



# Where the Law Is:

An Introduction  
to Advanced  
Legal Research

Fourth Edition

J.D.S. Armstrong  
Christopher A. Knott



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# WHERE THE LAW IS:

## AN INTRODUCTION TO ADVANCED LEGAL RESEARCH

FOURTH EDITION

■ ■ ■

By

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—JDSA

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—CAK



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*To the Class of 2012.*

—JDSA

*To Maggi, Acy and Alexander, as ever.*

—CAK



# TABLE OF CONTENTS

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	Page
LOCATION OF TABLES .....	xix
<b>Chapter 1. Advanced Legal Research: Getting Started</b> .....	<b>1</b>
1.1 What This Book Is About .....	1
1.2 What This Book Is Not About .....	2
1.3 Why You Must Make a Research Plan .....	2
1.4 Documenting What You Find: Citations .....	3
1.5 Documenting What You Find: Formats .....	4
1.6 What Source to Use? .....	5
1.7 Following Tangents: How Much Is Too Much? .....	6
1.8 How to Make a Research Plan .....	7
1.9 Best Uses of Full Text Searching .....	9
1.10 Best Uses of Field-Limited Searching .....	10
1.11 Best Uses of Searching Subject Indexed/Edited Data .....	10
1.12 What You Are Going to Look For .....	12
<i>Table 1.A</i> .....	13
<b>Chapter 2. Statutes</b> .....	<b>14</b>
2.1 Statutes First .....	14
2.2 Codes .....	14
2.3 Working With a Statutory Code Index .....	15
<i>Table 2.A: Selected Sources for the United States Code</i> .....	16
2.4 Terms to Look Up in Code Indexes .....	18
2.5 Distinctions Between Code Indexes .....	19
2.6 Using a Code Index Online .....	20
2.7 Finding the Statute by Finding a Case .....	22
2.8 Working With the Structure of the Code .....	22
2.9 Code Currency .....	25
2.10 Choosing a Format in Which to Do Your Code Research .....	27
2.11 Choosing a Code Source .....	28
2.12 Codes of the Past .....	29
2.13 Renumbered Codes .....	30
2.14 Session Laws .....	31
2.15 Using Session Laws to Update the Code .....	31
<i>Table 2.B: Sources for United States Session Laws</i> .....	32
2.16 Using Session Laws to Find New Laws Without Reference to Earlier Code Sections .....	34
<i>Table 2.C: Sources for New Federal Session Laws</i> .....	35
2.17 Citations to Session Laws .....	37
2.18 Choosing a Source for Session Laws .....	38



	Page
2.19 Finding Laws That Will Never Make It Into the Code .....	40
2.20 Updating Uncodified Session Laws .....	41
2.21 Statutes More Conveniently Discussed in Their Original Session Law Form .....	42
2.22 Session Law Nomenclature vs. Code Nomenclature .....	42
2.23 Session Laws as Authentication of Code Language .....	43
2.24 Getting From a Code Section to Its Source in the Session Laws .....	45
2.25 Monster Session Laws: Omnibus Statutes .....	46
2.26 Reading the Session Law as an Aid to Understanding the Code .....	47
2.27 Finding Statutes by “Name” .....	48
2.28 Getting From a Session Law to the Corresponding Code Sections .....	49
2.29 Finding Bills .....	50
2.30 Finding a Bill by Subject .....	50
<i>Table 2.D: Online Sources of Congressional Bills</i> .....	51
2.31 Finding a Bill by Bill Number, by Date, or by Sponsor .....	52
2.32 Cases Interpreting Statutes .....	53
2.33 Finding Cases in an Annotated Code .....	53
2.34 Currency of the Case Annotations .....	55
2.35 Revision of the Annotations .....	56
2.36 Cases Included in the Annotations .....	56
2.37 Case Annotations in Specialized Sources .....	57
2.38 Using a Citator to Find Cases Interpreting a Statute .....	57
<i>Table 2.E: Examples of Specialized Sources of Statute Annotations and How They Work</i> .....	58
2.39 Using Full Text Searching to Find Cases Interpreting a Statute .....	59
2.40 Special Issues in State Statutory Research .....	60
<i>Table 2.F: Some Sources of Comparative State Statutes</i> .....	62
<b>Chapter 3. Legislative History</b> .....	<b>63</b>
3.1 Legislative History: When and Why? .....	63
3.2 Compiled Legislative Histories .....	63
3.3 Types of Legislative History Documents .....	64
<i>Table 3.A: Selected Sources of Compiled Federal Legislative Histories</i> .....	65
3.4 Committee Reports .....	67
<i>Table 3.B: Sources for Committee Reports</i> .....	68
3.5 Identifying Committee Reports About a Known Statute or Bill .....	70
3.6 Accessing Congressional Committee Reports .....	74
3.7 Finding Committee Reports by Subject .....	74
3.8 Identifying Congressional Committee Hearings .....	76
3.9 Accessing Congressional Committee Hearings .....	78
<i>Table 3.C: Sources of Committee Hearings</i> .....	79
3.10 Unpublished Hearings .....	80
3.11 Identifying and Locating Committee Prints and House and Senate Documents .....	81
3.12 Identifying and Locating Bills as a Source of Legislative History .....	82
3.13 The Congressional Record .....	83
<i>Table 3.D: Sources of the Congressional Record</i> .....	85
3.14 Congressional Record Pagination .....	86



	Page
3.15 Congressional Record Indexing .....	87
3.16 State Legislative History .....	88
<b>Chapter 4. Introducing Secondary Sources: Law Review Articles</b> .....	<b>89</b>
4.1 Law Reviews as a Tool for the Legal Researcher .....	89
4.2 Finding Law Review Articles .....	90
<i>Table 4.A: Selected Legal Periodical Indexes</i> .....	91
4.3 Looking for Articles by Subject .....	92
4.4 Looking for Articles by Case Name or Citation .....	93
4.5 Looking for Articles About a Statute .....	94
4.6 Looking for an Article by a Particular Author .....	95
4.7 Evaluating the Usefulness of Law Review Articles .....	96
<i>Table 4.B: Examples of Sources for Working Papers in Law</i> .....	99
4.8 Using the Footnotes in Law Review Articles .....	100
<i>Table 4.C: Selected Dictionaries of Legal Abbreviations</i> .....	101
<b>Chapter 5. Cases</b> .....	<b>103</b>
5.1 The Core of Our Enterprise .....	103
5.2 Finding All the Right Cases .....	103
5.3 Full Text Searching of Case Law Databases .....	104
5.4 Using Subject Indexes to Case Law: Digests and the Key Number System on Westlaw .....	107
<i>Table 5.A: Principal Components of the American Digest System</i> ..	108
5.5 Finding a Topic and Key Number .....	109
5.6 Changes to the Topics and Key Numbers .....	111
5.7 Working With Key Numbers .....	111
5.8 Getting the Most Recent Key Number Indexing .....	112
5.9 Other Subject-Based Searching for Cases .....	113
5.10 Finding Cases by Name .....	114
<i>Table 5.B: Some Examples of Non-West Subject Indexes to Cases</i> ..	115
5.11 Finding Cases by Citation .....	116
5.12 Nominative and Other Unfamiliar Reporters .....	116
5.13 Docket Numbers .....	117
5.14 Other Citation Wrinkles .....	118
5.15 Using Indexed and Full Text Searching Together: The Heart of the Case Research Process .....	119
5.16 Researching the Authority for What Seems Like a Hoary or Even Self-Evident Well-Established Principle .....	120
5.17 Proving the Negative .....	120
5.18 When to Stop .....	120
5.19 Federal Case Law .....	121
5.20 Supreme Court Cases .....	121
<i>Table 5.C: Selected Sources of Scotus Opinions</i> .....	123
5.21 The United States Courts of Appeals .....	124
<i>Table 5.D: Selected Sources for Scotus Records and Briefs</i> .....	125
<i>Table 5.E: Selected Sources for Scotus Oral Arguments</i> .....	126
<i>Table 5.F: Selected Sources for Federal Courts of Appeal Cases</i> .....	128
<i>Table 5.G: Selected Sources of Court of Appeals Records and Briefs</i> .....	129



	Page
5.22 United States District Courts .....	130
<i>Table 5.H: Selected Sources of Federal District Court Cases</i> .....	131
5.23 State Case Law .....	132
5.24 Updating Case Law Research .....	134
<b>Chapter 6. Introducing Secondary Sources: Treatises and Other Overviews</b> .....	<b>137</b>
6.1 Treatises .....	137
<i>Table 6.A: Sources for Lists of Prominent Treatises</i> .....	138
6.2 Restatements of the Law .....	140
6.3 Encyclopedias .....	141
6.4 American Law Reports: The ALR .....	142
<b>Chapter 7. Introducing Secondary Sources: Form Books and Jury Instructions</b> .....	<b>144</b>
7.1 Form Books .....	144
7.2 A Word of Caution About Forms .....	145
7.3 General Collections of Forms .....	145
7.4 Subject-Specific Collections of Forms .....	146
7.5 Jurisdiction-Specific Collections of Forms .....	147
7.6 Pattern Jury Instructions .....	147
<b>Chapter 8. Sources of Administrative Law</b> .....	<b>149</b>
8.1 Introduction to Administrative Law Research .....	149
8.2 Sources of Administrative Law: The <i>Federal Register</i> .....	151
<i>Table 8.A—Where to Find the Federal Register</i> .....	153
8.3 Rules and Regulations Section of the <i>Federal Register</i> .....	155
8.4 Proposed Regulations Section of the <i>Federal Register</i> .....	157
8.5 Notices Section of the <i>Federal Register</i> .....	157
8.6 Reader Aids Section of the <i>Federal Register</i> .....	158
8.7 How the <i>Federal Register</i> Is Actually Used in Legal Research .....	158
8.8 Sources of Administrative Law: The <i>Code of Federal Regulations</i> ..	160
8.9 <i>CFR</i> Basics .....	160
<i>Table 8.B—Where to Find the Code of Federal Regulations</i> .....	161
<i>Table 8.C: Dates of Annual Revision of CFR Titles</i> .....	163
8.10 Structure of the <i>CFR</i> .....	164
8.11 Titles of the <i>CFR</i> .....	164
<i>Table 8.D: Titles of USC and CFR Compared</i> .....	165
8.12 Chapters of the <i>CFR</i> .....	167
8.13 Parts of the <i>CFR</i> .....	168
8.14 Sections of the <i>CFR</i> .....	168
8.15 How to Use the <i>CFR</i> .....	169
8.16 Updating a <i>CFR</i> Section .....	170
8.17 A Better Way: The <i>List of Sections Affected</i> .....	170
8.18 Electronic <i>CFRs</i> With Rolling Updates .....	171
8.19 Administrative Hearings and Other Quasi-Judicial Proceedings .....	172
8.20 State Administrative Law Research .....	174



	Page
<b>Chapter 9. Introducing Secondary Sources: Looseleaf Services</b>	<b>176</b>
9.1 Introduction: What This Chapter Is About	176
9.2 What Are Looseleafs Used For?	177
9.3 The Different Kinds of Looseleafs	179
9.4 Using a Newsletter-Style Looseleaf	182
9.5 Using an Interfiled Looseleaf	183
9.6 What Is Not in Looseleafs?	184
9.7 Finding a Looseleaf on Your Topic	185
9.8 Online Versions of Looseleafs	186
<b>Chapter 10. Court Rules</b>	<b>189</b>
10.1 What Are Court Rules and Why Do They Matter?	189
10.2 Federal Court Rules	190
10.3 Finding Annotated Federal Court Rules, General and Local	190
10.4 Secondary Sources and Federal Rules	191
<i>Table 10.A—Selected Sources of Annotated Federal Court Rules</i>	192
10.5 Federal Court Rules Judicially Considered	193
10.6 Using Citators for Updating Federal Court Rules	194
10.7 State Court Rules	194
10.8 Annotated State Court Rules	195
<b>Chapter 11. Legal Ethics Research</b>	<b>196</b>
11.1 Introduction to Legal Ethics Research	196
11.2 Model and Uniform Laws Generally	197
11.3 Sources of Authority—American Bar Association Ethical Codes and Rules	198
11.4 Sources of Authority—State Law	199
11.5 Sources of Authority—“Case Law” Publications	199
11.6 Sources of Authority—Secondary Sources	201
11.7 How Legal Ethics Research Really Works	202
<i>Table 11.A: Recommended Websites for Legal Ethics Information</i>	204
<b>Chapter 12. Foreign Law Research</b>	<b>205</b>
12.1 Introduction to Foreign Law	206
12.2 Major World Legal Systems	206
12.3 Guides to Legal Research in Foreign Jurisdictions	207
12.4 Methods of Foreign Law Research	208
<i>Table 12.A: Selected Online Foreign Law Research Guides</i>	209
<b>Chapter 13. International Law</b>	<b>211</b>
13.1 Sources of International Law	212
13.2 Treaty Research	212
<i>Table 13.A: Recommended Treaty Websites</i>	214
13.3 Intergovernmental Organizations	215
13.4 The European Union	216
13.5 European Union—Secondary Sources	216
13.6 European Union—Statutes	217
13.7 European Union—Case Law	218
13.8 European Union—Summing Up	218
<b>Chapter 14. Municipal Law Research</b>	<b>220</b>
14.1 Municipal Law: When, Why and How	220
14.2 Municipal Charters	221



	<b>Page</b>
14.3 Municipal “Session Laws” .....	221
14.4 Municipal Statutory Codes .....	222
14.5 Municipal Decisional Law .....	222
14.6 Doing Comparative Research on Municipal Law .....	223
14.7 Administrative Regulations and Decisions on the Municipal Level .....	224
<b>Chapter 15. Where the Law Is</b> .....	<b>225</b>
15.1 General Principles .....	225
15.2 Look for Basic Structures .....	225
15.3 Estimate What Form Your Answer Will Come In .....	226
15.4 Your Strategy Will Depend Upon Your Starting Point. What Do You Know Now? .....	227
15.5 The Less You Know, The More Certainly You Need Secondary Sources .....	227
15.6 Secondary Leads to Primary, But There Are Other Ways Around the Circle .....	227
15.7 Official Publications Often Less Useful .....	228
15.8 Human Ordering vs. Machine Recall .....	228
15.9 It Is Very Difficult to Do Effective Statutory Research Online .....	229
15.10 Know Exactly What Legislative Histories Are, and What They Are For .....	229
15.11 Let Someone Else Do the Work for You .....	229
15.12 But Don’t Be Afraid to Be the First, If Necessary! .....	230
15.13 Evaluating Sources .....	230
15.14 An Afterward: The World of Unpublished Information .....	232
<i>Table 15.A: Selected Directories of Helpful Phone Numbers</i> .....	233
Appendix. Selected Legal Research Guides for Each of the Fifty States .....	235
INDEX .....	251



# CHAPTER 1

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## ADVANCED LEGAL RESEARCH: GETTING STARTED



### 1.1 WHAT THIS BOOK IS ABOUT

As a lawyer, an important part of your job is to advise your client on the law and on its implications for your client's affairs, both prospectively and within the context of litigation. Your responsibility encompasses being as sure as possible about what the law is *not*, as well as what the law is, on any particular subject. Establishing a negative proposition through research, an exigency which arises constantly in legal practice, requires a very sure hand. In order to answer questions from your client or from the court about the law authoritatively and confidently, you must know that you have looked for the law in all the right places. Hence, the title of this book.

As a student of advanced legal research, you are already familiar with the nuts and bolts of legal information. Cases and statutes are no longer alien or frightening creatures to you, but rather the eagerly-sought tools which you know you need for your daily work. But as you shoulder more and greater research responsibilities, as you graduate from canned research exercises to the real world, you will want to ensure that you know where you have to look to do your job competently and reliably. This book, we hope, will help you learn to do just that.

In the old days, finding the law was a jumpy sort of process, involving the use of multiple sources, some of which were interconnected, which had grown up as historical fruits of the evolution of American legal publishing. Legal research instruction focused on how to use each of these legal publications, most of which were either unique or had rival publications which were essentially the same in structure. Many of the great research treatises, such as Cohen, Berring and Olson's *How to Find the Law* and Price, Bitner and Bysiewicz's *Effective Legal Research*, concern themselves primarily with the description and illumination of these discrete publications.

Today, on the other hand, the information which emanates from the sources of legal authority is available from many suppliers, packaged in



many different formats and combinations. Accordingly, today's legal researchers need to focus more on the information they are looking for, and less on any particular publication. In today's arena, you can no longer rely on any one publisher to have covered the field for you. The scope and coverage handled by a given publisher is influenced by competing licensing agreements, distribution networks, and both economic and political pressures that go beyond what the legal research market would seem logically to dictate. Researchers need to navigate through the shifting sands of the legal publishing world to locate all the information that they, as a matter of their own professional competency, deem necessary to the task at hand.

## 1.2 WHAT THIS BOOK IS NOT ABOUT

This book is about legal research, not about general research conducted by lawyers, which, of course, also happens all the time. Today's lawyer is called upon to argue from statistics, from marketing data out of the business world, from medical arcana, and from most other fields of human endeavor that furnish the background of discord. In order to construct their arguments and to master those anticipated from their opponents, lawyers may need to research facts or background in areas far afield from the law. Such research, since it is not specifically legal research, falls outside the scope of this book.

This book is also not about current awareness. All practicing lawyers have the responsibility of keeping up to date on legal developments in their areas of expertise, so as to be able to spot issues and recognize emerging problems or opportunities for their clients. Every area of practice has its own array of electronic news outlets and you will have the ability (and the obligation) to keep abreast of these. Moreover, many of the print sources discussed in this book arrive in the law practitioner's establishment fairly bristling with aids to maintaining such current awareness. Each volume of West's National Reporter System, for example, is chockablock with goodies intended for this purpose, e.g., tables of rules of procedure cited in that volume, words and phrases judicially construed in that volume, and so forth. These may, indeed, furnish the conscientious attorney with passingly interesting reading. However, they rarely figure in the process of active legal research, limited as they are to the tiny subset of materials (albeit recent materials) included in the selfsame volume. While we will occasionally mention some of these sources, we will focus instead on those elements that contribute usefully to research on a specific legal question rather than to speculative and abstract consideration of a legal authority's recent output.

## 1.3 WHY YOU MUST MAKE A RESEARCH PLAN

As advanced legal research students, it is you who are advanced. You are already somewhat versed in the law and know a bit about what you



are looking for and about what problems you might encounter in finding it. Perhaps the most common problem expressed by students beginning a course in advanced legal research is the difficulty of knowing when to stop searching. We have already mentioned the frequent and demanding obligation to prove a negative through research. Yet the opposite, seemingly simpler and more inviting task of establishing a positive legal proposition is actually more fraught with peril because of this very problem of not knowing when to stop. When looking for legal authority for a proposition, the inexperienced legal researcher all too often falls prey to the “*EUREKA!*” syndrome, i.e., he finds something which supports his claim, and calls it quits right there. In trying to prove a negative, on the other hand, there is no treacherous “*EUREKA! I have found it!*” moment. There are only slowly mounting indications that you have, in fact, done enough: you start to see no new authorities cited, you have made a rational research plan and you have carried it out.

The importance of making a rational and informed research plan cannot be overemphasized. By making such a plan (in writing, please, since this is tantamount to a contract with yourself!), you can avoid the pitfall of settling for the first (or fifth) plausible answer you encounter, when your conclusion is based on still incomplete research. This pitfall yawns all the larger in the electronic world. The speed and facility of flitting from one source to another in the multitasking environment makes it easy to fall into the trap of basically random research stabs at each new source; this leads to sketchy results, inviting error and defeat.

The research plan can save you from this all too common fate. Basically, the purpose of the research plan is twofold. First, it ensures that you have built checks into your research that will keep you from reaching unwarranted conclusions. Second, once carried out, it provides the structure for logical and orderly documentation of what you have done. This documentation is particularly important when you do not find anything that satisfies the requested conditions, since the worth of your negative findings lies wholly in your testimony of where you looked. This also applies when you *did* find something, your document trail serving to validate its appropriateness.

## 1.4 DOCUMENTING WHAT YOU FIND: CITATIONS

Documenting the fulfillment of your research plan should be done in such a way as to allow both today's and tomorrow's researchers to follow your trail easily. Such is the principle behind the sometimes irritating but nonetheless monumentally helpful rules of legal citation, such as (pre-eminently) those enshrined in the *Bluebook*. But in your own personal research writeups, you need not restrict yourself to leaving a trail universally legible to any and all researchers wherever they may be. You can and should feel free to enrich your paper trail with additional comments and