



# Research

BY MARTINE VENDELLO AND KENDALL GODLEY

**W**elcome to the third edition of “Redlines and Deadlines.” Research. When we asked colleagues, former classmates, friends, and mentors for their best legal research advice, the audible groan they all let out could probably be heard from space. While research is not everyone’s favorite part of lawyering, it is fundamental to what we do.

If you find yourself looking for case law the assigning attorney \*swears\* exists (spoiler alert: it doesn’t), this article offers a handful of practical legal research tips to help you make the most of your time.

## **It’s Googleable**

Of course, your research assignment will require you to get into the nitty-gritty of the issue, but almost everything—including legal issues—is “Googleable” these days. Chances are that somebody somewhere has thought about, researched, and succinctly summarized your topic before.

Reading briefs, articles, guides, and legal alerts from other law firms and lawyers will help you familiarize yourself with the broader area of the law that pertains to your project. Even if you are entirely familiar with the subject matter of your assignment, it never hurts to reorient

yourself before diving into your search. Likewise, if you have access to either of them, Westlaw’s Practical Law and Lexis’s Practical Guidance are both great starting points for understanding the basics and background of the matter.

If Googling yields too many results, free websites like the Social Science Research Network (SSRN) provide access to reprints of scholarly research, law review pieces, and academic articles. Searching and perusing a few articles on SSRN covering your topic while paying close attention to the sources in the footnotes might lead you directly to cases and statutory sources on point, as well as other relevant secondary

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sources and treatises that could take you to the next phase of your project.

Similarly, for corporate lawyers, the Harvard Law School Forum on Corporate Governance is yet another solid and free resource for discourse on corporate governance.

### **Start at the End**

Although we've all been guilty of it, you should try your best to curb the impulse to dive right into the search portion of the project and instead take a moment to think about the end of the project. Ask yourself, how is this research *actually* going to be used, and what form is the deliverable ultimately going to take? Is it going into a brief or filing with a court, being given to a client, or going to be used in a larger context of a matter? Although it seems intuitive, these simple questions at the outset will help you understand the level of formality, detail, citations, and synthesis you'll need to undertake.

Particularly for internal and client-facing deliverables, all the memo-writing practice you did in law school is unfortunately not going to be that helpful; unless you are specifically told to draft one, the deliverable of your research will likely be an email.

With our collective attention spans shrinking by the second with each ping, like, or post, you will also want to make sure the deliverable is clearly formatted and easy to read—a topic we'll cover later in the series.

### **Consider Gazing**

In elementary school, we were taught to keep our eyes on our own paper, but when it comes to practicing law, you should consider letting your eyes wander to your neighbor's desk.

Internally, if you have access to it, use your firm's database or document management system to see if similar issues have been briefed or researched in the recent past. Although you might find materials from before you were born, seeing how others approached a similar problem might help narrow the scope of your initial research.

Externally, if you're researching case law in particular, consider starting your project by seeking out two to four cases as factually similar to yours as possible. From there, head

to PACER, Lexis's Courtlink, or the state court website and pull all of the briefs on those cases. You'll need to check citations carefully, but the odds are pretty good that someone has already pulled a lot of the case law for you.

Lastly, consider your project from someone else's point of view and imagine what would happen if the opposing side or the client were to try to double-check your work. Would they find something you didn't? We're not trying to stoke your anxiety, but this serves as a pretty solid gut check to make sure you've covered the project thoroughly.

### **Use Boolean Searches**

We've all been there: you type your research topic into the search bar of your chosen legal research platform or subscription database and press enter. Your natural language search returns 37,484,764 results. Oh, joy.

A Boolean search uses specific words and symbols known as Boolean operators to help you expand, limit, or define your search. You can use the words AND, OR, and NOT, depending on which platform or database you use. Using AND narrows a search by combining terms. Using OR broadens a search to include results that contain either of the words you're looking for. In those instances where you get 37,484,764 results, placing quotations around a specific phrase will help you narrow results to find information containing that exact wording. For example, if tasked with researching the exemptions for "Commodity Trading Advisors" under the CFTC rules and regulations, it would be helpful to search for "Commodity Trading Advisors" OR "CTA" AND "Exemptions."

That being said, you may need to cast a wider net to catch more fish. Hyper-specific search terms or Boolean strings can backfire. When in doubt, narrow your search universe, but use broad teams. For example, you wouldn't want to search across all federal cases if your case is in the District of Colorado.

### **Organize Your Efforts and Results**

While you might use a "scattershot" approach to seeking sources, you should not do the same when collecting them. The 27 tabs you have open in your browser will likely expire, or your

computer will automatically require critical system updates at the most pivotal point of your research project, naturally.

Using a tracking chart or log, creating a draft email to yourself, or at least saving and organizing your research into dedicated folders can save you from having to go back and retrace your work. Likewise, if you're having a start-stop day where you can't dedicate a lot of uninterrupted attention to the project, you'll be able to pick up where you left off easily. A chart with hyperlinks to source material (in addition to citations) will make your life much easier if you need to go back and review that source. Future you will undoubtedly thank past you. Some people also find it useful to employ a "rating system" or color-coding system that helps them quickly identify or rank authority from most persuasive to least or most directly on point to tangential.

For challenging research projects, keeping a list of all search strategies and methods you employed may also be helpful for supervising attorneys, assistants, librarians, and others who come to your aid if you're feeling particularly stuck.

### **Research Your Research**

Once you find something on point, you've got to read it in its entirety, understand it, and check for any negative treatment or superseding changes to the law. Rinse and repeat for each source. Remember, while legal research platforms and databases do a pretty solid job of keeping sources up to date, agencies and governments constantly update their statutes, rules, regulations, and guidance. When in doubt, go straight to the "official" source.

One hot tip is that the Electronic Code of Federal Regulations (eCFR) website lets you compare the regulations as they existed on any two dates, among other valuable tools. While it's not the most exciting part of the process, it can be the most consequential. Again, think about what would happen if the client or opposing counsel were to double-check your work. Yikes.

### **Know When to Keep Going, When to Stop, and When to Ask for Help**

Ensure you understand your assigning attorney's expectations at the project's outset. Is there a

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deadline? Does the client have a limited budget? Some assigning attorneys may want a status update on everything you've researched ASAP, while others may want you to give periodic check-ins along the way. Regardless, don't have an existential crisis if you get stuck, overwhelmed, or lost, or are just utterly confused. Something as simple as taking a walk around the block could help you regroup. It's also okay to ask informed questions: the assigning attorney is often certain about the lay of the land but wants you to research if any new developments have been made.

Research is tricky but can be fun with a curious mindset. A realistic goal is to find the right or best answer you can with the resources you have at your disposal. One caveat, however, is that not every project will require you to find every case under the sun. Sometimes, you may get lucky and be done in 30 minutes; other times, you may have to really dig. It's a delicate balance between being thorough and efficient. Don't stop when you find the first good case or statute on point—run it to the ground and make sure it's good law and widely applied, not just an aberrant case. One way to figure this out quickly

is if you've encountered the same citation a few times and aren't finding new information.

Even if you feel like you don't find anything, explaining your process to your assigning attorney will be helpful to them. For example, "I looked in X jurisdictions for cases with similar facts and issues. I didn't find anything directly on point but found Y analogous cases." It may mean finding a different way to approach the problem or analogizing it to existing case law.

## Conclusion

Good news, while the legal articles you found on Google tell you to consult an attorney for more information, you are the attorney! At the end of your research, don't get into analysis paralysis; just do your best to come off the fence and provide a definitive answer (unless, of course, the answer is that there is no answer to your complicated research on an extremely nuanced issue that's most likely never been addressed—weird how that happens every time). For our next column, we'll be covering the art of legal writing, so if you can't find the words to summarize your research by then, we've got you covered. **CL**



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