTIVES

Teaching Legal Research and Writing

FROM THE EDITOR: A FRESH PERSPECTIVE

Yes, change is inevitable. It has been our great fortune to have the multitalented Frank Houdek as editor of *Perspectives* for six stellar years. Authors and columnists know firsthand Frank's fine judgment and gentle editorial touch; readers appreciate the quality and diversity of pieces he has selected and published. Frank decided earlier this year to step down with the completion of Volume 8. His wise counsel and deft manner will not be lost, however: fortunately, Frank will continue to serve on the *Perspectives* Editorial Board.

When Frank Houdek invited me to edit *Perspectives* I was both delighted and overwhelmed. Delighted because *Perspectives* is one of my favorite journals and overwhelmed because he has set such a high standard. As a member of the teaching community, and formerly the library community, I know that *Perspectives* is held in high regard. Frank took a fledgling journal and established it as *the* place to publish articles on teaching legal research and writing. As of July 2000, *Perspectives* is distributed in print to more than 3,000 subscribers. Recent issues are available both on the Web (in PDF) at <<http://www.westgroup.com/librarians/perspec/perspec.htm>> and on Westlaw®, in the PERSPEC database. And in 2001, we plan to issue a "Best of *Perspectives*," a selection of articles that have stood the test of time. This is particularly important because the legal research and writing community experiences higher turnover than other segments of law teaching. Such an anthology could be especially useful to newer teachers.

When Steven M. Barkan, the founding editor, launched *Perspectives* in 1992, his goal was to provide a balanced forum that encouraged collaboration among teachers of legal research and legal writing, whether librarians or law teachers. During their editorial terms, Steve established and Frank cultivated *Perspectives* as that crucial forum.

While *Perspectives* has always been supported and printed by West Group as a service to the legal community, the editor and Editorial Board are independent. The journal is committed to "maintain[ing] neutrality in its presentation of research materials, tools, and theories."¹

In Frank's inaugural issue in 1994, he noted that "*Perspectives* is primarily author-driven."² The journal reflects the thoughts and concerns of those who teach legal research and writing. During Frank's tenure, and with the assistance of the Editorial Board, regular columns have

¹ Steven M. Barkan, "From the Editor: Introducing *Perspectives*," 1 *Perspectives: Teaching Legal Res. & Writing* 1 (1992).

² Frank G. Houdek, "From the Editor: A New Perspective," 3 *Perspectives: Teaching Legal Res. & Writing* 1 (1994).

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evolved. The content notes for these columns illustrate the depth and variety of our teaching concerns:

- “Brutal Choices in Curricular Design” is designed to explore the difficult curricular decisions that teachers of legal research and writing courses must make in light of the realities of limited budgets, time, personnel, and other resources. The column editors are Helene Shapo, Northwestern University School of Law, Chicago, and Mary Lawrence, University of Oregon School of Law, in Eugene.
- “Legal Research and Writing Resources: Recent Publications” includes references to books, articles, bibliographies, and research guides that could potentially prove useful to both instructors and students. The column editor is Donald J. Dunn, Dean and Professor of Law at Western New England College, in Springfield, Mass.
- “Our Question—Your Answers” is a column of reader-prepared answers offered in response to a specific question posed by *Perspectives*. The column editors are Judy Meadows, Montana State Law Library, in Helena, and Kay Todd, Paul Hastings Janofsky & Walker, in Atlanta.
- “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 column editor is Barbara Bintliff, University of Colorado Law Library, in Boulder.
- “Teachable Moments for Teachers” is designed to give teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. It is a companion to the “Teachable Moments for Students” column that provides quick and accessible answers to questions frequently asked by students and other researchers. The column editor is Louis J. Sirico, Jr., Villanova University School of Law, in Villanova, Pa.

- “Technology for Teaching” is designed to introduce and describe the ways in which teachers of legal research and writing are using technology to enhance their teaching. The column editor is Christopher Simoni, Northwestern University School of Law, in Chicago.
- “Writing Tips” is designed to provide teaching concepts related to the process and techniques of legal writing. The column editor is Helene Shapo, Northwestern University School of Law, Chicago.

Each of these column editors would be delighted to hear from you if you have an idea or manuscript that might fit a column’s niche. I am also happy to receive manuscripts. Articles of any length will be considered for publication, but the preferred submission will fall between 5 and 15 typewritten, double-spaced pages. Please contact me at hotchma@u.washington.edu for a copy of the *Perspectives* Author’s Guide and Style Sheet.

I want to acknowledge the wonderful work of past members of the Editorial Board who worked with Frank Houdek: Kathy Garner, Barbara C. Holt, Christina Kunz, and Kathleen H. McManus. They too played a role in developing a stronger, more vital journal. A source of support and continuity for me is the present Editorial Board: Barbara Bintliff, Ellen Callinan, Donald Dunn, Penny A. Hazelton, Frank Houdek (!), Mary S. Lawrence, Judith Meadows, Helene Shapo, Christopher Simoni, Louis J. Sirico, and Kay Todd. They bring to the table years of teaching and writing experience.

Of course, the vitality of *Perspectives* is dependent on the contributions of the legal research and legal writing communities. The strength of *Perspectives* is that it weaves together great ideas from both librarianship and law teaching. My hopes are that it continues to be a reader-friendly forum for a lively exchange of ideas and opinions about issues in teaching legal research and writing. I am pleased to be the new editor of *Perspectives*, and I look forward to your support, contributions, submissions, comments, and suggestions for improvement!

Mary A. Hotchkiss
University of Washington School of Law

THE BEST SENTENCE

BY MARTHA FAULK

Martha Faulk is a former practicing lawyer and English instructor who teaches legal writing seminars through The Professional Education Group, Inc. She is co-author with Irving Mehler of The Elements of Legal Writing (Macmillan Publishing Co., 1994). She is a regular contributor to the Writing Tips column in Perspectives.

Ask a group of readers of legal writing what bothers them most about legal documents, and the answer is invariably this complaint: too often the writing is too long. In the seminars that I teach, I always ask participants what frustrates them most about reading legal writings. High on their list of frustrations is long sentences. If long sentences are difficult and annoying for the reader—even one trained in the law—why, then, do legal writers write them? The answer lies in the complex function of legal language. Legal statements must, of necessity, be both generally applicable and yet specific enough for individual circumstances. These statements must also be stable enough to stand the test of time, yet flexible enough to adapt to new situations. In short, legal language bears a heavy burden of responsibility.¹

Recognize the Problem

That burden often lures writers into combining many ideas into one lengthy and complex sentence. Clauses are coordinated and subordinated so that several relevant ideas may be combined into a single statement. Repetition may be necessary to make clear whether a new point applies to everything previously stated or to just a portion of it. And, occasionally, long lists of things are useful to reduce uncertainty about whether the law applies to a specific situation.²

Despite this burden of responsibility—or perhaps because of it—poets, playwrights, and parodists have gleaned much material from the language of the law. Carl Sandburg, in “The Lawyers Know Too Much,” observed:

In the heels of the higgling lawyers, Bob,
Too many slippery ifs and buts and howevers,
Too much hereinbefore provided whereas,
Too many doors to go in and out of.³

¹David Crystal, *The Cambridge Encyclopedia of the English Language* 374 (1995).

²*Id.*

³*Complete Poems* 189 (1950).

No matter that we tend to offer sophisticated defenses to criticism of the density of legal language. There is much we can do to make our sentences shorter and more readable. Although determining a document’s essential content may be difficult, it’s usually fairly easy to determine what makes a sentence too long.

Check Readability Statistics

Use your computer’s grammar checker to discover the average number of words per sentence. This average number will tell you approximately which century your writing fits into. According to Rudolf Flesch, the developer of the “Reading Ease” indicator used in Microsoft® Word, our sentences are shrinking.⁴ Linguistic research has shown that English sentences have grown shorter over the centuries. This observation will certainly ring true to any modern reader of novels of Jane Austen and Charles Dickens, for example. Flesch reports that “the average Elizabethan written sentence ran to about 45 words: the Victorian sentence to 29: ours to 20 and less.”⁵

So what do these numbers mean for modern writers? Although much of what we read in the law is historical in its origin, we modern writers should always be aware that we’re writing for modern readers. If we deliver “Elizabethan” or “Victorian” sentence length, then we’ve made reading, and ultimately comprehension, difficult for our readers who are used to discerning meaning in about 20 words.

Flesch, as you might imagine, had special criticism for legal writers. “[T]here is one profession that thinks it can’t live without long sentences: the lawyers. They maintain that all possible qualifications of an idea have to be put into a single sentence or legal documents would be no good.”⁶

Here’s an example from a recent appellate brief that would have made Flesch cringe:

The district court, on the other hand, erroneously addressed but one word of the Bankers Blanket Bond—the term “realized”—and then the district court misapplied it by erroneously considering whether [the appellee] “realized” a benefit and the Bank suffered a loss, which is not a question

⁴*The Art of Readable Writing* 106 (1949).

⁵*Id.* at 107.

⁶*Id.* at 111.

“If long sentences are difficult and annoying for the reader ... why, then, do legal writers write them?”

“If our reader immediately understands our writing, then we are more likely to be persuasive.”

under the Bankers Blanket Bond: and once the district court found that the Bank suffered a loss it held the Insurer liable without considering the language of the Bankers Blanket Bond as relevant to the issue of whether that loss was covered under the Bankers Blanket Bond.⁷

Break Up Long Sentences

Close examination requiring more than one reading reveals that this 94-word sentence contains at least four important ideas. Let's break up the sentence into its salient points, omit useless words, add some transitional words, and thus make the writer's ideas immediately comprehensible:

The district court addressed only the term “realized” as used in the Bankers Blanket Bond. Then the court considered whether the appellee “realized” a benefit and the Bank suffered a loss. At that point, the court incorrectly held the insurer liable. The issue is whether that loss was covered under the Bond.⁸

Of course, the corollary benefit to readability is comprehension. If our reader immediately understands our writing, then we are more likely to be persuasive. In the case of the above example, the lawyer-writer would certainly want the judge-reader to be favorably persuaded.

Omit Useless Words

Getting rid of empty prose is harder than you might think because we writers become fond of our words. Sir Arthur Quiller-Couch, in his celebrated essay “On Jargon,” recommends a kind of ruthlessness. His advice: “If you require a practical rule of me, I will present you with this . . . *Murder your darlings*.”⁹

Which “darlings” do we want to eliminate? Some expressions can be entirely omitted, as in the examples below:

Because (*of the fact that*) construction was delayed by bad weather . . .

The principal obligation of the Trustee is fiduciary (*in nature*)

In (*the instance of*) our first trial, we did not have

the complete list of witnesses.

Here's a list of some wordy phrases that could easily be reduced:

A large number of	many
Be in receipt of	have
Come to a conclusion as to	conclude
Conduct an investigation of	investigate
During the course of	during
Have a bearing on	affect
In consideration of the fact that	considering
On many instances	often
In reference to	about
Make allowances for	allow for
Make provisions for	provide for
Take into account	consider

Eliminating intensifying adverbs such as *very*, *really*, *actually*, *obviously*, and *certainly* is also good advice. Legal writers should make their sentences self-assured without the crutch of overworked modifiers.

Acquire the “Shrinking” Habit

These lists of useless and weak words are meant to serve only as examples of common offenders. Many more examples can be found in *Line by Line: How to Improve Your Own Writing*, an excellent compendium of editing techniques published by the Modern Language Association. The author counsels: “[T]rain yourself to recognize and remove empty prose additives. . . . Almost always expendable, any of these terms should set off a reflex action like a flashing light at a railroad crossing.”¹⁰

Just as stopping at a flashing light becomes habitual, reviewing your written work for long sentences is a worthy habit to acquire. It's as easy as accessing the spell checker program on your computer. If your number of words per sentence is significantly above 20, then it's time to break up those long sentences into shorter units, and get rid of useless words. The results will be satisfying to you, the writer, and edifying to your reader. As Gustave Flaubert, a master of modern prose advised, “Whenever you can shorten a sentence, do. And one always can. The best sentence? The shortest.”¹¹

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⁷Martha Faulk & Irving Mehler, *The Elements of Legal Writing* 5 (1994).

⁸*Id.* at 6.

⁹See Flesch, *supra* note 4 at 187.

¹⁰Claire Kehrwald Cook, *Line by Line: How to Improve Your Own Writing* 13 (1985).

¹¹Quoted in Flesch, *supra* note 4 at 106.

WHAT IS THE DIFFERENCE BETWEEN SUBSTANTIVE AND PROCEDURAL LAW? AND HOW DO I RESEARCH PROCEDURE?

BY KRISTIN B. GERDY

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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.

Civil Procedure. The mere utterance of the phrase strikes fear into the hearts of many American law students. It is generally the most hated and least understood course in the first-year curriculum. While it is true that procedure may not have the drama of torts or the intrigue of constitutional law, why is it that students are almost universally put off or at least confused by procedure? Perhaps the biggest obstacle to understanding procedural law is that students don't have experience with it as they do with other "substantive" law. Before they come to law school, most students can recognize a contract; they understand the concept of torts (even if they don't

label them as such); and, more often than not, they are well versed in many aspects of constitutional law, particularly those aspects addressing due process and equal protection. But they have no experience with procedure. No wonder the question often arises—exactly what is procedural law and how do I research it?

Substantive laws are "the part of the law that creates, defines, and regulates the rights, duties, and powers of parties."¹ Substantive laws govern people and organizations in their daily interactions—they are the "laws" that nonlawyers usually think of when they think about what law is. For example, the substantive law of torts says an uninvited guest cannot intrude upon another person's land; the substantive law of estates governs the formalities necessary to draft an "air-tight" will; and the substantive law of corporations dictates how a limited-liability corporation must be formed. However, a different set of laws, which we call procedural law, governs what happens when a party challenges that will or corporate formation in court.² In other words, procedural laws are the door to litigation.³ They set forth "[t]he rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves."⁴

It may be easier to think of procedural laws as the "rules" that govern litigation—the rules the parties must follow as they bring their case and the rules for the courts' administration. These rules proscribe such things as who gets to bring cases, which courts those cases are brought before, how the cases proceed through the judicial process, the rules of proof, the available remedies, and the manner in which the judgment is enforced. Procedural law is created either by the legislature, by the judiciary, or by a combination of the two. Procedural laws have three major purposes. First,

“[P]rocedural laws are the door to litigation.”

¹ *Black's Law Dictionary* (7th ed., West 1999).

² See Fleming James, Jr., et al., *Civil Procedure* § 1.1 (4th ed., Little, Brown & Co. 1992).

³ See Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* 16 (1930). ("[P]rocedural regulations are the door, and the only door, to making real what is laid down by substantive law. Procedural regulations enter into and condition all substantive law's becoming actual when there is a dispute. ... [W]hat substantive law says should be means nothing except in terms of what procedure says that you can make real.")

⁴ *Black's Law Dictionary* (7th ed., West 1999).

“It is not always easy to distinguish substance from procedure.”

they help courts conduct their business. Second, they establish uniform procedures within the courts. Finally, they provide information and instruction to those appearing before the courts, whether they are attorneys or the parties themselves.⁵

It is not always easy to distinguish substance from procedure. Sometimes courts deem the rules that seem procedural to be of substantive importance. For example, in *Bolton v. Travelers Insurance Co.*,⁶ the court held that a statute of limitations was substantive, but rules governing the time for answer and appearance were procedural.⁷

Researching Procedural Law⁸

Procedural law can be found in legislation, in rules promulgated by courts, and in cases that interpret the rules. Because court rules make up the largest body of procedural law, such laws are often generically referred to as “rules” or “court rules.”

Court rules can be divided into four categories: 1) rules of general application, like the Federal Rules of Civil Procedure and the Federal Rules of Evidence, which are applicable in all federal courts; 2) “local” rules for individual courts within the federal system; 3) statutory rules, rules that are part of the statutory compilation rather than a set of specific “court rules,” the most common being statutes of limitations; and 4) state rules, which are applicable in the courts of the issuing state.

In addition to the rules themselves, the thorough researcher will want to locate cases interpreting relevant rules and possibly

commentary on the rules. She may also want to locate model forms that give examples of documents that comply with the rules. Finally, she will want to ensure that the rules she has found are still in force. Let’s explore the various tools she might consult.

Rules of General Application

Four sets of rules make up the federal rules of general application. They are the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence. These rules govern practice before all courts within the federal system.

Perhaps the most readily accessible source of federal rules of general application is a specific rules pamphlet, which is sometimes called a “deskbook.” This single-volume, unannotated pamphlet typically contains the text of all four sets of federal rules and any related statutory provisions.

Federal rules of general application are also included in the *United States Code*. The Federal Rules of Criminal Procedure is located in the Appendix to Title 18, while the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, and the Federal Rules of Evidence are located in Title 28.

In addition, the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure are available in their unannotated form in the “Finding Aids” volume of *Federal Rules Service*, a West Group publication available in many law libraries.

While the text of the rules themselves is vital information for the researcher, often it is not enough. Fortunately, annotated versions of the rules are readily accessible in the annotated versions of the *United States Code*. In addition to the text, the rules’ annotations contain Advisory Committee comments, editorial annotations, and references to commentary on the rules. In LEXIS® Publishing’s *United States Code Service*, the Federal Rules of Evidence are located in the Appendix to Title 28; other rules are located in numerous “Court Rules” volumes at the end of the set. West’s *United States Code Annotated*[®] follows the same schema used in the *United States Code*—with the Federal Rules of Criminal Procedure following

⁵J. Myron Jacobstein et al., *Fundamentals of Legal Research* 251 (7th ed., Foundation Press 1998).

⁶475 F.2d 176 (5th Cir. 1973).

⁷*But see* Sun Oil Co. v. Wortman, 486 U.S. 717, 736 (1988) (Brennan, J., concurring). (“Statutes of limitations, however, defy characterization as either purely procedural or purely substantive. The statute of limitations a State enacts represents a balance between, on the one hand, its substantive interest in vindicating substantive claims and, on the other hand, a combination of its procedural interest in freeing its courts from adjudicating stale claims and its substantive interest in giving individuals repose from ancient breaches of law.”)

⁸Many legal research texts provide in-depth explanations of procedural law research, typically under the heading “Court Rules.” See, e.g., Robert C. Berring & Elizabeth A. Edinger, *Finding the Law* (11th ed., West Group 1999); Morris L. Cohen & Kent C. Olson, *Legal Research* (7th ed., West Group 2000); J. Myron Jacobstein et al., *Fundamentals of Legal Research* (7th ed., Foundation Press 1998); Christina L. Kunz et al., *The Process of Legal Research* (4th ed., Little, Brown 1996).

Title 18 and the Rules of Civil Procedure, Federal Rules of Appellate Procedure, Federal Rules of Evidence, Supreme Court Rules, Claims Court Rules, and the Rules of the Court of International Trade following Title 28.

The rules are also available electronically on both Westlaw® and LEXIS. Consult a current database directory to locate the appropriate database within the service.

Local Rules

In addition to the generally applicable rules, the thorough researcher must identify any rules that govern the particular court in which she will appear, rather than the entire court system. For example, there are rules for the U.S. Court of Appeals for the Tenth Circuit or for the district courts. These rules are called “local” rules, and often they are supplemental to the rules of general applicability, which are also enforced within the courts.

While pamphlet editions of local rules are sometimes available, the best source for local rules is *Federal Local Court Rules*. A part of the Federal Rules Service, *Federal Local Court Rules* includes rules for each of the federal district courts. Among the district court provisions are civil, criminal, bankruptcy, general and calendar matters, admiralty, and magistrate judge rules. In addition, *Federal Local Court Rules* includes the individual rules for the 13 courts of appeals and the internal operating procedures for the courts of appeals.

Statutory Provisions

Because the legislature has the power to enact procedural law, and often does, provisions that include procedural requirements can be found scattered throughout the *United States Code*. The most obvious examples are the provisions relating to habeas corpus in Title 28. Although these procedural laws can be located by using the general index to the *Code*, the more approachable source for these provisions is the jurisdictional rules pamphlet edition mentioned above.

State Rules

Typically state procedural law is quite similar to federal procedural law. In fact, often the language of the rules, as well as their organization and numbering, closely track the corresponding federal compilations. However, it is critical that

researchers working in state courts locate and follow state rules.

State procedural law is either incorporated into the state’s statutory compilation or published in supplemental “rules” volumes. Sometimes a single state uses both methods. For example, Utah’s Rules of Criminal Procedure are incorporated into Title 77 of the Utah Code. However, the Utah Rules of Civil Procedure are located in a separate “Court Rules” volume at the end of the code.

Sometimes publishers assist researchers by publishing both the state and federal rules for the jurisdiction in one set. California has two versions of its annotated code. Each has supplemental rules volumes. West’s version has two volumes, *California Rules of Court—Federal and California Rules of Court—State*. The LEXIS version combines the state and federal rules into one volume, titled *Rules of Court and Ninth Circuit Rules*.

Judicial Interpretations of Procedural Law

In addition to the text of the rules themselves and any commentary found in annotations, it is often necessary to locate judicial interpretations of procedural law. As with any case law, judicial interpretations and applications of procedural law are mandatory in the courts where they originate and in lower courts within that jurisdiction; they also may be persuasive elsewhere, particularly in jurisdictions with similarly worded or identical provisions. So, in order to thoroughly research procedural law, the researcher must go to the cases.

Because procedure is integral to every lawsuit, more often than not procedural issues are intermingled with substantive issues in a lawsuit. This being true, many interpretations of federal procedural law are found in the general federal reporters (the three reporters containing United States Supreme Court decisions, the *Federal Reporter*® for U.S. courts of appeals decisions, and the *Federal Supplement*® for U.S. district courts decisions). However, when a federal district court case specifically addresses the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, it is published instead in the *Federal Rules Decisions*® (FRD). Part of West’s National Reporter System®, the FRD has all the features of other West reporters, such as headnotes and key numbers. It also contains proposed changes to the

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“Procedural law doesn’t have to be scary, and it doesn’t have to be dry, but it does have to be strictly followed.”

rules and commentary on the rules, which are written by judges and law professors.

Often the first place federal cases involving procedural issues appear is West’s *Federal Rules Service*. A section of the Service contains federal cases construing the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.

Cases interpreting state procedural rules are seldom published because such issues are usually resolved at the unreported trial level. However, those cases that do reach the appellate courts are published in the general state reporters—either the National Reporter System regional reporters or other state reporters.

Commentary on Procedural Law

When a researcher confronts a particular procedural issue for the first time, commentary can help her understand its requirements and identify areas that may require further analysis. Numerous treatises and hornbooks provide commentary on procedural law, particularly on the rules of general applicability. Commentary sources typically contain the text of the statutes and rules followed by analysis of the rules, citations to cases, and other explanatory material.⁹

Citations to additional commentary on procedural law can be found through the rules sections of *Shepard’s® Federal Law Citations in Selected Law Reviews*.

Form Books

Because procedural law provides the requirements for all documents filed in court, researchers can benefit from sets of model forms that illustrate the documents used in federal

practice. Major federal form sets include *Bender’s Federal Practice Forms*, which contains cross-references to *Moore’s Federal Practice 2d*; *Nichols Cyclopedic of Federal Procedure Forms*; *West’s Federal Forms*, which includes both civil and criminal forms that are annotated with references to *Federal Practice and Procedure*; and *Federal Procedural Forms, Lawyers Edition*.

Citators

Finally, before concluding procedural law research, the researcher must make sure that the rules she has found are still valid. *Shepard’s Federal Rules Citations* includes citations to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, the Federal Rules of Evidence, and corresponding state rules, as well as all state and federal cases involving procedural issues. Citations to procedural rules can also be found in *United States Citations–Statutes* and individual state Shepard’s compilations.

Conclusion

Procedural law doesn’t have to be scary, and it doesn’t have to be dry, but it does have to be strictly followed. Legal researchers and law students simply need to understand that procedural laws are the rules for the legal “game” and they open the door for litigation. When students are equipped with the basic sources for finding and learning these rules, they are ready to enter!

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⁹Major treatises on civil procedure include *Cyclopedia of Federal Procedure* (West); *Federal Procedure, Lawyers Edition* (West); Stephen W. Feldman, et al., *West’s Federal Practice Manual* (3d ed., West 1996); James Fleming, Jr., et al., *Civil Procedure* (4th ed., 1992); James W. Moore, et al., *Moore’s Federal Practice* (3d ed., 1997); Charles A. Wright, *The Law of Federal Courts* (5th ed., West 1994); and Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*® (2d ed., West 1982). Major treatises on criminal procedure include Wayne R. LaFare, et al., *Criminal Procedure* (2d ed., West 1999); and *Orfield’s Criminal Procedure Under Federal Rules* (2d ed., West). Major treatises on evidence include Jack B. Weinstein & Margaret A. Berger, *Weinstein’s Evidence: Commentary on the Rules of Evidence for the United States Courts and State Courts* (Matthew Bender 1975); and *McCormick on Evidence* (John W. Strong ed., 5th ed., West 1999).

MANAGING A RESEARCH ASSIGNMENT

BY MARY WHISNER

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Many of our efforts at teaching legal research focus on particular tools or topics—we give a presentation on how to research federal statutes in print, we offer a hands-on session on using online citators, or we visit a class and introduce specialized resources for that subject. When undertaking actual projects, however, some students struggle with using the disparate pieces they have learned. Where should they start? When should they use one source rather than another? When do they go online? How do they put it all together? In the last couple of years, we have experimented with ways to help students with this challenge in two contexts: the first-year moot court problem and the summer job.

Moot Court

The moot court problem is generally the biggest assignment the first-year students have faced. Through the year, they have been given a series of writing and research assignments. Early writing assignments do not require research; early research assignments usually direct them to certain sources or types of sources. Now they are asked to put all their skills together. Even if they were paying close attention when they had a unit on secondary sources, statutes, and digests in January, competent students could still find that their knowledge is tenuous when they have to jump into this assignment in March or April. Moreover, this is a bigger project than they have dealt with before: they will spend weeks on it, generating many pages of notes, photocopies, and printouts. If they are to avoid being overwhelmed, they need to organize their work.

Last year, we addressed this need by combining students from different sections of Basic Legal Skills (the required first-year legal writing and research course) into two large groups for presentations by a reference librarian (me). We timed these presentations to come a few days after

the students had received their moot court packets, but well before they were expected to turn anything in. I talked about note-taking skills.¹ Among other things, I used props—a huge stack of unsorted printouts from LEXIS-NEXIS® and Westlaw®, a few neat file folders, a notebook—to get their attention (and, in the case of the printouts, to provide some comic relief). I always urge students to develop some system for organizing their research, but I do not prescribe one: I recognize that some students will be most comfortable with a three-ring binder, others with a laptop computer, and some with shopping bags of printouts. I just would like the shopping-bag students to consider highlighting the printouts, jotting down key terms, and perhaps supplementing the shopping bag with an outline or summary notes.

The students and I spent the bulk of the presentation brainstorming about the problem. This provided a good review of the research process we had taught the students in the winter² as well as of specific tools. Modeling the research process, I had the students talk me through a preliminary analysis of the problem. What questions did they think they would need to answer? What terms would be important? What were the key facts in the problem? Would they be looking at federal or state law? Together we looked at the moot court packet to pick out clues. For instance, the decision being appealed cited the relevant statute; they should seize on that as a research lead. The record excerpts in the packet included important—and unimportant—facts; they needed to read everything carefully and begin to sort the facts into legal categories.

Part of preliminary analysis includes consulting secondary sources to get an overview of an area, as well as citations to primary authority. So I asked students where they would start to look. It is good to be reminded—as I was that day—that students are just not as familiar with the types of secondary sources as more experienced researchers are. They

¹ See Penny A. Hazelton, Peggy Roebuck Jarrett, Nancy McMurrer & Mary Whisner, *Develop the Habit: Note-Taking in Legal Research*, 4 Perspectives: Teaching Legal Res. & Writing 48 (1996).

² See Penny A. Hazelton, *Why Don't We Teach Secondary Materials First?*, 8 Perspectives: Teaching Legal Res. & Writing 8, 8 (outlining Marjorie Rombauer's research strategy from *Legal Problem Solving: Analysis, Research & Writing* (5th ed. 1991)).

“I always urge students to develop some system for organizing their research, but I do not prescribe one ...”

“The skit enabled us to communicate the lessons more vividly and less pedantically than in a lecture.”

may have had exercises that exposed them to hornbooks, encyclopedias, ALR³, and so on, but two months later they need prompting. The class did come up with suggestions, and then we discussed which ones might be useful. Before the presentation, I had done enough research to know that there were some law review articles and ALR annotations on point. Without saying, “Here is the law review article that will explain all,” I encouraged them to consider that sort of source. We reviewed how to use LegalTrac to find articles and discussed possible searches (using the key terms they had already suggested for the problem). We talked about how the secondary sources they found might give them relevant authority, then talked about how they could research further, reviewing the roles of annotated statutes, digests, citators, and online searching.

The Basic Legal Skills faculty and I thought that these sessions were successful. The students participated in class and seemed to feel a little more confident starting their projects. We did not worry that the session gave too much away: the students still would face plenty of challenges in researching their moot court problems, even with the guidance they picked up in the classroom.

This year, we tried to repeat the success and offered a similar session. I found it harder to get the students to participate. It might be that fewer students had read the packet, which meant they were less eager to jump into a discussion about the case. This year’s presentation was optional (not required, as last year’s was), conflicted with a presentation about clinics, and came at the end of a week of optional presentations sponsored by the Moot Court Honor Board, so the students I saw might simply have been too overwhelmed to respond to my cheery questions. Even with the lower involvement by the students, I do think this was a helpful session to offer, and I hope to do it again.

Summer Job

The other context in which students must manage complex assignments is their summer jobs. For the last five years, our library and career planning office have sponsored a half-day program early in the summer for students—both from our own school and from any other law school—who are working in town.³ Along with sessions on legislative history,

³ See Michael R. Gotham & Cheryl Rae Nyberg, *Joining Hands to Build Bridges*, 7 Perspectives: Teaching Legal Res. & Writing 60 (1999).

practice materials, Web sources for legal research, and so on, we have included sessions on note taking and managing a research assignment.⁴

I like to have students participate as much as possible, but it is harder to draw them out in a bridge-the-gap session than it is in a regular class. When I talk to students about their moot court problem, for example, they have been in class together all year. They are all working on the same problem, and I know what the problem is, what resources they have at their disposal, and when their assignments are due. They have seen me before, and I know some of them by name. An audience at a bridge-the-gap session is more diverse: many of the students have never met before, since they attend different law schools and work in different places; they may be working in very different settings (from judges’ chambers to public defender offices, big law firms to the state attorney general’s office) with different resources and different expectations. No doubt many of them share similar challenges in their jobs—not knowing what the assigning attorney wants, being uncertain about how to get started on an assignment, not knowing when to stop or when to ask for help—but they might be embarrassed to talk about these issues in front of other students. How can we get them to talk about the challenges they encounter at work without putting them on the spot?

Dramatic Presentation

This year, we tried a dramatic presentation. Our skit showed a summer associate (played by reference librarian Ann Hemmens) getting assignments from a partner (played by reference librarian Nancy McMurrer) and, occasionally, getting assistance in her research from a reference librarian (me). In about 20 minutes, we were able to illustrate some potential pitfalls and some effective techniques. Following the skit, students were—we believe—more willing to talk than they would have been otherwise. In any event, we had some examples to discuss. To give readers a flavor of the skit, excerpts are produced in a sidebar.

⁴ These topics are touched on in other sessions, as well. For example, Career Planning’s panels on making the most of a summer job invariably address the importance of good organization. The session on practice materials includes discussion of how the materials fit into a research strategy.

The skit illustrated many lessons:

- It is OK to ask questions of an assigning attorney.
- Understanding the task is more important than saving face in the short term.
- Going online right away might not be cost-effective—and it might not yield the right answer.
- You should take good notes when getting an assignment.
- It pays to update. The statute you found might have been amended.
- You should find out when you need to report back and in what format (e.g., orally or in a formal memorandum).
- A reference librarian can point you to valuable sources.

Good lessons, right? Yes, but I confess that, even though they are my lessons, the list is rather flat. If I were a student in a class, I would start doodling as soon as some librarian started listing these platitudes. “Yeah, yeah,” I’d mutter cynically, “Tell us something we don’t already know.” It may be true that we should floss, eat more fruits and vegetables, exercise regularly, drink lots of water, and make our beds every morning, but who wants to be lectured about those good habits? The skit enabled us to communicate the lessons more vividly and less pedantically than in a lecture.

After the skit and a discussion of it, we also covered tips on note taking⁵ and some practical advice about keeping a log of assignments and a good calendar.

The log of assignments applies basic time-management tips to the context of a law student’s likely summer job experience. A student should keep track of the assignments given, with brief notes about who assigned the project, when it is due, and so on. The log can serve several purposes: as well as helping the student to keep track of assignments and meet deadlines, it gives the student a ready-made chronicle of the summer. When it is time to update her résumé, the summer clerk can easily scan to see the types of projects she worked on. When he needs references, the extern can see which attorneys he worked for and remind

them of the projects he did. The log does not have to be fancy. Here is a simple model:

Date Assigned	Supervisor	Project	Due	When will I work on it	Done
7/2	Anne McDonald	Ferguson case—prepare memo on prescriptive easement Q.	7/10	research 7/6–7/7 write 7/8	7/9
7/6	David Marks	Fein medical case—find Pa. statute of lim; copy w/ annotations	7/7	Research 7/6	
7/7	Jane Hansen	memo re compensation for eminent domain taking of a leasehold	7/15	?	

The log alone is not enough. Students who are juggling several projects—as well as trying to go to the firm picnic, have lunch with their mentors, and so on—would be well advised to use a calendar. For example:

Mon. 7/6 a.m. meet w/ Pete H. p.m. go to King County Law Lib. to research	Tues. 7/7 a.m. more research at KCLL? lunch w/ Liz M. Give David Pa. S/L info	Wed. 7/8 draft Ferguson memo	Thurs. 7/9 p.m. observe deposition w/ Jack	Fri. 7/10 Ferguson memo must be done!
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Our handout also offers a checklist for project intake:

- When is this due?
- What is the requester’s name, phone number, e-mail address?
- If you have questions as you go along, can you contact the requester? Is there someone else in the office who is familiar with the project?
- What format should the final product be in? (A list of citations, photocopies of cases, informal notes, an oral report, a formal memo, a draft summary judgment motion?)
- How much time should you spend?

⁵ See Hazelton et al., *supra* note 1.

“Managing research assignments is challenging—even for those of us who have been doing it for many years.”

- How should costs be charged (client, account number)?
- Try to flesh out the assignment as much as you can before you start researching. Asking questions is GOOD!

The evaluations of this session were strong, but not unanimously so. One student remarked that the session was “VERY common sense—nothing new.” Another said, “This would be good for the summer after first year.” These students might have been upper-class students (or better organized than typical first-year students). But most of the students who attend the bridge-the-gap program are in their first summer, and most of the respondents indicated that the program would be useful for them. In their comments, several picked up on our prime lesson: the importance of asking questions. Since the skit was an experiment, we asked the students to note in their evaluations whether we should keep it. They liked it!⁶

Conclusion

Managing research assignments is challenging—even for those of us who have been doing it for many years. We can help students by offering them practical tips. They will be able to apply them better if we offer the tips when they need them—e.g., as they start their moot court projects or when they are in their summer jobs. Instead of giving the tips as a flat list of do’s and don’ts, we should offer the students opportunities to engage—for example, by brainstorming about the research process or by identifying with a student researcher in a skit.

⁶ See Aljean Harmetz, “*Amadeus*,” in *Sweep of Oscars Wins Best-Film and Seven Other Awards*, N.Y. Times, March 26, 1985, at C13 (quoting Sally Field’s famous Oscar acceptance speech: “I’ve wanted more than anything to have your respect. And I can’t deny the fact that you like me right now. You like me!”). Unquestionably, Ms. Field’s dramatic accomplishments far outstrip what we did in our skit, but it *is* nice to be liked.

Excerpts from *Managing a Research Assignment Skit*

ACT ONE, Scene One

Ann is sitting in a chair, leafing through a newspaper. Her phone rings.

Nancy: Ann, this is Nancy Partner. Could you come to my office? I have a quick research project for you.

Ann: I'll be right there.

(to audience): This is my first chance to impress this partner.

Ann walks to Nancy's "office." She does not carry a notepad.

Nancy: I need a copy of the PRP statute for a meeting in half an hour. Bring it to me.

Ann: OK! Right away!

Ann walks back to her desk, musing: Well, finding a statute: that seems easy enough. I'll just boot up Westlaw (or LEXIS-NEXIS). Hmm, I wonder what PRP is. Guess I'll find out. Sits down and mimes turning on computer. Ms. Partner acted like this was a really big-deal statute. I was too embarrassed to ask what it was, but since it's important, I bet it's a federal one. Let's see ... I'll type in PRP ... 10 documents. That's great. What are they about? Oh, "potentially responsible party." It's some environmental cleanup provision. I'll print these out and I'm done.

Walks back to Nancy's "office" with a stack of papers.

Ann: Here you go—the PRP statutes.

Nancy: What is this? USCS? What's this environmental stuff? That's not what I wanted at all. And why did you print it out, anyway? Don't you know how much LEXIS-NEXIS and Westlaw cost us? Why can't we hire competent clerks?

Ann walks out, hanging her head, miserable. Geez, I guess I blew that one. I wish I could turn back the clock and start over.

Mary holds up a sign: A SECOND CHANCE!

ACT ONE, Scene Two

Nancy: Ann, this is Nancy Partner. Could you come to my office? I have a quick research project for you.

Ann: I'll be right there.

(to audience): I guess I do get another chance! This time, I'll do better.

Nancy: I need a copy of the PRP statute for a meeting in half an hour. Bring it to me.

Ann: Could you tell me what PRP stands for?

Nancy: That's "personal restraint petition." It's a form of postconviction relief in this state, sort of like habeas corpus.

Ann: Would you like a printout or a photocopy of the statute?

Nancy: Just bring me the volume of the *Revised Code of Washington Annotated*.

Ann: OK—I'll go get it!

(to audience) I was nervous about asking questions, but Ms. Partner didn't really mind. And now I have a lot better idea about where to look! Funny that it's "personal restraint petition," not "potentially responsible party."

Since she wants the RCWA, I might as well start with the index. ... "PERSONAL RESTRAINT—Crimes and offenses, petitions, postconviction relief, limitation of actions, WA ST 10.73.090 et seq." *(leafs through the book)* Yep, this is it. The book has its pocket part; that's good. I'll check the legislative service just to be sure there weren't any changes this year. Wow, there's a new postconviction relief statute ... OK, I'm set.

Goes to Partner's "office," knocks.

Here's the volume you wanted. I marked the pages. I also checked the legislative service. There's a new statute on postconviction relief.

Nancy: Thanks! This is just what I needed!

Ann: This only took me a few minutes. Would you like me to bill it? What's the client number?

Nancy: Oh, this meeting is for some pro bono work I'm doing. Go ahead and record your time as ____, but we won't be billing it.

ACT TWO, like Act One, has Nancy Partner giving an assignment to Ann. This time the project is more complex, including both procedural and substantive issues. Ann takes notes using an overhead projector, so the students can see the information she jots down as Nancy gives the assignment and Ann asks clarifying questions. Ann's notes are brief, but capture key information—from client's name and billing number to facts and legal issues. Ann makes sure she understands what Nancy wants done first and when she should report to her. When Ann goes to the "library" to begin her research, she asks for help from a reference librarian, who tells her about some practice materials for her project. Ann reports back on a preliminary question and, with Nancy, plans what she will do next on the project.

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“Many students don’t understand that an argument consists essentially of a proposition followed by proof.”

COMMON FIRST-YEAR STUDENT WRITING ERRORS

BY MARY DUNNEWOLD

Mary Dunnewold is a Legal Writing Instructor at Hamline University School of Law in St. Paul, Minn.

“Know your audience” is a fundamental principle we teach our students. This principle also applies to us as teachers, however. When I first started teaching legal writing, I didn’t know my audience well (although I thought I did because I had once been one of them). As a result, I sometimes misunderstood my students’ writing problems and learning needs, and I assumed they already had skills that they actually still needed to develop. But after a number of years of teaching, I like to think I have come to know them at least a little. So in the hope that it will help other new legal writing instructors know their audiences more quickly and thoroughly than I initially did, I’ve compiled a list of a few basic principles that first-year legal writers need to learn.

Think Ahead

Some students are not yet particularly disciplined thinkers. They forge ahead into outlining or even writing without first clearly articulating what they intend to prove. And if they have not clearly articulated what they intend to prove, they usually do a bad job proving it. So students need to think about each assignment in terms of what they must prove to reach a particular outcome. I tell them that a crucial step in the prewriting phase of their work is to write down exactly what they need to prove and keep that reminder posted somewhere in front of them during the writing process. This helps keep them more grounded and on track while writing.

Understand the Structure of an Argument

Many students don’t understand that an argument consists essentially of a proposition followed by proof. Often, students will state a proposition but will follow it with only a few statements of fact without explaining the significance of the facts. To force students to think through the entire structure of their argument,

during the prewriting stage I ask them to write each proposition they intend to prove in their memo at the top of a separate page. Then under each proposition, they must list the reasons that the proposition could be true. The reasons must relate back to the authorities they have read for the project. In particular, they must indicate whether the reasons the court relied on the relevant cases apply in our case. Under each reason, they must list the facts of their case that support application of that reason. When they construct their argument in paragraph form, then, they should start the paragraph with the proposition they intend to prove, state why it is true, then explain why the reason applies. They should then follow this pattern for each additional reason applied. Students could also do this exercise in a flowchart format, bubble-sort format, or any other format that makes sense to them.

Understand the Appropriate Support for a Legal Argument

Many students also don’t initially understand that there are different kinds of “proof” that may support a proposition or outcome. So they need to learn first that there are some basic types of “argument proof” to be made in legal writing. I identify these basic argument proof types as rule-based, analogical, and policy arguments. As students develop their lists of reasons in the exercise above, I require them to consider each of these three types of arguments as reasons supporting each proposition they must prove. Once they have identified the possible arguments, they can decide which arguments are worth making. This exercise thus helps students develop the habit of always considering each basic kind of argument.

Understand Analogical Argument

Students quickly learn that they must make analogical arguments, but when they get down to actually explaining one on paper, they often have trouble. They compare facts that are not comparable or not relevant to the legal outcome. Or they never state the point of the comparison; they simply compare the facts. To help students learn to construct understandable, defensible analogical arguments, I ask them first to state a

reason from a reported case that applies to their case. They must use the language of the court or an appropriate “label” for the court’s reason of their own devising, which they used when describing the case. Once they have identified a reason from the reported case that applies to their case, they then compare the facts of the reported case and of their case to prove that the reason applies. They must pay particular attention to how (and whether) the facts relate to the reason.

So in the exercise described earlier, students learn to think in terms of statement of a reason followed by explanation of why the reason applies. At this point, however, they learn specifically that they can defend application of a reason by showing that the relevant facts from the reported case are the same as or different from the relevant facts from our case.

Focus on a Few Basic Sentence Structure Principles

Many students are not accustomed to considering their audience. As a result, they don’t notice whether their sentences are reader-friendly. But often when I suggest that a student needs to work on sentence structure, the student feels completely overwhelmed and doesn’t know what aspect of sentence structure to attack. Usually, however, if students employ just a few basic principles, their sentence structure will improve considerably and their thoughts will be more accessible. So I give them a handout (printed in a large font) to post by their word processors that reminds them of these basic principles: eliminate passive voice, keep subject and verb concrete and close together, eliminate clutter words, and eliminate prepositional phrases when possible. I specifically direct them to lists of clutter words that they should be eliminating, which are usually available in their Legal Writing textbook. While focusing on these few principles won’t fix everything wrong with a student writer’s sentence structure, it can significantly improve sentence clarity.

Focus on Connectors

Students also need to learn to be kind to their readers by making their organization and flow of ideas obvious. Often, they need to work on both paragraph and sentence connectors. So once they get a handle on basic paragraph structure, I direct students to work on connectors. They need to learn that essentially every paragraph and every sentence must include some overlapping language or a connecting word or phrase so readers can follow their train of thought. If they cannot highlight a connector in a sentence or between paragraphs, or explain why they don’t need one at that point, they need to revise.

A Rule Is Not a Case Illustration Is Not an Argument

Finally, students have trouble seeing the functional differences among a “rule,” a case illustration that explains how a rule has been applied in the past, and an argument applying the rule. A concrete, visual depiction of the relationship between these ideas can help many students more easily grasp the underlying concepts. My particular method is to tell them that the rule is a box with a label on it (the main legal term or idea) that defines the parameters of a legal concept, the case illustrations are stories telling us what facts have fit into the box in the past and what facts haven’t, and the argument is their story to the readers about whether the client’s facts fit in the box or fit the definition. This description also provides me with a convenient vocabulary for discussing the rule, the case illustrations, and the arguments with the students.

There are undoubtedly numerous ways to address the problems I have identified here, and there are certainly more problems than I have identified. I hope, however, that these suggestions will help other new instructors know their audience well sooner rather than later.

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“Students also need to learn to be kind to their readers ...”

“Many researchers ... overlook secondary sources.”

This is a regular column of reader-prepared answers offered in response to a specific question posed by Perspectives. Readers are invited not only to submit “answers” but also to submit “questions” they would like to see addressed in future issues.

OUR QUESTION

What do you consider to be the most underutilized secondary source in your law library? Is it a style manual or a book on appellate argument or a legal encyclopedia?

Savvy librarians know that secondary sources can provide an overview and lead researchers to other sources, including primary sources like cases and statutes. Many researchers, however, overlook secondary sources. We asked librarians to nominate the secondary sources they find researchers fail to use.

YOUR ANSWERS

This question was posed to various electronic mailing lists for law librarians in June 2000, and generated a list of resources that are worth highlighting in legal research and writing classes. The following works received the most votes.

Martindale-Hubbell Law Digest can assist in setting up online database searches for other state statutes. They can serve as an expanded index—pointing to the law while summarizing it briefly. **Mark Estes**, librarian for Holme Roberts & Owen in Denver, feels that it is an under-taught tool at law schools because they all have all 50 states’ statutes. However, when lawyers go out into private practice they won’t necessarily have that luxury, and online searching of state statutes is much more difficult than case law research. Determining the organizational structure of a statute online has unique challenges. As **Lynn Merring** of Stradling Yocca Carlson & Rauth in Newport Beach stated, “We can’t carry all 50 state statutes, and finding the correct statute online can be frustrating and expensive. Often the state digest gives us the exact cite we need; it almost always gets us in the right neighborhood. But very few people seem to be aware of it.”

American Law Reports (ALR)[®]: **Margi Heinen**, a librarian for Jaffe Raitt in Detroit, finds that many new associates want to find “all the information in one place, and often an ALR article will provide them not only with links to jurisdic-

tionally specific cases but also to related topics which they have not considered.” A county law librarian says that ALR articles provide a good start for almost any project. “Because there are so many ALR volumes, every topic is at least touched on in some way. While the article may not have a case from the state sought, you simply pull a case on point in a West reporter and get the key number. From there it is easy to track a point of law in any state.” **Sid Kasky** from Morgan, Lewis and Bockius LLP said, “ALR is a tremendous resource because if an issue you are researching can be found ... then your research time can be cut dramatically. For whatever reason, I find many do not use this resource often.” **Marita Paparelli** of the Bar & County Law Library in Scranton commented that “attorneys seem unfamiliar with using it.” She says that “ALR cuts to the chase and does a lot of the research for you.”

The Encyclopedia of Associations was another favorite underused resource. As **John Perkins** from the Oklahoma City University School of Law Library said, “Too many students and attorneys try to do original research when a phone call or e-mail can connect them to an interested party willing to provide the information needed.” Researchers generally overlook the timesaving value of directory information. A librarian with the University of Texas said about the *Encyclopedia*, “By using a little imagination, one can find the obscure research institute or other organization that keeps the odd statistic or handles the strange survey you are hoping to find.”

West Group’s *Words and Phrases*[®] was described as particularly useful for litigators. It is a valuable reference for anyone, especially new attorneys. **Mark Estes** commented that “it reminds [the researcher] that so much turns on the meaning of the word. It also doubles as a thesaurus.” This set has a place even in the online world of total recall; the selective nature of *Words and Phrases* allows researchers to pinpoint cases that define key terms. On the other hand, a law librarian at the University of San Diego described *Words and Phrases* as “a vast monument to the inability of lawyers to express themselves clearly.”

Causes of Action and *American Jurisprudence Proof of Facts* were also nominated. “As a medium sized trial court library, we can’t have specialized treatises on lots of topics that are well covered in

.....

these sets. It never ceases to amaze me that attorneys often overlook them without the intervention of library staff,” commented **Karlye Pillai**, senior law librarian for the New York State Supreme Court Library in Troy.

Resources for Tax Research: Both the RIA *All States Tax Guide* and the CCH *State Tax Guide* were named as valuable and underused. One librarian from a Milwaukee firm said of the CCH *Standard Federal Tax Reporter*: “Rookies don’t know it exists and they try to do tax research in the USCA® and CFR. They are always amazed at how useful it is once you show it to them.” Research in specialized areas of law, involving administrative regulations and rulings, is much simpler when the researcher discovers the one-stop shopping approach of a looseleaf treatise. Mertens *The Law of Federal Income Taxation* and the *Proceedings of New York University Annual Institute on Federal Taxation* were also identified as overlooked secondary sources.

Other nominations ranged from finding aids to standard reference tools such as the following:

- *West’s National Reporter Blue Book* (most attorneys have never heard of it)
- *Wasserman’s Law and Legal Information Directory*
- State encyclopedias
- Digests—any digest (“students won’t use them, and, therefore, practitioners have no idea of their value”)
- *Shepard’s® Acts and Cases by Popular Name*
- Major Studies and Issue Briefs of the Congressional Research Service (Library of Congress)
- Prefatory material in any publication (Introductions, abstracts, directions, etc.)

The general consensus of the respondents was that secondary sources, while often overlooked, are a key part of the research process. The tools identified by our readers will save researchers time and money.

Please send suggested questions for future issues to the column editors.

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“The tools identified by our readers will save researchers time and money.”

THE TOP 10 ANSWERS, PLEASE

BY KELLY BROWNE

Kelly Browne is Head of Reference Services at the University of Connecticut School of Law Library in Hartford.

Dear Kelly,

Greetings. I just finished reading your article ("The Top 10 Things Firm Librarians Wish Summer Associates Knew") in the Spring 2000 issue of *Perspectives*. I enjoyed reading this piece and was relieved to see that I'm not the only librarian who thinks law students (and attorneys) should understand the difference between statutes and regulations!

Anyway, I took the quiz included in your article (in the Appendix) and, I'm embarrassed to admit, I do not know all the answers. I am wondering whether you have a set of answers to go with the quiz.

Thanks very much,

Liz Larson

Reference Librarian
Indiana University School of Law

Dear Liz,

I didn't really have a key when I first gave the pre-test at our bridge-the-gap session. Grading the pre-test was the substance of the whole hour-long class; each question was just a springboard for discussion. But (now *I'm* embarrassed to admit) you are not the first law librarian to tell me he or she didn't know all the answers, so it appears that publishing a key is in order. The easy answers, and summaries of the discussions the answers generated, are as follows:

1. A search on Westlaw® costs:
 - a) Approximately \$4 per minute
 - b) Depends whether pricing plan is flat rate, transactional, or hourly
 - c) Depends on which database you run the search in

d) All of the above

ANSWER: d) All of the above. We handed out a comparison of LEXIS® and Westlaw prices for common searches, briefly explained transactional and time-based pricing, and told them to find out what their firm's pricing plan was in their first three days on the job (as suggested by the number 10 top thing firm librarians wished summer associates knew).

2. A reference to 85 Lab. L. Rep. (CCH) 187 is a reference to a:

- a) Page number
- b) Headnote number
- c) Paragraph number
- d) None of the above

ANSWER: c) Paragraph number. We passed out a research guide on looseleaf services, briefly explained how to use them, and told them what great resources they were for certain areas of the law (as per number 9 in the original top 10 list).

3. Before you leave the assigning attorney's office, you should know the following about your assignment:

- a) How much time to spend on it
- b) What format it should be in
- c) When it is due
- d) Whether you can use LEXIS or Westlaw
- e) Which jurisdiction controls
- f) All of the above

ANSWER: f) All of the above. We distributed a sample assignment sheet and legal research evaluation form, "Checklist of Basic Legal Research Sources," from a local firm and a handout titled "Research Strategy." We discussed the fact that although it is sometimes hard to ask the assigning attorney questions, it is necessary and appropriate (as per number 7).

4. Your best friend in a law firm is:

- a) The other summer associates
- b) The hiring committee
- c) Your senior associate mentor
- d) The librarian(s)

ANSWER: d) The librarians, of course (as per number 6). We handed out a copy of the original "Top 10" article to prove it. We also mentioned number 8 at this point, to remind them that saying "thank you" goes a long way.

5. The *Federal Register* is to the *Code of Federal Regulations* what the:

- a) *Statutes at Large* is to the U.S.C.
- b) GSCA is to the Conn. Pub. Acts
- c) Conn. Agencies Regs. is to the Conn. L.J.
- d) None of the above

ANSWER: a) *Statutes at Large* is to the U.S.C. We discussed how statutes and regulations are passed and codified. We handed out a research guide on federal administrative law (as per number 1).

1. Final Connecticut state agency regulations first appear in/on:

- a) *Connecticut Law Journal*
- b) *Connecticut Law Tribune*
- c) *Regulations of Connecticut State Agencies*
- d) Westlaw and/or LEXIS

ANSWER: b) *Connecticut Law Tribune*. This is, of course, peculiar to each state. We distributed research guides on Connecticut, Massachusetts, and New York legal material because most of our students end up practicing in these states. The point of this question is to share information about your own state's administrative code (as per number 5).

2. Match the following items of legislative history with the sources in which they appear:

- | | |
|-----------------------------|--|
| a) Hearings | 1) <i>U.S. Code Congressional & Administrative News</i> [®] |
| b) Floor debates | 2) CIS microfiche |
| c) House and Senate reports | 3) <i>Congressional Record</i> |

ANSWER: a=2; b=3; c=1 and 2. We distributed a research guide on legislative history and discussed how a bill becomes a law in the federal system. We discussed how researchers should be familiar with their own state's legislative history process (as per number 5).

3. The best place to do research on Connecticut state legislative history is:

- a) UConn School of Law Library
- b) The Internet
- c) The Connecticut State Library
- d) LEXIS and/or Westlaw

ANSWER: c) The Connecticut State Library. It has everything in print; the University of Connecticut Law Library only has fiche back to 1985. Again, this is local information, but it led into a lively discussion about the relative value of the various sources and formats (as per number 4).

4. If you were stranded on a desert island but knew you were going to have to appear in a Connecticut state court tomorrow (a magic carpet will transport you there and back after your appearance) and could only choose one set of books to have with you, would it be:

- a) West's Connecticut Practice Series
- b) Connecticut Practice Book Annotated, with Forms
- c) Official Connecticut Practice Book
- d) Connecticut Legal Forms

ANSWER: a) West's Connecticut Practice Series. This is a personal choice. The point is to remind researchers of the importance of jurisdiction-specific practice materials (as per number 3).

5. Federal administrative decisions can be found in/on:

- a) LEXIS and/or Westlaw
- b) The Internet
- c) Official agency reporters
- d) Commercial reporters

ANSWER: This is a trick question because it depends on the agency. But this question is a springboard to an extended discussion about how agencies issue decisions in general (as per number 2).

I bet you did better than you thought you did!

Kelly

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COMPILED BY DONALD J. DUNN

Donald J. Dunn is Dean and Professor of Law at Western New England College in Springfield, Mass. He is a member of the Perspectives Editorial Board. This bibliography includes references to books, articles, bibliographies, and research guides that could potentially prove useful to both instructors and students and includes sources noted since the previous issue of Perspectives.

Glen-Peter Ahlers, Sr., *Notaries Public: A Pathfinder*, 32 J. Marshall L. Rev. 1065 (1999).

This research tool guides the user to various sources of information relating to notaries public. It covers federal and state legislation, case law, administrative rules and regulations, books, law reviews, associations, and human experts.

ALWD Citation Manual: A Professional System of Citation, 2000. [New York, NY: Aspen Law & Business, 425 p.]

Prepared by the Association of Legal Writing Directors and Darby Dickerson of Stetson University College of Law, this extensive manual is designed as an alternative to *The Bluebook*. Its design, clarity, and flexibility position it to be a major competitor to the long-enduring Harvard citation standard.

Amy B. Atchison et al., *Judicial Independence and Judicial Accountability: A Selected Bibliography*, 72 S. Cal. L. Rev. 723 (1999).

"[P]rovides citations and abstracts for selected books, papers, reports, and articles relating to the topics of judicial independence and judicial accountability" over the 40-year period from 1958 through November 30, 1998. *Id.* at 724. Prepared in conjunction with a symposium held at the University of Southern California.

Steven C. Bennett, *Research Strategies—A Practical Guide to Cite-Checking: Assessing What Must Be Done*, N.Y. St. B.J., Feb. 2000, at 48.

"[P]rovides a short list of practical questions and answers to guide junior lawyers who take up their first cite-checking tasks." *Id.*

Robert C. Berring & Elizabeth A. Edinger, *Finding the Law* (11th ed. 1999). [St. Paul, MN: West Group, 393 p.]

An updated version of one of the standards in the field of legal research. An appendix includes a reprint of a case in both print and electronic format to illustrate points made in the text. A Web-based update is provided at <www.law.berkeley.edu/faculty/berringr/findingthelaw/menu.html>.

Rosemary Bunnage, *Current Awareness from the User's Perspective: A Survey of Harvard Legal Academics*, Legal Reference Services Q., No. 4, 1999, at 115.

Reports the results of a survey of Harvard Law School faculty that was designed to assess and improve current awareness tools and produce a new tool that fills gaps in faculty needs for information.

Richard Cabrera & Stephanie Zeman, *Law School Academic Support Programs—A Survey of Available Academic Support Programs for the New Century*, 26 Wm. Mitchell L. Rev. 205 (2000).

Gives the results of a two-and-a-half-year survey designed to identify schools with academic support programs; the criteria, conditions, and components of the program; and whether it targets minorities.

Donna C. Chin et al., *One Response to the Decline of Civility in the Legal Profession: Teaching Professionalism in Legal Research and Writing*, 51 Rutgers L. Rev. 889 (1999).

Discusses how legal research and writing courses may be "the ideal forum to begin instilling ... [civility and professionalism] in prospective attorneys." *Id.* at 896.

Morris L. Cohen & Kent C. Olson, *Legal Research in a Nutshell* (7th ed. 2000). [St. Paul, MN: West Group, 441 p.]

One of the standard works in the field has been revised and updated and now contains more than 300 Web site addresses. Internet resources are fully integrated into the text. Secondary sources are now introduced before primary materials. Includes new exhibits.

Christine A. Corcos, *Federal Admiralty Judges and Courts: A Bibliography*, 31 J. Mar. L. & Com. 505 (2000).

“[L]ists contemporary scholarship by or about federal admiralty judges and courts.” *Id.* Unannotated.

Richard A. Danner, *Focus on Information Literacy*, Nat'l L.J. July 17, 2000, at 1.

Discusses the challenges that law schools face as a result of students' reliance on online materials for legal research.

Diana Roberto Donahoe, *Writing Clinic—Analyzing the Writer's Analysis: Will It Be Clear to the Reader?*, N.Y. St. B.J., Apr. 2000, at 46.

Provides 10 tips for developing a critical eye for rereading drafts.

Shelley L. Dowling & Mary C. Custy, *The Jurisprudence of United States Constitutional Interpretation: An Annotated Bibliography* (1999). [Buffalo, NY: William S. Hein & Co., 574 p.]

This comprehensive annotated bibliography identifies and describes more than 800 documentary collections, treatises, textbooks, articles, and electronic resources bearing on U.S. constitutional interpretation.

Linda Holdeman Edwards, *Legal Writing: Process, Analysis, and Organization* (2d ed. 1999). [New York, NY: Aspen Law & Business, 450 p.]

Designed to concentrate on the basics of legal reasoning and writing, this volume provides a step-by-step overview of the process of legal writing, outlining, creating a working draft, developing a final document, and revising effectively. Contains a new chapter on oral argument.

Jack A. Hiller, *How Not to Write Answers to Law School Examinations*, 29 Stetson L. Rev. 1181 (2000).

Discusses the value of organization, budgeting of time, writing like a literate person, and avoiding useless discussion and slang.

Shu Huang, *Researching Periodical Literature on the Web*, 24 Can. L. Libr. 198 (1999).

Discusses the major Web sites that provide listings and links to legal periodicals and those sources with searchable databases.

Faye Jones, *Twenty-Five Years After Watergate: A Selective Bibliography*, 51 Hastings L.J. 793 (2000).

This extensive, although selective, bibliography covers books, symposia, law review and popular articles, and bibliographies about Richard Nixon and the Watergate aftermath.

J. Clark Kelso, *Studying Law: An Introduction to Legal Research* (3d ed. 1999). [New York, NY: LEXIS® Publishing, 87 p.]

A very basic text for use in an introductory course on legal research. Accompanied by a series of computer exercises.

Bruce M. Kennedy, *Design Principles for Universal Legal Citations*, 30 U. Tol. L. Rev. 531 (1999).

Universal citations are intended to allow researchers to find law published in both print and electronic format. The universal system is still developing. “This essay explores design principles implicit in a mature system of universal citations.” *Id.* at 532.

Christina L. Kunz et al., *The Process of Legal Research* (5th ed. 2000). [New York, NY: Aspen Law & Business, 530 p.]

A revision of one of the standard works in the field of legal research, with new material regarding the ongoing debate about whether to use paper or electronic research. Includes all new fact situations in the problem sets.

Terri LeClercq, *Guide to Legal Writing Style* (2d ed., 2000). [New York, NY: Aspen Law & Business, 200 p.]

Provides stylistic elements for polishing documents, a synopsis of the process of crafting a final legal document, practice exercises, and grammar and punctuation reviews.

Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 Fla. St. U. L. Rev. 1067 (1999).

This article is intended for two types of audiences. The first is those “[l]awyers considering their first jobs as a professor of legal writing. . . .” The secondary audience is “writing professors who are seeking a teaching appointment at another law school, or perhaps even a directorship of a legal writing program.” *Id.*

Antoinette Sedillo Lopez, *Translating Legal Terms in Context*, 17 *Legal Reference Services Q.*, No. 4, 1999, at 105.

Evaluates the relative merits of a number of Spanish/English legal dictionaries, with a particular focus on the author's or editor's understanding of cultural and language differences.

Ruth Ann McKinney, *Legal Research: A Practical Guide and Self-Instructional Workbook* (2d ed. 2000). [St. Paul, MN: West Group, 304 p.]

Designed as a tool that will self-teach the user. Includes assignments followed by practice tips and "bombs" (warnings about where one might go wrong). Accompanied by a CALR problem set and a teacher's manual.

Susanna Marlowe & Jane Underwood, *Adopting More Kids: Barriers and Solutions—A Selective Bibliography of the Participants' Adoption Law Publications*, 28 *Cap. U. L. Rev.* 141 (1999).

An annotated listing of the publications of the speakers at a symposium titled "Adopting More Kids: Barriers and Solutions."

Kellen McClendon, *The Convergence of Thinking, Talking, and Writing: A Theory for Improving Writing*, 38 *Duq. L. Rev.* 21 (1999).

The author discusses his theory of developing good legal writing, which is "Write the way you think. Write the way you talk. Talk the way you think. Talk the way you write. Think the way you write. Think the way you talk." *Id.* at 22.

Steve Mirsky, *Parental Kidnapping: A Guide to Resources*, *Legal Reference Services Q.*, No. 4, 1999, at 93.

A pathfinder to the state and federal resources relating to parental kidnapping. Not intended to be comprehensive.

NLRB Style Manual: A Guide for Legal Writing in Plain English (2000 rev.), [Washington, DC: National Labor Relations Board, 1 vol., looseleaf].

Designed specifically for those who draft documents for the National Labor Relations Board. Contains sections titled "Good Usage"

and "Plain English—Not Legalese."

Colleen Kristl Pauwels, *Legal Research: Traditional Sources, New Technologies* (1999).

[Bloomington, IN: Phi Delta Kappa Educational Foundation, 91 p.]

A very basic, brief introduction to legal research, including Web sources.

Teresa J. Reid Rambo & Leanne J. Pflaum, *Legal Writing by Design: A Guide to Great Briefs and Memos* (2000). [Durham, NC: Carolina Academic Press, 300 p.]

Explains the design of deductive and inductive reasoning and analytical thinking and shows that writing is a by-product of reasoning. Provides examples of technical rules of style and citation, memos, briefs, etc.

Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 *Stetson L. Rev.* 1193 (2000).

Stresses that research, writing, and analysis are complex and interwoven and that these are part of a process that needs to be developed and fine-tuned. Also discusses the value of upper-level writing opportunities, such as law review and moot court.

Virginia Rutledge, *Defining Fair Use in Visual Art: Research Sources and Strategies*, *Legal Reference Services Q.*, No. 4, 1999, at 7.

Intended for attorneys, museum administrators, art collectors, art dealers, and artists handling copyright litigation, this guide provides information about the "resources on the intersection of intellectual property law and contemporary visual art and on the application of the doctrine of fair use within this context." *Id.*

Terry Jean Seligmann, *Beyond "Bingo!": Educating Legal Researchers As Problem Solvers*, 26 *Wm. Mitchell L. Rev.* 179 (2000).

The author argues that the "Ah ha, I got it" notion should take place during legal research training, not afterward. Thus, the researcher will be "equipped to blaze trails toward an answer." *Id.* at 180.

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Amy E. Sloan, *Basic Legal Research: Tools and Strategies* (2000). [New York, NY: Aspen Law & Business, 200 p.]

A concise volume that focuses exclusively on essential legal research skills using a building-block approach. Includes a teacher's manual.

Robert C. Vreeland, *Law Libraries in Hyperspace: A Citation Analysis of World Wide Web Sites*, 92 *Law Libr. J.* 9 (2000).

"The goal of this article is to formulate an objective standard for the measurement and evaluation of law library Web sites." *Id.* at 10.

Sally Ginsberg Waters, *A Selected Bibliography [in Maximizing the Law School Experience II]*, 29 *Stetson L. Rev.* 1323 (2000).

This brief, annotated bibliography focuses on legal education from the perspective of the law student.

Stephen E. Young, "*By Command of Her Majesty*": *An Introduction to the Command Papers of the United Kingdom*, 92 *Law Libr. J.* 81 (2000).

Command Papers are one of five main types of parliamentary papers in the United Kingdom, but are often overlooked by researchers. These Papers, which can provide insights into governmental policymaking and thinking, are described and the sources for locating them are discussed.

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PREPARED BY FRANK G. HOUDEK

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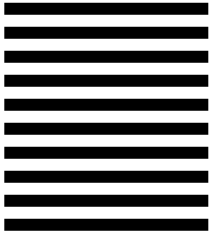


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