

## CHAPTER 11 RESEARCHING A FEDERAL LAW PROBLEM

### TABLE OF CONTENTS

**Federal Government**

**U.S. Constitution**

**Federal Legislation**

**Federal Courts**

**Federal Regulations and Other Administrative Materials**

**Federal Court Rules**

**Strategies for Researching a Federal Law Problem**

**Highlights of *Bluebook* Form for Federal Authorities**

**Federal Practice Materials**

**Checklist: Researching a Federal Law Problem**

### FEDERAL GOVERNMENT

The federal government is comprised of three branches: the executive, legislative, and judicial. The executive is the president. Legislative power is vested with Congress. Congress has two chambers: the U.S. House of Representatives and the U.S. Senate. The judiciary consists of the Supreme Court of the United States (the highest appellate court in the nation), the circuit courts of appeals (the intermediate appellate courts), district courts (trial courts of general jurisdiction), and various specialty courts. For more information on the structure of the federal government, see the [U.S. Government Manual](#).

### U.S. CONSTITUTION

The U.S. Constitution is the organic law of the United States. It defines and establishes the powers and structure of the federal government and guarantees certain fundamental rights. The United States has had two constitutions in its history, the Articles of Confederation (1777) and the current Constitution (1789) albeit with several amendments.

The U.S. Constitution is available in print (the U.S. Code and other books) and online. Online sources include Bloomberg Law, Lexis, and Westlaw, and freely available websites such as the Legal Information Institute <https://www.law.cornell.edu/constitution/overview> or U.S. House of Representatives, Office of Law Revision Counsel <http://uscode.house.gov/view.xhtml?path=/frontmatter/organiclaws/constitution&edition=prelim>.

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

The U.S. Constitution is comprised of a preamble, several articles, and several amendments. The preamble which begins with the famous phrase “We the people” is generally viewed as being persuasive, but not having legal force. The preamble is followed by seven articles. These articles define the institutions and powers of the federal government, set principles for relations between member states, and provide a process for amending the Constitution. The articles are followed by several amendments. The first 10 amendments are collectively referred to as the “Bill of Rights.” The Bill of Rights provides protections for: freedom of speech, religion, and association; private gun ownership; private property; and criminal defendants. Later amendments abolished slavery, provided voting rights for women, and presidential term limits.

There are several methods for finding specific provisions in the U.S. Constitution. One method is to use secondary sources that cite relevant constitutional provisions. You may also use Bloomberg Law, Lexis, Westlaw, or internet searches to locate the provisions. Additionally, you may use an index. One topical index to the Constitution is called the *Analytical Index to the Constitution of the United States* <http://uscode.house.gov/view.xhtml?path=/frontmatter/organiclaws/indexconstitution&edition=prelim>. The *Analytical Index* is published by the federal government and is freely available online. The index volumes for the *United States Code Service* (Lexis) and the *United States Code Annotated* (described below) also cover the Constitution. Westlaw also has an online index for the U.S.C.A. that also covers the U.S. Constitution.

There are also several strategies for finding cases interpreting the U.S. Constitution. Again, you may read secondary sources such as law review articles and treatises. Another effective strategy is using annotations. Annotated U.S. Constitutions are available online via Lexis and Westlaw. They are also available in print in the *United States Code Service* and the *United States Code Annotated*. Another annotated Constitution is the *Constitution of the United States of America: Analysis and Interpretation* <https://www.congress.gov/constitution-annotated/>. This publication is published by the Congressional Research Service (a government agency that provides legal and policy advice to Congress) and is freely available online. You may also use other search strategies to find cases such as full-text searching, topic searching, or using citators.

## FEDERAL LEGISLATION

### Federal session laws

Federal session laws are the laws enacted by Congress during a term of Congress. A term of Congress is two years and consists of two regular sessions each lasting a year. Session laws include public and private laws. Public laws are laws applicable to the entire nation. Private laws are laws applicable to an individual, and usually address immigration and naturalization issues.

Session laws occupy a special place in legal research. First, researchers often rely on session laws if the relevant provisions have not yet been codified. Second, if there is a

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

textual conflict between the codified version of a statute and the session law, then the text of session law prevails.

Federal session laws are available from many sources. The official publication for federal session laws, however, is the *United States Statutes at Large*.

### A. *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. Session laws are available on Bloomberg Law, Lexis, Westlaw, HeinOnline, and FDsys.

### B. *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. Available on Westlaw.

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

Monthly print 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.

## **Codification of federal laws**

Federal laws currently in effect are codified, or organized by topic, in the U.S. Code. The U.S. Code is organized by a scheme of numbered titles that correspond to a particular topic. For example, Title 11 is the Bankruptcy Code, Title 26 is the Internal Revenue Code, Title 43 contains federal statutes relating to public lands. Currently, there are more than 50 titles in the U.S. Code. Titles are further organized into subtitles, chapters, subchapters, and sections. The U.S. Code also contains the text the U.S. Constitution.

There are several versions of the U.S. Code. However, all versions are organized with the same scheme of numbered titles. All 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.

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

### A. *United States Code* (U.S.C.)

This is the official codification of federal public laws (published under government auspices.) The U.S.C. is available in print in the Thurgood Marshall Law Library. Several online databases and websites also contain all or parts of the U.S.C. Bloomberg Law provides online access to an unannotated, up-to-date version of the U.S.C. Some free online sources include FDsys, Justia, the Legal Information Institute, and the U.S. House of Representatives, Office of Law Revision Counsel website. Use caution as these free versions may not be up-to-date.

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.” Popular names are the titles given to public laws when they are enacted. The popular name may describe the legislation (Jumpstart Our Business Startups (JOBS) Act) or refer to its authors (Dodd–Frank Wall Street Reform and Consumer Protection Act).

The U.S.C. is usually not the preferred choice for researchers. First, given its lengthy update schedule, the U.S.C. may not provide you with the most up-to-date statutory language. Second, the U.S.C. does not contain helpful annotations to cases or other sources interpreting statutory sections.

Nevertheless, the U.S.C. 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.

### B. *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. The U.S.C.A. is available in print and on Westlaw. The 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 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.

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

## **Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018**

Published by Lexis Law Publishing and like U.S.C.A., U.S.C.S. contains federal statutes, the Constitution, and procedural rules. The U.S.C.S. is available in print and on Lexis. 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.

### **Which version to choose?**

For currency and access to annotations, U.S.C.S. or U.S.C.A. are far 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, you 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 codes in print**

Most researchers now use the annotated codes available online from Lexis or Westlaw. However, if you find yourself using a code in print, start with the index volumes using terms identified in background research if you do not already have a statutory citation. Then 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. Then read the section(s) carefully. Look at adjacent sections to see if they may be relevant as well. There may also be separate "definitions" sections that define terms. Finally, if you are using an annotated code, following the statutory language, there may be references (annotations) to cases that have interpreted the section. Remember to check pocket or supplements as case annotations and references to secondary sources often appear here even if the text of the code section has not changed.

## **FEDERAL COURTS**

Federal courts were created under Article III of the Constitution. The federal court system has three main levels: district courts, circuit courts of appeals, and the Supreme Court of the United States. There are also specialized courts for bankruptcy, international trade, tax litigation, and monetary claims against the U.S. government.

Many issues before federal courts deal with the application and interpretation of federal legislation. Often a circuit split can occur, meaning the circuits 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 district courts also hear cases on state law issues

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

under diversity jurisdiction. In such cases, the federal courts look to opinions of the highest court of the state as mandatory authority.

Bloomberg Law, Lexis, and Westlaw each have robust coverage of federal court decisions. However, decisions on Lexis and Westlaw are often assigned headnotes and topics to facilitate legal research. These decisions are also widely available on the internet.

### Supreme Court of the United States

The Supreme Court of the United States is the highest appellate court in the nation. The Court reviews cases involving the legality of state laws under U.S. Constitution, and cases involving the constitutionality and interpretation of federal statutes, regulations, and executive actions.

Decisions of the U.S. Supreme Court are widely available in print and online. Decisions are reported in *United States Reports* (U.S.), the *Supreme Court Reporter* (S. Ct.) (West), the *United States Supreme Court Reports, Lawyer's Edition* (L. Ed., L. Ed. 2d) (Lexis), and *United States Law Week* (U.S.L.W.) (Bloomberg BNA).

In addition to being available from all online legal research services, U.S. Supreme Court decisions are freely available online from numerous sources. The Court's website <https://www.supremecourt.gov/> has decisions from 1991 to date. [FindLaw](#) also has Supreme Court decisions that can be searched by full text or browsed by year. Supreme Court decisions are also available on [Google Scholar](#), [Legal Information Institute](#), and [FedWorld](#).

### Circuit Courts of Appeals

The circuit courts of appeals are the nation's intermediate appellate courts that sit below the U.S. Supreme Court. The circuit courts are generally organized by region covering several federal district courts. There are 13 circuit courts of appeals, including 11 numbered circuit courts of appeals, one for the Federal Circuit, and one for the District of Columbia Circuit. Circuit courts of appeals hear appeals from decisions of district courts and appeals from decisions of federal administrative agencies. The Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in patent cases, and cases decided by the U.S. Court of International Trade and the U.S. Court of Federal Claims. A map of the federal circuits is can be found at <http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>.

Decisions from circuit courts of appeals are widely available in print and online. Decisions are reported in the *Federal Reporter* (F., F.2d, F.3d, 1st - 3d series) (West) and the *Federal Appendix* (F. App'x) (West). Only decisions designated by circuit courts of appeals as "for publication" are included in the *Federal Reporter*. These published decisions have full precedential value. Decisions not designated for publication are

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

included in the *Federal Appendix*. These decisions are called “unpublished decisions” and generally have limited precedential value.

In addition to being available from all online legal research services, circuit court decisions are often available on circuit court websites dating back through the early 1990’s. Links to circuit court websites are available from the [Administrative Office of U.S. Courts](#). Circuit court decisions are also available from [Google Scholar](#).

### Federal District Courts

Federal district courts are the trial courts of the federal court system. There are 94 district courts. All states have at least one federal district court; larger states have several, divided by geographic district within the state (e.g., the Western District of Pennsylvania).

Decisions of federal district courts are widely available in print and online. Decisions are reported in the *Federal Supplement* (F. Supp., F. Supp. 2d) (West) and the *Federal Rules Decisions* (F.R.D.) (West). The *Federal Supplement* includes decisions from district courts on all matters. The *Federal Rules Decisions* contains decisions from district courts that only involve federal procedural matters only. In addition to being available from all online legal research services, many decisions are also available on district court websites. Links to district court websites are available from the [Administrative Office of U.S. Courts](#). District court decisions are also available from [Google Scholar](#).

### Federal Practice Digest (West)

The *Federal Practice Digest* is a topical index to federal cases. The digest contains headnotes, or points of law, from various cases and organizes them using the West Topic and Key Number system. This approach helps researchers quickly find cases that are similar to the legal issue under consideration. The entire West digest system, covering federal and state courts, is available on Westlaw. The Thurgood Marshall Law Library cancelled its print subscription to the Federal Practice Digest in 2012 (ending with *Federal Practice Digest 4th*).

Most researchers will use the online version of the digest on Westlaw. However, if you need to use the print version then start with the most recent digest in the series (currently *Federal Practice Digest, 5th*). Then 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. Next, 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. Finally, in addition to the main volume, check the pocket part in the back of the book or in a separate pamphlet for more recent cases.

## FEDERAL REGULATIONS AND OTHER ADMINISTRATIVE MATERIALS

Rules issued by administrative agencies are generally known as regulations. Administrative regulations, both federal and state, carry the force of law. Agencies issue regulations under authority granted by statutes to expand upon the general outline provided by the statute and to prescribe or prohibit activities in areas statutes do not reach.

The principle sources for finding federal regulations are the *Federal Register* and the *Code of Federal Regulations*.

### Federal Register (F.R. or Fed. Reg.)

The *Federal Register* is the official journal of the federal government. 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. The *Federal Register* is available on Bloomberg Law, Lexis, and Westlaw. It is also freely available on [FDsys](#), a federal government website that provides access to official government publications, and [FederalRegister.gov](#).

### Code of Federal Regulations (C.F.R.)

The *Code of Federal Regulations* (C.F.R.) is the codification of federal administrative regulations currently in force. Final rules published in the *Federal Register* are codified, or organized by topic, in the C.F.R.

The full-text of current C.F.R. is available on Bloomberg Law, Lexis, and Westlaw. All three services also have specialized practice pages that contain only the regulations pertinent to a particular area of law. However, some caution must be used in deciding to search only in limited titles in order to avoid missing relevant material.

The C.F.R. is also freely available on [e-cfr.gov](#) and [FDsys](#). The website e-cfr.gov does not provide an official edition of the C.F.R. It is an editorial compilation of C.F.R. material and *Federal Register* amendments. Many researchers use the e-CFR as an updating tool (the current update status is printed at the top of e-CFR pages). FDsys is a federal government website that provides access to official government publications. The Thurgood Marshall Law Library also maintains a current edition of the C.F.R. in print on the third floor.

The C.F.R. is organized into 50 numbered 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

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

U.S.C. contains copyright statutes, while Title 17 of the C.F.R. contains securities regulations.

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

The official C.F.R. is published in multiple volumes that are re-issued annually. The annual updating of the C.F.R. is done sequentially, with a portion of the entire set updated each quarter. The annual update cycle is as follows: titles 1-16 are revised as of January 1; titles 17-27 are revised as of April 1; titles 28-41 are revised as of July 1; and titles 42-50 are revised as of October 1. Check the front of each volume to determine when it was last updated. If you are citing the C.F.R. for court pleadings or academic research, you need to use the official C.F.R.

### Locating federal regulations by topic

There are several ways to locate federal regulations by topic. First, you can use secondary sources as part of your background research to find citations to relevant regulations.

Second, you can try full-text searching of the C.F.R using an online legal research service. Full-text searching, however, can be inefficient if you do not know the keywords used in the regulation, and even if you know the keywords you may still miss related regulations in other sections or titles.

If you do try full-text searching, you can use either terms and connectors or plain 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:

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

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.

Third, agency websites often include regulations relating to the activities of the agency. Advantages of using an agency website include the fact that they are free of charge and one need not know the precise citation to 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.

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

Fourth, if you know the citation to a relevant section in the U.S. Code, you may be able to locate a cross-reference to the pertinent regulations. Both the *United States Code Service* (Lexis) and the *United States Code Annotated* (West) contain cross-references to related C.F.R. sections. However, even though the 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. These cross-references are available in the print and online versions.

Fifth, you may try using an index to the C.F.R. The official subject index published in the last volume of the C.F.R. The *United States Code Service* includes an unofficial C.F.R. subject index that is more detailed than the official index. This index is available online through Lexis. Westlaw also has an online index to the C.F.R.

Finally, you can try using a publication called the “Parallel Table of Authorities and Rules.” The Parallel Table provides cross-references from the U.S. Code sections to their corresponding C.F.R. sections. The Parallel Table is freely available online from FDsys, [https://www.gpo.gov/help/parallel\\_table.pdf](https://www.gpo.gov/help/parallel_table.pdf).

### 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). BCite on Bloomberg Law is not currently available for federal regulations. 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. Another alternative is to construct a terms and connectors search that uses the regulation cite as a search term. However, since regulations are cited in a variety of ways, care and flexibility must be used in formulating this type of search.

### Updating regulations

When researching regulations, it is often necessary to determine whether a particular regulation has been affected by recent agency action, or to determine if there is a newly proposed regulation that may affect your issue. The C.F.R. is updated by the *Federal Register*. First, final regulations are published in the *Federal Register*, and then later they are codified in the C.F.R. As a result, the official C.F.R. is often out of date by the time it hits library shelves.

There are several ways to update regulations. Secondary sources, including legal blogs and current awareness publications, may alert you to recent changes or potential changes to regulations. Agency websites often publish information alerting readers to changes to regulations administered by the agency. On Westlaw individual regulations are marked with indicator flags at the top of the screen that alert readers to proposed rules or final rules amending the regulation that have not gone into effect yet. Finally, researchers may

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

update regulations using a publication called the *List of C.F.R. Sections Affected* (LSA) and the *Federal Register*. This method allows researchers to track developments affecting a regulation through the most recent issue of the *Federal Register*. The LSA is available online from FDSys and Bloomberg Law.

To update a C.F.R. section using the LSA and *Federal Register*:

1. If you are using print, note the revision date of your C.F.R. volume's coverage stops by looking at the title page of the volume. You can also use the official C.F.R. on FDSys (the revision date is noted under each title).
2. Find the most recent monthly LSA from [FDSys](#) or [Bloomberg Law](#).
3. Look up the regulation in the LSA. There are two separate listings under each title: one for final rules and one for proposed rules. You should check them both.
4. 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*).
5. Record the page cites given for your regulation, if any. Bold numbers in the LSA refer to the previous year.
6. 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.
7. 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. You will need to fill in this gap.

8. To fill the gap, you use the last issue of the *Federal Register* for each complete month not covered by the LSA pamphlet and the most recent issue of the *Federal Register* for the current month.
9. There is a "C.F.R. 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.

### Tracking proposed new and amended federal regulations

Rulemaking activities of federal agencies can be followed in a number of ways. Both Lexis and Westlaw provide regulation tracking services.

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

If you are tracking a particular area of law or a particular regulation, [FederalRegister.gov](http://www.federalregister.gov) will let you look at current issues of the Federal Register, or sign up for the table of contents to be e-mailed daily.

The site [Regulations.gov](http://www.regulations.gov) provides access to proposed federal regulations that are open for public comment as well as those for which the comment period has ended. The site also includes federal agency notices published in the *Federal Register*, and additional supporting materials, comments, and federal agency guidance and adjudications. It is also the portal for submission of public comments on proposed regulations.

Federal agencies are required to publish their planned rulemaking or deregulatory activities in the Unified Agenda, which is published twice a year. The FDSys website, in addition to providing full text of C.F.R. and the *Federal Register*, provides links to Regulations.gov and the Unified Agenda.

Finally, in addition to individual agency websites, other sites that provide information about proposed regulations are Openregs.com and Reginfo.gov (which provides information about the status of agency documents undergoing mandated executive branch review by the OMB's Office of Information and Regulatory Affairs.)

### **Historical versions of the Federal Register and C.F.R.**

When the need arises to review how a federal regulation appeared at an earlier point in time, historical versions of C.F.R. can be consulted. Westlaw and Lexis provide some historical versions of C.F.R. HeinOnline, another database available from the Thurgood Marshall Law Library's website, provides historical coverage of C.F.R. extending back to the first published version in 1938.

To trace back the evolution of a C.F.R. section, you can use these historical versions, or review the "Administrative History" that usually appears at the end of a section, similar to the parenthetical information following a statutory code section. (The location of this information varies depending on which source you are using.) This administrative history will provide references to the Federal Register publications of the original or amended versions of the C.F.R. section. Bloomberg Law, Lexis, and Westlaw all provide historical coverage of the *Federal Register* back to 1936. FDSys provides historical coverage back to 1994.

### **Federal agency opinions, rulings, etc.**

Federal agency websites can be good sources of agency adjudications, interpretations, and other documents. Many are reasonably up to date. A list of federal administrative agencies whose decisions are freely available on the internet can be found at [http://guides.lib.virginia.edu/administrative\\_decisions](http://guides.lib.virginia.edu/administrative_decisions).

Bloomberg Law, Lexis, and Westlaw provide federal administrative agency decisions, rulings, and other documents, which are accessible via the federal listings or the topical

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

listings. Make sure to consult the resource information notes for coverage (types of documents and dates) and search tips. Topical databases such as IntelliConnect and print loose-leaf services can also be a valuable source of agency decisions and other documents. HeinOnline includes a U.S. Federal Agency Documents, Decisions, and Appeals Library that contains full runs of some agency decisions.

### FEDERAL COURT RULES

Court rules are rules that govern practice and procedure in the various courts. Federal court rules include the *Federal Rules of Civil Procedure*, the *Federal Rules of Criminal Procedure*, the *Federal Rules of Evidence*, and the *Federal Rules of Appellate Procedure*. In addition to these court rules, most courts also have local rules that supplement the main rules. Local rules can deal with a variety of matters from requiring parties to file extra copies of motions or prohibiting reading newspapers in courtrooms.

Text of the *Federal Rules of Criminal Procedure* are found in the Appendix to Title 18 to the U.S. Code. The *Federal Rules of Civil Procedure*, *Appellate Procedure*, *Evidence*, and specialized federal courts are in the Appendix to Title 28 of the U.S. Code. The rules are also found in annotated codes, the U.S.C.A. (West) and U.S.C.S. (Lexis).

Court rules are widely available online. Bloomberg Law, Lexis, and Westlaw, and other websites provide access to federal court rules. Both Lexis and Westlaw provide the text of the rules followed by annotations of decisions as well as comments from the Advisory Committee on the federal rules.

Local rules are usually available online from court websites. Local rules for federal courts are also available on Bloomberg Law, Lexis, and Westlaw. Local rules for the circuit courts of appeals may also be found in print 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. Additionally, the publication *Federal Local Court Rules 4th* contains local rules for federal district courts and courts of appeals and the internal operating procedures of courts of appeals [Print: KF8816 .A194 (General Stacks)].

When researching court rules, it is important to research judicial interpretations of these rules. While cases interpreting court rules are available from the usual sources, some specific resources include *Federal Rules Decisions*, *Federal Rules Service*, and *Federal Rules of Evidence Service*.

*Federal Rules Decisions* (F.R.D.) 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. The F.R.D. is available on Westlaw. The Thurgood Marshall Law Library's print subscription was cancelled in 2012.

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

*Federal Rules Service* is a reporter of cases applying the *Federal Rules of Civil Procedure* and the *Federal Rules of Appellate Procedure*. Updated by advance sheets. The Thurgood Marshall Library still maintains a current subscription to the *Federal Rules Service* [KF120 .F292 (General Stacks)].

*Federal Rules of Evidence Service* is a reporter of cases applying the *Federal Rules of Evidence*. “Finding Aids” volume includes text of *Federal Rules of Evidence*. Updated by advance sheets. The Thurgood Marshall Law Library still maintains a current subscription to the *Federal Rules of Evidence Service* [KF8935 .F4 (General Stacks)].

## 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. However, when you begin your research, try to apply a rule of thumb that if you cannot find something within about 15 minutes, stop and try another source.

Initially, identifying the jurisdiction is a critical step that should be taken prior to beginning research on a federal question. The nation is divided into several 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.

### Background research

Use secondary sources to do background research. Some secondary sources include hornbooks and treatises, law review articles, legal encyclopedias, and *American Law Reports Federal*.

Hornbooks and treatises often provide a framework for further research and may provide citations to key federal cases. Hornbooks explain the basics of a given subject. West publishes several popular hornbook series that are available in the Thurgood Marshall Law Library (check the catalog for holdings). Treatises can be short or quite long and tend to provide more detail analysis of an issue. 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., *Federal Practice and Procedure* (often referred to as “Wright & Miller”) and *Moore’s Federal Practice*. For other subject areas, try using the library catalog or browsing to relevant topic areas in Bloomberg Law, Lexis, and Westlaw.

Law review articles covering federal topics are frequently helpful for finding basic and detailed information on legal issues. Law review articles are widely available online from

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

Bloomberg Law, Lexis, Westlaw, other online databases, and even Google Scholar. Additionally, researchers can also use electronic journal indexes such as the *Index to Legal Periodicals and Books* or *LegalTrac* to find law review articles. These indexes provide current and retrospective coverage of law review articles and are searchable by subject keyword, title, author, and abstract text. These electronic periodical indexes are available from the Thurgood Marshall Law Library's website.

The general encyclopedias, *American Jurisprudence 2d* and *Corpus Juris Secundum*, cover the entire spectrum of American law and can also be helpful starting points. In the Thurgood Marshall Law Library, *American Jurisprudence 2d* is available in print and online (Lexis and Westlaw). *Corpus Juris Secundum* is available online from Westlaw. *American Jurisprudence 2d*, in particular, is recognized for its coverage of federal topics. *ALR Federal* can also be an excellent starting research on a federal issue because *ALR Federal* provides heavily annotated articles on current issues involving federal law. These articles include substantial references to federal statutes and cases. The Thurgood Marshall Law Library provides access to *ALR* articles (including those from *ALR* and *ALR Federal*) through Lexis and Westlaw. The Thurgood Marshall Law Library cancelled its print subscription to all ALRs in 2015.

While most researchers now use *ALR* online, some researchers still prefer to use the print. When using the print *ALR Federal* begin with the *ALR Federal* "Quick Index" or the "ALR Index" to locate *ALR* articles. The "Quick Index" is a one-volume hardcover topical index, updated by annual pocket part. The "ALR Index" is a multi-volume hardcover topical index that covers all *ALR* series. Additionally, you may also use the "*ALR Digest*" which indexes the annotations by broad subject areas (somewhat similar to the West Digest system).

### Searching for statutes or constitutional provisions

Annotated federal codes and constitutions are available on Lexis and Westlaw as well as in print form. The *United States Code Annotated* is available on Westlaw. The *United States Code Service* is available on Lexis. Bloomberg Law provides access the U.S. Code and the Constitution albeit without annotations.

Most researchers now use the online versions of the U.S. Code or Constitution to do legal research. However, if you find it necessary to use an annotated code in print then be sure to check the soft bound index volumes 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. Once you have a cite to a particular section, checking the pocket parts and supplements first is a good idea.

Whether doing research online or in print, you should always 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

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

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.

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.

### Searching for cases

Today most case research is done online. Bloomberg Law, Lexis, and Westlaw, all provide robust coverage of federal 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. Research strategies include using full-text searches, using citators, using headnotes, and using topics such as West's Topic and Key Number system.

The scope of your research should be a factor in determining which cases to review. Outside of law school, the larger case databases may be more costly to search, as well as being inefficient due to the large numbers of results. Bloomberg Law, Lexis, and Westlaw, allow researchers to use filters to limit cases by court or jurisdiction. It can make sense to use these filters if you are confronted with a particularly large number of search results. However, remember that the significance of persuasive authorities in federal jurisprudence makes it more likely that you will need to search beyond your immediate jurisdiction.

When researching federal cases, it is also important to be aware of the persuasive and precedential value of decisions from different courts. 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 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. Decisions from circuit courts of appeals are usually binding on district courts within the circuit unless the decision is unpublished. Decisions from circuit courts of appeals are not binding on any court from another jurisdiction.

However, circuit courts frequently look to each other's opinions as persuasive authority. So, 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. This is particularly important when federal courts diverge on their interpretation of the law. When this happens between circuit courts of appeals it is called a circuit split. Sometimes a consensus will emerge among the circuit courts, and if not, the U.S. Supreme Court may grant certiorari to resolve the split.

In the event you intend to do federal case research in print, the traditional method involves using *West's Federal Practice Digest* and its topic and key number system

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

(**Note:** The Thurgood Marshall Law Library cancelled its print subscription to the Federal Practice Digest in 2012 (ending with *Federal Practice Digest 4th*). 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. For finding cases in print, the Thurgood Marshall Law Library maintains current subscriptions to the three U.S. Supreme Court reporters: *United States Reports*, *West's Supreme Court Reporter*, and *Lawyers' Edition 2d*. The Thurgood Marshall Law Library cancelled its subscriptions to the other federal reporters in 2012.

### **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 BCite on Bloomberg Law, Shepard's on Lexis, or KeyCite on Westlaw.

### **Refining analysis and formulating conclusions**

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 AUTHORITIES**

### **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*, the *United States Code Service*, or the federal session law.

### **Federal cases**

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

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

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).

### Regulations Organization of the *Code of Federal Regulations*

#### Citing the C.F.R.

In *The Bluebook*, see Rule 14.2 and Table T1.

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 T1.

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).

## FEDERAL PRACTICE MATERIALS

The Thurgood Marshall Law Library has an extensive collection of federal practice materials. Below is a bibliography listing some of these resources.

- *Cyclopedia of Federal Procedure*  
[Online: [Westlaw](#) -- Print: KF8840 .C93 (General Stacks)]  
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.

## Thurgood Marshall Law Library Guide to Legal Research: 2017 - 2018

- *Federal Practice and Procedure*  
[Online: [Westlaw](#) – Print: KF8816 .W7 (General Stacks)]  
Popularly known as *Wright & Miller*, this multi-volume treatise provides in-depth commentary on federal rules and practice. The treatise is arranged by Federal Rules of Criminal Procedure, Civil Procedure and Evidence. There are 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.
- *Moore's Federal Practice 3d*  
[Online: Lexis ([Civil](#)) ([Criminal](#)) -- Print: KF8820 .A313.M63 1997 (General Stacks)]  
Discussion of federal practice arranged by rule numbers. Special volumes for Supreme Court practice. Includes forms, index volume, and tables volume.
- *Moore's Manual: Federal Practice and Procedure*  
[Online: [Lexis](#) -- Print: KF8816 .M63 (General Stacks)]  
An abridged version of Moore's Federal Practice.
- *Weinstein's Federal Evidence 2d*  
[Online: [Lexis](#) – Print: KF8935 .W4 2011 (General Stacks)]  
Commentary on the Federal Rules of Evidence with annotations to cases. Subject index with table of cases.
- *West's Federal Administrative Practice*  
[Online: [Westlaw](#) -- Print: KF8840 .V62 2002 (General Stacks)]  
Examines federal administrative practice, providing checklists, forms, instructions and citations.
- *West's Federal Forms*  
[Online: [Westlaw](#) – Print: KF8836 .W32 (General Stacks)]  
Contains procedural forms with commentary. Has 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 republished every year. Updated by pocket parts and paperback supplements.
- *Federal Local Court Forms 3d*  
[Print: KF8836.F422 (General Stacks)]  
A collection of forms for federal district and circuit courts of appeals. There is a subject index in last volume.

## CHECKLIST: RESEARCHING A FEDERAL LAW PROBLEM

- Analyze the facts, identifying key terms, dates and jurisdiction, 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 key terms, and get clues to primary sources.
  - Law review articles [Bloomberg Law, Lexis, Westlaw, and other online sources]
  - *ALR Federal* [Lexis, Westlaw]
  - Treatises [Bloomberg Law, Lexis, Westlaw, other databases, and also in print (check the Thurgood Marshall Law Library's online catalog)]
  - Legal encyclopedias
  - Government websites
  - Legal news services
  - Seek expert advice
- Search for legal authority (relevant statutes, cases, and regulations) using appropriate finding tools and methods of updating.
  - Annotated codes [print *U.S.C.A.* or *U.S.C.S.* shelved on Level 3; *U.S.C.A.* is available on Westlaw; *U.S.C.S.* is available on Lexis]
  - Search full text case databases [Bloomberg Law, Lexis, Westlaw, and other online sources] using the tools available to locate relevant authorities
- Read and evaluate primary authorities. Read relevant opinions looking for citations to additional relevant primary authority.
- Make sure cases are still good law by using citators to determine the subsequent treatment of cases.
  - BCite [Bloomberg Law]
  - Shepard's [Lexis]
  - KeyCite [Westlaw]
- Refine analysis and formulate conclusion. When refining your analysis often it is helpful to revisit secondary sources.
  - Law review articles [Bloomberg Law, Lexis, Westlaw, and other online sources]
  - Treatises [Bloomberg Law, Lexis, Westlaw, other databases, and also in print (check the Thurgood Marshall Law Library's online catalog)]