

Federal Legal Research

CAROLINA ACADEMIC PRESS
LEGAL RESEARCH SERIES

Suzanne E. Rowe, Series Editor



- Arizona—Tamara S. Herrera
Arkansas—Coleen M. Barger
California—Hether C. Macfarlane & Suzanne E. Rowe
Colorado—Robert Michael Linz
Connecticut—Jessica G. Hynes
Federal—Mary Garvey Algero, Spencer L. Simons, Suzanne E. Rowe,
Scott Childs & Sarah E. Ricks
Florida, Third Edition—Barbara J. Busharis & Suzanne E. Rowe
Georgia—Nancy P. Johnson, Elizabeth G. Adelman & Nancy J. Adams
Idaho—Tenielle Fordyce-Ruff & Suzanne E. Rowe
Illinois, Second Edition—Mark E. Wojcik
Iowa—John D. Edwards, M. Sara Lowe, Karen L. Wallace
& Melissa H. Weresh
Kansas—Joseph A. Custer & Christopher L. Steadham
Louisiana—Mary Garvey Algero
Massachusetts—E. Joan Blum
Michigan, Second Edition—Pamela Lysaght & Cristina D. Lockwood
Minnesota—Suzanne Thorpe
Missouri, Second Edition—Wanda M. Temm & Julie M. Cheslik
New York—Elizabeth G. Adelman & Suzanne E. Rowe
North Carolina—Scott Childs
Ohio—Katherine L. Hall & Sara Sampson
Oregon, Second Edition—Suzanne E. Rowe
Pennsylvania—Barbara J. Busharis & Bonny L. Tavares
Tennessee—Sibyl Marshall & Carol McCrehan Parker
Texas—Spencer L. Simons
Washington, Second Edition—Julie Heintz-Cho, Tom Cobb
& Mary A. Hotchkiss
Wisconsin—Patricia Cervenka & Leslie Behroozi



Federal Legal Research

Mary Garvey Algero

Spencer L. Simons

Suzanne E. Rowe

Scott Childs

Sarah E. Ricks

Suzanne E. Rowe, Series Editor

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2012
Carolina Academic Press
All Rights Reserved.

Library of Congress Cataloging-in-Publication Data

Federal legal research / Mary Garvey Algero ... [et al.].

p. cm.

Includes index.

ISBN 978-1-61163-122-7 (alk. paper)

1. Legal research--United States. I. Algero, Mary Garvey. II.
Title.

KF240.F48 2011

340.072'073--dc23

2011038237

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America.

Summary of Contents

Contents	vii
List of Tables and Figures	xvii
Series Note	xxi
Preface and Acknowledgments	xxiii
Chapter 1 Legal Authority and the Research Process	3
Chapter 2 Research Techniques	23
Chapter 3 Secondary Sources	55
Chapter 4 Constitutional Law Research	81
Chapter 5 Statutory Research	101
Chapter 6 Bill Tracking and Legislative History	125
Chapter 7 Administrative Law Research	157
Chapter 8 Judicial Systems and Judicial Opinions	177
Chapter 9 Case Law Research	195
Chapter 10 Citators	215
Chapter 11 Court Rules and Rules of Professional Responsibility	233
About the Authors	245
Index	247

Contents

List of Tables and Figures	xvii
Series Note	xxi
Preface and Acknowledgments	xxiii
Chapter 1 • Legal Authority and the Research Process	3
I. Introduction	3
II. Legal Research Documents	3
III. Sources and Classes of Legal Authority	4
A. Primary vs. Secondary Authority	5
B. Mandatory vs. Persuasive Authority	5
IV. Hierarchy of Legal Authority	6
V. Overview of the Research Process	6
A. Getting Started	7
1. Gathering Facts and Determining Jurisdiction	7
2. Generating Search Terms	8
3. Keeping a Research Log	9
B. Using Secondary Sources	10
C. Researching Enacted Law	10
D. Researching Cases	11
E. Updating Research	11
1. Checking Currency	12
2. Determining Subsequent Treatment	12
3. Expanding Research	13
F. Ending Research	13
Appendix A. Samples of Legal Documents	14
Appendix B. Sample Citations for Legal Documents	21

Chapter 2 • Research Techniques	23
I. Basic Principles	23
A. Determine the Meaning of Words	24
B. Take Advantage of the Work of Others	26
C. Use the Interconnectivity of American Legal Materials	26
II. Tools, Techniques, and Tips	27
A. Use the Library Catalog	27
B. Use Finding Tools	29
1. Indexes	29
2. Tables of Contents	30
3. Other Finding Tools	30
C. Use a Known Document to Find Other Documents	31
D. Ask Somebody Who Knows: A Librarian	31
E. Ask These Questions Before Using a Resource	32
1. Is It Relevant?	32
2. Is It Authoritative?	33
a. Primary Authority	33
b. Secondary Sources	34
3. Is It Current?	34
III. Choosing Between Online or Print Resources	35
A. Where Is the Document Available?	35
B. Is an Online Document Official and Authenticated?	36
C. What Is the Database Scope?	36
D. How Current Is the Source?	37
E. What Is the Cost/Time Tradeoff?	37
F. How Easy Is Searching and Navigating?	38
G. How Easy Is Reading and Skimming?	38
H. Do You Need to Print, E-mail, or Cut and Paste?	39
IV. Online Resources	39
A. Lexis, Lexis Advance, Westlaw, and WestlawNext	39
B. Other Commercial Databases	40
C. Free Online Legal Resources	41
D. Specialized Legal Databases	41
V. Online Searching	42
A. Terms and Connectors Searching	42
B. Natural Language Searching	44

C. Getting the Most from Keyword Searching	44
1. Using Segments and Fields	46
2. Refining Queries	47
D. Add Power to the Search with Finding Tools	48
1. Indexes	48
2. Tables of Contents	49
3. Lexis's Topic and Headnote System and West's Key Number System	49
4. Citators: Shepard's and KeyCite	49
E. Cost-Effective Searching	50
F. Pitfalls of Online Searching and Solutions	52
1. Tunnel Vision and "Law-Bytes"	52
2. Inadvertent Plagiarism	53
3. Losing Track	53
Chapter 3 • Secondary Sources	55
I. Why Consult Secondary Sources?	55
II. The Persuasive Value of Secondary Sources	57
III. Types of Secondary Sources and the Process for Researching Them	58
A. Legal Dictionaries	59
B. Legal Encyclopedias	59
1. Overview	59
2. Researching in a Legal Encyclopedia	60
C. Legal Periodicals	61
1. Overview	61
2. Researching Legal Periodicals	63
D. Legal Treatises and Other Books	66
1. Overview	66
a. Treatises	66
b. Monographs	67
c. Hornbooks, <i>Nutshells</i> , Deskbooks, and Practice Guides	67
2. Researching Treatises and Other Books	68
E. <i>American Law Reports</i>	72
1. Overview	72
2. Researching in A.L.R.	73

F. Looseleaf Services	74
G. Restatements	75
1. Overview	75
2. Researching Restatements	76
H. Continuing Legal Education Materials	76
I. Forms and Jury Instructions	77
1. Overview	77
2. Researching Forms and Jury Instructions	78
Chapter 4 • Constitutional Law Research	81
I. Background	81
II. Locating the Text of the Constitution	82
III. Researching Constitutional Issues	84
A. Beginning Research with Secondary Sources	84
1. Treatises and Hornbooks	85
2. <i>American Law Reports</i>	87
3. Legal Encyclopedias and Annotated Constitutions	88
4. Blogs and Lexis Preview of Supreme Court Cases	90
5. Brief Banks	92
6. The Department of Justice Website	92
7. Other Secondary Sources	93
B. Using Comprehensive Sources of Cases and Case Summaries	93
1. Free Online Case Databases	93
2. Statutory Codes with Case Annotations	94
3. Case Annotations in Digests	96
4. West Key Number Searches	96
5. Lexis “Area of Law by Topic”	97
C. Updating Authority	98
IV. State Constitutions	99
Chapter 5 • Statutory Research	101
I. Statutes and Codes in American Law	101
A. Session Laws and Codification	101

B.	Federal Session Laws and Codes	102
1.	<i>Statutes at Large</i>	102
2.	<i>Revised Statutes of the United States</i>	103
3.	<i>United States Code</i>	104
II.	Researching Federal Statutes in Print	106
A.	Researching in the <i>United States Code Annotated</i>	107
1.	Search the Index	107
2.	Find and Update the Statutory Text	108
3.	Read the Statutory Text	109
4.	Find Cases Interpreting Federal Statutory Law Using the Annotations	110
5.	Other Features of the Annotations	111
6.	Popular Name Table	113
7.	Other Tables	113
B.	Researching in the <i>United States Code Service</i>	116
III.	Researching Federal Statutes Online	117
A.	United States Government Websites	118
B.	Federal Statutes on Westlaw	119
C.	Federal Statutes on Lexis	121
D.	Federal Statutes in Other Online Databases	122
IV.	Applying and Interpreting Federal Statutes	122
V.	Researching the Statutory Law of States	123
Chapter 6 •	Bill Tracking and Legislative History	125
I.	Introduction	125
II.	The Federal Legislative Process	125
III.	Bill Tracking	126
A.	Bill Tracking in the U.S. Congress	126
1.	Researching with a Bill Number	126
2.	Searching for and Tracking Pending Bills	130
B.	Bill Tracking in State Legislatures	133
IV.	Federal Legislative History Research	134
A.	Sources of Federal Legislative History	135
1.	Versions of Bills	135
2.	Committee Hearings	135

3.	Committee Prints and Bill Analyses	137
4.	Committee Reports	138
5.	Congressional Floor Debates	140
6.	Conference Committee Reports	140
7.	Presidential and Executive Agency Documents	141
8.	History of Related Bills	141
B.	Preparing a Federal Legislative History	141
1.	Compiled Legislative Histories	142
a.	Finding Aids for Compiled Legislative Histories	142
b.	Collections of Compiled Legislative History Documents	143
i.	Congressional Information Service (C.I.S.)	143
ii.	G.A.O. Legislative History Collection	146
iii.	<i>United States Code Congressional and Administrative News</i>	146
iv.	Westlaw and Lexis	147
2.	Compiling Your Own Legislative History	147
a.	Compiling a List of Documents	147
i.	THOMAS	148
ii.	Historical House and Senate Journals	149
iii.	U.S.C.C.A.N.	149
iv.	<i>Congressional Index</i>	150
v.	<i>Congressional Record</i>	150
vi.	House Calendar	150
vii.	<i>House Journal and Senate Journal</i>	151
viii.	<i>Digest of Public General Bills and Resolutions</i>	151
b.	Getting the Documents	152
i.	Congressional Bills	152
ii.	Committee Reports and Conference Committee Reports	153
iii.	Congressional Debates	154
iv.	Hearings	154
v.	Committee Prints	155
V.	State Legislative History Research	155

Chapter 7 • Administrative Law Research	157
I. Federal Administrative Law	157
A. Overview	159
B. Administrative Regulations	160
1. General Process of Creating Administrative Regulations	161
2. <i>Code of Federal Regulations</i>	162
3. <i>Federal Register</i>	165
4. Researching Federal Administrative Regulations	166
a. Starting with a C.F.R. Citation from a Secondary Source	166
b. Starting with a C.F.R. Citation from an Enabling Statute	167
c. Browsing C.F.R. Titles in Print or Online	167
d. Browsing or Searching the C.F.R. Index	168
e. Keyword Searching the C.F.R. in Full Text or by Field	168
f. Searching Regulations on Agency Websites	168
5. Updating Administrative Regulations	168
a. Updating Online	169
b. Updating in Print	169
i. <i>List of C.F.R. Sections Affected</i> Monthly Pamphlet	169
ii. <i>Federal Register</i> “C.F.R. Parts Affected” Table	170
C. Administrative Decisions	170
1. The Nature of Administrative Decisions	170
2. Researching Administrative Decisions	171
II. Researching United States Attorney General Opinions	172
III. Researching Presidential Documents	173
IV. State Administrative Law	176
Chapter 8 • Judicial Systems and Judicial Opinions	177
I. Introduction	177
II. The Federal Judicial System	178

A. Federal Courts	178
B. Federal Judges	181
III. Judicial Opinions	182
A. The Court's Opinion	182
B. Publishers' Research Aids	184
C. Where to Find Judicial Opinions	186
IV. Reading and Analyzing Judicial Opinions	188
A. Skim	189
B. Read	190
C. Brief	191
D. Categorize	193
V. State Judicial Systems and Judicial Opinions	193
Chapter 9 • Case Law Research	195
I. Beginning with a Citation to a Relevant Statute	195
II. Beginning with a Citation to a Relevant Case	196
A. Using a Citator to Find Additional Cases	197
B. Using Headnotes from a Case to Find Additional Cases	197
III. Using the West Digest System to Begin or Continue Research	198
A. Organization by Topics and Key Numbers	199
B. Researching West Digests	200
1. Researching a West Digest in Print	200
a. Beginning with a Relevant West Topic	200
b. Using the Descriptive-Word Index	202
c. Using Words and Phrases	204
d. Using the Table of Cases	205
2. Researching West's Digest System Online	205
IV. Using the Lexis Topic and Headnote System to Begin or Continue Research	206
V. Digest Coverage	207
A. Digests for Court Systems or Particular Courts	207
B. Subject Matter Digests	209
C. Geographically Based Digests	210

D. All-Inclusive Digests	210
VI. Researching Cases Online	211
A. General Case Research	211
1. Lexis and Westlaw	211
2. Google Scholar	212
B. Online Topic Searching	213
1. Westlaw Search by Topical Practice Area	213
2. Lexis Search by Area of Law	213
C. Searching with Fields and Segments	214
Chapter 10 • Citators	215
I. Introduction	215
II. Citator Basics	216
III. Shepard's on Lexis	217
A. Access the Citator List	217
B. Analyze the Citator Symbols	218
C. Limit the Search Results	219
D. Read and Analyze the Citing Sources	223
IV. KeyCite on Westlaw	223
A. Access the Citator List	223
B. Analyze the Citator Symbols	226
C. Limit the Search Results	226
D. Read and Analyze the Citing Sources	226
V. Updating Details	228
A. Colored Symbols	228
B. Headnotes	229
C. Prioritizing Citing Sources	229
D. Table of Authorities	229
VI. When to Use Citators	230
VII. Citators and Legal Ethics	231
Chapter 11 • Court Rules and Rules of Professional Responsibility	233
I. Introduction	233
II. Court Rules	233

A. Rules of Procedure and Evidence	234
1. Background	234
2. Researching Federal Rules of Procedure and Evidence	235
B. Court-Specific Rules, Including Local Rules	237
III. Rules of Professional Responsibility	239
A. Background	239
B. Researching Rules of Professional Responsibility	240
About the Authors	245
Index	247

List of Tables and Figures

Tables

Chapter 1 • Legal Authority and the Research Process

Table 1-1. Overview of the Research Process	7
---	---

Chapter 2 • Research Techniques

Table 2-1. Overview of Research Principles and Techniques	24
Table 2-2. Questions to Ask Before Using a Resource	32
Table 2-3. Commercial Legal Database Providers	40
Table 2-4. Lexis and Westlaw Connectors and Commands	43

Chapter 3 • Secondary Sources

Table 3-1. Outline for Researching Secondary Sources	58
Table 3-2. Sample Legal Periodicals	62
Table 3-3. Selected Deskbooks and Practice Guides	69

Chapter 4 • Constitutional Law Research

Table 4-1. U.S. Constitution	83
Table 4-2. General Constitutional Law Treatises	85
Table 4-3. Constitutional Law Treatises on Civil Rights	86
Table 4-4. Constitutional Law Treatises on Criminal Law	87
Table 4-5. Free Online Encyclopedias	89
Table 4-6. Lexis “Area of Law by Topic”	97

Chapter 5 • Statutory Research

Table 5-1. Titles of the <i>United States Code</i>	105
Table 5-2. Outline for Research in Print Annotated Code	108

Chapter 6 • Bill Tracking and Legislative History	
Table 6-1. How a Bill Becomes Law	127
Table 6-2. Outline for Congressional Bill Tracking	129
Table 6-3. Outline for Compiling Your Own Legislative History	148
Chapter 7 • Administrative Law Research	
Table 7-1. Outline of Administrative Law Research	159
Chapter 8 • Judicial Systems and Judicial Opinions	
Table 8-1. Geographic Jurisdiction of the United States Courts of Appeals	180
Table 8-2. Reporters for Federal Cases	187
Chapter 9 • Case Law Research	
Table 9-1. West Digests	208
Chapter 10 • Citators	
Table 10-1. Outline for Using a Citator	217
Table 10-2. Selected Symbols for Shepard's	218
Table 10-3. Selected Symbols for KeyCite	227
Chapter 11 • Court Rules and Rules of Professional Responsibility	
Table 11-1. Excerpt of Table of Rules for the Model Rules of Professional Responsibility	242

Figures

Chapter 1 • Legal Authority and the Research Process	
Figure 1-1. Constitutional Provision	15
Figure 1-2. Statute	16
Figure 1-3. Regulation	17
Figure 1-4. Judicial Opinion	18
Figure 1-5. <i>American Law Reports</i> Annotation	20
Chapter 2 • Research Techniques	
Figure 2-1. Natural Language Search in Westlaw	45
Figure 2-2. Fields in Westlaw	47

Chapter 3 • Secondary Sources

Figure 3-1. Excerpt from <i>Federal Practice and Procedure</i>	71
--	----

Chapter 4 • Constitutional Law Research

Figure 4-1. Lexis “Area of Law by Topic”	98
--	----

Chapter 5 • Statutory Research

Figure 5-1. Notes of Decisions from the U.S.C.A.	112
Figure 5-2. Annotations for a Statute in the U.S.C.A.	114
Figure 5-3. Popular Name Table in the U.S.C.A.	115
Figure 5-4. U.S.C.A. Conversion Table 2	116

Chapter 6 • Bill Tracking and Legislative History

Figure 6-1. THOMAS Home Page	131
Figure 6-2. Introduced Bill	136
Figure 6-3. Committee Report	139
Figure 6-4. C.I.S. Legislative History	145

Chapter 7 • Administrative Law Research

Figure 7-1. Sample Regulation	161
Figure 7-2. Justice Department Office of Legal Counsel Opinions as Delegated by the Attorney General	174

Chapter 8 • Judicial Systems and Judicial Opinions

Figure 8-1. Diagram of the Federal Court System	179
Figure 8-2. Federal Case with West Topics and Key Numbers	185

Chapter 9 • Case Law Research

Figure 9-1. Digest Excerpts	201
Figure 9-2. Excerpt from the Descriptive-Word Index	203
Figure 9-3. Excerpt from Words and Phrases	204

Chapter 10 • Citators

Figure 10-1. Shepard’s for Research	220
Figure 10-2. Citing Decisions on Shepard’s	221
Figure 10-3. Shepard’s Restrictions	222
Figure 10-4. Citing References on KeyCite	225

Series Note

This book complements the Legal Research Series published by Carolina Academic Press, which includes titles from many states around the country. The goal of each book is to provide law students, practitioners, paralegals, college students, laypeople, and librarians with the essential elements of legal research in each state. Unlike more bibliographic texts, the Legal Research Series books seek to explain concisely both the sources of legal research and the process for conducting legal research effectively.

Preface and Acknowledgments

Federal Legal Research complements the state-specific books that comprise the Legal Research Series published by Carolina Academic Press. The book offers concise, accessible explanations of primary authority in the federal system, along with chapters on secondary sources, updating, bill tracking and legislative history, and legal ethics and court rules. Similar to other books in the series, *Federal Legal Research* takes a process-oriented approach to research, discussing strategies and techniques for conducting American legal research both online and in print. While the focus of the book is federal law, state law resources are briefly mentioned in some chapters to highlight variations and to provide connections to the other books in the series.

One challenge in writing a book for both novices and experienced researchers is when and how to introduce new terms. The novice needs background that the experienced research would probably find unnecessary. We have taken two approaches. First, the index to this book includes a “Words and Phrases” entry with subentries to basic terms and indications of where the terms are defined in the text. On the pages indicated, the terms will be italicized to help the reader find them. Second, each chapter of the book includes numerous cross-references to discussions in other chapters. While we tried to keep these cross-references to a manageable number, we decided to err on the side of inclusion to provide guidance for a novice who might be feeling overwhelmed.

In writing this book, each author took responsibility for the following chapters: Mary Algero—secondary sources, judicial systems and judicial opinions, case law research, and court rules and rules of professional responsibility; Spencer Simons—research techniques, statutory research, and bill tracking and legislative history; Suzanne

Rowe—legal authority and the research process, and citators; Scott Child—administrative law research; and Sarah Ricks—constitutional law research. As series editor, Suzanne Rowe took the lead in harmonizing the contents of the chapters and the voices of five authors.

We are grateful to many colleagues, librarians, research assistants, and professional support staff for their contributions to this work. We are especially grateful for the editorial and research assistance of Mason Whitcomb, Kimberly Trujillo, and Jamison McCune. Please note that each of the authors has published other books on related topics, and some of their earlier work is reflected here.