

“Notes help the researcher or a reader to understand, replicate, and update results.”

DEVELOP THE HABIT: NOTE-TAKING IN LEGAL RESEARCH

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Introduction

At some point—perhaps it was for that seventh-grade report on the Pony Express—we were probably all taught to take notes on 3x5 index cards. Each card was supposed to record the source (with full citation) followed by the fact or the quotation we were noting. The teacher was sure to spot-check the cards, so most of us earnest junior high students were careful to make “proper” notes. But are we still as careful, now that we research and teach research as adults?

We librarians take notes ourselves when we do research, whether it be our own research, or projects for faculty, attorneys, or judges. We also have had the opportunity to observe many other researchers—students, professors, partners, and pro se patrons—many of whom come to the reference desk when they are stuck. We do not see many 3x5 cards. Instead, we see a wide assortment of legal pads, three-ring binders, scrap paper, Post-it notes, laptops, and (too often) nothing at all.

This lack of organized 3x5 cards interests and concerns us; we believe good note-taking is a habit every attorney should have. In this article we will identify types of notetakers and some personal factors researchers should consider, and then we will present our top 10 tips for effective note-taking. Our “top 10” are addressed to the researchers themselves, so we encourage teachers of legal research to make photocopies and pass them out in class (with attribution, please)!

Why Take Notes?

To begin, why take notes? Why be concerned about the paucity of index cards? After all, it makes sense that few use them now; there have been a lot of technological changes since junior high! Rather than taking any sort of notes on cases, articles, or book chapters, many researchers today make a copy—either by photocopying from a book or printing a document from an electronic source.

Making a copy of the information has several advantages over taking notes: speed, reliability, and completeness. However, it also has disadvantages. When one photocopies an entire case or law review article, she may not read it, but instead may just tuck it in a briefcase or backpack to read at some later time—which might never arrive. If the researcher does read it, but does not take notes, the material might not be understood as well, or how the pieces fit together might not be perceived. Note-taking allows one’s mind to process the information in a different way. If the researcher goes back to the case or article several weeks later, it might be difficult to remember what was important about it, and perhaps the whole thing will have to be skimmed again to figure out why it was copied in the first place. Finally, the bulk alone of photocopies and printouts may impede the research project. A 6-inch stack of paper with no order will quickly overwhelm all but the most determined researcher.

Many researchers nowadays combine a tendency to print out or photocopy with a freewheeling use of highlighters. Using colored markers to identify important or relevant text can be an effective note-taking tool. However, some seem unable to avoid the propensity to highlight every line on a page, because, on first reading, everything seems like it might be important. Often one must read the entire case or article before the truly relevant portions can be successfully highlighted.

It does take time and self-discipline to be a systematic note-taker, and sometimes researchers decide that note-taking, that is, *good* note-taking, is just not that important. Why do we disagree? We see several good reasons for taking careful and thorough notes:

- Notes record the researcher’s sources in order to use them, find them again, and cite them.
- Notes record the research path so the researcher knows what has been checked.
- Notes helps the researcher to think about what is being done and keeps the focus on the correct issue.

- Notes aid the researcher in communicating (with colleagues, supervisors, and the host of others the researcher may want to ask for help).
- Notes allow the researcher to demonstrate her thoroughness, especially when there are less than complete answers to the questions posed.
- Notes help the researcher or a reader to understand, replicate, and update results.
- Notes serve as a reinforcement to everything the researcher learns during a particular research project and provides a “tips and tricks” resource for future projects.

Note-Taking Types

Recently we have begun seeing law students and lawyers taking notes on laptop computers. That surely will change some people’s habits. Perhaps their note-taking will be faster and more accurate (if they are fast typists). Perhaps they will be able to use outline features to organize their notes better, and cut-and-paste features to capture quotations and key passages. Of course, if note-takers forget to record a citation, that laptop will not do it for them—technology cannot solve all our problems.

Whatever technology is used, we suspect the basic styles of note-taking have not changed. Most researchers will undoubtedly identify with one of the types below.

- **Perry Mason:** Does not do research, does not take notes. If he reads cases, he remembers them for the rest of his career. He always wins. *Drawbacks:* This technique works only in fiction.
- **Rain Man:** Writes everything in his notebook, very accurately. Memorizes it anyway. (Does not understand it.)¹ *Drawbacks:* This method is very time-consuming.
- **Absent-Minded Professor:** Takes concise notes on whatever paper is at hand but does not record sources since he is sure that he will remember them. Intends to check the citations he cannot remember and to assemble and organize notes when he has a bit more time.² *Drawbacks:* There is never “a bit more time” and miscellaneous pieces of paper tend not to gather but to migrate.
- **Peppermint Patty:** Gets notebook stuck in hair. *Drawbacks:* Information retrieval is limited.

- **Dudley Do Right (our hero):** Sets up a system for note-taking so that when he is ready to prepare the final product he has everything he needs. *Drawbacks:* Gets more “plum” assignments than others (who may get envious enough to tie him to the train tracks).

Personal Styles and the Note-Taker’s Art

If taking notes is so important, why do texts on legal analysis, research and writing not provide a template for perfect note-taking? That would be nice, would it not? We kicked around the idea of a checklist that could be handed out to associates, paralegals, law students et al., listing sources to check and what information needs to be noted. But reflection convinced us that legal research projects are too varied and what needs to be written down depends on too many factors for one checklist to be appropriate for all projects.

Perhaps even more importantly, note-taking needs to be adjusted to suit individual work environments and styles. Consider the following questions.

How good is the researcher’s memory? Some people can turn their backs on a set and not remember whether they were using the *Pacific Digest* or *Am. Jur. 2d*, let alone whether they looked under “vicarious liability” as well as “respondent superior.” Other people can keep a tremendous amount of complex information in their heads while they are working through a problem. If one is the first sort of researcher, each source used had better be recorded as well as every search term tried. To paraphrase Santayana, those who do not remember research are doomed to repeat it.

How much time is available? If it is 9:10 and the partner wants the associate to find cases mentioning a particular statutory provision by 9:30, there is only one course of action to follow: do a quick search (in an annotated code or online), pull the cases, and give them to the partner. There is no time to write down every term checked in the code’s index (although the associate might want to call attention to the fact that the pocket part was checked). *After* handing over the results, of course, the associate should consider

¹ Recall the Academy Award-winning performance of Dustin Hoffman in the 1988 film *Rain Man*.

² Inspired by Fred MacMurray’s performance in the 1961 film *The Absent-Minded Professor*.

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taking a few minutes to write down what was done and what was found. Several weeks later the partner may ask a follow-up question.

How long will the project take? The longer the researcher thinks a project will be around, the more important it is to take good notes. If the task is to work on a law review article or a seminar paper or an appellate brief, it is likely the researcher will be looking at the same issues for a long time—or will be coming back to them after thinking about something else for a few weeks. The better the notes are—listing what was checked, what headings were used, the dates of the supplementation, and so on—the more efficient the researcher will be.

How many people are working on the project? If more than one person is working on a project, the researcher cannot rely on memory as much as if everything was in the researcher's own hands. Somebody else might need to know whether the researcher checked the case citations on a list; the researcher, on the other hand, might need to know whether a coworker checked CIS for committee reports or relied on USCCAN.

Who will read the notes? If only the researcher will be using the notes, then whatever shorthand works can be used. “LRI = 0” might be an adequate reminder that *Legal Resource Index* was checked but nothing useful was found. But if the researcher is reporting the results to someone who does not do as much or the same kind of research as the researcher does, it might help to explain what the database is and something about the searches that were tried (e.g., “I searched *Legal Resource Index*, an index of legal periodical articles, 1980 to present, using the phrase ‘wildlife refuge’; the only articles I found predated the cases you asked about.”). This would help the requester understand what the researcher meant when reporting that nothing relevant was found—as well as give the requester an opportunity to adjust the scope of the request.

How many projects is the researcher juggling? The busier the researcher is, the more tempting it is to skip steps. But it is a dangerous temptation. Pity the researcher who is left muttering, “I know I looked around in the UN Gopher, but was it for that death penalty question or the law of the sea question? Did I look for an ALR annotation on the premises liability question? Or was it the wrongful termination case?”

How novel is the subject? If the researcher is trying to find information in an unfamiliar area,

much better notes need to be taken. Both the terminology and the sources may be unfamiliar and details will be much harder to remember. Terms of art, variant spellings, and specialized resources should all be particularly well documented. Even in a familiar area, if the researcher is using an unfamiliar source (or a source that may be unfamiliar to the requester), its scope and coverage should be noted.

What sorts of similar research will the researcher be doing in the future? Any time future research in the same area is envisioned, taking careful and thorough notes in the present is a wise course. There is no better gift researchers can give themselves than having all the conundrums solved when the need to revisit the same area of research occurs. Notes will show the researcher the best sources to try first, perhaps provide leads that took days to develop in the former project, and suggest effective terms for searching. If the researcher cannot imagine ever doing research on a particular topic again, good note-taking is still a boon. One never really knows when an odd, messy problem might crop up again (and the researcher will be looked to as the “expert”). As Louis Pasteur said, “Chance favors only the mind that is prepared.”

Conclusion

Research, no matter how interesting and rewarding, is hard work. Taking notes, good notes, may not come naturally to you and may at first seem like a lot of bother. But good notes help you remember, organize, process, synthesize, and communicate information—which, in the long run, is the point of research. And the first time you find yourself up against a deadline writing up your results, and you realize that everything you need to complete the project is in your notes, you will appreciate having made an effort to form good note-taking habits.³

³ Taking technology, work environments, and personal styles into consideration, we have compiled a list of “top 10 tips” for better note-taking. These are designed for distribution to LR&W students and anyone else who might wish to sharpen their note-taking skills. (All we ask is proper attribution.) We cannot guarantee the tips will lead to perfect note-taking (and from there to prestigious clerkships, lucrative partnerships, or academic tenure), but we hope all researchers will find a few ideas for improving their research habits.