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“HERE THERE BE DRAGONS”:
HOW TO DO RESEARCH IN
AN AREA YOU KNOW
NOTHING ABOUT

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terra incognita “1. An unknown land; an unexplored region . . . 2. A new or unexplored field of knowledge.”¹

Introduction

Early seafarers were justifiably frightened of terra incognita. Maps covered known areas; unknown areas were marked “Here there be dragons.” Perhaps some legal researchers feel similarly. One of us remembers with pain the securities assignment she had as a summer associate—she might as well have been sailing without chart or compass for all she knew about securities terminology and sources. But, happily, researchers seldom need to venture into territory that is totally unexplored. Others have explored most areas of legal research and have left behind signposts and maps to guide those who follow. This article provides advice for getting started in an area you know nothing about.

Ask Questions

The person who gives you the assignment could know a great deal about the area and appropriate sources. You might feel embarrassed about revealing that you do not know the area, but you also might be surprised at how often the person assigning the project is eager to share his or her expertise.

For example, a summer associate faced with a first securities project might say to the assigning attorney: “I haven’t taken Securities Regulation, and I am not familiar with what you are asking me to research. Could you give me some quick background? What sources do you think will be useful?” In a few minutes, the attorney could give the summer associate a great start. Even if the attorney does not have the time or inclination to do the coaching, he or she might refer the summer associate to someone else: “Chris Smith, a second-year

associate, has been working with me on this project. Go see Chris to get up to speed.”

Use Secondary Sources

Before you plunge into primary sources, use secondary tools to get an overview of the area. You will gain valuable information, including vocabulary, leading cases, citations to statutes, and checklists.

For example, someone asked to research sexual harassment law for the first time could consult a book, such as Barbara Lindemann and David D. Kadue’s *Sexual Harassment in Employment Law* (1992) or William Petrocelli and Barbara Kate Repa’s *Sexual Harassment on the Job* (2d national ed. 1994), and in a short time find the following:

- terms of art (“quid pro quo harassment” versus “hostile or abusive work environment”)
- citations to applicable statutes (Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (1994), and state fair-employment statutes)
- citation to federal regulations (29 C.F.R. § 1604.11 (1996))
- discussion of leading cases (e.g., *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986))
- analysis of alternative causes of action (e.g., fair-employment statutes versus common law tort claims)

A researcher who did not begin with secondary sources and instead went directly to statutes or cases might waste a lot of time. For instance, Title VII is clearly important in sexual harassment law, but the phrase “sexual harassment” does not appear in the statute and a careless researcher might not find this key piece of legislation. Some researchers might assume that the area is entirely federal and, without the guidance provided by secondary sources, neglect the state law issues (or vice versa). And researchers who begin simply by searching for cases might be overwhelmed by the sheer number they find.

Secondary sources covered in law school legal research and writing classes are great places to start, but look beyond treatises, encyclopedias, ALR®, and law review articles. Practice materials, which include “deskbooks,” manuals, and continuing legal education materials, can be gold mines of information. In Washington state, for example, researchers can choose among a variety of sources including the encyclopedic *Washington Practice*, the multivolume looseleaf *Washington Lawyer’s*

¹ *American Heritage Dictionary of the English Language* 1853 (3d ed. 1992).



Practice Manual, and the many topical deskbooks published by the Washington State Bar Association. A researcher unfamiliar with parenting plans and modification of child support would be wise to start with the *Washington Family Law Deskbook* (1989–date) or *Family and Community Property Law* (*Washington Practice*, v.19–21, 1997), both of which include forms.

Self-help law books can also be of great help. Even if you know a lot about areas such as insurance bad-faith or environmental law, you still may be faced with areas totally unfamiliar to you. So if you are stumped by a question about a charitable remainder trust, why not take a look at *Plan Your Estate* (4th ed. 1997)? Self-help law books are not just for the public—lots of lawyers sneak peeks at them and find useful information.

Don't forget to look terms up in *Black's Law Dictionary** (6th ed. 1990) or *Words and Phrases**. A quick definition may help at the beginning of a project or along the way.

Avoid Fishing Online

It is usually best to avoid using online services to find primary sources until you are familiar with the area of law. Online research is most effectively done with a specific issue in mind, and knowledge of the specific vocabulary, leading cases, and applicable statutes. The computer is literal—it cannot tell you the meaning of what it retrieves. One can easily waste precious time (and a significant amount of money) browsing electronic sources without clear direction. Beware the seductive call of “free” online time or “free” Internet access. Nothing is ever really free, and at the very least, your time, even when you are a new researcher, is always valuable.

One exception to this suggestion is the use of online resources to find secondary sources. LEXIS-NEXIS and WESTLAW both offer the *Legal Resource Index*, ALR, legal encyclopedias, and a variety of treatises (WESTLAW also has Practising Law Institute handbooks). If your library does not have a good collection of secondary sources and you do not have access to one, it might be appropriate to go online for background information.

Use a Research Guide

Many areas of law have such specialized bodies of literature that people have produced research guides, pathfinders, or bibliographies guiding researchers through the sources. If you are going to spend your summer working on tax, first look at a research guide in the field, such as Gail Levin Richmond's *Federal*

Tax Research: Guide to Materials and Techniques (5th ed. 1997). If you are writing a law review article about United Nations human rights enforcement, get a running start on your research with a guide such as Jack Tobin and Jennifer Green's *Guide to Human Rights Research* (1994) or Marci Hoffman's chapter on human rights in the ASIL Guide to Electronic Resources for International Law, <<http://www.asil.org/resource/humrts1.htm>>. And if you are preparing briefing papers on passive smoking for a public health group, it will save you a lot of effort if you start with Maria Okanska's *Legal Aspects of Passive Smoking: An Annotated Bibliography*, 86 *Law Libr. J.* 445 (1994).

How can you find research guides? First, try your library's catalog. Search for your topic and either “research” or “bibliography.” (Catalogers often use the term “bibliography” in the subject heading; “legal research” is another common subheading.) A search of the catalog will turn up bibliographies that are separately published books. Similarly, checking periodical indexes, such as *Legal Resource Index*, will help you find bibliographies and pathfinders that are published as articles in law reviews and bar journals. You should also check Leah Chanin, ed., *Specialized Legal Research* (1987–date), which has chapters on 13 topics ranging from admiralty to securities regulation, and government contracts to tax. If your topic is covered, you will find a wealth of information.

If you are researching an issue in a particular state, check to see whether there is a legal research guide for that state. You might find a section discussing practice tools or a bibliography that might include just the right secondary source.

For foreign and international research, a good place to start is *Germain's Transnational Law Research* (1991–date). Like *Specialized Legal Research*, *Germain's* is a collection of research guides. Procedural issues, such as service of process abroad and recognition and enforcement of judgments and arbitral awards, are covered along with 39 subjects (antitrust, commercial law, immigration, intellectual property, etc.) and 17 countries.

Look For a Looseleaf Service

Many areas of law are covered by comprehensive looseleaf services that provide access to statutes, case law, regulations and administrative decisions, as well as some analysis and explanation. Looseleaf services can be hard to figure out, and again, it is often best to start digging in one with a little bit of background knowledge and some vocabulary in order to use the

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indexes effectively. But for some areas of law, they are a better starting point than a general digest or annotated code. Areas of law covered by comprehensive looseleaf services tend to be highly regulatory and specialized. They include tax, securities, labor, trade regulation, government contracts, banking, and environmental law. If you don't uncover a looseleaf from your search in secondary sources or research guides, check the annual *Legal Looseleafs in Print*.

Use Current-Awareness Tools

If you are going to be working in an area for some time, find out how practitioners stay current. If you skim newsletters, attend CLEs, and otherwise keep up with new developments, you will be better prepared for each new assignment because you will know what issues are coming up in the field. For instance, if you recently read in a newsletter that the Treasury Department issued new regulations affecting a certain type of transaction, you will be ready to go when the senior partner asks you to find the new regulations and prepare a memo analyzing their effect on your client's business.

Check *Legal Newsletters in Print*—you will be amazed at the number and range of newsletters, on topics from asbestos abatement to workers' compensation. In addition, looseleaf services frequently include a newsletter section (often labeled “New Developments”) that highlights new regulations and cases. Many firms and agencies route newsletters to attorneys in relevant practice groups. If you are moving into a new area of practice, see if you can get on the routing list.

Another source is the work that your own office produces. Does your firm prepare a newsletter for clients? Does your agency circulate summaries of new regulations? Does the firm have files of briefs and memoranda that attorneys have written? Being aware of what your organization does will make research easier for you, since you will know the issues that are coming up. A brief or memo bank can also give you a good start on your own briefs and memos.

Attorneys also keep up with their practice areas by attending CLE programs—sponsored by bar associations, law schools, or professional groups or produced in-house. If you are starting out in, say, environmental law (or you are moving into the environmental practice group after years in the business litigation group), attend some CLEs—e.g., “New Developments in Hazardous Waste Litigation”—to build your knowledge base. (The CLE course materials will also be handy secondary sources.)

Read the Directions

Once you identify a source that is new to you, take a few moments to figure it out. Does it have a table of contents? An index? A table of statutes cited? How about an appendix of primary documents? How is it updated? You will find that many sets include sections such as “How to Use This Service.” You might be the sort of person who learns well by trial and error—but, then again, after 20 minutes of trial and error you might find it helpful to give the instructions a try.

If you are using electronic tools, take advantage of the resources you have. Read the help screens, read the documentation, call the 800 numbers. On WESTLAW, read the Scope screens, and in LEXIS-NEXIS, check Guide, to find out how current the material is and whether there are any special tricks for searching.

Talk to an Expert

Maybe there is an expert in your organization—an experienced attorney or a law professor—who can give you a quick run-through of a subject area and its sources. Many knowledgeable people like to share information, especially when asked.

Or maybe you need to find people outside your organization who follow your issue. If you have found a useful book or law review article, you might try talking to the author. Someone you met at a CLE might be a good contact. Or use the *Encyclopedia of Associations* (in print or on WESTLAW) and other directories to find trade associations or advocacy groups that would track your area. A call to the American Bankers Association, the American Hospital Organization or the Sierra Club might be an effective way to gain background information on a specialized topic.

Use Librarians

Librarians spend a great deal of time guiding researchers toward sources “to get them started.” If you are having trouble finding a secondary source or research guide, or you just want to talk about strategy, try asking your librarian. Librarians are always happy to share their knowledge.

Conclusion

Researching in a new area of law need not be as terrifying as sailing into uncharted seas. The tips we have listed will help you find your way. Soon you will be able to guide others into your new area. ♦