

CHAPTER 10 RESEARCHING A FEDERAL LAW PROBLEM

THE LEGAL RESEARCH PROCESS: FEDERAL LAW SOURCES

Analyze the facts and formulate a preliminary statement of issues.

Develop a system for organizing research notes and putting cites in *Bluebook* form.

Familiarize yourself with the court structure of the jurisdiction.

- *Bluebook* Table T.1

Do background research to get an overview of the subject area, identify issues and terms, and get clues to primary sources.

- Hornbooks [Reading Room across from library desk]
- Law review articles [print – compact shelving on Level 1; Lexis; Westlaw]
- *ALR Federal* [print - Level 2; Westlaw]
- Seek expert advice

Search for legal authority (relevant statutes and cases) using appropriate methods of updating.

- Annotated codes [print *U.S.C.A.* or *U.S.C.S.* – Level 3; *U.S.C.A.* is available on Westlaw; *U.S.C.S.* is available on Lexis]
- *West's Federal Practice Digest* [print on Level 3]
- full text case databases [Lexis, Westlaw; Internet sites]
- *ALR Federal* [print - Level 2; Lexis; Westlaw]
- Shepard's [Lexis]
- KeyCite [Westlaw]

Read and evaluate primary authorities.

- *United States Reports* (U.S.), *United States Supreme Court Reports, Lawyer's Edition* (L.Ed., L.Ed. 2d), *Supreme Court Reporter* (S. Ct.), *Federal Reporter* (F., F.2d, F.3d), *Federal Supplement* (F. Supp., F. Supp. 2d) [print – Level 3; Lexis; Westlaw]

Make sure cases are still good law.

- Shepard's [Lexis]
- KeyCite [Westlaw]

Refine analysis and formulate conclusion.

- Treatises [Level 2; check the library's online catalog]
- Law review articles

FEDERAL COURT SYSTEM

United States Supreme Court.

- Highest level appellate court.
- Reviews, inter alia, cases of constitutionality of state statutes, and cases involving constitutionality and interpretation of federal statutes.

Federal Circuit Courts of Appeal.

- Federal appellate level courts.
- The United States is divided into eleven numbered circuits and a Federal and a District of Columbia Circuit, each with a Circuit Court of Appeal.
- The map of the federal circuits can be found at <http://www.uscourts.gov/links.html>.

Federal District Courts.

- Federal trial courts.
- All states have at least one; larger states have several, divided by geographic district within the state (e.g., the Western District of Pennsylvania).

Many issues before federal courts deal with application and interpretation of federal legislation. Often the circuits may diverge in matters of their interpretation. Circuits frequently look to each other's opinions as persuasive authority and often consensus will emerge; if not, the U.S. Supreme Court may grant certiorari to resolve a split in the circuits.

Federal courts may hear cases on state law issues under diversity jurisdiction. In such cases, the federal courts look to opinions of the highest court of the state as mandatory authority.

USING SECONDARY SOURCES FOR FEDERAL LAW PROBLEMS

For federal topics, a number of secondary sources may be consulted.

- Law review articles are frequently helpful. Electronic (*LegalTrac* and *Index to Legal Periodicals*) and print (*Current Law Index*) indexing sources are searchable either by subject keyword or by the popular name of a relevant statute (e.g., the Americans With Disabilities Act). Both Lexis and Westlaw provide databases that include legal periodicals and some texts. These may be searched either by Boolean or natural language searches.
- *A.L.R. Federal* provides heavily annotated articles on current issues. It may be searched through its print indexes or electronically on either Westlaw.
- In some areas of federal law, authoritative treatises may be a very valuable source both for background analysis and citations to primary authorities. One such subject area is civil procedure, in which useful treatises include Charles Alan Wright et al.,

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Federal Practice and Procedure (KF8816.W7) (often referred to as "Wright & Miller") and *Moore's Federal Practice* (KF8816.M63). For other subject areas, try using the library catalog or searching on Westlaw in the databases which include treatises.

- *American Jurisprudence 2d* has relatively good coverage of many federal topics.
- Cross-references to many secondary sources are provided in the federal annotated codes, U.S.C.A. and U.S.C.S. If you know the relevant statute, try looking in these codes for references to other materials. These references appear after the statutory language and before the case annotations.

FEDERAL CODES

There are three versions of the federal code that the researcher may consult. All three are organized by the same scheme of numbered titles. There are presently fifty such titles. Each number corresponds to a particular topic, e.g., Title 26 is the Internal Revenue Code. All three versions contain, in addition to the text of the statutes, historical legislative information allowing the researcher to trace the evolution of the section through any amendments back to its original enactment.

United States Code (U.S.C.)

This is the official version of the federal statutes (published under government auspices.) A new edition of the United States Code is issued every six years. Each edition of the Code is updated annually by a bound supplement volume containing statutory amendments. These supplements are cumulative, so each yearly supplement reflects all changes made since the last revised edition of the Code. The U.S. Code is searchable through its subject index and by a table of "Popular Names." The U.S. Code is not as current as the other two versions because it does not issue supplementary pamphlets during the year to reflect legislative activity during the current session of Congress. This version of the Code does not contain annotations to cases or other sources. Therefore it is not as useful to researchers as the two commercially published versions listed below. Although it is less frequently used as a research tool, the U.S. Code is the version the *Bluebook* requires when citing to a federal statute. Only if a newly enacted or amended section is too recent to appear in the U.S. Code is it correct to cite to U.S.C.A. (the next in line of preference according to the *Bluebook*) or to U.S.C.S. A number of Web sites contain all or parts of the United States Code. Use caution as to their currency.

United States Code Annotated (U.S.C.A.)

Published by West, this version of the Code also includes the U.S. Constitution and several sets of court rules, such as the Federal Rules of Civil Procedure. U.S.C.A. has a multi-volume subject index published annually in paperbound format and Tables volumes. Each title also has its own index. U.S.C.A. is updated much more frequently than U.S.C. and by various means. Each volume contains an annual pocket part or has a

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pamphlet supplement that updates the volume unless the volume has just been republished. The supplements are further updated by quarterly pamphlets that cover the entire code set. U.S.C.A. contains extensive annotations to judicial materials, law reviews, treatises, and practice materials. When many cases appear, they are organized in "Notes" with their own mini-index. U.S.C.A. also contains references to applicable West Digest topics and key numbers. Electronic version: Westlaw: USCA database.

United States Code Service (U.S.C.S.)

Published by Lexis Law Publishing and like U.S.C.A., U.S.C.S. contains federal statutes, the Constitution, and procedural rules. U.S.C.S. has an annual multi-volume subject index and Tables volumes. Each title also contains its own index. U.S.C.S. is updated by annual pocket parts, quarterly cumulative supplements, and a monthly advance service pamphlet with new legislation and annotations. U.S.C.A. and U.S.C.S. are roughly comparable in currency. U.S.C.S. includes annotations to judicial and administrative decisions, organized by sub-topic under the heading "Interpretive Notes and Decisions." U.S.C.S. also includes references to A.L.R., Am. Jur. 2d, and law reviews, treatises and practice materials. Electronic version: Lexis (Source Directory: Federal Legal - U.S. – United States Code Service).

Which version to choose?

For currency and access to annotations, U.S.C.S. or U.S.C.A. are better choices than U.S.C. It is, however, necessary to consult U.S.C. to obtain citation information before finalizing a written draft. Since each annotated version may contain references to sources which do not appear in the other, the student researcher may wish to consult both if available. Usually the "real-life" researcher will not have access to both print versions of the annotated codes; therefore it is a good idea while in law school to establish some familiarity with both.

USING FEDERAL ANNOTATED CODES

- 1) Start with the index volumes using terms identified in background research.
- 2) Look up references to sections that appear to be relevant. Before reading any section's text, check to see if there is added or amended text in either a pocket part or a separate pamphlet supplement next to the volume. There may also be a supplementary pamphlet at the end of the entire set.
- 3) Read the text of the statute carefully. Look at adjacent sections to see if they may be relevant as well. There may also be separate "definitions" sections that define terms.
- 4) Following the statute language, there may be references (annotations) to cases that have interpreted the section. Often, case annotations and references to secondary

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sources appear in pocket parts and supplements even if the text of the code section has not changed.

FEDERAL SESSION LAWS

Federal session laws are available in both print and electronic formats. While subject access may be available, the easiest access point is by public law number.

Researching federal legislative history is treated in depth by Chapter 5 of this guide.

Print

United States Statutes at Large (Stat.)

This is the official (published under government auspices) version of the federal session laws. Each volume (published in several parts) contains the enacted public and private laws for one Congressional session. Laws are arranged in chronological order. Publication of the bound volumes occurs about two years after the end of the session. Publication of official slip laws is also slower than commercial versions. A subject index is contained in each part of a *Statutes at Large* volume; however, one normally begins with the code and works from there to the session laws. Recent enactments printed in pamphlet form (slip laws) are shelved at the end of the bound volumes.

United States Code Congressional and Administrative News (U.S.C.C.A.N.)

Published by West, this set is primarily used for legislative history purposes. However, it also includes monthly pamphlets with new federal legislation. Typically, these are published about a month or two after the date of enactment. Pamphlets include cumulative subject indexes and tables listing code sections that have been affected by recent legislation.

United States Code Service Advance Session Law Service (U.S.C.S.)

Monthly pamphlets, shelved at the end of this code set, contain the text of recent public laws. These have the same publication schedule as U.S.C.C.A.N., appearing a month or two after enactment. Various tables and indexes are included in the pamphlets.

Electronic

Public law databases on LEXIS and WESTLAW

Westlaw's US-PL database and the public laws file on LEXIS (Source Directory: Federal Legal - U.S./United States Code Service (USCS) Materials/USCS - Public Laws) both contain the full text of enacted public laws as set forth in enrolled bills. The text normally appears on these systems within a few days of enactment. LEXIS includes session laws from 1988 to the present. US-PL on WESTLAW includes only

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legislation enacted during the current Congress; the US-PL-OLD database has legislation from 1973.

Internet Site: THOMAS (<http://thomas.loc.gov/>)

THOMAS is the Library of Congress' Congressional Bill Information System on the Web. It includes the text of public laws from the current session (updated more frequently than the LEXIS and WESTLAW databases) and the text of public laws from 1973 to the current session.

LOCATING AND UPDATING FEDERAL ADMINISTRATIVE MATERIALS

Administrative rules and regulations, both federal and state, carry the force of law. They are promulgated under authority granted by statute to expand upon the general outline provided by the statute and to prescribe or prohibit activities in areas statutes do not reach. The federal compilation of administrative regulations currently in force is the *Code of Federal Regulations* (C.F.R.). The chronological compilation of new and amended regulations, both proposed and final, is the *Federal Register* (F.R.)

Researching in print format

The C.F.R. is published in paper-bound volumes that are re-issued annually. It is organized into titles that roughly correspond to the titles used to organize the United States Code. For example, Title 26 of the U.S.C. is the Internal Revenue Code, while Title 26 of C.F.R. contains Internal Revenue Service regulations. However, the correlation is not so precise for all titles. For example, Title 17 of the U.S.C. contains copyright statutes, while Title 17 of the C.F.R. contains securities regulations. The annual updating of the C.F.R. is done sequentially, with a portion of the entire set updated each quarter. Check the front of each volume to determine when it was last updated.

The *Federal Register* is published every Monday through Friday except on federal holidays. It contains, among other items, the text of new and amended regulations, as well as proposed new regulations and amendments, and notices of repealed regulations.

Locating federal regulations by topic

- Use the official subject index published in the last volume of the C.F.R., or the unofficial subject index published as part of the United States Code Service.
- If you know the citation to the enabling or other relevant statute, you may be able to locate a cross-reference to the pertinent regulations. Currently the *United States Code Service* (U.S.C.S.) contains more cross-references to the *Code of Federal Regulations* (C.F.R.) than *United States Code Annotated* (U.S.C.A.). Look up the federal statute and scan the accompanying annotations. Often a C.F.R. reference will appear after the statutory language and before the case annotations begin.

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- Even though the Code annotations may include a reference(s) to C.F.R., it may not be precisely on point. It may direct you to a general title and "part" - or subdivision - of C.F.R. without giving you a subject description or subsection. Another way to find the C.F.R. section you want is to locate the most current "CFR Index and Finding Aids" volume, either the official version published as part of the C.F.R. or the version that is part of U.S.C.S. This volume can be used in two ways:
 1. Look for the pertinent regulation through a keyword search in the subject matter index
 2. Use "Table I - Parallel Table of Authorities and Rules" that provides cross-references from the U.S. Code sections to their corresponding C.F.R. sections.

Updating regulations

- Because agency regulations are newly promulgated, or revised or repealed, on a constant basis, the paper C.F.R. volumes that are issued yearly are out of date literally by the time they reach the library shelves. Therefore it is necessary to determine whether a particular regulation has been affected by recent agency action. The C.F.R. is updated by the *Federal Register*. There is an updating tool called the *List of Sections Affected* (LSA) that enables you to track developments affecting a regulation through the *Federal Register*.

To update a C.F.R. section:

1. Note the date your C.F.R. volume's coverage stops by looking at the title page of the volume.
2. Collect the LSA pamphlet(s) necessary to update the C.F.R. section you located.
3. Look up the regulation. There are two separate listings under each title: one for final rules and one for proposed rules. You should check them both.

If your section is not listed, there have been no changes during the period covered. If your section is listed, you will see a one or two word explanation of the change and a page number (which refers to a page in the *Federal Register*).

1. Record the page cites given for your regulation, if any. Bold numbers in the LSA refer to the previous year.
2. Check the Table of Federal Register Issue Pages and Dates in the back of the LSA issue to determine the date of the *Federal Register* in which the citation you found appears.
3. Find this page in the *Federal Register* and read it.

Note the date the most recent LSA pamphlet's coverage stops. There will always be a gap between that date and the day you are conducting your research. To fill the gap, you need to find:

1. the last issue of the *Federal Register* for each complete month not covered by the LSA pamphlet and,

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2. the most recent issue of the *Federal Register* for the current month. There is a "CFR Parts Affected" table in the back of each issue, as well as a table of Federal Register pages and dates. Use the table to determine whether there have been any recent changes affecting your regulation.

NOTE: Publication of the LSA pamphlets has slowed markedly in the past few years. Therefore, updating in print sources can be cumbersome and time-consuming. We recommend that you use the GPO Access web site, described below, or Westlaw or Lexis, for updating.

Checking for cases interpreting or affecting the validity of your regulations

Courts have a complex role in implementing and interpreting agency regulations. To determine whether judicial opinions have had an impact on the validity of a regulation, you should check a federal regulation on Shepard's (Lexis) or KeyCite (Westlaw). Coverage differences between the two systems can result in quite distinct results, so this is an area where checking a citation in both systems is usually worth the slightly extra effort.

Researching in electronic formats

Lexis and Westlaw:

Both Lexis and Westlaw provide the current full text of C.F.R. and the *Federal Register*. Both systems also contain superseded versions of C.F.R. back to the early 1980s in separate databases/sources. *Federal Register* coverage goes back to 1980 on Lexis and to its first publication in 1936 on Westlaw. On both systems, an alternative to searching the full text of C.F.R. and/or F.R. is to search the versions available in the specialized "area of practice" sources/databases. These contain only the titles pertinent to a particular area of law. As always with the specialty databases/sources, some caution must be used in deciding to search only in limited titles in order to avoid missing relevant material.

Locating federal regulations by topic

To search for a C.F.R. section online by subject, you can use either terms and connectors or natural language searching, using descriptive terms. Another approach, if you know the citation to the enabling statute, is to use the U.S. Code citation in a field/segment search as follows:

Westlaw: **cr(20 /5 4011)** - searches the credit field

Lexis: **authority(20 /5 4011)** - searches the authority segment

The above examples will search your terms in only the portion of the document that contains the reference to the statute under which your regulation was promulgated. You can combine search terms with the field segment search if desired, using terms and connectors.

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Updating regulations

The online versions of C.F.R. are much more current than the print version, making updating an easier task. Each C.F.R. section online on either Lexis or Westlaw contains a line, near the heading, indicating the last issue of the *Federal Register* through which the section is updated. (Note: this does not mean that material affecting the section was published on that date in the *Federal Register* - merely that that is the last date through which the database has been updated.) The date of most recent update varies; it may be from a week or so to nearly a month prior to the date you are researching.

If the particular C.F.R. section has been affected by developments during the gap, Westlaw provides a highlighted "Update" link at the top of the screen. Clicking on this link will take you to the Federal Register database and to the particular Federal Register item that is relevant to the regulation you are updating. On Lexis, you can run a separate search in the Federal Register file to determine whether any updating items exist; alternatively, you can search in a combined file that includes both C.F.R. and Federal Register documents.

Checking for cases interpreting or affecting the validity of your regulations

C.F.R. sections can be Shepardized on Lexis or KeyCited on Westlaw. Another alternative is to construct a terms and connectors search that uses the regulation cite as a search term.

Internet sources

The GPO Access site < <http://www.gpoaccess.gov/> > provides search and updating capability for the C.F.R. and the Federal Register.

GPO Access permits searching for regulations by citation or subject and includes the parallel authorities table in which cross references from U.S.C. citations to accompanying regulations in the C.F.R. may be found.

This web site has proven to be reliable and current, and is useful for updating regulations without incurring the costs associated with Lexis and Westlaw. To update a C.F.R. citation on GPO Access:

Go to the GPO Access web site by going to Federal Resources from the library's home page (GPO Access is the first of the federal links) or by going directly to the site at <<http://www.gpoaccess.gov/cfr/index.html>> Select List of CFR Sections Affected. The List of CFR Sections Affected (LSA) is the tool researchers use to make sure they have the most recent changes to regulations and to find out whether there are any proposed amendments pending.

- Use Last Month's List of CFR Parts Affected (the link is on the left frame) to determine whether there were any changes to your regulation between the

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publication of the annual volume containing the regulation and the end of the previous month.

- Use Current List of CFR Parts Affected (also linked on the left frame) to determine whether there have been any changes to the regulation within the past month. This component should be current to the previous business day.

GPO Access also offers access to e-CFR, a much more current electronic version of the C.F.R. at <http://www.gpoaccess.gov/ecfr/>. Using this version makes it unnecessary to use the LSA to update regulations. However, Boolean searching is not yet possible in this version – you must browse by C.F.R. title and part.

Agency web sites may include statutes and regulations relating to the activities of the agency. Advantages of using an agency web site include the fact that they are free of charge and one need not know the precise citation to statutes and regulations in order to locate them. Be aware, however, that some such sites do not provide sufficient information as to the source or currency of the information provided.

USING THE FEDERAL PRACTICE DIGEST

1. Start with the most recent series of the digest, *West's Federal Practice Digest 4th*.
2. Locate the Descriptive Word Index volumes for the digest set. Look up research terms to identify potentially relevant topics and key numbers. Check the pocket parts of index volumes to see if later terms have been added.
3. Look up the topics and key numbers in the main digest volumes to find summaries of cases. Digests are organized alphabetically by topic and then chronologically by key number.
4. In addition to the main volume, recent cases may be in a pocket part in the back of the book or in a separate pamphlet supplement that covers the particular volume, and/or in a paper supplement at the end of the set that updates all topics and key numbers in that set. It usually makes sense to start with the most recent supplement and work backwards.
5. Record the citations of cases that appear to be relevant to your research situation. Note that the digest may include cases that are of persuasive value only; for example, cases from other circuits or districts.

USING AMERICAN LAW REPORTS FEDERAL

A.L.R. Federal does a better job of incorporating statutory law into the annotations than does the state version. This is often a good place to begin research on a federal topic for which a statute has not yet been identified.

Searching the print version of A.L.R. Federal

- the A.L.R. Federal "Quick Index" contains a one-volume hardcover topical index, updated by annual pocket part, as well as a three-volume set of tables containing federal cases, statutes and procedural rules which have been cited in A.L.R. annotations.
- a multi-volume hardcover topical "ALR Index," updated annually by pocket part, covering both the state and federal series;
- an "A.L.R. Digest" which indexes the annotations by broad subject area (somewhat similar to the West Digest system). The last two sources are shelved at the end of the state A.L.R. series.

Electronic research

The federal series of A.L.R. is available online through Westlaw in the ALR database. *A.L.R. Federal* can be searched by terms and connectors or by natural language searching. Because its print indexing is quite good, it may be easier to locate helpful annotations in print than online. Additionally, the online format of A.L.R. is difficult to browse. Often it is more efficient to take a print approach to this resource.

SOURCES FOR FEDERAL CASE LAW RESEARCH

United States Supreme Court

Digests:

United States Supreme Court Digest (through 2001); Federal Practice Digest.

Reporters:

United States Reports (U.S.)

United States Supreme Court Reports, Lawyers' Edition (L. Ed., L. Ed. 2d)

Supreme Court Reporter (S. Ct.)

Electronic databases:

Westlaw:

SCT (for U.S. Supreme Court opinions only); FEDn-ALL (for Supreme Court, circuit and district court cases by circuit of origin)

Lexis:

Supreme Court cases only: From the Source Directory, select "Federal Legal-U.S.- Supreme Court Cases and Materials - U.S. Supreme Court Lawyers' Edition Cases." You may also want to update your research in the "Preview of United States Supreme Court Cases," United States Law Week, or "Web Buzz" (contains coverage of cases argued before the Supreme Court in the current month).

Web:

Extensive Supreme Court opinions are available on the Web.

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Since 1990 - The Legal Information Institute's site contains most opinions of the court issued since May 1990. <<http://supct.law.cornell.edu/supct/>>

Before 1990 - Several sites offering collections of older decisions are available, including:

- The Legal Information Institute Collection of Significant Historic Opinions < <http://supct.law.cornell.edu/supct/cases/historic.htm> >
- Findlaw (opinions dating back to 1893)
<<http://www.findlaw.com/casecode/supreme.html>>
- FedWorld (opinions from 1937 – 1975)
<<http://supcourt.ntis.gov/>>.

Courts of Appeals

Digest:

Federal Practice Digest

Reporter:

Federal Reporter, 1st - 3d series (F., F.2d, F.3d); Federal Appendix (F. App'x)

Electronic databases:

Westlaw:

CTAn (for individual Courts of Appeals, e.g., CTA1 for First Circuit); CTA (Courts of Appeals, all circuits)

Lexis:

From the Source Directory select "Federal Legal-U.S." There are many case law files to choose from, including files for each individual Circuit Court of Appeals and combined files covering Supreme Court, Court of Appeals, and District Court decisions.

Web:

A number of Federal Circuit Courts of Appeal web sites contain opinions dating back through the early 1990's. Check:

- Villanova Law School Federal Court Locator at
<http://www.law.vill.edu/library/researchandstudyguides/federalcourlocator.asp>
- U.S. Courts home page at
<http://www.uscourts.gov/links.html>

District Courts

Digest:

Federal Practice Digest

Reporters:

Federal Supplement, Federal Supplement 2d (F. Supp., F. Supp. 2d)

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Federal Rules Decisions (F.R.D.) (cases involving federal procedural matters only)

Electronic databases:

Westlaw:

DCT (for all district court cases); FEDn-ALL (for Supreme Court, Court of Appeals, and district court cases by circuit of origin)

Lexis: From the Source Directory, select “Federal Legal.” There are many case law files to choose from, including files for the district courts of each circuit, for the district courts from each state, and combined files covering Supreme Court, Court of Appeals, and District Court decisions.

Web: At the present time few District Court opinions appear on the Web. Check:

- U.S. Courts home page at <http://www.uscourts.gov/links.html>
- Villanova Law School Federal Court Locator at <http://www.law.vill.edu/library/researchandstudyguides/federalcourtlocator.asp>

FEDERAL COURT RULES AND PRACTICE MATERIALS

1. Court Rules – Text

- a. Text of the *Rules of Criminal Procedure* are found in the Appendix to Title 18 to the U.S. Code. The Rules of Civil Procedure, Appellate Procedure, Evidence, and specialized federal courts are in the Appendix to Title 28 of the U.S. Code.

2. Court Rules - Text and Annotations

- a. Both U.S.C.S. and U.S.C.A. have volumes that contain the Rules of Federal Procedure, Civil and Criminal, and the Federal Rules of Evidence. Each set gives the text of the rules followed by annotations of decisions as well as comments from the Advisory Committee on the federal rules.

3. Judicial Interpretations of Court Rules

- a. *Federal Rules Decisions* (F.R.D.) (KF120.F28)
Contains cases from the federal district courts that construe the Rules of Civil Procedure and the Rules of Criminal Procedure. Also includes articles, reports of judicial conferences and committee reports. This is a standard West reporter and is indexed in the digest system.
- b. *Federal Rules Service* (KF120.F29)
Reporter of cases applying the Federal Rules of Civil Procedure and the

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Federal Rules of Appellate Procedure. Updated by advance sheets.
Finding Aids volume in looseleaf format. Indexed by the *Federal Rules Digest* (KF120.F292)

- c. *Federal Rules of Evidence Service* (KF8935.F4)
Reporter of cases applying the Federal Rules of Evidence. "Finding Aids" volume includes text of Federal Rules of Evidence. Updated by advance sheets. Includes digest volumes arranged by rule number and updated by pocket parts.

4. Treatises

- a. *Cyclopedia of Federal Procedure 3d* (KF8840.C93)
Analysis with extensive annotations on jurisdiction, service, venue, pleadings, trial practice and appeals for civil and criminal actions. Arranged by subject. Includes a multi volume forms section and one volume subject index with tables. Updated by pocket parts and paperback supplements.
- b. *West's Federal Practice Manual* (KF8840.V6)
Discussion of practice before federal administrative agencies and courts. Includes forms, tables, and an index volume. Updated by pocket parts and paperback supplements.
- c. Charles Alan Wright et al., *Federal Practice and Procedure* (KF8816.W7)
Arranged by Federal Rules of Criminal Procedure, Civil Procedure and Evidence. Additional volumes on jurisdiction and related matters. General index in separate paperback volumes republished every year. Main volumes updated by pocket parts and paperback supplements.
- d. *Moore's Federal Practice 3d* (KF8820.A313M63) & *Moore's Manual* (KF8816.M63)
Discussion of federal practice arranged by rule numbers. Special volumes for Supreme Court practice. Includes several volumes of forms, index volume, and tables volume. Looseleaf format.
- e. *Weinstein's Federal Evidence 2d* (KF8935.W4)
Commentary on the Federal Rules of Evidence with annotations to cases. Subject index with table of cases. Looseleaf format.

5. Forms

- a. *West's Federal Forms* (KF8836.W32)
Separate volumes for Supreme Court, courts of appeals, district courts, and bankruptcy courts. Each group of volumes organized by rule number. One volume paperback index and table of statutes and court rules

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republished every year. Updated by pocket parts and paperback supplements.

6. Local Court Rules and Forms

- a. *Federal Local Court Rules 3d* (KF8816.A2 2001)
Local rules for federal district courts and courts of appeals. Internal operating procedures of courts of appeals. Table of contents at beginning of section for each court. Address and telephone number for each court. Multi-volume looseleaf.
- b. Federal rules for the courts of appeals may also be found in the U.S.C.A. in the Rules volumes following Title 28 and in the U.S.C.S. in the Court Rules volumes at the end of the set. The U.S.C.A. volumes also include the internal operating procedures of the courts of appeals. Each court also issues its rules in pamphlet form.
- c. *Federal Local Court Forms 3d* (KF8836.F422)
Forms and completion instructions for every federal district court, arranged alphabetically by court. Also includes general forms and forms for the courts of appeals. Subject index in last volume. Multi-volume looseleaf.

STRATEGIES FOR RESEARCHING A FEDERAL LAW PROBLEM

Initial steps

With any problem that involves unfamiliar issues and terminology, secondary sources are useful for background information. Hornbooks and treatises often provide a framework for further research and may provide citations to key federal cases. Law review articles covering federal topics may be quite easy to locate, either online in Lexis or Westlaw or in print indexes. The general encyclopedias, *American Jurisprudence 2d* and *Corpus Juris Secundum*, can be helpful starting points if used very carefully. *ALR Federal* can also be an excellent starting source because, unlike *ALR* which only covers state case law, *ALR Federal* includes references to federal statutes in addition to cases.

Identifying the jurisdiction is a critical step that should be taken prior to beginning research on a federal question. The nation is divided into eleven federal judicial circuits, each including several states. Each state has at least one federal district (trial level) court. If the problem you are researching involves a federal issue set in a particular state, identifying the circuit covering the state is a crucial first step.

Searching for statutes

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Either of the two annotated federal codes, *United States Code Annotated* or *United States Code Service*, can be used for locating federal statutes. Both have soft bound index volumes, replaced annually, that provide subject access to federal code sections. Even if you have picked up a cite to a federal statute from a secondary source, a few minutes spent double-checking the index is important as there may be other statutes applicable to your research. The same principles that apply to searching state statutes apply in the federal arena. For example, once you have a cite to a particular section, checking the pocket parts and supplements first is a good idea. Look for definitions sections and adjacent sections that may be relevant to the problem. Go through the case annotations, checking for U.S. Supreme Court decisions, and paying particular attention to cases that have been decided by the pertinent Circuit Court of Appeals and to decisions of district courts in the state in which your problem is set.

Annotated federal statutes are available on Lexis and Westlaw as well as in print form. The same rule of thumb applies to searching in either format. If you cannot find something within about 15 minutes, stop and try searching in print if you started online or vice versa. If that does not work, go on to another source and keep watching for relevant statute cites.

Searching for cases

Several possibilities exist for locating relevant federal cases and a researcher who wants to do a thorough research job will utilize a variety of sources to ensure that the important cases are found. The traditional method involves using *West's Federal Practice Digest* and its topic and key number system. Start with the most recent series of the digest. Similar to the state system, this digest has Descriptive Word Index volumes to help you identify potentially relevant topics and key numbers. Because the volume of federal cases is so high, the federal digest is published in several series covering different year spans, so it is important to realize that the current series only covers relatively recent cases. Useful cases may reside in an earlier federal digest set. As is true with state digests, identifying possible topic/key numbers from cases found in secondary sources can help make the digest search easier, although it is still important to double-check the index volumes. *ALR Federal* is a good, although not comprehensive, source for identifying case citations.

In print sources such as the digests, relevant cases may be cited under pertinent topics, but the descriptions may not give enough information or may give misleading information that makes one assume that the cases are not relevant. Since both the federal digest and *ALR Federal* provide a compilation of cases from all federal jurisdictions, it is important to focus on U.S. Supreme Court decisions and on decisions of the relevant circuit and then look up all the decisions that could potentially be relevant, even if they do not appear to be directly on point. Obviously, this approach does not work if the volume of cases is large; if so, you will have to be more selective.

While district court decisions are not mandatory authority, in the absence of a higher court decision it may still be important to read those from the particular state. Among

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other reasons, the district court may be the court that would hear the case if the current problem winds up in litigation; and, if the decision is recent, it may have been appealed to the Circuit Court. District court cases from other states within the same circuit may also be important if they have been appealed to Circuit Court.

This library maintains current subscriptions to the three U.S. Supreme Court reporters: United States Reports, West's Supreme Court Reporter and Lawyers' Edition 2d. Federal circuit court decisions are found in the *Federal Reporter* and selected district court decisions are published in *Federal Supplement*. West introduced the *Federal Appendix* in 2001, a reporter that contains unpublished opinions - opinions that the issuing court has not ordered to be published. Many unpublished opinions are available on Lexis and Westlaw. Use great caution when relying on an unpublished opinion as it may not have precedential value in your jurisdiction.

Federal databases in Lexis and Westlaw can be valuable case finding tools. Both systems offer several database combinations for federal case law. Many of these are very broad in coverage, including cases from the U.S. Supreme Court as well as cases from various combinations of District and Circuit courts. As with print sources, limiting your search initially to cases in either the Supreme Court or a particular circuit court may make the search manageable.

As always, the scope of your research should be a factor in selection of a database or source. The significance of persuasive authorities in federal jurisprudence makes it more likely that you will need to search beyond your immediate jurisdiction, but many of the databases/sources which combine federal court decisions may be too large to be a good starting point when you are still trying to define research terms and concepts. The larger databases may be more costly to search, as well as being inefficient. In any event, be sure to ascertain the exact coverage of the various options. Use the print directories for each service or the online database descriptions to ascertain the coverage of the databases before you start running searches.

At some point, even if the law in a particular jurisdiction seems clear, it is important to get a perspective on the state of the law in other circuits. Knowing whether the approach your circuit is taking is consistent with or against the national trends is an important part of the larger picture. For this purpose, *ALR Federal* and recent law review articles can be helpful. Using Shepard's or KeyCite as a case finder with particular attention paid to very recent court decisions can be valuable.

Making sure cases are still good law

As with state case law research, taking steps to validate all cases you are planning to cite is critical. This can be done by using Shepard's on Lexis or KeyCite on Westlaw.

Refining analysis and formulating conclusions

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Returning to treatises and law review articles toward the end of the research process may be a good ending step. With information gained by reading the cases that constitute mandatory authority for the particular problem, re-reading the more general discussions can help put things into perspective.

HIGHLIGHTS OF *BLUEBOOK* FORM FOR FEDERAL ADMINISTRATIVE SOURCES

Organization of the *Code of Federal Regulations*

Titles:

The C.F.R. is divided into 50 numbered titles. While the organization of the 50 titles is similar to the organization of the *United States Code* (including the annotated versions), there are differences.

Parts:

The next level of organization of the C.F.R. is the Part. A Part contains a set of regulations on a particular subject. Rules in a particular part relate to the same subject. Citations to rules are often to a Part.

Subparts:

Parts may be divided into subparts. One does not cite to Subparts, but to Parts or Sections, as illustrated below.

Sections:

Analogous to sections in the U.S.C., sections are the smallest segment of the C.F.R. They may be brief or lengthy, but they generally cover a specific point of law.

Citing the C.F.R.

In the *Bluebook*, see Rule 14.2 and Table T.1.

Citation by section: 21 C.F.R. § 2.10 (2001).

Citation by part: 21 C.F.R. pt. 2 (2001).

The year is taken from the title page of the volume in which the rules are printed, in this case, "Revised as of April 1, 2001."

Citing the Federal Register

In the *Bluebook*, see Rule 14.2 and Table T.1.

Final rule: 66 Fed. Reg. 19387 (Apr. 16, 2001) (to be codified at 14 C.F.R. pt. 39).

Proposed rule: 66 Fed. Reg. 19403 (proposed Apr. 16, 2001) (to be codified at 40 C.F.R pt. 258).

HIGHLIGHTS OF *BLUEBOOK* FORM FOR FEDERAL CASES

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Rule 10 specifies how to cite to cases and the federal section of Table T.1 specifies which reporter to cite to.

Sample citation for U.S. Supreme Court decision:

Roe v. Wade, 410 U.S. 113 (1973).

Sometimes you will see three parallel citations used as follows:

Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

However, the *Bluebook* mandates the use of only the U.S. Reports citation, if it is available. For recent cases for which the U.S. citation is not yet available, either the S. Ct. citation or the L. Ed. 2d citation, in that order, should be used.

Sample citation for federal Circuit Court of Appeals decision:

Robinson v. Shell Oil Co., 70 F.3d 325 (4th Cir. 1995).

Sample citation for federal district court decision:

Wolf v. J.I. Case Co., 617 F. Supp. 858 (E.D. Wis. 1985).

HIGHLIGHTS OF *BLUEBOOK* FORM FOR FEDERAL STATUTES

Rule 12.3 of the *Bluebook* specifies that statutes should be cited to the official code when possible. Therefore, the standard citation to a federal statute is as follows:
22 U.S.C. § 2567 (2000).

If a statute section in its most up-to-date form does not yet appear in the official United States Code, cite to the United States Code Annotated or the United States Code Service.