

## LEGAL RESEARCH AND THE SUMMER JOB

### ... ADVICE FROM THE LAW SCHOOL

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### ... ADVICE FROM THE LAW FIRM

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**Editor's Note:** *This article offers examples of documents that can be distributed to law students to help them succeed in their summer legal jobs. The first, **Legal Research Tips for the Summer**, is a model of advice that a law school might give to students prior to their summer employment. It is followed by **How to Survive Summer Associate Research ... and Thrive!**, an exemplar of what a law firm might tell new associates about summer legal research upon their arrival in the firm. Readers are encouraged to distribute copies of these documents "as is" or to modify them to meet their particular needs.*

### Introduction<sup>1</sup>

For law students, obtaining a legal position for the summer is a major professional step. Whether the employer is a law firm, a government agency, a judge, a business, or a public interest organization, the student knows that the job offers a chance to try out legal skills and gauge his or her aptitude

and ability. It also may offer an opportunity to gain a positive reference and even an invitation for a permanent position.

Of course, this foray into the "real world" can be intimidating. Most students probably are asking themselves unsettling questions: "Do I really have the ability?" "Do I know how to use the law books and electronic research tools efficiently?" "If I am given a research assignment, will I know where to start?"

As teachers, whether in the law school or the law firm, we can help. From our past experiences, we probably know the pitfalls into which other students have fallen and what measures students can take to sidestep dangers and succeed. We can pass on this advice to students in a variety of ways: individual conversations, a formal lecture on how to succeed, and a hand-out that gives guidance. (One example of a helpful handout is *Legends of the Fall: Begin with a Successful Summer*, a pamphlet published by the National Association for Law Placement, which can be reached at (202) 667-1666.)

What follows is some advice for students on completing summer research assignments, presented in the form of hand-outs that readers can easily duplicate and distribute to students as summer approaches (*Legal Research Tips for the Summer—Advice from the Law School*) or as they arrive in the law firm (*How to Survive Summer Associate Research ... and Thrive!—Advice from the Law Firm*).

<sup>1</sup> The introduction to this article was prepared by Nazareth A. Pantaloni and Louis J. Sirico, Jr.

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## Legal Research Tips for the Summer —Advice from the Law School

No matter what type of position you will have or what type of projects you will be tackling this summer, a big part of your job will be performing legal research. Although you have been well trained, you may have some butterflies caused by self-doubts and uncertainties about exactly what your assignments will be and how to execute them. These reservations are perfectly natural. They are much like the ones that plagued you when you first entered law school. Ultimately, you dealt with the transition to law school successfully, and now you can expect to make the transition to the “real legal world” successfully.

To guide you along, here are some suggestions on how to proceed. As you will see, the preparation begins before the summer starts.

### Before You Leave for the Summer

**Talk with a librarian at the law school.** If you know what kind of work you will be doing, the librarian can review with you some of the important sources in particular areas of law. For example, if you expect to be working in the real estate field, the librarian can tell you about the major treatises, looseleaves, form books, and periodicals in that area. The librarian can also describe sources tailored to the law of the state in which you will be working. If you will be researching in an administrative law field, you will find it immensely helpful to learn or review administrative law sources, particularly statutes, regulations, and looseleaves.

**Sign up for the review sessions provided for Westlaw® and LEXIS-NEXIS®.** It's easy to get rusty.

**Where needed, review selected print sources.** Again, it's easy to get rusty.

### Once You Arrive at Your Office

**Find out what legal resources are available.** You may find a full-service law library, with materials covering a wide range of subjects. Alternatively, you may find a small collection devoted to one or two areas of practice. No matter what the library includes, be sure to learn about the policies for using the firm's legal resources. If there is a law librarian, plan an early meeting so that you can learn about the resources and whether there will be any orientation sessions. You may be relying heavily on a local bar association library or some other public law library. If so, inquire about its policies on accessing and borrowing materials. Find out whether the library will be holding an introductory session for summer associates.

**Determine what access your office has to electronic sources.** If it has access to Westlaw and LEXIS-NEXIS, acquaint yourself with the policies for searching, downloading, and printing. Depending on your office's pricing plan, you may be limited in how much searching and downloading you can perform. For example, if the firm owns print copies of a reporter, you may be permitted to search electronically for citations, but not to print the cases. Also, be sure to check on the office's collection of CD-ROM resources. Many practicing lawyers use CD-ROMs more frequently than do law students.

### When Working on Projects During the Summer

**When you receive an assignment, don't be afraid to ask questions.** Even if your supervisor seems impatient and brusque, be gracious but assertive in getting all the information you need. Without this information, you may fail to meet his or her expectations in completing the assignment. Here are some questions to ask: What sort of final work product would you like (e.g., a written memorandum of law or a short answer)? For purposes of format, can you show me a completed assignment that uses the format you prefer? (Don't assume that each supervisor in an office prefers the same format.) Can you tell me more about the facts in the case? If a document is involved (e.g., a will, a contract, or a deed), could you give me a copy? Has anyone else already researched this issue or a related one? What is your deadline? (Seek as precise a deadline as possible. “In a few days” is open to multiple interpretations.) Would you like copies of sources of law that I find? Alternatively, would you like just a copy of a primary source, such as a statute or case, or would you like a copy of a secondary source, such as a law review article, to read for yourself?

**When necessary, ask follow-up questions.** Although you may want to show your employer that you are self-reliant, don't spin your wheels for long periods of time. Your supervisor would rather have you admit that you're stuck than waste lots of time and money getting nowhere. When you first get your assignment,

say that you would like to meet periodically to give updates and ask questions. Of course, you won't want to impose to the point of pestering your supervisor or revealing excessive insecurity. Save up your questions to reduce the number of meetings. In deciding what questions to ask and how frequently to speak with your supervisor, use good judgment.

**When beginning a brand-new research project, try starting with a secondary source.** Your question may have already been the subject of a law review article, an ALR annotation, or a treatise. The secondary source will give you the overview you need and the starting point for a more specific investigation. In either the text or the footnotes, you will find citations to primary and other secondary sources that you should examine and update.

**If you are working in an area that is heavily regulated, look for a looseleaf publication on the subject.** Examples of such areas include security, tax, labor, antitrust, and employment discrimination. Looseleafs bring all the current sources of law together in one place. Every looseleaf differs with respect to which sources it includes and which it excludes. Look for information on coverage in the beginning pages. Ask someone who has used the looseleaf before for an evaluation of its quality and for suggestions on how to use it.

**Be sure to update all your primary sources of law.** This is essential. It is the only way you can be sure that a case, statute, or regulation is still valid. With print sources, check the date of publication and examine all updates. With electronic research, check the dates of coverage for databases, CD-ROMs, and other such sources.

**Don't begin your research with Westlaw or LEXIS-NEXIS unless you have permission to do so.** Sometimes, efficiency and cost militate in favor of using printed books. Know your office's policy on when you can perform electronic research. Databases are not always the best place to start. Always look for statutes and regulations in print; they are much easier to find this way. Begin case research with the case digests. Before logging on, call the service's customer service to discuss a search strategy. Sometimes the service representative will run preliminary searches to let you know if you can expect to find anything. Also, before logging on, identify your issue of law precisely and decide which part of the database you will be searching. With a little forethought you can minimize costs by searching as little of the database as possible.

**Find out if the office has access to the Internet.** The World Wide Web gives access to many cases and some statutes and regulations—at no cost.

**Never turn in a "rough draft."** You run the risk of your supervisor treating it as a final draft—no matter how you label the document—and giving you a poor evaluation.

**Before turning in a document, let trusted peers and mentors review it.** You are working in a legal culture different from the culture with which you are familiar. As with all cultures, it has its own set of unspoken rules. The only way to avoid breaking those rules is to consult with people who know what those rules are. Even if you think your document is perfect, you may have used an inappropriate format or tone. Play it safe.

**Go the extra mile.** When researching a problem, you may recognize another argument worth pursuing or research in a neighboring jurisdiction worth investigating. Suggest your proposal to your supervisor. Your suggestion may show that you have initiative and imagination and are willing to do more than passively complete an assignment. However, do not do additional research until you receive permission. The supervisor may have already considered and rejected your proposed argument or decided that financial constraints do not justify the additional cost.

**Call home.** If you do not want to admit to your supervisor that you are stuck at some point in your research, call the reference desk at your law school library. Librarians typically won't be able to send you the resources that you need or do your research for you; however, they can help you decipher a citation, suggest some possible next steps with your office's resources in mind, or simply review what you have done to make sure you've covered everything. They want you to succeed.

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## How to Survive Summer Associate Research ... and Thrive!—Advice from the Law Firm

**The Bad News:** A summer clerkship is like a three-month-long job interview!

**The Good News:** You have three months—not just three hours—to demonstrate all your talents!

Your clerkship will give you a taste of what it will be like to practice law, but the experience will probably still feel a lot like school. **That’s exactly what it’s supposed to feel like!** We in the law firms know that you’re still students and have a lot to learn. Everyone from your attorney mentor to the firm’s receptionist expects to help you master the nuts and bolts of practice—and we approach the summer associate season as if we were running a little school.

In law school, you’ve been learning to *think like a lawyer*. Teaching you to think like a lawyer enables you to succeed in practice by conditioning your mind to see analogies between existing precedents and new issues and facts.

This summer, you’ll start learning how to *act like a lawyer*. You’ll probably spend a lot of time doing research and organizing mountains of paper, which isn’t really very glamorous. Unfortunately, these activities make up a significant portion of legal practice. Therefore, if you approach these tasks with acceptance and enthusiasm, you’ll be happier and it will show in the quality of your work. All this translates into the brass ring at the end of the summer—that all-important job offer!

### Typical Summer Associate Research Assignments

#### The Wild Goose Chase

The Scenario: “We think our matter is a case of first impression, but we won’t tell you because we think that knowledge will influence your research.”

Your Strategy: Start a research journal and record the entire process of your research—every resource, every search term, every search strategy. Submit a memo detailing your thorough research, thus demonstrating that this is a new and unique case.

#### The Survey

The Scenario: “For a large national client, we need to know how all 50 states handle a particular legal issue. If we make you research this issue 50 times, you’ll learn some substantive law and we’ll get a useful resource for quick advice to clients in the future.”

Your Strategy: Before you conduct the survey yourself, find out if someone else has already done the work. Ask your librarian for the following titles, and use them to see if anyone else has already compiled the information for you:

*Subject Compilations of State Laws* (Boast and Nyberg, 1981)

*National Survey of State Laws* (Gale, 1993)

*Statutes Compared: A U.S., Canadian, Multinational Research Guide to Statutes by Subject* (Hein, 1992)

#### Update My ...

The Scenario: Partners often teach courses, conduct seminars, and write articles or books to develop both new business and legal expertise. They use summer associates to support these endeavors.

Your Strategy: Obtain both the print and electronic versions of the document. Find CheckCite or WestCheck® automated citation-checking and retrieval software. Open the document from within the software and select the appropriate retrieval and citation options. Print the report and review it to identify the new decisions, statutes, and regulations you need to add. Finish up with a well-designed subject search in a current LEXIS-NEXIS or Westlaw database.

### Golden Rules of Successful Research

**1. Plan your strategy.** A good strategy starts at the time of the assignment. By culling information from the person requesting your service, you can save yourself time and frustration. Use the mnemonic device *JUST ASK*<sup>2</sup> as a final checklist before exiting an assignment to ensure that you have the basic facts. Build your strategy around the information you collect.

<sup>2</sup> JUST ASK stands for the following components of research: J = Jurisdiction; U = Useful Tips; S = Scope of Research; T = Terms of Art; A = Acronyms; S = Sources; K = Key Cost Constraints

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**2. Assess your resources.** Before you begin legal research, inventory the materials at your disposal. Locate the librarian and find out how the organization's collection is developed and arranged. Ask about the specific subject collection you'll be using. See if there are local libraries with collections in your area of law and request visiting privileges.

**3. Put your research in a context.** Unless you're an expert in the area of law you need to research, you should start the process by identifying the location of your issue within the broader subject. Secondary materials are best for determining context. In a law library, start with the card catalog and locate the relevant collection of treatises on your subject. Aim to find at least one very broad treatise and one more narrowly focused title.

**4. Employ serendipity.** There is something to be said for the ameliorative effects of browsing. Sometimes the answer is sitting next to the spot where you expected to find it. Browsing opens your mind to possibilities that you might never contemplate by "staying in the box." Commercial legal publishers include little gems of information you might only find by turning one more page or flipping to a seemingly unrelated chapter just because it caught your eye.

**5. Don't reinvent the wheel.** The law does change rapidly, but the burden of uncovering every facet related to your issue need not rest entirely on your shoulders. Someone, somewhere, may have already examined the issue at great length, and the product of that effort awaits your discovery. It's worth the time to locate an expert, either in your organization or in the body of published legal works, to save yourself some time and your client some money.

**6. Open your mind to analogies.** Too many novice researchers spend endless hours searching for a case that matches their facts perfectly, only to give up in despair that no such case exists. If practicing law were simply a matter of locating factually identical precedents and matching them to client problems, many people wouldn't need lawyers. The challenge of practicing law is seeing the patterns in existing precedent and successfully arguing that those patterns include—or exclude—the circumstances at hand.

**7. Browse annotations, read full texts.** The temptation to rely on case annotations is strong, but to do so risks missing the subtleties embedded in dicta or suggested more by what is not stated than by what is. Use the annotations to serve the purpose for which they were designed—guidance. Develop a list of citations as you review the annotations, then go read the corresponding decisions carefully. Online databases can be most effective at this point because they allow you to collect the decisions you want to read quickly; however, make sure you understand your organization's pricing plan when it comes time to read decisions online.

**8. Don't limit your research to case law.** Although the ultimate goal of a good research strategy is to locate case law on point, starting with a statute or regulation can lead you to relevant decisions more effectively than the familiar paths of digest or database searches. Why? Even the best case-finding tools are subjective. When you start with a statute, you rely on an objective criterion for organizing and identifying relevant material—the number associated with the code section.

**9. Confirm the reliability of your source.** Not all law books are created equal, and it's wise to develop a healthy skepticism about the reliability of the tools you use for research. Seek independent confirmation of the currentness and accuracy of the information contained in a tool. The reputation of the author can be a good clue; look for the author's biography in the book for some insights. Note the breadth of sources of information. Review the table of authorities and the index. Check for *Bluebook* form in the citations and for a variety of sources. Poor citation form, a lack of authorities, and poor indexing are good clues about the reliability of the source.

**10. Have a backup.** Computer systems go down, books disappear from shelves, libraries close at certain times, printers fail, faxes blur, and even the Internet can slow to such a crawl during peak hours that the answer is not worth the wait. If you only know one way to locate the information you need, some day something will interfere with that approach and you won't have access to that information unless you have an alternative.

**11. Write down every citation you find when you find it.** When you come across a source that looks promising, write down its citation immediately! In the excitement of finding a relevant piece of information, it's easy to skip this important step, so make it a habit from the start of your career, or at least the start of your next research project, and you'll not regret its absence later.

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**12. Make the most of what you do find.** Squeeze every potentially relevant piece of information from any good source you locate. There's an odd phenomenon in research by which we tend to devalue a good source just because it's no longer elusive. Maximize what you do find and resist moving on just because you have something good in hand.

**13. Close the circle.** Knowing when to stop researching and start writing is surprisingly difficult. If you've found relevant information, you may be tempted to stop before you've fully explored every tangent. If you haven't found the correct authority, you may draft incomplete arguments for your case.

To "close the research circle," follow every lead to its logical conclusion. If you find a relevant case, verify that it is still good law. Read the cases cited within the text of that decision as well as those references in the citators you use to confirm its validity. If the cited cases turn out to be relevant, Shepardize them and read the cases cited within their text. Continue this process until you stop hitting relevant cases.

When you see repeating citations in both the primary and secondary sources you use, you can feel confident that you've identified the main line of cases on point. Use a secondary source you located in the initial phase of your research as a final checklist to ensure that you've uncovered all the possible angles.

If you haven't found relevant law, you will probably feel uncomfortable claiming that there are no cases on point unless you're absolutely certain you've exhausted all the possibilities. While you can't really prove the absence of relevant case law, in some situations, you can point to circumstantial evidence supporting your claim.

**14. Update your research.** You cannot be overly cautious when it comes to verifying the currentness of laws you cite to support your issues. Master the use of standard citators, such as Shepard's and KeyCite®. Remember that Shepard's is not the only publisher of citators. Smaller publishers include citators in looseleaf services and other case reporters, particularly in administrative areas of law.

**15. Have fun.** Legal research occupies an odd perch in the practice of law. Attorneys risk malpractice by failing to perform research sufficient to make informed judgments on behalf of their clients, yet within the hierarchy of law firm functions, legal research is delegated to the most junior attorneys. Just when a lawyer really learns how to perform legal research well, he or she graduates to more "desirable" tasks. It's no wonder this critical responsibility is perceived as drudgery.

The bad reputation that's attached to legal research overlooks one other critical factor—*it's fun to find information!* The popularity of the Web actually proves that many, many people are hooked on finding information for the sheer joy of it. There is thrill in the discovery and pleasure in the process.

Legal research offers practitioners the chance to experience these thrills and pleasures. Uncovering an obscure decision that makes your case inspires grinning and bragging. Meticulously tying up loose ends through the process of citation checking is uniquely satisfying. As with many valuable activities in life, with legal research, it's the journey as much as the destination. Enjoy the ride!

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