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Too Broke to Hire an Attorney - How to Conduct Basic Legal Research in a Law Library.

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TOO BROKE TO HIRE AN ATTORNEY? HOW TO CONDUCT BASIC LEGAL RESEARCH IN A LAW LIBRARY

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I. INTRODUCTION

This article targets as its audience pro se patrons[1]—individuals who cannot afford counsel and need to conduct their own legal research.[2] The poor and disenfranchised have historically had difficulty getting equal access to justice.[3] One cause is simple: they cannot afford legal representa-

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1. For a comprehensive discussion of using the law library, directed to legal educators, see William A. Hilyerd, *Using the Law Library: A Guide for Educators Part VI: Working with Judicial Opinions and Other Primary Sources*, 35 J.L. & EDUC. 67 (2006) (last of a six-article set).

2. The instruction imparted here is not presented in a remedial fashion because effective legal research is a specialized endeavor, demanding observance of certain procedures and conventions—mapped out in the discussion that follows.

3. *See* Deborah J. Cantrell, *Justice for Interests of the Poor: The Problem of Navigating the System Without Counsel*, 70 FORDHAM L. REV. 1573, 1573 (2002) (arguing that the poor have limited access to legal information because the for-profit legal system is not interested in clients who struggle financially to pay for essentials, such as food and housing); Tiffany Buxton, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE W. RES. J. INT'L L.

tion. This could lead to exclusion from the legal process. A solution might be self-representation, which presents its own difficulties.[4] In the latter role, the pro se litigant will likely need to access resources in a law library.

Who are pro se patrons?[5] Financial considerations significantly, but not exclusively, account for the reasons why individuals represent themselves in legal matters. One set of statistics indicates that about a third of all pro se litigants represent themselves because they cannot afford counsel.[6] Others choose self-representation for a variety of reasons, such as mistrust of the legal system, dissatisfaction with appointed counsel, or self-confidence in taking care of one's own matters.[7] Whatever the reason, pro se litigants need access to the law.

II. Trends in Print and Online Resources

Academic law libraries and many courthouse libraries open to the public will have in their collections many of the core materials discussed here. The trend, however, is for libraries to cut print subscriptions and add online sources.[8] While this may save money and shelf space, and streamline research by students, scholars and practitioners trained to conduct online queries, it has a detrimental impact on pro se researchers who are unfamiliar with the contents of a typical legal collection and lack online access. Physical items on a shelf are often easier to locate and comprehend than virtual sources existing in Internet hyperspace. With a physical collection, the pro se patron can talk to a reference librarian, get pointed in the right direction, and then readily browse the stacks for helpful titles. Library administrators, especially those from institutions dedicated to providing disadvantaged populations equal access to justice, should be

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103, 105 (2002) ("[W]hat is often missing for the poor or impoverished sections of society—access to justice.").

4. *See* Candice K. Lee, Note, *Access Denied: Limitations on Pro Se Litigants' Access to the Courts in the Eighth Circuit*, 36 U.C. Davis L. Rev. 1261, 1264 (2003) ("Given the complex procedures that accompany a lawsuit, pro se litigants often face great difficulty finding their way through the judicial system.").

5. *See generally id.* (defining a pro se litigant as "one who represents herself in a lawsuit without the aid of an attorney").

6. Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 Am. U. L. Rev. 1537, 1573 (2005).

7. *Id.* at 1573–74.

8. *See, e.g.*, Lee F. Peoples, *The Death of the Digest and the Pitfalls of Electronic Research: What Is the Modern Legal Researcher to Do?*, 97 Law Libr. J. 661, 662–63 (2005) (explaining the trend toward libraries replacing book resources with subscription based online materials).

cognizant of this dynamic when determining whether to renew print subscriptions.

Most of the materials discussed in this article are available over the Internet, but from commercial vendors who charge for access. Westlaw and Lexis are the main legal information vendors used by lawyers and government personnel, who either factor in the subscription cost as overhead or pass it on to their clients. Individual access to these online sources by a pro se patron is prohibitively expensive.[9] Free online sources, such as FindLaw[10] and LexisONE,[11] give access to volumes of legal information, but search results are not nearly as comprehensive and well-organized as those provided by commercial vendors for a fee. Suffice it to say that if free Internet sources were as effective for legal research as Westlaw and Lexis, lawyers with expensive access to these commercial vendors would quickly cancel subscriptions and rely on Google for their research.

The typical pro se patron cannot afford to conduct research in the same online databases used by many attorneys. Thus, this article limits its scope to research of book materials available on law library shelves, offering equal access to pro se patrons and lawyers alike.[12]

III. ORGANIZATION OF THE LAW

Unlike public libraries collections, which are typically organized by subject under the Dewey Decimal system, law libraries arrange their collections in a manner that facilitates the research needs of lawyers and law students. While organizational schemes vary by law library, cognizance of government structure and how the law is published may, coupled with casual perusal, be predictive of the gross organization of any particular law collection. If that approach fails, the reference librarian on duty can be tapped for directions to the following: federal and state statutes; federal and state reporters; legal encyclopedias; and form books used by local lawyers.

In the theory of library organization, a law collection may be broken down into primary and secondary sources. Primary sources are "the law," consisting of statutes, case law, and regulations promulgated by lawmakers, such as legislatures, judges, executives (the president or gov-

9. Justin D. Leonard, *Cyberlawyering and the Small Business: Software Makes Hard Law (But Good Sense)*, 7 J. SMALL & EMERGING BUS. L. 323, 344–45 (2003) ("Without a special deal, Westlaw costs $14 per minute (not including printing costs).").

10. FindLaw, http://findlaw.com (last visited Oct. 4, 2006).

11. Lexisone, http://lexisone.com (last visited Oct. 4, 2006).

12. *See* Phill Johnson, *Free on the 'Net: FindLaw, LexisONE and More*, 91 ILL. B.J. 579 *passim* (2003) (evaluating free online legal databases).

ernors), and regulatory agencies. A litigant typically cites primary sources when relying on authority to support a legal argument.

Secondary sources make up everything else not primary, such as legal encyclopedias, finding aids, treatises, and law review articles. Secondary source finding aids are typically shelved with the primary materials to which they make reference. Treatises (a fancy name for what a layperson would call a "book") are usually shelved by subject, in a fashion similar to the organization at the public library. Law journals are ordinarily treated as periodicals or magazines, and shelved together roughly in alphabetical order by title.

The organizational scheme for primary law resources divides into two components. First, the researcher must determine whether the area of research is federal or state law. For example, federal statutes logically may be shelved near federal cases; Texas statutes may be near Texas cases. For the second component, one needs to recall from civics class the three branches of government and their functions: the legislature makes the law; the executive enforces the law; and the judiciary interprets the law.[13] Thus, statutes may be shelved in one area, regulations in another, and cases in a third area. By far, case law occupies the most shelf space.

Even with this background in mind, a layperson first entering a law library may experience confusion—even a sense of disorientation.[14] The novice researcher, when stepping into the stacks, will confront huge sets of books of similar size and color shelved on range after range. Not to worry; the researcher only needs to understand the straightforward notation on the spines of these volumes and how basic legal citation sends the researcher to a particular volume and page. Getting over this learning curve of understanding the organization of legal materials is not too much more difficult than understanding the organization of a standard encyclopedia, which simply depends on knowledge of the alphabet and cognizance that information about aardvarks will predictably be in the first volume and zebras in the last volume.

IV. Primary Sources and Finding Aids

Navigating primary legal resources is simplified if the sources are broken into manageable divisions. The two main primary sources are statutes and cases. Looking first at statutes, each of the fifty states and the

13. Harold J. Krent, *Separating the Strands in Separation of Powers Controversies*, 74 Va. L. Rev. 1253, 1254 (1988).

14. *See* Paul D. Healey, *In Search of the Delicate Balance: Legal and Ethical Questions in Assisting the Pro Se Patron*, 90 Law Lib. J. 129, 131 (1998) (noting that "[l]aw libraries were not originally intended for use by the general public, but were intended to be the exclusive domain of legal practitioners").

federal government have their own set of statutes—or codes.[15] A set of statutes typically contains the government body's constitution (often the first volume(s) of the set), the various statutory provisions in the middle volumes, usually numbered by title and section, or article, and a comprehensive index at the end of the set. A fail-safe strategy for conducting legal research is first to look to the end of a set of volumes for a general index.

Statutory and code language unaccompanied by editorial enhancement[16] is readily available for free on the Internet.[17] Legal practitioners and courts, however, conduct research in *annotated* versions of statutes and codes, not generally available for free online.[18] An annotated statute or code contains the same legislative language found in the basic version made available via the government, but the commercial publisher adds references to court cases interpreting the language (called notes of decisions), notes on the history of the statute, and suggestions helpful to the practitioner who wants guidance in use of the statutory provision, such as references to practice forms and explanatory articles. By way of example, the United States government prints the United States Code, which contains the basic statutory language but little of the editorial enhancement just discussed. On the other hand, West Publishing Company[19] prints the widely used United States Code Annotated, and Lexis prints the United States Code Service. These latter publications are fully annotated and contain reference sources lawyers and judges turn to for research in books.

The continual addition or revision of laws and updated notes of decisions necessitates regular updating to the various volumes in the annotated statutes set. Replacement of the entire set of bound volumes would

15. The term "statute" is used here generically. Technically, a statute often refers to the law as passed by the legislative body, containing the various topics addressed by the legislation. This language is then codified, that is, broken up by topic and grouped with similar provisions in a "code" or "revised statute" that addresses a single topic.

16. A judicial opinion interpreting what the language of a law means often offers more meaning than the text of the law itself; thus, an editor can greatly add to the utility of the statutory language by providing notations to court cases that have interpreted a particular statute. ROY M. MERSKY & DONALD J. DUNN, FUNDAMENTALS OF LEGAL RESEARCH 156 (8th ed. 2002).

17. FindLaw, *supra* note 10 (containing links to federal and state legal resources).

18. *See, e.g.*, MERSKY & DUNN, *supra* note 16 (stating that annotated United States code sets are "easier to use, more current, and better indexed" than the official code published by the Federal government).

19. *See* Robert Berring, *Chaos, Cyberspace and Tradition: Legal Information Transmogrified*, 12 BERKELEY TECH. L.J. 189, 190 (1997) ("In 1996, the West Publishing Company was purchased by the Thomson Group."). This article will refer to Thomson/West products by the commonly used business designation "West."

be prohibitively expensive if undertaken every time a bit of statutory language within the set changes or a note describing a new decision is added. Instead, publishers use several procedures to update changes throughout these legal volumes.

New laws passed during a legislative session are collected in pamphlets, generically referred to as session laws, which are usually shelved at the end of the set. Because all the information contained in these pamphlets will be integrated into the permanent annotated set in the future, publication is on cheap paper, similar to that used for a phonebook, indicating the nonpermanent nature of the pamphlets. These session laws, along with any new notes of decisions and other editorial enhancements to the statutory language are integrated, usually annually, with the information contained in the bound volumes being supplemented. This can take two forms. Sometimes the amount of new material and any revisions to a given volume necessitates replacement of that bound volume. More typically, however, new laws and annotation information impacting the content of the bound volume appear first in "pocket parts," named for the slot, or pocket, in the back cover of each bound volume, into which is inserted an annual supplement. Just as the session law pamphlets, pocket parts are printed on cheap paper because they will be replaced annually. When the pocket part grows to a size that makes it difficult to fold into the back cover of the bound volume, the publisher issues a new bound volume. Another method to supplement a bound volume is by the addition of a supplementary pamphlet, shelved next to the bound volume. Ultimately, the entire bound set and annual pocket parts can be supplemented with, for example, quarterly pamphlets shelved at the end of the set.

To be thorough in statutory research, the researcher must be confident that the materials are up to date. Look first to the bound volume copyright date, which indicates that the information contained in that book can be no more current than that date. Next, check if the bound volume has a pocket part that is less than a year old. Look for a supplementary pamphlet on the shelf next to the bound volume, and for any interim pamphlets near the end of the volume set. Finally, research any session laws that may be relevant. Even with that, a new law or new court case interpreting the law could be in the works but not yet published in the bound set or any of its periodic updates. That is one reason online research with Westlaw or Lexis has certain advantages over book research. It can be instantly updated, albeit at a high subscription cost.

The researcher must access the content of the statutory set mindful of the currency of the materials. Usually at the back of the set of volumes is a general index useful to access a statutory subject by topic. Keep in mind that legal publishers typically use index terms that would be familiar to legal practitioners, and not necessarily the term a layperson would

choose. For example, "kill" is a layperson term for what a lawyer would refer to as "murder" or "homicide." Lawyers are trained to formulate descriptive key words and phrases to help with index searching.[20] Consider terms that are specific as well as by general category. If there is no entry for "dog," look in the index under "animal."

Another method to access a statute set is by browsing the general descriptors on the spines of the volumes. Codified laws are grouped by subject. Thus, criminal provisions may be in a volume marked "penal," and divorce procedures in a volume marked "family." While in the general area of the applicable statute, look at the table of contents at the front of the volume to hone in on the desired subject. A safe bet for locating an applicable statute is to follow a citation reference in a case opinion written by a judge. Such a reference will contain a volume number or title, followed by a section number or article.

Having located the applicable law in an annotated set of statutes or codes, the researcher should then read the value-added material, such as historical references, research links, and especially the notes of decisions for access to case law interpreting the statutory language. Be sure to check pocket parts and any supplementary pamphlets.

The other major primary resource to conduct legal research is case law. Beige case reporters take up major shelf space in a typical law library. To the untrained researcher these volumes, at first glance, are indistinguishable from one another. However, one need only decipher the spine notation and correlate that information to standard citation conventions to make case opinions easily navigable with a case cite.

As judges write opinions, West Publishing collects the documents and publishes[21] them in a series of books called, collectively, the *National Reporter System*. The West system groups federal court opinions separately from state court opinions. Some of the states and the United States Supreme Court publish their own versions of case reporters, but, as with the official statutes and codes discussed above, these official versions lack many of the editorial enhancements provided by commercial publishers. Judges and attorneys use West's *National Reporter System* when conducting book research for federal and state cases.

Federal opinions are collected under three titles: the *Supreme Court Reporter*, which carries only United States Supreme Court cases; the *Fed-*

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20. *See* William A. Hilyerd, *Using the Law Library: A Guide for Educators Part V: Finding Legal Materials by Topic*, 34 J.L. & EDUC. 533, 552–53 (2005) (discussing archaic conventions used in certain types of indexes to legal resources).

21. *See* Michael Hannon, *A Closer Look at Unpublished Opinions in the United States Courts of Appeals*, 3 J. APP. PRAC. & PROCESS 199, 205–06 (2001) (noting that not all court opinions are sent to West for book publication; many of these opinions, however, are available online in subscription-based databases).

eral Reporter, which carries opinions of the various circuit courts of appeal; and the *Federal Supplement*, which carries the opinions of the federal trial courts. These three titles are represented by abbreviations that logically correspond to their names: S. Ct. for the *Supreme Court Reporter*; F. for the *Federal Reporter*; and F. Supp. for the *Federal Supplement*.[22]

State court opinions are collected not by court level, as with federal cases, but by geographical region. For example, published Texas cases appear in the *South Western Reporter*, along with the published cases from Arkansas, Kentucky, Missouri and Tennessee.[23] The seven regional reporters and their abbreviations are as follows: *Atlantic Reporter*, A.; *South Eastern Reporter*, S.E.; *Southern Reporter*, So.; *North Eastern Reporter*, N.E.; *South Western Reporter*, S.W.; *North Western Reporter*, N.W.; and *Pacific Reporter*, P.[24] In general, the regional reporters carry published state appellate level cases—that is, no state trial court opinions (unlike F. Supp., which carries published federal trial court opinions).

As a practical matter, the pro se litigant will likely research within the jurisdiction in which the subject of the litigation occurred, so there may be use of only one of the regional reporters. If in doubt about which regional reporter contains the case law of a certain state, ask a reference librarian. The content of the regional reporters does not always follow logic. For example, Michigan cases are in the *North Western Reporter*,[25] and Oklahoma cases are in the *Pacific Reporter*.[26]

Familiarity with the reporter abbreviation scheme unlocks the simple citation convention lawyers use to identify the location of any particular case. For example, the citation 86 S. Ct. 1602 directs the researcher to the 86th volume of the *Supreme Court Reporter*, and then to page 1602. This case—the famous opinion in *Miranda v. Arizona*[27]—will always uniquely occupy that spot. Thus, whenever a judge, lawyer, or researcher wants to refer the reader of a legal document to *Miranda*, they include the citation 86 S. Ct. 1602. The pro se patron can ask someone at the law library front desk, "Where are the *Supreme Court Reporters*?," and then go pull the case off the shelf.

The same citation scheme works for locating any case in the *National Reporter System*. The researcher knows from the citation that 1 F. Supp. 100 appears in the first volume of the *Federal Supplement*, beginning on

22. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 193–94 tbl. T.1 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005) [hereinafter BLUEBOOK].

23. *Id.* at 210, 216, 232–33 tbl. T.1.

24. *Id.* at 198–239.

25. *Id.* at 215.

26. *Id.* at 227–28.

27. 86 S. Ct. 1602 (1966).

page 100, and is a federal trial court opinion.[28] The citation 300 P. 1000 sends the researcher to volume 300 of the *Pacific Reporter*, the opinion beginning on page 1000. The citation indicates that the opinion will be a state court appellate case (court of appeals or supreme court) from one of the states in the *Pacific Reporter* region. In this instance, the citation is to an Oklahoma Supreme Court opinion.[29]

The West brothers began assigning names and volume numbers in the mid 1870s to the then-nascent West's *National Reporter System*.[30] Along the way throughout the century that followed, the volume count in some of the sets reached into the thousands. To accommodate the space needed on the spine of each book for volume number notation, West typically starts a new series when the count for any given set reaches 999 volumes. Thus, the volume that follows 999 F. Supp. is 1 F. Supp. 2d, denoting the beginning of a second series. Most of the West Regional Reporters are in their second or third series; for example, recent published Texas appellate cases appear in the S.W.3d. The *Federal Reporter* is in its third series, notated by F.3d.

Another twist in locating cases by citation is the occasional use of "parallel" cites. These come into play when an opinion is published, for example, in a West reporter *and* an additional source, such as one of West's specialty reporters or another publisher's reporter. In the classic illustration, the United States Supreme Court publishes the official *United States Reports* (U.S.); West publishes the *Supreme Court Reporter* (S. Ct.); and Matthew Bender & Company, a Lexis member, publishes the *United States Supreme Court Reports, Lawyer's Edition*, which is in its second series (L. Ed. 2d). Thus, the parallel cite for the *Miranda* opinion is *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). The same case appears in all three sets of reporters. *Miranda* can be found in the 384th volume of the *United States Reports* beginning on page 436, in the 86th volume of the *Supreme Court Reporter* beginning on page 1602, and in the 16th volume of the *Lawyer's Edition*, second series, beginning on page 694.

The various publishers include in their publications different editorial enhancements to the *Miranda* case. The *United States Reports* provides the opinion, a syllabus outlining the holding in the case, a list of counsel participating in arguments and filing briefs, and a table of cases and general subject index that refers to other cases in the volume. West's *Supreme Court Reporter* provides the same content from the Court contained in the *United States Reports* but adds a synopsis and headnotes

28. *See* Frick Co. v. Rubel Corp., 1 F. Supp. 100 (E.D.N.Y. 1932).
29. *See* TULSA GAS PROD. CO. v. KELLY, 300 P. 1000 (Okla. 1931).
30. *See* Berring, *supra* note 19, at 191–92.

on the major points of law in the case. The *Lawyer's Edition*, similar to West's treatment of the case, adds to the Court's content its own summary and digest notes, as well as summaries from the attorneys' briefs to the court and an article discussing various cases considering the admissibility of pretrial confessions, which was at issue in *Miranda*.[31] A large library, such as a law school collection, will likely carry all three reporters. A county courthouse or law firm library might only subscribe to one of the versions.

Some of the states publish, or in the past have published, their own case reporters, which gives rise to parallel citations. The Texas Supreme Court case *Shell Oil Co. v. Rudder*, 156 Tex. 618, 299 S.W.2d 686 (1957), can be found in the 156th volume of the *Texas Reports* beginning on page 618 and in the 299th volume of the *South Western Reporter*, second series, beginning on page 686. The State of Texas stopped publishing its official *Texas Reports* in 1962;[32] thus, all subsequently published Texas appellate cases appear without a parallel citation in West's *South Western Reporter* second and third series (S.W.2d and S.W.3d). For purposes of retrieving a case, use of either the state-published official reporter or commercial-published reporter will provide the reader the cited legal source.

Not all court opinions are published. In every case in which a court issues a written opinion, it sends copies to the litigating parties. Only in a certain percentage of cases does the court mark the written opinion for official publication, with inclusion in a permanent bound reporter—usually one of the reporters in West's *National Reporter System*. A generally accepted estimate for federal appellate courts is that only twenty percent of the cases issued are selected for publication.[33] State court statistics are harder to track because the various states have unique publication rules and appellate court structures.[34] For purposes of pro se research, the local law library will not have available every case ever issued by the courts. The major rationales backing the decision for nonpublication of a case turn on principles of judicial economy and economy of library space. Proponents of limiting the number of published cases argue that courts act with more efficiency in writing for a limited audience, *i.e.*, the parties to the case, instead of general audience who would have to be fully in-

31. E.H. Schopler, Annotation, *Admissibility of Pretrial Confession in Criminal Case—Supreme Court Cases*, 16 L. Ed. 2d 694 (1966).

32. *See* BLUEBOOK, *supra* note 22, at 233.

33. *See, e.g.*, Hannon, *supra* note 21, at 201 (reporting that "more than seventy nine percent of federal circuit court opinions are unpublished").

34. *See* Stephen R. Barnett, *No-Citation Rules Under Siege: A Battlefield Report and Analysis*, 5 J. APP. PRAC. & PROCESS 473, 477 (2003) ("Merely to collect, let alone to classify and compare, the rules [on unpublished opinions] of all the states is therefore a substantial undertaking.").

formed of the factual and procedural aspects of the case. Second, the glut of published cases militates against publishing similar opinions when the opinion will add little to the existing body of law on the topic.[35]

This should not leave the impression that case reporters readily available in the law library fail to provide millions of cases, covering over a century of law and speaking on every aspect of American law. However, to look up the case ruling on a particular divorce, bankruptcy, or criminal conviction, the researcher will likely have better success abandoning the law library to dig through the archived case files at the local court house to retrieve whatever the clerks of court have placed in the public record.[36]

Pro se researchers unquestionably are at some disadvantage with regard to the acquisition and use of unpublished opinions. In one significant scenario, citation to unpublished opinions is common practice by the government, such as in its role as prosecutor in criminal actions.[37] The government has ready access to thousands of so-called unpublished opinions available online from subscription databases, such as Westlaw and Lexis.[38] By contrast, pro se litigants often lack financial resources to take advantage of fee-based resources. On a positive note, the E-Government Act of 2002[39] will soon require all federal courts of appeal to post all decisions, whether published or not, on the Internet.[40] At this time, however, book research in the local library is the most cost efficient method for pro se litigants to research case opinions published in West's *National Reporter System.*

The discussion so far on locating cases applies when the researcher knows the citation, that is, volume number—reporter abbreviation—page number. These case law citations may come from the notes of decisions researched in annotated statutes, as discussed above, or from references in court pleadings or other case opinions. Oftentimes, however, citation to a desirable case is unknown, such as when the researcher wants to

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35. *See* Joseph L. Gerken, *A Librarian's Guide to Unpublished Judicial Opinions*, 96 LAW LIBR. J. 475, 477 (2004).

36. *See* Boyce F. Martin, Jr., C.J., *In Defense of Unpublished Opinions*, 60 OHIO ST. L.J. 177, 185 (1999) ("All federal appeals court opinions, after all, are part of the public record.").

37. Robert A. Mead, *"Unpublished" Opinions as the Bulk of the Iceberg: Publication Patterns in the Eighth and Tenth Circuit United States Courts of Appeals*, 93 LAW LIBR. J. 589, 597 (2001).

38. William R. Mills, *The Shape of the Universe: The Impact of Unpublished Opinions on the Process of Legal Research*, 46 N.Y.L. SCH. L. REV. 429, 433 (2002–2003).

39. E-Government Act of 2002, Pub. L. 107–347, 116 Stat. 2899, 2913–15 (to be codified at 44 U.S.C. § 101).

40. Analisa Pratt, Comment, *A Call for Uniformity in Appellate Courts' Rules Regarding Citation of Unpublished Opinions*, 35 GOLDEN GATE U. L. REV. 195, 212 (2005).

locate an opinion to refute a point of law or conduct original research. In that situation, the researcher needs to access the case by topic. Because cases are published in the reporters in rough chronological order, an external research tool is needed.

West developed the *American Digest System* in the 1870s, which categorizes and indexes each distinct point of law in every case published in the *National Reporter System.* West editors examine each published opinion to glean the significant points of law—what one writer calls "nuggets of authority," which researchers use to construct legal arguments.[41] The trade name for these legal nuggets is "headnotes." Since the 1870s, West's scheme has been to divide the entire body of American law into seven categories, and then further subdivide those categories into (currently) approximately 414 topics.[42] Thus, every case published in the *National Reporter System* has at least one headnote that fits into the scheme. All of the headnotes are collected by topic in sets of bound volumes called digests, which are updated with pocket parts. Case reporters are served by corresponding digests, which provide topical access to case opinions. By way of example, the *Federal Practice Digest*, currently in its fourth series, collects headnotes from cases in the *Federal Supplement*, *Federal Reporter*, and *Supreme Court Reporter.* The *Texas Digest*, currently in its second series, provides topical access to Texas cases reported in the *South Western Reporter*, and Federal opinions connected to Texas, such as cases from the Fifth Circuit and Federal district courts sitting in Texas.

Digest sets for state and regional reporters typically are made up of 30 to 60 volumes. The *Federal Practice Digest 4th* is over 100 volumes. Case headnotes assigned to one of the 414 West topics are arranged in each of the digest sets alphabetically by topic name, starting with "Abandoned and Lost Property" and ending with "Zoning and Planning."

If the topic is known, the researcher can look at the spine notations on the individual digest volumes and then browse the subject analysis by reading the volume's table of contents. An experienced lawyer, for example, could avoid use of the index knowing that West has digested the topic on the *Miranda* rule under Criminal Law.

The pro se researcher, by contrast, would probably have better success starting the research process in the Descriptive-Word Index that accompanies every digest set. Effective use of this multivolume index requires the researcher to distill the legal and factual aspects of the controversy to

41. Fritz Snyder, *The West Digest System: The Ninth Circuit and the Montana Supreme Court*, 60 MONT. L. REV. 541, 541 (1999).

42. *See generally* THOMSON WEST, WEST'S ANALYSIS OF AMERICAN LAW, at v (rev. ed. 2006).

key terms that match with the digest topic scheme. Under the *Miranda* warning scenario, the controversy is about an arrest in which police interrogated the criminal defendant without a defense attorney present. The key concepts are the arrest and the absence of an attorney. Turning to the "arrest" term in the Descriptive-Word Index, under the subcategory "attorney," the entry sends the researcher to the term "criminal law, counsel for accused." Browsing under "counsel for accused," the entry for "statements by defendant" matches the headnote from the *Miranda* opinion. In West's digest notation the topic is "Crim Law 412.2," which is the "key number." In deciphering this notation, the "Crim Law" term refers to the Criminal Law category, which is one of the 414 topics in the digest scheme, and within that topic, the term 412.2 (of over 1600 Criminal Law subcategories) concerns the caution authorities must give an accused regarding the right to counsel.

Armed with the key number "Crim Law 412.2," the researcher can survey the spine notations on the numerous volumes of the digest and easily locate (because the topics are in alphabetical order) the Criminal Law volume that contains subtopic 412.2. Under that location, the digests collect headnotes on the subject covered by Crim Law 412.2. The *Federal Practice Digest 4th* lists all of the federal *Miranda* warning cases, in order starting with opinions by the United States Supreme Court, followed by circuit courts of appeal, and district trial courts. The *Texas Digest 2d* lists all *Miranda* warning cases reported by federal courts sitting in Texas and Texas courts. In sum, once in possession of key number Crim Law 412.2, the researcher can locate case opinions on the *Miranda* warning in all of the jurisdictions covered by the West digest system.

This illustration shows that research beginning with the Descriptive-Word Index to locate key numbers in the digest produces thorough research results, even though the process can be cumbersome at times. Nonetheless, digest research is a tried and proven method lawyers have used for over a century.

Much of legal research is an exercise in finding analogous cases with favorable outcomes. An effective way to do so is to find a key number, whether through the digest Descriptive-Word Index, just described, or from the headnote in a particular case already located. A typical research task begins with the researcher confronting a case with a legal analysis that produces an undesirable result. If that legal analysis is significant, a West editor has likely reduced the proposition to a headnote, assigned it a topic and key number, and placed it in the digest that supports the case reporter—along with all of the other cases written on that legal proposition. The researcher can use the key number to access a digest, read all of the other headnotes collected on that particular legal analysis, and possibly find cases that indicate a favorable result.

It must be emphasized that American law is built on a system of precedent—the tradition of deferring to similar cases decided previously in making one's argument.[43] Thus, locating the "similar case" (with a favorable holding, relatively speaking), is a key goal of legal research. As just discussed, the digest key number method leads the researcher to applicable law, and the collection of headnotes under that key number indicates the range of findings and holdings made by courts on that legal issue.

A commercial publication titled the *American Law Reports*, known by the initials A.L.R., provides another research source designed specifically for the comparison of similar cases. Since about 1919, the editors at A.L.R. have published "annotations." In non-legal scholarship, an annotation is commentary added to text.[44] A legal research annotation builds on a case, and explores issues in a discussion of similar cases touching on the same legal topic.

Annotations differ in some respects from digests. A.L.R. is a selective reporter[45] because it covers only the cases related to the treated topics—unlike West's digests, which are part of the comprehensive system that treats *every* case published in the *National Reporter System*. A.L.R. annotations are similar to digests in that they are accessed through a multivolume general index shelved at the end of the set and updated by pocket parts.

For each A.L.R. volume, editors select 10 to 20 significant cases that attorneys are likely to research for litigation. Although not every legal topic is covered by an A.L.R., with more than 800 volumes available to date, A.L.R. provides research information on thousands of legal issues. The experienced researcher knows that developing novel theories of recovery can be time consuming and risky. Locating an A.L.R. on point avoids the hazards of reinventing the wheel. By its very nature, an annotation covers territory already addressed by various courts. Thus, effort is well spent researching A.L.R. for an annotation on point. One commentator assessed the value of A.L.R. research as follows:

> [A.L.R. is] such a helpful tool. . .[b]ecause so much research has already been done and it can save an incredible amount of time. If an annotation exists on your issue, you will find that its author has already compiled some of the cases in the area, anlayzed them, and summarized them for you.

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43. Polly J. Price, *Precedent and Judicial Power After the Founding*, 42 B.C. L. REV. 81, 108 (2000).

44. *See, e.g.*, VICKI FITZPATRICK, CREATING AN ANNOTATION: A MANUAL ON WRITING AND EDITING ANNOTATIONS 1 (1979).

45. MERSKY & DUNN, *supra* note 16, at 115.

> Caveat: You cannot just use the author's research and assume that it is complete, but you can use it as a starting point to get a lot of information and an overview of the issue.[46]

By way of example, in 1986, an A.L.R. editor selected *United States v. Fouche*,[47] a case in which FBI officials obtained an involuntary confession from a criminal defendant, who, after receiving a *Miranda* warning, said he "might want to talk to a lawyer." Volume 80 of the A.L.R. federal series reports the *Fouche* case, beginning on page 605; the annotation, titled "What Constitutes Assertion of Right to Counsel Following *Miranda* Warnings—Federal Cases," follows on page 622.[48] The discussion analyzes numerous scenarios based on "similar cases" to *Fouche*. The cases are arranged in sections: first, by those in which the right to counsel was held asserted; second, by those held equivocally asserted; and third, those held not asserted. In other words, a criminal defendant in the same shoes as defendant Fouche will find cases in the annotation in which the defendant prevails alongside cases in which the prosecutor was successful.

A.L.R. annotations do not only provide access to an array of cases on a given issue. Beginning with the 3d series of annotations, they also give directions for targeted research in a feature called the Total Client-Service Library. This service guides the researcher to relevant legal encyclopedia entries, and pleading and practice forms. The 5th series also provides West's key numbers.[49]

As with West's digests, the researcher familiar with A.L.R. will readily appreciate the value in accessing similar cases—some of which may be in support of a legal issue, albeit alongside unfavorable cases. However, access to a full range of legal opinions—both favorable and adverse—shows the strengths and weaknesses of a case. The researcher must confront the full range of authority during the research phase, while developing the theory of the case. Moreover, courts *require* litigants to reveal adverse

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46. Maureen Arrigo-Ward, *How to Please Most of the People Most of the Time: Direction (or Teaching in) a First-Year Legal Writing Program*, 29 VAL. U.L. REV. 557, 598 (1995).

47. United States v. Fouche, 776 F.2d 1398 (9th Cir. 1985) (also reported at 80 A.L.R. FED. 605 (1986)); *see also* Mitchell J. Waldman, Annotation, *What Constitutes Assertion of Right to Counsel Following* Miranda *Warnings – Federal Cases*, 80 A.L.R. FED. 605 (1986).

48. *See* Mitchell J. Waldman, Annotation, *What Constitutes Assertion of Right to Counsel Following* Miranda *Warnings—Federal Cases*, 80 A.L.R. FED. 622 (1986).

49. *See generally* Frederick Schauer & Virginia J. Wise, *Legal Positivism as Legal Information*, 82 CORNELL L. REV. 1080, 1107 (1997) (noting that the Thomson publishing conglomerate owns both West and A.L.R.). It should also be noted that the linking of A.L.R. and West's digest system makes for a powerful research duo.

authority.[50] Researchers must be wary that opposing counsel may seek the same research resources, relying on the very sources the opposing party discarded as unfavorable. The best research strategy is to research and locate favorable and unfavorable authority—relying on the former, and confronting and distinguishing[51] the latter.

V. Legal Encyclopedias

Sometimes, diving directly into finding such aids as a digest or annotation can be perplexing to the pro se patron (and to seasoned lawyers).[52] In those situations, another strategy might be to start researching in a more familiar source: an encyclopedia. The two major legal encyclopedias are *American Jurisprudence*, now in its second series, popularly called *Am. Jur. 2d*, and *Corpus Juris Secundum*, known by its initials *C.J.S.* Each of these sources is arranged alphabetically by topic, with content that states general legal propositions, heavily footnoted with case citation references. Topical access is enhanced with multi-volume general indexes. Pocket parts update the bound volumes. Unlike annotations that analyze and assess the law, encyclopedia coverage of legal issues assumes a neutral tone in offering an overview of the law. This posture makes legal encyclopedias a good starting point for many research tasks, especially for pro se researchers.

For more targeted research on the law of a specific jurisdiction, some states have encyclopedias dedicated to their own state law. For example, *Texas Jurisprudence 3d* provides comprehensive coverage of the full body of Texas law made by the state courts[53] and legislature. Footnote references provide the researcher with relevant case citations, as well as digest key numbers and A.L.R. annotations on point.

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50. Christopher W. Deering, *Candor Toward the Tribunal: Should an Attorney Sacrifice Truth and Integrity for the Sake of the Client?*, 31 Suffolk U. L. Rev. 59, 74 (1997) (discussing affirmative duty to disclose adverse authority).

51. Douglas R. Richmond, *The Ethics of Zealous Advocacy: Civility, Candor and Parlor Tricks*, 34 Tex. Tech L. Rev. 3, 40 (2002) (explaining that "[o]nce a lawyer reveals adverse authority, he is free to distinguish it, to argue that it is inapposite, to argue that the law ought to be changed, or to advance any other legitimate grounds for disregarding it").

52. Mersky & Dunn, *supra* note 16, at 350 (noting that "[a]n individual beginning a project often lacks even the most rudimentary knowledge necessary to identify and research the legal issues involved. At other times, a refresher in broad concepts is needed").

53. *Cf.* James E. Duggan, *Using Illinois Legal Encyclopedias*, 87 Ill. B.J. 167, 167 (1999) ("Typically, state legal encyclopedias will include state case law, as well as cases from federal court applying that state's law, or U.S. Supreme Court cases affecting the validity of the state's law.").

VI. CITATORS

So far, this article has discussed legal research as a process to gain familiarity with an area of law and find authority. A third, critical stage involves the necessity to update the law. This is done with a citator. The two leading legal citators are *Shepard's Citations*, a Lexis product available in both book format and online, and *KeyCite*, a Westlaw product available only online.

Legal publication is fluid because lawmakers continuously pass new legislation and courts regularly issue opinions. A statute or published case may have been legal authority when it was placed in the library stacks ten years ago, but for a variety of reasons, it may no longer be valid law today. Lawmakers repeal or revise statutes, and court opinions can later be reversed or overruled. When considering a source, the researcher must verify whether content printed in volume 100 is still good law when volume 200 hits the shelf.

Each legal resource, such as a statute or case, has a unique citation. Subsequent legal resources, such as case opinions or annotations, may cite to that earlier authority to support or refute a legal proposition. A citator records the initial citation and keeps a running list of subsequent resources that cite it. For example, in cite checking the *Miranda* opinion at 384 U.S. 436, *KeyCite* shows over 50,000 citing references. This quantitative record indicates that *Miranda* is a key opinion for its legal propositions on custodial interrogations, demonstrated by the fact that numerous sources cite it. By contrast, if cite checking a case produces no record of other sources citing it, its value as precedent certainly would not be as strong as a widely cited case. On a qualitative note, over 500 cases have not just cited *Miranda*, they have explained some aspect of the *Miranda* opinion; about that many cases have distinguished *Miranda*.[54] Using a citator, the researcher can hone in on cases from one's own jurisdiction that have cited or discussed *Miranda*, readily updating the 40-year-old opinion.

Knowledge of these quantitative and qualitative factors tells the researcher a lot about the precedential value of the case. One commentator sums up the essentials needed to determine the value of a resource under review for favorability: "Ha[s] it been, best of all, cited as precedent by subsequent cases? Ha[s] it never been cited at all by subsequent

54. *See, e.g.*, K.K. DuVivier, *The Aikido Technique for Rebutting Opposing Authority*, 31 COLO. LAW. 65, 65 (2002) (noting that opposing authority can be distinguished, or rebutted, because it has different facts, is based on unsettled law, or is out of date).

cases? Or ha[s] it been distinguished, or, worst of all, overruled by a later case?"[55]

With the advent of online searching, cite checking has become as simple as typing a citation and clicking a button.[56] Unfortunately for pro se researchers, online citation services are available by subscription only. Unless the law library offers free access through a public *Shepard's* or *KeyCite* terminal, the pro se patron wanting to avoid a fee will have to confront *Shepard's* research in multi-volume bound set, supplemented with paper pamphlets. The process is aptly called "Shepardizing."[57]

The concept of Shepardizing in print format is straightforward: assemble all of the volumes in which the citation could be treated (usually several bound volumes and a couple supplementary pamphlets), and look for notations on positive and adverse treatment listed for that citation.[58] The reality of Shepardizing is much more confusing. One can easily get disoriented scanning lists of citations and deciphering explanatory notations. Fortunately, each set of *Shepard's* comes with detailed instructions in the introductory pages to each volume. Read them whenever Shepardizing; and Shepardize every citation relied upon for legal authority.

Finally, ask a reference librarian for help with cite checking. If the library discontinued its *Shepard's* print subscription, it must offer an alternative online format for cite checking to enable patrons to conduct verifiably accurate research. An online terminal with a *Shepard's* or *KeyCite* subscription typically is dedicated for public access when no print format is available.

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55. Lynn Foster & Bruce Kennedy, *Technological Developments in Legal Research*, 2 J. APP. PRAC. & PROCESS 275, 277 (2000) (discussing the historical need of a citator).

56. *See, e.g.*, MERSKY & DUNN, *supra* note 16, at 313 ("The marriage of electronic technology and citation services is a happy one. Tasks that were fairly time consuming and tedious in the print world are easier in an electronic environment.").

57. *See* Donna Galchus, *To Join or Not to Join—A Law Review Reflection*, 25 U. ARK. LITTLE ROCK L. REV. 255, 256–57 (2003) (discussing "the importance of Shepardizing cases to determine if they still represent good law. In legal research it is meaningless to find a good case that stands for the exact proposition you are searching for if it has been reversed or overruled by another decision").

58. Christine Fisher, *Evolving Technology and Law Library Planning*, 70 ST. JOHN'S L. REV. 181, 183 n.6 (1996) ("[Shepardizing] consists of looking in the proper book and proper division of that book which corresponds to the reporter in which that case was published, then referring to the volume and page number of the case. The citations following that page number represent instances in which the case has been cited in subsequent decisions. To locate all such subsequent citations, it is necessary to examine all bound and soft-covered supplements to the *Shepard's* book being used." (citations omitted)).

VII. FORMBOOKS

The discussion to this point has been about the law that has been researched, updated, and formed into an analysis of application of law to facts. The final step requires packaging that analysis for presentation to opposing counsel or the court. Formbooks are helpful at this stage of the practice of law. The formbooks most often used are typically located in a prominent place in the library, or may be held in reserve collections for supervised public use. It is not uncommon to see sections on family law in tatters from frequent use and photocopying.

Lawyers use formbooks to promote consistency and efficiency when creating practice documents. The pro se litigant can take advantage of these same time-saving resources. A wide selection of formbooks is available, which vary in content and scope. Some are single volume materials, such as *O'Connor's Texas Civil Forms*, which is published annually, while others, such as the *Texas Litigation Guide*, are multi-volume sets with periodic updates to loose-leaf binders. The material contained within formbooks can vary from general points of law from no particular jurisdiction[59] to specific provisions from specialty areas within the law. To gain familiarity with the range of information offered in any particular source, time is well spent browsing indexes and tables of contents. Formbooks often contain practice tips, which provide guidance in the form of commentary and checklists.[60] These commentaries often give information about the statute or law in question, suggesting litigation strategies and listing the steps the litigant could follow in the trial process.

A word of caution: a form is *not* a fill-in-the-blank template to be used without discretion. Proper research requires tailoring the form to individual needs by assuring that each of the form's provisions is applicable to the issue.[61] The best research practice entails becoming familiar with the law through the secondary and primary materials discussed above, applying the relevant law to the facts. Forms can only become useful legal instruments after thorough legal research.

VIII. REFERENCE ASSISTANCE

This article has suggested several times that seeking the assistance of a law librarian could be helpful. The librarian will be familiar with the library's collection in general and knowledgeable about which materials local practitioners use, such as popular formbooks and finding aids. Law

59. BRANDON D. QUARLES & MATTHEW C. CORDON, LEGAL RESEARCH FOR THE TEXAS PRACTITIONER 45 (William S. Hein & Co. 2003).

60. *Id.*

61. *Id.*

librarians, however, are *not* free legal aid attorneys. In fact, many law librarians are not attorneys at all. Thus, to get the most out of the reference interview,[62] the pro se patron must keep in mind the role information professionals play in the law library. Their expertise is in the location of legal resources, not what those resources have to say in regard to any specific legal controversy. To get the most assistance from a librarian, approach the meeting from a perspective of wanting tips on where to look for materials on a particular topic, not advice on how to solve an issue.

Equipped with the tools discussed here, the pro se researcher can more ably overcome the hurdle of locating authority to support a valid legal argument. Armed with the knowledge gained from productive legal research, the pro se litigator can better take on the difficult role of self representation and move closer to equal access to justice.

62. *See* Mary Whisner, *Teaching the Art of the Reference Interview*, 94 LAW LIBR. J. 161, 161 (2002) (asking "How do we direct the patron's question toward areas in which it is appropriate for us to respond (as opposed to, say, asking for what amounts to legal advice or psychotherapy)?").