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## Legal Research Using Technological Tools: Librarians' View

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LEGAL RESEARCH USING  
NEW TECHNOLOGICAL TOOLS

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Research Methods in the Study of Legal Issues in Education

2<sup>nd</sup> Edition (Forthcoming)

# **Legal Research Using New Technological Tools**

## **Introduction**

The technology revolution has impacted every aspect of our daily lives. It is hard to imagine a world without smartphones and the Internet. Where and how we access information has changed dramatically over the last decade. Gone are the days of traveling to the library check out books and read printed journal articles. No longer simply storehouses of print information, libraries but now serve as starting points for searching online information that can be accessed anywhere, any time and on any device. Library research that used to take hours or days can now be done in minutes. Online materials are often updated quickly, sometimes in hours rather than weeks or months, when researchers had to wait for updated print materials to be delivered.

Utilizing websites and databases now prevails as the most common method of conducting legal research. The sheer number and variety of resources can sometimes make it difficult to determine where to start, how to choose among similar resources, and how to keep up-to-date on what is available. This chapter provides an overview of vast range of legal materials available in libraries and on the web, and offers guidance for efficiently and effectively conducting legal research.

## **The History of Education Law Research**

The law permeates all areas of education and in many different formats. Some practices are required by law, prohibited by law, and permitted by law. There are constitutional

provisions, statutes, regulations, common law and policies. Generally, these various types of laws are meant to complement one another but conflicts occur. Further complicating the matter, rules of law are created at the federal, state and local levels. While there are many different origins of the law, it is all interpreted by the courts. Courts also resolve inconsistencies between the laws. As a result, research in education law is complex and sometimes difficult to navigate. More and more, resources are available online and in order to understand how to navigate through the myriad of resources available online and how to use them, it is important to understand the history of legal research in education law.

Traditionally, conducting legal research requires three different types of materials: primary sources, secondary sources, and finding aids in print format. Primary sources are the official pronouncements of the government lawmakers: court decisions, legislation and regulations that make up the basis of legal doctrine. Primary sources can be either binding or persuasive authority. For example, a decision from a state supreme court is mandatory authority in its jurisdiction and must be followed by the lower state courts. A state statute must be followed within the state. On the other hand, a court in one state may be influenced by decisions in other states with similar issues but is free to make up its own mind making the primary sources of the similar state persuasive authority. Secondary sources are not the law itself but discuss or analyze the law. While not the law, secondary sources serve important functions in legal research. They clarify the bewildering number of statutes and case decisions, propose changes in the law, and provide current awareness of changing laws. These resources may also contain extensive references to both primary sources and additional secondary sources.

As previously mentioned there is less and less reliance on print resources, however understanding their interconnectivity makes it easier to understand and use the online resources,

which will be discussed further in this chapter. The choice as to which sources a researcher uses and in which order necessarily depends on the sophistication of the researcher. For example, a researcher familiar with education law may start with primary sources, while someone just beginning to research education law may start with secondary sources. Each of the different types of materials necessary to conduct legal research will be discussed in this section.

### ***A. Primary Sources***

#### **1. Constitutions**

Primary sources are the legal doctrine established by the government. These include constitutions, statutes, regulations and case law. The U.S. Constitution is the law of the land. It establishes the three branches of the government: executive, legislative and judicial; describes the relationship among the three branches; forms the unions of the states; dictates the relationship between the federal government and the states; and provides the protection of individual rights. The Constitution has been interpreted as empowering Congress to raise money for education and to adopt certain types of legislation affecting schools, despite never mentioning either education or schools. According to the 10<sup>th</sup> Amendment “[t]he powers not delegated to the United States by the Constitution, nor prohibited it by to the States, are reserved to the States respectively, or to the people,” the basic power to control education devolves to the states. State constitutions generally contain vague language stating that there will be schools and other educational activities and describing the way schools will be governed and funded.

#### **2. Federal and State Statutes**

Congress and state legislatures execute their powers through the enactment of statutes. Most of the statutes controlling the operation of public schools are enacted by state legislatures but federal statutes providing aid to schools and prohibiting discrimination are also significant.

Although specifics vary from state to state most state statutes have enacted statutes that:

- Dictate who may and who must attend school.
- Create local public school districts and boards and the means for their alteration and dissolution.
- Designate the qualifications for public school teachers and educational administrators.
- Prescribe the curriculum that public schools must offer.
- Establish minimum requirements for high school graduation.
- Create a system for raising and distributing funds for education.
- Establish certain limited powers for schools to discipline students and employees.
- Fix the selection process, duties, powers, and limitations of local boards of education.
- Regulate certain aspects of the program of private schools.
- Delegate authority to regulate and oversee certain aspects of education to state agencies and officers.

Even with the 10<sup>th</sup> Amendment, Congress can exercise tremendous influence over schools by its ability to control the allocation of federal funds and its power to regulate interstate commerce. Historically, Congress has always been reluctant to pass laws that regulate schools. However, that reluctance disappeared as Congress began attaching many conditions to the use of federal funds and enacted general laws that apply to schools, including laws prohibiting discrimination in employment and protecting people with disabilities. Two important federal statutes in their effects on public schools are the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §1400, et seq.) and the No Child Left Behind Act (20 U.S.C. §6301 et seq.).

### **3. Regulations**

Regulations explain the meaning of statutes, implement the goals of the statutes and set out the details of the legislation. Many of the specifics of education law are located in regulations and in order to fully understand any education law, it is important to consult the regulations in addition to the statutes. The Federal Register (F.R.) is the daily publication that publishes these regulations. The Code of Federal Regulations (C.F.R.) is the compilation of the regulations arranged by subject matter. Most of the federal regulations pertaining to education promulgated by the U.S. Department of Education are in 34 C.F.R.

#### **4. Case Law**

Courts interpret the rules of law. The decisions rendered by the courts are called case law. The study of any subject of law, including education law is primarily a study of the case law since it provides the authoritative interpretations of the law. See *Owasso Independent School District No. I v. Falvo*, 534 U.S. 426 (2002) where the Supreme Court determined that student assignments of peer grading and announcing their scores didn't satisfy the FERPA definition of education records. Case law does not negate the importance of constitutions, statutes or regulations it merely recognizes that their meaning is not necessarily clear until they are deciphered or clarified by the courts. Once a judgment is rendered in the courts, it is placed into an opinion available for review by researchers in materials called reporters. However, prior to reaching the reporters, the judgment of the courts are released in earlier versions. The day of a decision it is released in what's called a slip opinion. The slip opinion is simply the basic presentation of the court's decision. A few weeks later, the case is released into a soft-bound pamphlet called an advance sheet. The advance sheet is what its name implies an advance of the case being published in the official bound reporter. Advance sheets include research aids and cross-references like headnotes (paragraph summaries of points of law) to assist researchers.

Since the advance sheets are identical to the official bound reporter, they are generally discarded once the official bound reporter arrives.

Case law is divided into the reporter system by federal and state cases. The Federal Reporter System includes: Federal Supplement (F.Supp.) Series, which contains federal trial court opinions; Federal Reporter (F.) Series, which contains Circuit Court opinions; and United States Reports (U.S.), which contains United States Supreme Court opinions. Slip opinions for Supreme Court cases in the United States Law Week (U.S.L.W). There are also two unofficial publications of Supreme Court opinions: West's Supreme Court Reporter (S.Ct.) and the Lawyer's Edition (L.Ed.).

State court opinions are divided into West's National Reporter System. Essentially, this system divides the states into subjectively defined regions: Atlantic, North Eastern, North Western, Pacific, South Eastern, Southern, and South Western. One of the major benefits of this system is the ready access to key numbering system described in more detail below.

### ***B. Secondary Sources***

As mentioned above, primary sources can be notoriously difficult to navigate and understand, let alone locate. Secondary sources that analyze and explain legal doctrine make primary sources more accessible. They are generally written about the law rather than present the law itself. Encyclopedias, textbooks, Restatements and law review articles lay out established legal doctrine, explain its nuances and help the researcher understand how a particular problem fits within the doctrinal structure. They serve as an introduction to a new area of the law or refresh your memory of a familiar area. Secondary sources can contain influential insights to shape law reform or stimulate new legislation. They are practical and provide an overview of the law. They also include references to the primary sources needed for further



research. They discuss leading cases and statutes and are an invaluable resource for the researcher.

### **1. Encyclopedias**

The two national legal encyclopedias are American Jurisprudence 2d (Am.Jur 2d) and Corpus Juris Secundum (C.J.S.). They were once competing works but now are both published by West. Similar to encyclopedias in other disciplines, these provide a quick, general overview on a particular legal topic. While they provide annual updates and pocket parts, they are still slow to show changes in the law and do not provide sufficient detail to fully understand an education-related topic.

### **2. Textbooks and Treatises**

Legal scholars and practitioners have written numerous textbooks and treatises addressing topics of substantive and procedural law. These materials can be divided into several general categories: scholarly treatises; hornbooks and law school texts; practitioners' handbooks and manuals; scholarly monographs; and self-help publications. One of these treatises particular to education law include: *Law of Schools, Students, and Teachers in a Nutshell, 4<sup>th</sup> edition* which explains the legal relationships among public schools, students and teachers in the case law of the state and federal courts. Another treatise is *Education Law, 3<sup>rd</sup> edition* which provides educational administrators and policy makers with the legal knowledge necessary for them to do their jobs. *Education Law: an Essential Guide for Attorneys, Teachers, Administrators, Parents and Students* which attempts to analyze the legal issues from the point of view of school administrators and students. Finally, ELA's *Yearbook of Educational Law* provides analyses of the prior year's federal and state court decisions which affects private and public elementary and secondary schools and higher education. Another treatise is the *Individuals with Disabilities*

*Education Law Report*. It contains the complete text of federal statutes and regulations in the special education area, the complete text or summaries of decisions, rulings and memoranda from federal and state courts, U.S. Department of Education Office of Special Education and Rehabilitation, Office of Special Education Programs and the USDOE Office of Civil Rights, and state educational agencies. It is indexed by topic, statute and regulation.

### **3. Restatements of the Law**

Some of the most important commentaries on the law are the Restatements of the Law. They provide excellent summaries of the law, starting with a general comment of the law. They also include a thorough examination of developments and trends in a particular subject area and examples of specific cases and deviations from the general rule. Education law is not one of the topics covered in the Restatements, developments in the law of contracts and torts impact the education field and can offer assistance in researching background materials.

### **4. Periodicals**

Law reviews offer the most important commentary on the law and are a form of scholarly publication unknown to most disciplines. They are generally edited by law students and not established scholars and are educational tools for their editors. They also provide an opportunity for discussion of legal developments and theories. Law reviews are an invaluable part of the research process as they provide an introductory overview of the area of the law, summarizing the relevant doctrine and literature and they are chock-full of footnotes citing to primary sources and other secondary sources. Generally, law review articles are written on recent developments of the law so they are the one of the best resources for researching changes in the law.

In addition to general law reviews, a number of specialized academic journals are published on variety of legal topics. Two student-edited law reviews devoted specifically to

education law are: *BYU Journal of Law and Education* and the *Journal of Law and Education*. The *Journal of College and University Law* is published by the National Association of College and University Attorneys and focuses on legal developments in higher education. The peer-reviewed journal on education law is West's Education Law Reporter. It covers selected state and federal education cases from 1982 to the present. It also includes summaries of grants, awards and regulations from the U.S. Department of Education and articles authored by education experts. The articles contain accurate and up-to-date analyses of current and emerging legal topics.

### ***C. Finding Aids***

The most common way to locate judicial decisions are by using case digests, annotated reports and descriptive word searches.

#### **1. Digests**

Digests are compilations of the law around major points in a judicial opinion. By far the most well-known and comprehensive digest system is the key number classification system established by West. The West editors prepare headnotes for each case and assign each headnote to a legal topic and a specific Key Number classification within that topic. The headnotes are short, succinct summaries of the points of law in a case.

Education has been classified by West as Key Number 141E and includes such topics as: school desegregation and rights of students with disabilities, admission and attendance of pupils, and curriculum, rules, discipline and government of schools. So, if you were looking for cases pertaining to learning disabilities, you would go to the general topic of education, then the subtopic of Children with Disabilities, Special Education, then select Learning disabilities. One of the more beneficial parts to the classification system is what is **not** included in a particular

topic. West provides a list of all subjects excluded and covered by other topics. For example, under Education you will not find any cases relating to the Family Educational Rights and Privacy Acts (FERPA), you will find that information under the topic of Records. Liability of school district for vehicle-related injuries is covered under the Automobiles heading.

Digests are valuable tools to locate cases but they do have some drawbacks to be considered. They are only headnotes with no text to explain which decision is more important than another or how they fit together. They also do not indicate whether or not a case is still good law. It is always important to locate and read the cases themselves and do not rely solely on the blurbs from the digests.

## **2. American Law Reports (ALR's)**

American Law Reports (ALR's) are currently published in three series: ALR6th for general and state legal issues, ALR Federal 2d for issues of federal law and a new ALR International comparing the law of U.S. and foreign courts. Annotations limited to Supreme Court cases are published in the United States Supreme Court Reports, Lawyers' Edition.

Annotations summarize the cases on a particular topic, like education law, and identify decisions that have reached conflicting results. It does the initial time-consuming research of finding relevant cases and arranges them in specific fact patterns and holdings. They present an organized and efficient way to see the varied judicial decisions.

## **3. Words and Phrases**

Words and Phrases is a multi-volume set of headnote abstracts. Topics are generally included in this set if a court defines or interprets a legally significant term. This set is especially useful to new researchers since it makes it easy to locate cases by gathering key words describing pertinent facts about the cases.

As previously mentioned, much of educational law research may now be conducted online. The remaining sections of this chapter will be devoted to online resources and how to use them. With a basic understanding of the “traditional” ways research was conducted, it will be easier to navigate the new and vast online world.

### **The Revolution of Technology in Legal Research**

#### ***Beginning Your Legal Research: The Law Library is Still a Good Place to Start***

As the cost of electronic dissemination of information has decreased and the price of print books and periodicals has increased, libraries have begun to forgo their large print collections for more online databases. Despite the dip in the cost of delivering information electronically, many research databases are free to consumers but costly to the libraries that make them available. Still, shrinking budgets and user preference for twenty-four hour access has led many libraries to purchase and deliver more electronic content at the expense of print resources. The occasional user of legal sources will need to be prepared do research that substitutes the use of traditional print primary resources such as statutes, regulations and case law, with access to those sources in electronic form, and still requires the use of supplemental secondary sources that are sometimes only available in print. Having a research strategy that encompasses sources in a variety of formats is increasingly necessary to complete a legal research project successfully.

As the number and scope of electronic research resources have grown and libraries have shifted their collections, convenient remote access has grown. However, law library licensing agreements dictate that only law faculty and students have access to some of these resources. These limitations, along with the ease and low cost of providing information resources electronically in the digital age, have resulted in new competitors in the market. In response,

the leaders in the provision of legal research sources have developed versions of their databases that, while less robust, meet many of the needs of those doing interdisciplinary research where legal issues merge with other studies like education. It is important to be aware of the many and various legal resource options as you begin a research project.

Though you may complete components of the legal research process remotely from any computer, it is still a good idea to start your research in an academic or county law library. There you can take advantage of the knowledge of reference librarians who often hold a law degree in addition to a degree in library science. The law librarian can help you understand what free, reliable resources are readily available online and how to supplement those with those proprietary resources that the library pays for and print resource. Though many primary legal resources are available free online, it can be difficult to discern what is reliable and current, and gaps remain that can be filled doing research within the library. Until the researcher addressing issues where law and education merge is comfortable with the new materials, it is smart to take advantage of the research support available in the law library.

### ***Accessing Paid Legal Databases***

The primary providers of electronic legal research sources are LexisNexis, with its new interface, Lexis Advance, and Westlaw, which also has a new interface called WestlawNext. Each of these sources has licensing agreements that limit access to law affiliates. However, to broaden the reach of the sources, universities and public county law libraries often subscribe to LexisNexis Academic or WestlawNext Patron Access. Each of these databases provide access to primary legal materials. LexisNexis Academic allows any campus patron to access both federal and state primary sources as well as legal academic journals, which include scholarly articles on

legal issues with heavy footnoting that can lead to related sources. WestlawNext Patron Access databases vary according to the purchasing library's preference. Generally, it also includes federal primary legal sources, and may include resources of the state in which the library sits and some secondary resources if the hosting library selects to add them. These materials are sufficient to successfully complete many legal research projects. For example, you may find the text of a federal statute like the No Child Left Behind Act, (2001), P.L. 107-110, related regulations that govern the application of the Act and state law that determines how the mandates of the Act are carried out in the state in which you are located. You may also find articles by legal scholars that analyze various aspects of the Act using these sources.

Though not free, there many new resources that contain primary legal sources, and some secondary sources, which have entered the market competing with Lexis and Westlaw. These sources, including Casemaker, Fastcase and Loislaw, provide the convenience of compiling the text of state and federal primary sources in a single place and add some additional conveniences such as the award-winning mobile accessibility of Fastcase and access to a suite of secondary legal sources through Loislaw. Each of these resources have a variety of subscription options that allow the researcher to meet both short- and long-term legal research needs.

### ***Free Sources of Legal Information***

There are several websites that organize access to legal information that can help direct the online legal research process. These sometimes replicate legal information in full-text, but often simply organize legal sources and link out to the original information source. One notable legal resource is the Legal Information Institute (LII) of Cornell University (<http://www.law.cornell.edu/>). This open access source has grown over the years to include federal

legislative, regulatory and judicial resources, as well as select state materials. LII has also developed a legal encyclopedia that can help the researcher new to legal issues understand many legal topics. It provides the legal definitions of terms, for instance, searching the phrase, “free and appropriate public education,” leads to a plain language definition of that term as used in relationship to the Individuals with Disabilities Education Act. Other legal concepts are explored more thoroughly. The coverage of the concept of affirmative action, for example, includes a reference to a Presidential Executive Order and statutes that address the concept generally, as well as links to primary sources of law that address affirmative action in education more specifically.

Two other reputable sources of free legal information online are FindLaw and Google Scholar. FindLaw ([www.findlaw.com](http://www.findlaw.com)) provides links to legal information as well as some original articles that explain various areas of law. FindLaw, owned by Westlaw, provides a site for the general public and a separate site for legal practitioners. Because the site for the general public focuses more on educating consumers about legal issues they may face, the professional site is a better place to begin legal research. It is linked from the top of the consumer page. Primary materials can be located by selecting the appropriate jurisdiction and legal articles and commentary by legal practitioners can be accessed through a search by practice area or research type. Finally, Google now provides access to some legal resources. Using Google Scholar, you can locate both federal and state case law, though it is not as comprehensive as some of the other sources mentioned. Scholar also includes scholarly articles on legal topics.

### ***Government Online Sources***



Of course, governmental entities are increasingly making their own materials available online, free of charge. It is possible to access sources of law directly if the researcher knows where to start. A comprehensive source for the researcher looking for federal statutes, regulations and court opinions is the Government Printing Office (GPO) Federal Digital System website ([www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/)), which the GPO labels the source of, “America’s Authentic Government Information,” right on its homepage. The researcher can, for example, select the United States Code database, which houses codified statutes passed by the U.S. Congress, and find the text of the current version of the Family Educational Rights and Privacy Act (FERPA). To use the FDsys site, it is better to start with the citation to the statute, 20 U.S.C. § 1232g, in the case of FERPA, since the search function can be difficult for a novice to navigate. Some sources on this site are not as current as sources on proprietary sites, while others, like the Federal Register, are updated here daily. It is important to take steps to ensure you are using the most current version of each source checked when completing a legal research project.

Legislative information can be found using a website developed by the Library of Congress, [Congress.gov](http://Congress.gov), the official source for federal legislative information. The researcher would use this tool to trace bills related to a particular federal issue. For example, the researcher who is interested in determining whether there are any changes to FERPA being considered by the current Congress, could use this site to find the bill proposing the change and track its progress, from its introduction, the delivery of the bill to a legislative committee, to the signing of the bill in either chamber of Congress, and the signing of the bill by the President. If you have done bill tracking before, you probably used the predecessor to [Congress.gov](http://Congress.gov), Thomas. Thomas is being permanently retired and all the information previously found there is being migrated to [Congress.gov](http://Congress.gov) in preparation for that change.

Often, the federal agency in charge of enforcing a particular statute and developing the regulations related to that statute will make primary sources accessible through its website. This may be by means of full-text housed on the agency's site or links to sources on the FDsys site. The Department of Justice, for example, has created a website dedicated to the Americans with Disabilities Act (2004), P.L. 111-48, at [www.ada.gov](http://www.ada.gov). This site compiles the federal law, both statutes and regulations, in one convenient place. The Department of Education has a similar site for the Individuals with Disabilities Education Act (2004), P.L. 101-476, at [idea.ed.gov](http://idea.ed.gov), which provides the text of the statute and related regulations a few clicks into the website. Usually, these special compilations can be found through a simple Google search, however, if that search is unsuccessful, the researcher who is aware of the agency that governs a particular area of law will sometimes find selected sources by browsing that agency's website.

States also provide primary legal sources on the web; with very few exceptions, this material is also free of charge. State law is significant because several federal statutes that govern education issues leave decisions to be made by states about how to administer resources and carry out the requirements of the laws. In addition, many legal issues in education are not federally governed at all, making state statutes, regulations and case law the sole source of authority on these matters. To find state judicial resources, the National Center for State Courts website ([www.ncsc.org](http://www.ncsc.org)) is a good starting point. Here, there are links to court sites in all fifty states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. For legislative resources, use the National Conference of State Legislatures Directory (<http://www.ncsl.org/aboutus/ncslservice/state-legislative-websites-directory.aspx>). Finally, for ordinances from local municipalities, use the website, Municode ([www.municode.com](http://www.municode.com)). Though not completely comprehensive, Municode contains over 2,900 sets of ordinances for municipalities all over the

country. These codes can be difficult to find, even in print, making this a valuable resource.

### ***Evaluating Online Sources***

When selecting free legal source on the web, you must take steps to evaluate the source to determine its reliability. Because anyone can post information on the web, a researcher must have tools for evaluating online sources. Generally, when looking for legal information, government sites, those with URLs ending with .gov, and sites associated with institutes of higher learning, with URLs ending in .edu, are strong indicators of reliability. Though many government sites still note that the print publications of primary legal resources are the “official” sources for that information, the researcher can find the text of these sources online and use print equivalents to ensure accuracy. There is a small chance that the print and electronic versions of a source will have conflicting language, due to human error, but this is a very rare case.

Those sources of legal information on sites ending in .edu are normally reliable because they include compilations of sites composed by information professionals such as librarians. A third source of information that tends to be reliable are professional organizations associated with bar membership such as the American Bar Association or state bar associations. These organizations often produce secondary legal sources themselves. As the publishers of that information, they are its best online source, though there is sometimes a charge for this information. The URL for these organizations usually end in .org and the American Bar Association maintains a directory of state and local bar associations on its website ([http://www.americanbar.org/groups/bar\\_services/resources/state\\_local\\_bar\\_associations.html](http://www.americanbar.org/groups/bar_services/resources/state_local_bar_associations.html)).

When looking at websites that do not fall into these categories of reliable sources, consider the following characteristics of information. First, check the authority of the

information. Government sites, for example, are maintained by the creators of the content, which gives their information authority. Though many specifically consider their print sources the final authority, this is only to protect from liability for errors, not to contradict the authenticity of the information they produce. Second, consider the currency of the information. Again, using government information as an example, the Federal Register, which is the daily record of regulatory activity among federal agencies, is published every weekday, except government holidays. Each day, the Federal Register is posted online in its entirety. Because it is published daily, the print Federal Register has never been available in libraries across the country as quickly as it is now posted online and even proprietary sites like Westlaw and Lexis are not able to make it available more quickly than the Government Printing Office now can in FDsys. Always check to see the last time information online was updated before relying on it. Finally, the researcher must determine the purpose of the information he wishes to use. If the source is merely intended to inform by providing factual information, this is likely more reliable than a site that has advocacy of one point of view over another as a goal. Bias can result in incomplete information that favors a particular position. Though there can still be value in information used to persuade, it is imperative that the researcher understand the objectives of the entity posting the information.

### **Emerging Trends and Tools**

Technology has transformed the availability and accessibility of information. From the integration of free Internet resources into library collections, to the development of sophisticated search tools that allow for faster and more precise searching, libraries help researchers to navigate the myriad of information available both in the library and beyond.

## *The Google Effect*

Google has had an immeasurable impact on how people access information. OCLC, a provider of library databases and services, published *Perceptions of Libraries and Information Resources* (2010), a report chronicling how information consumers perceive of and use libraries, search engines, websites and other emerging information sources. The report noted that most information consumers start their information searches on a search engine “Not a single survey respondent began their information search on a library web site” (De Rosa et.al, 2010, p.33). Google is, unquestionably, the search engine of choice, boasting a 71% share of the global search market (Marketline, 2014). With billions of web pages indexed, a single search instantly yields a vast amount of information from a wide range of sources. The overwhelming popularity of the Google search engine can be attributed in part to the simplicity of the Google search interface. Librarian and scholar Judy Luther (2003) argued that “Google's popularity is easy to understand. It's ubiquitous--accessible wherever a searcher can get Internet access. It's simple. Searching with Google is as easy as entering keywords in a single search box” (p.1). Studies which compare end user search behavior of library resources and Google (Ponsford & vanDuinkerken, 2008; Griffiths & Brophy, 2007), or traditional library resources and single search box interfaces (Belliston, Howland & Roberts, 2007) consistently show that users prefer single search box interfaces. LexisNexis Academic and WestlawNext, along with many other databases have developed interfaces that feature a single text box and natural language searching. The increased use of smartphones and tablets has also factored into the movement toward simple search interfaces. Mobile devices generally have limited screen sizes and lack traditional keyboards. As the popularity of smartphones and tablets continues to grow, database providers are developing mobile-optimized interfaces that focus on function and ease of use.

Mobile applications or “apps” are becoming increasingly popular and relevant to all aspects of our daily lives, including law. Westlaw has recently released an app for subscribers that provides full access to WestlawNext’s features. A growing number of other library databases are also accessible using mobile applications.

When students and researchers begin searching for information, Google, not a library website is often their first stop. Studies have shown that the simplicity of Internet search engines is preferred over the perceived complexity of library websites (Brophy & Bawden, 2005). Google, with its one stop shopping approach, is regarded as fast and user friendly. By contrast, the array of databases and tools presented on library websites are often viewed as overwhelming and confusing. Library databases must be searched individually, which can be a time-consuming and somewhat daunting task for researchers. Libraries have long recognized that creating search tools that allow users to access the full range of a library’s content in a single search is a critical step toward making the library, rather than Google, the first choice for research.

Federated searching, or metasearching, was the first attempt by libraries to address the demand for a single search solution. Federated search tools connect users to multiple databases simultaneously through a single interface and present one set of search results. Despite their initial promise, federated search tools were plagued with slow response times, inaccurate results and compatibility issues. The drawbacks of federated search tools seemed to outweigh their benefits, and as a result most were underutilized by library users.

As search engine technology evolved, database providers introduced web scale discovery, the next generation of library search tools. These sophisticated search engines feature a simple “Google-like” search interface with the capability of searching the virtual entirety of a

library's accessible content. One search will retrieve books, scholarly journal articles, news information, archival, digital and audiovisual resources. Similar to Google, web scale discovery tools are built using a pre-harvested central index of data. Google relies on open access and public domain data to populate its central index, which can sometimes lead to broken links and inaccessible sources. By contrast, web scale discovery tools use data supplied by libraries and publishers, resulting in deeper and more reliable search results with stable, direct links to licensed, full text articles and digital content. Web scale discovery tools also offer an array of search and retrieval features, used for refining and exporting search results. These tools allow libraries offer to users an attractive alternative to searching the open web.

### ***Open Access to Legal Scholarship***

More than a decade ago, academics and librarians began to recognize the potential impact of Internet on the dissemination of scholarship. Open access is founded on the basic principle that research should be available online to the widest audience possible. What began as a grassroots effort in the sciences to respond to the rising cost of scholarly journals has resulted in a worldwide movement to make scholarly output available online, free of charge, and free of most copyright and licensing restrictions. Until recently, open access to law focused on mainly on primary source material (e.g legislation, regulations and court opinions). As discussed earlier, courts, governments, and online repositories such as the Legal Information Institute (LII) at Cornell University make primary source material available to the public via the Internet. The scope of open access to law is now expanding to include works of legal scholarship, published in the form of journal articles, law reviews and monographs. Prior to the open access movement, LexisNexis, and other proprietary databases provided access to the journal literature, but were available only through libraries or to affiliates of organizations with subscriptions. A growing

number of legal scholars are now choosing to make their work available by self-archiving in publically accessible online repositories or by publishing in free, open access journals.

Examples of open access subject repositories are the Social Science Research Network (SSRN) Legal Scholarship Network and the Berkeley Press (bepress) Legal Repository. Using a search engine, researchers can locate, read and download scholarly journal articles for no cost. For those who are unfamiliar with the legal system, journal articles and monographs can prove invaluable, as they comment, interpret, and may provide references to primary authorities. For example, an educator is interested in statutory and case law surrounding the the topic of privacy rights of students can use a search engine to locate and download relevant scholarly journal articles. Those articles will provide discussion, and may contain citations to primary sources, which can then be located in an open access government website, Findlaw®, or the Legal Information Institute.

Similar to primary source material, journal articles and other secondary sources, particularly those retrieved from open access repositories require careful evaluation for authority and currency. Authority refers to the credentials of the author, publisher or website sponsor. The authors of scholarly journal articles are generally affiliated with educational institutions or organizations that support research. Users should note the institutional affiliation of the author, which is usually listed on the first page of a journal article. Currency refers to the timeliness of information. Like many disciplines, up to date information is essential to the study of law. As new legislation is passed and court cases decided, the law can change. For example, a journal article discussing U.S. Supreme Court decisions regarding affirmative action in higher education published before 2003 will cite *Regents of the University of California v. Bakke*, (1978), but will not reference *Grutter v. Bollinger*, (2003), which limited the use of race in admission decisions,



originally set forth in the Bakke decision. When retrieving sources from a library or from the web, note the date of publication and consider whether or not the timeliness of the information will affect its usefulness.

John Willinsky, author of *The Access Principle* (2006) urged academics, publishers and libraries to use new technology to do as much as can be done to advance and improve access to research and scholarship. Despite widespread endorsement of the open access concept by scholars, the number of law journals freely available is “surprising low” (Danner, 2012, p.68). The situation is gradually changing, as a growing number of academics are choosing to make their journal articles publicly available through institutional and subject repositories. In 2008, a group of librarians from law schools throughout the United States met and subsequently issued the *Durham Statement on Open Access to Legal Scholarship* (2009), which calls for law schools to stop publishing law reviews in print format and to rely instead on electronic publication, along with a commitment to keep the electronic versions available in stable, publically accessible, open, digital format. Since the *Durham Statement* was issued, a number of law schools have created institutional repositories to provide public access to law journals, but not all have embraced the concept. While on the surface, open access appears to be a solution to the rising cost of library materials, the movement is not without its critics. Questions regarding peer review of articles published in open access journals, along with issues surrounding self-archiving, copyright and publisher cooperation are still being debated. As open access becomes a more acceptable avenue for scholarly publishing, the amount of freely available will continue to grow.

## **Legal Research Strategies**

Whether you have access to a law library or simply have access to the Internet, a well thought out research plan gives direction to your efforts, allowing you to gather, organize and synthesize sources in a systematic way. Keep in mind that research is not a simple linear process. There is no one *correct* way to conduct research, but using the strategies outlined in this section can make your efforts more efficient and effective.

### ***Strategy #1 -Gather Background Information***

You may not initially know much about the legal issues that surround a topic. Reading background information will help you determine what some of those issues are. Preliminary research will also help generate a research vocabulary of keywords and legal terminology related to your topic, which will be helpful when constructing database search queries. Potential sources of background information include encyclopedias, books, journal articles and news articles. For those with access to a law library, legal encyclopedias, textbooks and treatises not only provide an overview of a particular area of law, but may point to primary authorities.

### ***Strategy #2 - Become Familiar With the Legal System.***

Before studying a specific area of law, you should gain a basic understanding of the legal system in which these laws are passed. A working knowledge of the legislative process and how the court system functions is essential for conducting effective legal research. Websites such as [www.uscourts.gov](http://www.uscourts.gov), [www.congress.gov](http://www.congress.gov) and [Findlaw.com](http://Findlaw.com) provide useful primers on the United States legal system.

### ***Strategy #3 - Learn to Read and Decipher Legal Citations.***

Decoding legal citations is key to locating primary authorities. Most legal citations to follow a standard format consisting of three components: volume or title number; abbreviated publication name; first page or section number. A case citation includes of the names of the

parties involved in the case, the volume number of the case reporter, the abbreviation for the case reporter, the page number on which the opinion begins. For example, in *Morse v. Frederick*, 551 U.S. 393 (2007), the names of the parties are Morse (plaintiff) and Frederick (defendant). The opinion is published in volume number 551 of *United States Reports* (the official case reporter of the United States Supreme Court, abbreviated U.S.) and begins on page 393. The opinion was rendered by the court in 2007. Law review and other legal periodical citations follow a similar format of volume number, abbreviated title of the journal, and beginning page number. For example, an article cited as 46 Duq. L. Rev. 521 (2008) appears in volume 46 of the *Duquesne Law Review*, beginning on page 521.

Statutes are cited either by title and section number (as with the U.S. Code) or by section number alone (as with some state statutes). A statute may appear in various forms in different publications. Using the No Child Left Behind Act of 2004 to illustrate, the legislation is cited as PL 107-110, which is the 110th Public Law passed by the 107th Congress. Public Laws are issued as slip laws and then gathered into *Statutes at Large* (abbreviated Stat.). The citation for the NCLB in Statutes at Large is 115 Stat. 1425. The NCLB begins on p.1425 of *Statutes at Large* volume 115. Laws are then arranged in the *U.S. Code*, which contains the federal laws of the United States as they are currently in effect. Each subject area is called a title (e.g. Title 20 is Education). The *U.S Code* citation for the NCLB is 20 USC § 6301, meaning that the law is located in Title 20 of *U.S. Code* beginning in section 6301. Public Laws may be divided according to content and distributed among titles. For example, most of the NCLB is in Title 20 but some sections are in Title 5 and Title 25.

States may vary in the way they codify their statutes. Some states follow the arrangement of the Federal statutes and use numbered titles and section numbers while others section numbers

only. For example, the Florida statute section regarding compulsory school attendance is found in *Fla. Stat.* § 1003.21 while the Oklahoma statutes regarding the same topic are found in 70 O.S. § 10-105, which is Title 70 section 10-105.

#### ***Strategy #4 - Select Research Tools and Databases***

Select appropriate starting points to begin your search. Will you begin with primary sources or secondary sources? If you have access to a library, check the library's website for a list of available databases. Consider searching education databases (Education Full Text, ERIC, and JSTOR), and legal databases (Lexis/Nexis, Index to Legal Periodicals, Legal Trac) for scholarly journal articles. If you are relying on free sources available on the Internet, focus on official websites or websites that are known to be reliable.

#### ***Strategy #5 - Create and Execute a Search Strategy***

Construct search queries using the keywords identified when gathering background information to create a list of search terms. Use of logical operators (AND, OR) when searching databases will add focus and precision to your results. The **OR** operator expands a search by retrieving items that contain any of the search terms, while the **AND** operator narrows a search by requiring that items retrieved contain all search terms. For example, a search for ***school choice OR educational vouchers*** expands the search by retrieving items that contain either term. A query for ***educational vouchers AND charter schools*** will only retrieve items where all terms are present, thus narrowing the scope of the search. Expect to revise your search as you progress in the research process. Evaluating your search results closely will help to identify how you can improve your search. Take the time to assess the relevance and quality of the sources you find, considering factors like authority, accuracy, and currency

#### ***Strategy #6 - Stay Organized***

When conducting library research , you will need to do multiple searches in a variety of databases, catalogs and websites. Consider creating a log to record research activities. A research log provides a detailed list of citations and annotations, along with dates, places or search tools used, search strategies, and other information that may help with future research. As you begin to collect sources, organize and store all documents and references in a logical fashion. It may be helpful to store electronic documents in folders on a computer or on a free virtual drive, such as Dropbox or Google Drive.

### ***Strategy #7 Consult a librarian***

In an era where the information landscape is becoming increasingly complex, librarians can be a valuable resource for students, scholars and education professionals. Librarians are trained in research techniques and have expertise locating and searching legal resources. Librarians assist researchers by helping to define their specific research needs, identify appropriate resources to search, develop search strategies, and provide guidance regarding the reliability of sources.

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