TO: All Paralegal and First Year Law School Students

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MEMORANDUM OF LAW

TO: All Paralegal and First Year Law School Students

FROM: Angela Passaro, Paralegal

RE: A Step-by-Step Primer on Conducting Legal Research
Adapted from the CLA Review Manual, Second Edition by
Virginia Koerselman, J.D.

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You can become a skillful legal researcher if you incorporate these simple steps in your research routine over and over again.

**Step 1:** Evaluate the facts of a real or hypothetical case to determine the general legal topic. (267) Is this about whether the court has jurisdiction over a person or her property? Did someone get injured as a result of another person’s negligence?

**Step 2:** To find cases with facts that are similar to that of your client, review such legal encyclopedias as C.J.S., American Jurisprudence, Second Series, and American Law Reports. Consult West’s American Digest System, Indexes, Annotations, and treatises (Restatements and hornbooks). In addition to directing you to cases and statutes, the table of contents of the legal encyclopedias will also remind you of the elements of a particular rule of law you will need to prove. (267) By the way, standard jury instructions can also be used as a checklist of the elements of a rule of law you will need to prove (267). You can find them in your state court’s website. Download them and print them out.

Computerized databases are case-finding tools as well. (257) Use them to find, browse, and obtain citations. (257) Try to use search terms which are specific. For example, to search for cases similar to the hypothetical discussed *infra*, enter in the search box: “slipped and fell” AND “broken arm” OR “broken hip” OR “broken collarbone” OR “injuries” AND “icy sidewalk” AND “front of store” In time, you will learn to get better, because, at first, the database will show you cases that are not even close to what you are looking for.
After you get the citations, and after you have read enough online to know that the case interests you, go to the hard copy reporters. Many journals still want the actual page numbers of any quotes you use. It is easier to jot the page number down when you are looking at the actual page. The computerized databases do put the page numbers in the left hand margins. But, you may get so engrossed in what you are reading online that you will forget to write the page number that is in the left margin on the screen.

**Step 3:** Identify the facts that are legally significant. (267)

Mayor Roscoe Wiley slipped and fell on an icy sidewalk in front of BJ’s Bingo Hall last Sunday, breaking his right arm and collarbone. He was hospitalized for ten days. Mayor Wiley and B.J. Hollis, the proprietor, have been political enemies for years. (268)

In the above hypothetical, the fact that Wiley is a mayor has no legal bearing on the case. (268) A slip and fall case is handled in the same way, whether the plaintiff is an elected official or whether the plaintiff is a 10 year old girl (who is not the mayor’s daughter). (268) Also, the fact that Wiley and Hollis are political enemies is immaterial to the liability issue. (268)

What may be legally relevant is the fact that Wiley slipped and fell on an icy sidewalk in front of B.J.’s Bingo Hall on a Sunday, broke his right arm and collarbone, and was in the hospital for 10 days. (268)

**Step 4:** State the legal issues (268). Framing the issues and determining which facts are legally relevant are normally done simultaneously (268). Based upon the facts in the Wiley hypothetical, one of the issues might be:

Is a business owner liable to a plaintiff who slips and falls on an icy sidewalk in front of the owner’s storefront? (268)

If the research shows that liability will be different when the storefront is open for business and if bingo halls in your jurisdiction are not allowed to be open for business on Sundays, the issue might be: (268)

Is a business owner liable to a plaintiff who slips and falls
Step 5: Find the law. Use the finding tools to find the rules of law that apply to the legally relevant facts and the issues suggested by the facts. (268) The finding tools are the statute’s indexes and annotations, the American Digest System for cases, and computerized databases for both. (268) You can use either the topic method (browsing legal encyclopedias) or the case method (browsing the digests and restatements) to find the relevant rules of law. (268)

Search all the primary authorities. (268) Remember: Primary authorities are the law. Secondary authorities are about the law. Report both favorable and unfavorable precedent in your memorandum of law. (268)

Step 6: Update the law using the statute’s pocket parts and Shepard’s for statutes and Shepard’s for case law. (269) The first few pages of every Shepard’s hard cover volume will help you to make sense of the following pages in the book. However, the computerized databases normally have the most recent updates.

Step 7: Brief each statute and case you read. Uncondensed photocopies of statutes and court opinions can become too unwieldy. (270)

Step 8: Analogize the facts (276). Compare the client’s facts with the statutory list of what is required or prohibited (276). Compare your client’s facts with the facts and issues of each case you read for similarities and differences and make a side-by-side list--one case at a time. (277)

Keep in mind, though:

... [a] researcher working on [for example] Mayor Wiley’s slip and fall case is unlikely to find many other cases where the plaintiff had slipped and fallen on an icy sidewalk in front of the bingo hall. In fact there may be no cases found with these precise facts. The researcher, then looks for cases with similar facts. . . (277)

Is the case about the plaintiff who slipped on a dirty, browned banana peel on a railroad platform sufficiently similar? Is the case about a plaintiff who slipped and fell on a piece of pizza in a restaurant sufficiently similar? You will know
that you are way off target if, based on Mayor Wiley’s facts, the database includes the *Palsgraf* case in the results.

Be prepared for a lot of ambiguity (277) It is unlikely that you will find definite answers to all the legal issues raised by your client’s facts. (277) As a result, statutes and case law precedent may merely narrow the issues that will be left for a judge to decide (277). Don’t try to hide the ambiguity. Point it out in your memorandum of law. Many court opinions discuss a form of ambiguity when the judges determine that the cause of action is not yet “ripe” for a decision.

**Step 9:** Once you are reasonably sure that you have located all the relevant primary law, organize and summarize your work in an analytical memorandum of law (278).

Becoming a good legal researcher takes practice. You can begin to hone your skills by downloading and printing out your state’s bar exam essay questions and passing answers. Compare your essay with the acceptable answer after you have:

1. Separated the relevant from the legally immaterial facts.
2. Found similar cases in C.J.S. or American Jurisprudence, Second Series, or from a computerized database.
3. Read, updated, and briefed the relevant statutes and court opinions.
4. Compared the facts and issues of your case with a statute’s requirements.
5. Compared the facts and issues of your case with court opinions you deem to be “on point.”
6. Organized your results into an analytical essay.
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