

## CHAPTER 3 BACKGROUND RESEARCH USING SECONDARY SOURCES

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### SECONDARY SOURCES: BACKGROUND

The catchall term "secondary sources" encompasses a wide variety of publications. Their common characteristic is that they consist of descriptions of or commentary on the law, and not the law itself. The law upon which your analysis of a problem must ultimately rely is embodied in primary authorities (constitutions, statutes, case law and regulatory materials), which may be mandatory or persuasive depending, among other factors, upon the controlling jurisdiction. Secondary sources - also referred to as secondary authorities - can serve many purposes, but they can never be mandatory or binding precedent. Keep in mind when using these sources that they must never be used as the essential underpinnings of your legal analysis or argument.

Nevertheless, secondary sources are invaluable aids to the researcher. They may be profitably consulted at almost any stage of the research process.

Secondary sources can provide a springboard for beginning a research project. At this stage the researcher may consult secondary sources:

- \* to obtain background information and an overview of an unfamiliar or emerging area of law;
- \* to obtain citations to primary authorities to launch the research;
- \* to suggest further issues or analytic approaches to the problem.

Secondary sources can also be valuable midway through or closer to the end of a research project, when consulting them can help to confirm conclusions or refine analysis.

Obviously, for any particular research project, you do not need to consult every secondary source available. This contrasts with the importance of comprehensiveness in

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primary authority research. Eventually you will develop preferences among the secondary sources available, along with an instinctive sense for which sources might be helpful for a given project. Additionally, the print and/or electronic resources available at the location where you are researching will dictate some of your choices. The following are some guidelines for choosing a secondary source for a particular topic and for using secondary sources in general:

- \* If you are researching a topic which is completely unfamiliar to you, some background reading may provide an overview of the basic structure and sources of law on the topic. A treatise may be helpful at this stage if it is not overly detailed. Sometimes a hornbook or even a Nutshell can provide the quick introduction to a topic area and the ideas for research vocabulary which a beginning researcher needs.
- \* Highly scholarly law reviews, treatises, and the Restatements are probably not good starting places for most research projects unless you already have basic knowledge about the subject area.
- \* Usually in the early stages of researching a state topic, you will be focusing on the primary authorities from the controlling jurisdiction. If you need to expand your research to seek persuasive authority from other jurisdictions, consulting a secondary source such as *American Law Reports* (A.L.R.) or one of the national law encyclopedias (*American Jurisprudence 2d* or *Corpus Juris Secundum*) may help.
- \* Generally, when consulting secondary sources, choose the most up-to-date available. The sources which can provide the most current references to primary sources will probably be the most useful.
- \* Make certain to focus on the primary sources cited in the secondary sources you use, rather than spending precious research time trying to thoroughly digest the content of each secondary source. Do not uncritically adopt the theory of the source's author - your own reading of the primary authorities may lead you to different conclusions.

## USING LEGAL PERIODICALS

### Finding articles in legal journals and law reviews

In-depth research will nearly always involve the use of legal journal articles. A large proportion of scholarly legal literature is published in law school law reviews. Other types of law journals are bar association journals and journals written for legal practitioners.

The Thurgood Marshall Law Library provides access to many scholarly law journals, along with selected practitioners' journals and leading journals from other disciplines

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such as political science and economics, in PDF form through HeinOnline and other databases. The Thurgood Marshall Law Library also has in paper a historical collection of journals. Most are shelved in the compact shelving on Level 1, in alphabetical order by the title of the journal.

The Thurgood Marshall Law Library also has subscriptions to many journals in electronic form; finding these is discussed below.

### **Law reviews**

Often various types of legal periodicals are inaccurately lumped together under the term "law review." Strictly speaking, a law review is a student-edited publication which is produced under the auspices of a law school and which publishes both pieces written by legal scholars and student-written articles and notes. However, the terms "law review" and "law journal" are often used interchangeably. For example, some prominent law reviews include the Duke Law Journal, Georgetown Law Journal, and the Yale Law Journal. Law reviews may be general in scope or devoted to specialized subject areas. Law review articles written by noted scholars may be citable as persuasive authority under some circumstances. They are always heavily footnoted and thus can serve as a tremendous resource for the researcher, providing citations to primary and other secondary authorities.

### **Other legal periodicals**

There are many other legal periodicals which may not carry the persuasive weight of a scholarly law review, but which may still be useful to the researcher. These may be published by a professional association or by an independent publisher. Some are theoretical while others are more practitioner-oriented. At the lower end of the scale are bar association and other publications which function primarily as "current awareness" or news publications, and which may include little analysis or in-depth information. However, they may be helpful for tracking down local legal developments that may not appear in nationally oriented journals.

With a little experience you will learn to distinguish among the various types of publications and to evaluate their potential usefulness both as research aids and as persuasive authority. It is essential to develop such winnowing skills, because essentially the same research techniques will yield citations to the various types of publications.

### **Searching legal journal indexes**

One useful method for finding law journal articles is to use a periodicals index. Indexes allow searching by author, title, subject, and keyword. Many also include abstracts of articles, and online indexes usually link to the full-text of selected articles. Coverage in legal journal indexes is more comprehensive, both in terms of journals covered and dates of coverage, than that of the online full-text journal databases.

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The two main legal journal indexes are the Index to Legal Periodicals & Books and LegalTrac, both of which are available under “Databases” on the Thurgood Marshall Law Library’s home page. These indexes include references to many journals not included in Westlaw or Lexis databases and in some cases provide access to the full text electronically. Each of these two online indexes has a parallel print version: the Current Law Index (K33.C87), which provides coverage back to 1980, and the Index to Legal Periodicals (K9.N32), which provides coverage back to 1908. Both are shelved near the print journals on Level 1.

The Legal Resource Index, a slightly different version of LegalTrac, is available on Westlaw and covers from 1980 to the present.

If you are researching a topic on foreign or international law, you may want to also try the Index to Foreign Legal Periodicals. This index, available electronically under “Databases” on the Thurgood Marshall Law Library’s home page, indexes mainly non-English language legal journals, but uses English subject headings. (The main foreign-published English-language journals are covered in LegalTrac and the Index to Legal Periodicals & Books.) The Index to Foreign Legal Periodicals covers articles indexed since 1985.

The subscription service [Current Index to Legal Periodicals](#), which is available and current in HeinOnline’s Law Journal Library, is produced weekly by the Marion Gould Gallagher Library at the University of Washington School of Law, and contains articles from journal issues received in the library that week, making it more up-to-date than the other indexes.

### **Searching for articles in full-text databases**

If you do not need to do a comprehensive search, but are just looking for a few relevant articles, you can look for legal journal articles on Google Scholar (accessible to all) or on the two main legal online databases, Westlaw and Lexis (access limited to law faculty and students).

Westlaw has articles from over 500 journals – the beginning date of coverage varies, and not all articles from all journals are included. Lexis Advance coverage is similar – it has fewer journals, but contains all articles from the journals it includes. Searching is the same as that used in all the main Westlaw and Lexis databases. Be especially cautious to note the beginning dates of coverage as they may be more recent than you would expect.

Google Scholar is a search engine that can be limited to searching for scholarly periodicals. Members of the University of Maryland Carey School of Law community can access the full text of many subscription-only articles by changing the Google Scholar settings to show access links for this school. Note that not all databases to which the Thurgood Marshall Law Library subscribes are searchable through Google Scholar. As such, Google Scholar is a good place to begin your more in-depth research and locate full-text articles on your topic. And if you know the title, author, or date of an article, it

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can be a fast way to find a full-text version of it.

### Finding journals and law reviews

Once you have located a journal citation from an index, if there is no link to the full text, you will need to find the journal, either in paper or electronic format. To find the journal, search the Thurgood Marshall Law Library's catalog by the title of the journal. Print copies can be found in alphabetical order by title in the periodical stacks, as indicated in the catalog.

For journals available electronically, in addition to using the full-text journal databases and search engines mentioned above, check the Find It link from the catalog record for links to subscription databases where full text is available. You might also check the Thurgood Marshall Law Library's list of electronic journals – linked from the library's homepage. Many of those journals will be included in the journal databases described below.

### Law journal databases

- HeinOnline – Full-text, image-based collection of more than 1800 legal periodical titles. Coverage for each journal starts at its inception and continues to the most current volume allowed under contract between Hein and the journal. HeinOnline is the best place to find older articles from scholarly law journals. Many articles available on Hein can be found using Google Scholar.
- JSTOR – Complete back issues of scholarly journals covering a variety of subjects. JSTOR includes some law journals; it is best for older journals not included in HeinOnline.

Both HeinOnline and JSTOR provide PDF versions of journals. Lexis and Westlaw databases mentioned in the section above provide articles with “star pagination” to the original journal pages.

The Thurgood Marshall Law Library subscribes to a number of databases that include many non-legal journals in full-text. To access these, go to either the “Electronic Journals” or “Databases” links on the library's home page.

### General news sources

For some topics, information contained in general newspapers and magazines can be helpful for learning about recent developments in an area of law or finding information about trial level decisions that may not have reached an appellate level. Bloomberg Law, Lexis, and Westlaw, as well as ProQuest platforms, contain the full text of dozens of regional and national newspapers. Westlaw has the *Baltimore Sun* back to 1990 and Lexis back to 1994. ProQuest has the *Baltimore Sun* from its first publication in 1837 through the present and is accessible from the databases on the Thurgood Marshall Law Library's website. Of course, many news sources move from one platform to another so these

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holdings are subject to change, and may also be available on the internet. Most areas have state or local legal newspapers; for example, *The Daily Record* focuses on Maryland legal news and is accessible from the databases on the Thurgood Marshall Law Library's website.

### USING LEGAL ENCYCLOPEDIAS

Legal encyclopedias provide a brief, integrated statement of the law. They pull together an enormous body of legal literature, definitions, rules, and practice points derived mainly from case law. Indexes and cross-references are provided. Sections may be written by experts or by editorial staff who are not themselves legal scholars. Generally they are more descriptive than analytical. Encyclopedias tend to be most useful at the beginning of a research project to provide an overview of specific topics and to briefly outline issues that may be involved. They can be good finding tools at this stage. Encyclopedias may also be useful at the close of a research project to again provide an overview and a check that no issue has been overlooked.

Issues to consider when using legal encyclopedias include the following:

- 1) encyclopedia articles are often oversimplified;
- 2) each article is only as good as its author/editor;
- 3) encyclopedias should never be cited as authority; always track down the quoted source, read it in context and cite to that instead;
- 4) encyclopedias emphasize case law, and generally do a less effective job with statutory or administrative law subjects.

There are two popular national legal encyclopedias.

*Corpus Juris Secundum* or C.J.S. is published by West and gives far more case citations than *American Jurisprudence*. While many libraries, including the Thurgood Marshall Law Library, no longer subscribe to C.J.S. in print, it is available on Westlaw. Attention is paid to providing citations that highlight jurisdictional differences. C.J.S. also gives cross-references to other West publications and to West topic and key numbers. The print version is updated annually by pocket parts, and a new general index is published annually. This index is very general indeed, often pointing the researcher only to the volume. Check the volume specific index for more detailed references. The index provides access by person, place, thing, facts, and legal topic. It is important to note that while C.J.S. is published by West and uses a system of topics (alphabetically arranged) and section numbers, its topic and section number system is not the same as the Topic and Key Number system used in West digests.

*American Jurisprudence 2d* or Am. Jur. 2d is also now published by West and is a very practice oriented encyclopedia that is less comprehensive than C.J.S. but, as a result, is sometimes easier to use. It is designed to complement the annotations in *American Law Reports*. The general index is more detailed than that of C.J.S., but often the researcher will need to search the volume specific index in addition to the general index. Am. Jur. has a table of Statutes and Regulations, and gives more emphasis to non-case law than C.J.S. The print version is updated annually by pocket parts, and a new general index is

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published annually. Both C.J.S. and Am. Jur. are available on Westlaw. Lexis Advance also provides online access to Am. Jur.

### **USING TREATISES, HORNBOOKS, AND NUTSHELLS**

#### **Treatises**

The term treatise usually refers to an in-depth scholarly book on a particular subject area. A treatise may be a single volume or a multi-volume set. Some treatises carry scholarly weight but are not too technical or theoretical to be useful to law students, such as *The Law of Torts* by Dan B. Dobbs. Most provide cross-references to primary sources such as cases and statutes. To locate a print treatise on a specific topic, use the Thurgood Marshall Law Library's online catalog, or ask at the User Services Desk. Some major treatises are electronically searchable on Lexis or Westlaw.

#### **Hornbooks, nutshells, and outlines**

Besides the ubiquitous casebook, these might be the type of sources most familiar to law students, at least during the first year. They are not the type of secondary source that will provide extensive cross-references to relevant primary authorities or in-depth analysis. They are however, useful for providing the quick "bare-bones" introduction and orientation to a subject field that the beginning researcher sometimes needs. The Thurgood Marshall Law Library owns copies of many hornbooks and nutshells, which are kept in the Reading Room immediately inside the library's entrance. Many outlines, such as Gilbert Law Summaries and Legalines, are available through a subscription to West Academic Study Aids.

### **USING RESTATEMENTS**

The Restatements are multi-volume sets devoted to broad areas of the law such as torts, contracts, agency, and others. They are drafted by members of the American Law Institute, a group of legal scholars and professors. They tend to be highly detailed and analytical, and thus are more helpful for in-depth study than for an overview of any subject. They are heavily annotated (in separate volumes) with case law from all jurisdictions. Because they are highly regarded as the product of many distinguished legal scholars, they are sometimes cited in judicial opinions. In the Thurgood Marshall Law Library the various Restatements are shelved in call number order with other related topical materials on Level 2. Restatements are also electronically searchable on Lexis and Westlaw.

### **USING AMERICAN LAW REPORTS**

*American Law Reports* (A.L.R.) is characterized by some researchers as a secondary source and by others as a case-finding tool. In fact, it has elements of both resources and

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can be extremely useful in both providing a context for a legal issue and providing citations to primary authorities.

The format of A.L.R. is the publication of articles, usually referred to as “annotations,” written by practicing attorneys on a wide variety of current legal issues. The articles provide citations to relevant cases. The strength of A.L.R. is its systematic presentation of the “state of the law” across the jurisdictions on a particular issue. It does not focus on legal analysis or discussion of policy issues. It is not considered a scholarly publication and would not be cited in a piece of legal writing.

In A.L.R., topics are usually more specific than those found in sources such as legal encyclopedias, making it an excellent tool for gaining a quick national overview of the law on a particular topic and for getting leads to cases in a particular jurisdiction. Often, the goal of finding one recent on point case in any jurisdiction can be achieved by using A.L.R. There are two divisions of A.L.R., one covering state legal issues (A.L.R.) and the other federal (A.L.R. Federal).

Indexing tools available for the print versions include:

- \* Quick Index – for the state A.L.R., this is a one-volume paperback covering A.L.R.3d through current
- \* Quick Index – for the federal A.L.R., this is a one-volume hardcover index, updated by annual pocket part, plus a four-volume paperback set of tables containing federal cases, statutes and procedural rules that have been cited in A.L.R. annotations
- \* A.L.R. Index – a multi-volume hardcover topical index, updated annually by pocket parts, covering both the state (series 2 through 5) and the federal series; shelved at the end of the state series
- \* A.L.R. Digest – indexes the annotations by broad subject areas (A.L.R.3d through current and federal); also shelved at the end of the state series.

The state and federal series of A.L.R. are available online through Westlaw and Lexis, although Lexis does not contain the First series. The formats of A.L.R. on Westlaw and Lexis vary slightly from each other and can be difficult to browse.

## USING LITIGATION SOURCES

In addition to the usual sources for researching case law, statutory law, and administrative law, practice sources can be helpful in preparing to bring an action or defend an action. Attorneys in practice do not “re-invent the wheel” each time they face a drafting project, but rather use a wide variety of forms and practice materials. Many firms maintain their own form and document files for various purposes. There are also numerous commercially published materials, some general and cross-jurisdictional in scope, and some geared to specific jurisdictions.

There are many treatises, practice guides, and form books available that apply specifically to the practice of law in Maryland, other states, and before the federal courts. Some are general in scope while others are written for specialized practice areas. Many of



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these resources contain, in addition to forms, commentary, planning checklists, and cross-references to primary source materials. It is extremely important to keep in mind that these materials are never a substitute for thorough research in the statutory, case, or agency sources which provide controlling authority for the legal problem you are addressing. Additionally, you will always need to adapt any form you use not only to your particular fact situation, but also to the procedural rules of your jurisdiction. These resources may offer guidance in starting or double-checking a writing project, but substituting their contents for your own research, analysis, and writing is always inappropriate. Copying form language without modifying it for local considerations or common sense factors can be disastrous.

A variety of sources exist that are designed to provide assistance in preparing for trials. Examples of these types of sources are discussed below. Many of these are available on either Lexis or Westlaw. Those that appear below represent only a sample of what is available. If you are looking for a source of a specific type and find nothing helpful listed, consult the Thurgood Marshall Law Library catalog or browse the Lexis and Westlaw directories under the Litigation topics.

### **Determining Possible Causes of Action**

*Causes of Action* (Westlaw) This set contains discussions of possible causes of action for specific types of fact patterns.

*Pleading Causes of Action in Maryland* (Lexis)

### **Evaluating the Merits of Proceeding with an Action**

Once a determination has been made that a possible cause of action exists, the next practical question is whether filing a lawsuit is worth the cost. Several sources report jury verdicts and settlements for particular causes of action. Selected titles include:

*The National Jury Verdicts Review & Analysis* (Lexis)

*National Law Journal – Annual Jury Verdict Reports* (Lexis)

*What's it worth?* (Lexis – only most recent version)

*Mealey's Litigation Reports* (Lexis)

*Maryland Jury Verdicts* (Westlaw)

### **General Litigation Sources**

*American Jurisprudence Trials* (Westlaw and KF8913.A35). This set includes about five sample trials on specific subjects, mostly civil but some criminal, per volume. The following is its statement of purpose: "a guide to the modern practices, techniques, and tactics used in preparing and trying cases, with model programs for the handling of all types of litigation." Examples of examination, cross examination, forms, and discussion of substantive law are included. While most of the *Am Jur* sample trials cover actions that would be filed in state or federal courts, samples are also included for topics involving administrative hearings.

*American Jurisprudence Proof of Facts* (Westlaw and KF8933.A35). This set includes

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"text and sample testimony to assist in proving contested facts" involving specific areas of the law.

### Proceeding with a Trial

In addition to *American Jurisprudence Trials and Proof of Facts*, many sources exist that deal with specific stages of conducting a trial, beginning with guidelines for interviewing the client. Matthew Bender is one of the major publishers of treatises in all areas of law and many are available through LexisNexis. Under the Secondary Legal category of the Lexis list of sources is a link to Matthew Bender. You can browse the list of Matthew Bender treatises under "litigation" and by area of law. Both the litigation category and the torts category have sources that may be helpful for this fact pattern. For example, *Bender's Forms of Discovery* (Lexis, Westlaw and KF8900.A3B4) is a heavily used source for composing interrogatories for various types of actions. Sample interrogatories are included along with the text and discussion of applicable federal rules. Discussions of depositions, requests for admission, and criminal discovery are available.

Another series with useful information on various stages of the litigation process is the West Trial Practice Series. Examples of titles in this series include:  
Roberto Aron, Julius Fast & Richard Klein, *Trial Communication Skills* (2d ed.) (Westlaw and KF8915.A83) An overview of the litigation process is included in addition to specifics of communication issues at the various trial stages.

Jeffrey Kestler, *Questioning Techniques and Tactics* (3d ed.) (Westlaw) Questioning strategies as well as principles of cross-examination are discussed in detail in this work.

In addition to *Pleading Causes of Action in Maryland*, several sources exist to help attorneys prepare for appearances in Maryland courts. Examples are:

*Basic Civil Trial Practice Pre-Trial* (Lexis)

*Discovery under the Maryland Rules* (Lexis)

*Pattern Examinations of Witnesses for the Maryland Lawyer* (Lexis)

*Practice Manual for the Maryland Lawyer* (Lexis)

### Court Rules

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. Lexis and Westlaw both have databases with the federal rules. Most U.S. District Courts provide local rules on their websites. Links to court websites can be found on the U.S. Courts home page: <http://www.uscourts.gov>

Helpful treatises relating to federal practice and court rules research include:

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Charles Alan Wright et al., *Federal Practice and Procedure* (KF8816.W7 & Westlaw)  
Arranged by Federal Rules of Criminal Procedure, Civil Procedure and Evidence.  
Additional volumes on jurisdiction and related matters.

*Moore's Federal Practice 3d* (KF8820.A313M63 & Lexis) Discussion of federal practice  
arranged by rule numbers.

*Weinstein's Federal Evidence 2d* (KF8935.W4 & Lexis) Commentary on the Federal  
Rules of Evidence with annotations to cases.

Frequently used Maryland trial practice sources include:

Both Lexis and Westlaw have databases with Maryland Rules.

Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* (3d ed.)  
(KFM1729.N67 & Lexis). "A commentary on each rule in Titles I and II of the Maryland  
Rules." "This Commentary provides an explanation following each rule, which gives the  
source from which each rule was derived, its interrelationship with other rules, and its  
intended purpose."

Robert Dale Klein, *Maryland Civil Procedure Forms* (Lexis)

Lyn McLain, *Maryland Evidence: State and Federal* (3d ed.) (KFM1740.M37 &  
Westlaw). Overview of the Maryland law of evidence that, while written before the  
adoption of the Maryland Rules of Evidence, is still valuable for "gathering relevant  
statutes and rules and discussing the relevant case law in one place."

Joseph F. Murphy Jr., *Maryland Evidence Handbook* (4th ed.) (KFM1740.M87 & Lexis)  
Succinct guide to the admissibility of evidence with pertinent cases both cited and  
described in detail.

*Pattern Examination of Witnesses for the Maryland Lawyer* (Lexis)

### **Court Filings**

Another option is to review actual complaints and briefs filed in similar cases.

Fact-specific pleadings, motions, exhibits and other filings are available on Westlaw for  
federal courts under Trial Court Documents. This can be narrowed to search by type,  
jurisdiction, or topic, such as by only cases arising in Maryland. Lexis has civil docket  
summaries for U.S. District courts in 48 states.

Appellate court briefs and some district court briefs are available on Westlaw. In a real  
world setting, if you cannot find the briefs you are looking for, a pay-per-use database  
called PACER (Public Access to Court Electronic Records) contains case and docket  
information for most federal appellate, district, and bankruptcy courts. Bloomberg Law  
also provides a database of PACER dockets at the federal and state levels that can be  
searched by keywords in the description field. Full text is only available for federal  
dockets at this time.

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Briefs from the Maryland Court of Appeals are included in Westlaw.

### Locating Expert Witnesses

Both Lexis and Westlaw have databases that support searching for experts on particular topics.

*The Forensic Services Directory* (Westlaw) provides biographical information on experts in data on translators, testing laboratories, investigators and other specialists providing trial support services.

*Martindale-Hubbell* <https://www.martindale.com/legal-library/browse-by-aop/> offers many resources for legal professionals. FindLaw [www.findlaw.com](http://www.findlaw.com) is another free resource with links to information about experts and other litigation-related services.

Several membership organizations exist that provide litigation support services. Examples include ATLA (Association of Trial Lawyers of America), DRI (Defense Research Institute) and idex.com (Collaborative Defense Network of Expert Witness Research).

### Jury Instructions

Jury instructions are directions or guidelines that judges give a jury concerning the law of the case before the jury begins deliberating.

Model or pattern jury instructions are forms that provide instructions for different types of cases and situations. Model jury instructions may also include cases and comments explaining the instructions.

Judges and attorneys rely on model jury instructions when preparing jury instructions for a particular case. Model jury instructions are useful for researchers because they can provide concise explanations of the law of a jurisdiction. The commentaries for the instructions are also likely to identify leading cases on the issues. In this sense, model jury instructions can serve a similar function to other secondary sources in providing an overview of the law of jurisdiction.

At the state level, model jury instructions are often published by state bar associations or judicial committees, and are cited favorably by the courts of that state. In Maryland, the most relied on sets of model jury instructions are the *Maryland Civil Pattern Jury Instructions* and the *Maryland Criminal Pattern Jury Instructions*. The Maryland State Bar Association publishes both sets. The sets are available in print in the Thurgood Marshall Law Library and online via Lexis and Westlaw. Lexis and Westlaw also have model jury instructions for other states.

At the federal level, commercial publishers sell collections of model jury instructions for criminal and civil cases. Collections of federal jury instructions are also available on Lexis and Westlaw. Lexis has the collection *Modern Federal Jury Instructions* and Westlaw has *Federal Jury Practice and Instructions*.

## TIPS FOR USING SECONDARY SOURCES

Use at the outset of your research for background on an unfamiliar topic:

- \* Some treatises
- \* Hornbooks/Nutshells

Use near the beginning of your research for citations to primary authorities:

- \* Law reviews or other legal periodicals
- \* Legal encyclopedias: state or national
- \* American Law Reports (A.L.R.): state or federal

Use for in-depth analysis and scholarly discussion:

- \* Treatises
- \* Restatements
- \* Law reviews

Use for obtaining the most current information on pending appeals, lawsuits, legislative developments:

- \* Legal newspapers

Use closer to the end of a research project, to confirm conclusions or refine analysis:

- \* Treatises
- \* Law reviews, especially current articles

Use for a state law research project:

- \* a state law encyclopedia
- \* state bar journal or legal newspaper

Use for expanding a research project to persuasive authority:

- \* A.L.R. (state or federal)
- \* a national law encyclopedia (Am. Jur. 2d or C.J.S.)

General tips:

1. Make sure the secondary sources you consult are as up to date as you can find. Both the background information and the citation finding benefits are diluted if you look at sources that are out of date.
2. If searching for secondary sources online:
  - a. Use the Locate (Westlaw) and Focus (Lexis) functions to help you browse the materials.
  - b. Avoid printing out lengthy documents that may prove to be marginally relevant.
  - c. Try global (default) searching if you are not familiar with the jargon.
  - d. Use appropriate date and title field restrictions to cut down on the volume of search results.
3. Remember that lengthy secondary sources may be easier to browse in print

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format.

4. Don't spend too much time on a particular source if you are not finding helpful materials.
5. Remember that secondary sources are essentially used to speed up the process of locating, and enhancing the understanding of, the primary source materials which are the objective of your research effort.

### PRACTICE MATERIALS AND FORM BOOKS

There are a great many treatises, practice guides, and form books available that apply specifically to the practice of law in Maryland, other states, and before the federal courts. Some are general in scope while others are written for specialized practice areas. Those that appear below represent only a small sample of what is available. If you are looking for a source of a specific type and find nothing helpful listed, consult the Thurgood Marshall Law Library catalog.

Sample forms can be very helpful as starting points. However, the drafter must take into account the substantive law of the jurisdiction. Copying form language without modifying it for local considerations or common sense factors can be disastrous.

There are two popular sets of general forms that are national in scope.

#### *American Jurisprudence Legal Forms 2d* (KF170.A542)

This set includes brief commentary and references to Am. Jur. 2d, A.L.R., law reviews and tax references. It is arranged alphabetically by topics and has a multi volume general index.

#### *West's Legal Forms 2d* (KF170.L53)

Substantive introductions, references to C.J.S. and West topics and key numbers precede forms for each subject covered. The set has a topical arrangement with each subject volume or set of volumes having its own index. A general index for the entire set is also available.

A variety of sources exist that are designed to provide assistance in preparing for trials. These are designed for practitioners and often contain helpful checklists and references to other materials that are useful at various stages of the litigation process. Examples of these types of sources are discussed below. Additional sources can be found in the Thurgood Marshall Law Library stacks in the same general areas.

#### *American Jurisprudence Pleading and Practice Forms* (KF8836.A45)

Forms and annotations are included in this set along with procedural timetables and drafting checklists. The set has a multi volume index.

#### *Bender's Forms of Discovery* (Available on Lexis)

Sample interrogatories are included along with the text and discussion of applicable federal rules. Discussions of depositions, requests for admission, and criminal discovery

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are available. Separate index volumes exist for volumes 1 to 10 and 11 to 16.

### *American Jurisprudence Trials* (KF8913.A35)

The set includes about five sample trials, mostly civil but some criminal, per volume. The following is its statement of purpose: "a guide to the modern practices, techniques, and tactics used in preparing and trying cases, with model programs for the handling of all types of litigation." Examples of examination, cross examination, forms, and discussion of substantive law are included. There is a multi volume index.

### *American Jurisprudence Proof of Facts* (KF8933.A35)

With about eight articles per volume, this set includes "text and sample testimony to assist in proving contested facts" involving specific areas of the law. There is a multi-volume index.

Douglas Danner, *Pattern Discovery* and *Pattern Interrogatories* (Available on Westlaw)  
Several titles are included treating areas of the law such as medical malpractice, torts, employment discrimination, premises liability, and products liability.

### Herbert Newberg and Alba Conte, *Newberg on Class Actions* (Available on Westlaw)

This six-volume set covers the theory and strategies of bringing class actions. It includes numerous appendices and checklists.

The West Trial Practice Series includes a number of useful works on various stages of the litigation process. Some of the titles in this series are:

### Roberto Aron and Jonathan Rosner, *How to Prepare Witnesses for Trial* (2d ed.) (KF8915.A83 and Westlaw)

This work covers a multitude of considerations relating to preparing witnesses for trial.

### Roberto Aron, Julius Fast & Richard Klein, *Trial Communication Skills* (2d ed.) (KF8915.A83)

An overview of the litigation process is included in addition to specifics of communication issues at the various trial stages.

### Edward Imwinkelried and Theodore Blumof, *Pretrial Discovery Strategy and Tactics* (KF8900.I483)

This work begins with the need for strategic planning and covers tactics and considerations relating to interrogatories and other related pretrial concerns.

### Jeffrey Kestler, *Questioning Techniques and Tactics* (Available on Westlaw)

Questioning strategies as well as principles of cross-examination are discussed in detail in this work.

## **HIGHLIGHTS OF BLUEBOOK FORM FOR SECONDARY SOURCES**

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While you will frequently find reason to consult and to refer to secondary sources in your research notes, you must always keep two general points in mind. First, secondary sources are not binding authority and therefore may be used only to support a position based upon the value of their intellectual authority, not their legal authority. They cannot be cited in legal documents in place of citing to the original primary sources. Second, secondary sources vary widely in both their quality and the respect accorded to them by the academic and legal communities. For example, the thoughts of a respected scholar writing in a noted law review will almost always be given far more weight than those of a new practitioner writing in a local bar journal. Moreover, it is almost always unacceptable to cite to an *American Law Reports* annotation or a legal encyclopedia, such as Am. Jur. 2d or C.J.S. The decisions made about citing to a secondary source, whether in a memorandum, law review article, appellate brief, client opinion letter, etc., will always be somewhat subjective.

### Periodicals

Rule 16 of *The Bluebook* deals generally with how to cite to periodicals. However, as is often the case with *The Bluebook*, reference must also be made to other rules.

Specifically, Rule 15.1 must be consulted for information on which authors to include in the citation and how to cite their names. Both authors are cited for a piece with two authors. However, for a piece with three or more authors, you may list all of the authors or, more commonly, just the first author followed by "et al."

Other information about citing to periodical articles, such as article titles, periodical abbreviations, and page numbers, appears in Rule 16. To some extent, periodical citation format depends on the type of periodical being cited, that is, consecutively paginated or non-consecutively paginated. A periodical is consecutively paginated if the first issue in a particular volume begins with page 1, the second issue picks up the numbering where the first issue left off, and so on. The format for citing articles that appear in consecutively paginated journals appears in Rule 16.4, while the format for citing to non-consecutively paginated periodicals appears in Rule 16.5. Most law reviews are consecutively paginated. Some bar journals and most popular publications, on the other hand, are non-consecutively paginated. Finally, the various tables contained in or referred to Table T.13 at the back of *The Bluebook* provide guidance in abbreviating the words in the title of the periodical you are citing.

Example of a citation to a consecutively paginated periodical:

Akhil Reed Amar & Vikram David Amar, *Is the Presidential Succession Law Constitutional?*, 48 Stan. L. Rev. 113 (1995).

Both authors of the piece are cited with their full names as they appear on the publication. If this had been a signed, student-written piece, the basic citation form would have been the same, although Rule 16.7 mandates that the designation of the piece, such as "Comment," "Note," or "Recent Development" should appear before the title of the work. Because the article cited in the above example is not student written, the citation does not include such a designation. The title of the article is cited with the original



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punctuation, if any, included. The title is followed by the volume number, the abbreviation for the publication from the tables in T.13 and other tables, the page on which the article begins, and, finally, the year of publication parenthetically noted. The specific issue month (November) and issue number (1) are superfluous information, given that this is a consecutively paginated journal, and are, therefore, not included.

### Books

As with periodicals, Rule 15 describes both the form of an author's name and which authors to cite for books, including both single and multi-volume works. Rule 15.3 sets forth the form of a book title. The citation forms for the edition, publisher, and date of publication of books are given in Rule 15.4. Pinpoint reference must usually be made to the exact page, section number, and volume (if a multi-volume work). See Rules 3.2 and 3.3. Books that are updated with supplements require additional information, which is described in Rules 15.4(d) and 3.1(c). Books organized by sections or paragraphs, in addition to pages, are cited according to Rule 3.3, which states that when citing a source that is organized by sections or paragraphs as well as pages, you should cite to the section or paragraph number. You may include the page number if it would be useful in locating specific matter within the section or paragraph.

Citation:

14A Charles Alan Wright et al., Federal Practice and Procedure § 3661.3, at 85 (2013 & Supp. 2017).

While the authors vary from volume to volume of this set, citation is made as they appear on the title page of the volume cited. However, because there are three or more authors for this volume, we have chosen to cite only the first. Even though both the volume and its pocket part are paginated, they are also divided into sections and therefore citation is made to the section number as well as the page number. The edition cited is the third edition of the work and that fact along with the year of publication must be noted in the parenthetical. The language of the section has been augmented and updated in the pocket part, and therefore citation must be made to both the bound volume and the pocket part in the parenthetical. Rule 15.4(a)(iii) states that the name of the publisher is included before the date in the parenthetical only if you are citing to an edition by other than the original publisher. In citing to a publisher, you should abbreviate any words in the name of the publisher according to Rule 15.1(d).

### Restatements

Rule 12.9.4 sets forth specific information about citing to the Restatements, as well as model codes, and uniform laws. Citation to the Restatements is made not only to the language of the Restatement itself, but also to the official comments and illustrations that follow many of the sections. Rule 3.4 provides additional information about citing to appended material, including comments and illustrations.

Citation:

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Restatement (Second) of Contracts § 96 cmt. a (Am. Law Inst. 1981).