

The background of the cover is a photograph of a library study desk. In the foreground, a silver laptop is open on the left, and a large, thick, open book with a marbled cover lies flat on the right. A green lamp with a white shade is positioned behind the laptop, casting a warm glow. The background consists of tall wooden bookshelves filled with numerous books.

Sixth Edition

LEGAL RESEARCH, ANALYSIS, & WRITING

Joanne Banker Hames | Yvonne Ekern

SIXTH EDITION

Legal Research, Analysis, and Writing

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Santa Clara University School of Law



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Preface

GOALS

Beginning legal researchers generally ask four questions:

- How do I find the law?
- How do I know that I found the right law?
- How do I know when to stop?
- What do I do with the law now that I have it?

Experienced legal researchers know that successful research requires the ability to answer each of these questions.

They also know that researching the law requires more than knowledge of law books. Today, it also requires proficiency in finding the law online. Whatever source a researcher uses, though, legal research requires the ability to analyze factual and legal disputes; the ability to understand the written law, whether found in cases or statutory materials; the ability to apply the law to the factual disputes; and the ability to communicate one's findings in a legally acceptable format. Our purpose in writing this book is to give students the basic information and practical exercises so that they can develop the skills needed to research and analyze a problem and to communicate their results appropriately.

Our experience in teaching legal research classes in law school and paralegal programs confirms that all programs cover the same topics and assign similar projects. A review of the model curriculum for legal research and writing recommended by the American Association for Paralegal Education further illustrates the similarity. However, even within law schools or paralegal programs, the way in which legal research and writing is taught often differs. Some programs teach separate courses in legal research, legal writing, and legal analysis. Some programs recommend research before writing, while others require writing and analysis courses before research. This text is appropriate for a variety of instructional approaches to legal research, analysis, and writing. Realizing that there are legitimate reasons for different organizations, we offer suggestions for using the text with different approaches to teaching the subject.

In addition, many educational institutions offer courses, including legal research and writing, online. Even traditional classroom education often incorporates online features within the class. This text can easily be used in such instances. All chapters refer students to helpful Internet websites to enhance their learning. Research chapters also direct students to freely accessible websites providing access to case law, codes, and selected secondary sources. The extensive use of annotated sample pages and screen shots and the variety of questions, exercises, and assignments at the end of the chapters allow a student to explore the world of legal research outside the traditional classroom.

Recognizing that legal research and writing requires “hands-on experience,” at the end of most chapters, we include numerous research and writing exercises, including one feature entitled “Test Yourself” where students can check their own work by referring to Appendix G, which contains suggested answers. In addition, in most chapters, questions are suggested for group work or discussion. Many of these questions are easily posted on discussion boards for students to “discuss”

online. Several features in the text are especially helpful for online instruction, including online research assignments at the end of most chapters.

CHANGES TO THE SIXTH EDITION

While retaining the pedagogical features of the prior edition, the sixth edition contains the following updates and changes:

1. Every chapter contains a new end-of-chapter feature, “Write It Right,” containing writing examples and exercises with answers or suggested answers located in Appendix G allowing students to check their own work.
2. Research chapters contain new sections with expanded discussion of free Internet research websites with an emphasis on government sites. Students can now start developing and practicing basic online research skills at the beginning of their research course.
3. Chapter 9 was revised to reflect the changes to Shepards and KeyCite resulting from the changes in the Lexis Advance and Westlaw websites.
4. Chapter 10 was revised to reflect the progression from Lexis.com and Westlaw.com to Lexis Advance and Westlaw (previously known as WestlawNext.)
5. Chapter 11 was revised to reflect changes and additions to legal research websites available without fee.
6. Sample pages of print materials have been modified in Chapters 3, 5, 7, and 8, reflecting the trend to rely on online sources.
7. Appendix C—Citation Guide updated to reflect changes in the 20th Edition of the Bluebook.
8. Appendix G (Answers to Test Yourself)—Revised to include suggested answers to Writing Exercises in each chapter.

ORGANIZATION

- Chapter 1 presents an introduction to legal research and writing as well as an overview of the legal system, with an emphasis on the way by which laws originate. The distinction between federal and state laws is explained. This material provides even beginning students with the basic information and concepts needed to undertake a legal research project.
- Chapter 2 introduces students to the beginning steps of legal research—analyzing the facts and issues to be researched.
- Chapter 3 explains how to find and analyze case law. The importance of legal citations is explained.
- Chapter 4 explains how to brief a case using the IRAC method of analysis.
- Chapters 5 and 6 explore statutes and constitutions. These chapters explain the publication and organization of these materials both in print and online. The chapters also explain how the laws should be read and analyzed.
- Chapters 7 and 8 explore numerous secondary sources and digests.
- Chapter 9 explains *Shepard’s*, KeyCite, and other citators.
- Chapter 10 introduces computer-assisted legal research as it applies to Westlaw and Lexis, although the use of the Internet as a research tool is included in all chapters. Bloomberg Law is also introduced.
- Chapter 11 presents an overview of the use of free Internet sites for legal research.

- Chapter 12 explains the basic legal writing skills.
- Chapter 13 introduces predictive legal writing using the memorandum of law. This chapter also reviews the basic analysis methods (e.g., IRAC) introduced in earlier chapters and shows how these methods are incorporated into more formal legal writing.
- Chapter 14 introduces persuasive legal writing, with an emphasis on writing to a court.
- Chapter 15 presents an overview of research and writing concerns in motion practice.
- Chapter 16 introduces basic legal correspondence.

For courses covering only legal writing, the following chapters are appropriate:

- Chapters 1 and 2: Introductory Material (These chapters may be quickly reviewed depending on the students' educational background.)
- Chapter 4: How to Read and Summarize a Case Law Decision
- Chapter 6: Statutory and Constitutional Analysis
- Chapter 12: Basic Legal Writing Skills
- Chapter 13: The Memorandum of Law: Predictive Legal Writing
- Chapter 14: Writing to the Court: Persuasive Writing
- Chapter 15: Motion Practice: Research and Writing Issues
- Chapter 16: Legal Correspondence
- Appendix Materials

For courses covering only legal research, the following chapters are appropriate:

- Chapters 1 and 2: Introductory Material (These chapters may be quickly reviewed depending on the students' educational background.)
- Chapter 3: Finding and Analyzing Case Law
- Chapter 5: Constitutions, Statutes, and Administrative Regulations
- Chapter 7: Secondary Sources
- Chapter 8: Digests
- Chapter 9: Validating Your Research: Using *Shepard's*, KeyCite, and Other Citators
- Chapter 10: Computer-Assisted Legal Research (CALR): Lexis, Westlaw, and Bloomberg Law
- Chapter 11: Computer-Assisted Legal Research (CALR): The Freely Accessible Internet
- Appendix Materials

PRACTICAL APPROACH

Regardless of which instructional approach is followed, this text assists the instructor in presenting material in a practical and relevant way.

Each chapter opens with a short memorandum *From the Desk of W. J. Bryan, Esq.*, that contains a hypothetical factual situation to be researched and analyzed by a fictional research associate. The memorandum approach helps to introduce the topic of the chapter and to engage the student's imagination. Each chapter contains figures with sample pages from print resources, screen shots from online sources, or examples of legal writing so as to illustrate text material. One feature at the end of the chapter, *Can You Figure It Out?*, requires students to answer questions related to these figures. Furthermore, because learning to do legal research requires hands-on experience, at the end of each chapter are research, analysis, citation, and writing exercises. Research assignments can be performed in a library or, in many cases, online. (Answers to most of these exercises are found in an Instructor's Manual.) So that students can build confidence prior to

using a library or online resource, exercises are found in a chapter end feature, Test Yourself. Answers to selected research problems are found in Appendix G to the text.

Each chapter also addresses important writing issues in end-of-chapter features. **Test Yourself** also contains a section entitled “Write It Right.” Here students find a writing assignment preceded by an explanation and example. Suggested answers to the writing assignment are generally provided in Appendix G. This feature covers a variety of legal writing issues.

All chapters also include a **Chapter Summary**, **Terms to Remember**, **Citation Matters**, and **Questions for Review**, as well as a **Case Project**. This section allows students and instructors to select one hypothetical case (many of which are found in Appendices A and B) and to perform some research, analysis, or writing project in chapters. In this way, students see how the material covered in the different chapters is integrated. Questions and problems for group work, either in class or online through the use of discussion boards, have been added.

FEATURES

A variety of features helps students and instructors.

- **Legal vocabulary** is identified in boldface type. The key terms are defined in the margins of the text where the terms appear. A comprehensive **Glossary** is also included at the end of the book.
- **Skill Objectives** are listed at the beginning of each chapter, helping students recognize the main points of the chapter.
- **Finding It Online** offers students the opportunity to explore online legal research resources.
- **Citation Matters**, a feature that appears in each chapter, is a brief overview of major citation rules affecting legal writing.
- **The Writer’s Corner**, a feature in each chapter, focuses on an important legal writing issue.
- As previously stated, an interoffice memorandum called *From the Desk of W. J. Bryan, Esq.*, opens the text of each chapter. This memorandum serves as an introduction to the subject matter, encouraging the student to think about the subject matter in a practical setting.
- **Research checklists** are found in several chapters, providing a quick, easy-to-read summary of the material found in the text.
- **Sample pages** from an assortment of law books are included in the research chapters. Practical exercises, found in the section **Can You Figure It Out?** at the end of the chapters, give students the opportunity to practice research skills *before* going to the library.
- Examples of actual **research memoranda** appear in appropriate chapters.
- A **Chapter Summary** is included in every chapter; it provides a short overview of the major concepts covered in the chapter.
- Basic **Questions for Review** follow the chapter summary. These questions are designed to focus the student on the most important concepts presented in the chapter.
- **Assignments**, **Activities**, and **Exercises** are included at the end of each chapter. These features include library research problems, analysis exercises, and writing assignments.
- **Citation Exercises** are included at the end of each chapter.
- Questions **From the Writer’s Corner** located at the end of the chapter reinforce the material covered in the chapter.

- Most chapters include a feature called **A Point to Remember**. This practical information is fashioned to help students focus on the skills and concepts that will help them in doing legal research, writing, and analysis.
- **Test Yourself**, including **Write It Right**, allows students to test their own research and writing skills by providing answers to the questions in Appendix G.
- **Appendix B** includes several research problems that may be used as a basis for assignments for all chapters, giving students the opportunity to see the entire research process as it relates to one factual problem. Many of the problems contain case documents, including transcripts and declarations. Other appendixes include a **citation guide**, a **research strategies outline**, and **partially completed case briefs**.

INSTRUCTOR SUPPLEMENTS

Instructor's Manual with Test Bank Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

TestGen This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.

PowerPoint Presentations Our presentations are clear and straightforward. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable.

To access supplementary materials online, instructors need to request an instructor access code. Go to **www.pearsonhighered.com/irc**, where you can register for an instructor access code. Within 48 hours after registering, you will receive a confirming email, including an instructor access code. Once you have received your code, go to the site and log on for full instructions on downloading the materials you wish to use.

ALTERNATE VERSIONS

eBooks This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit www.mypearsonstore.com.

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chapter **one**

INTRODUCTION TO LEGAL RESEARCH, WRITING, AND ANALYSIS

SKILL OBJECTIVES FOR CHAPTER 1

When you complete chapter 1, you should be able to

- Describe the role of a legal researcher.
- Explain the effect of federalism on legal publications.
- Describe the sources of U.S. law.
- Explain the difference between a primary and a secondary source of law.
- List the types of materials often found in law libraries.
- List the common features of law books.



CHAPTER OUTLINE

- 1-1** Introduction
 - Preparing for Legal Research
 - Legal Research and Law Practice
 - The Role of the Researcher
- 1-2** The U.S. Legal System
- 1-3** Sources of U.S. Law
 - Constitutional Law
 - Statutory Law
 - Administrative Regulations
 - Case Law
 - Relationship between Sources of Law
- 1-4** Legal Publications
- 1-5** The Law Library
 - Traditional Law Libraries
 - Types of Legal Materials
 - Virtual Law Libraries
 - Features of Legal Publications
- 1-6** Internet and Legal Research
- 1-7** Legal Citation
 - Case Law
 - United States Constitution
 - The United States Code (Statutes)

From the Desk of W. J. Bryan, Esq.

TO: Research Assistant
FROM: W. J. Bryan
RE: Our Client, Justin Meyers
DATE:

I'm sorry I won't be here to greet you personally on your first day of work. Unfortunately, I need to be in court today. I am leaving a file on your desk for you to review. The case relates to a new client, Justin Meyers. He is charged with murder. There may be a problem with the legality of a search and seizure, and we need to do more research into this matter. After you read the documents in the file, including statements from several individuals, please write a brief memorandum outlining the issues in the case.

You need to familiarize yourself with our office library. The firm has a legal library containing all state and federal cases and codes, as well as selected secondary source materials. I hope that all the books you need are available. You can access information on various free Internet sites, but these sites are sometimes unreliable. The firm maintains subscriptions to both Westlaw and Lexis but these sources are not free, and using them can be costly.

Just leave your memo on my desk and I will review it tomorrow morning.

1-1 INTRODUCTION

If you are a research assistant for W. J. Bryan working on the Meyers case, you must engage in legal research, analysis, and writing. You are asked to determine if Meyers's rights were violated. To do this, you first need to conduct legal research and locate laws dealing with police searches. You then need to read and analyze the law and apply it to the facts of the Meyers case. Your job is not complete, however, until you communicate your findings to Bryan in a written memorandum.

One of the most important skills for lawyers and paralegals is the ability to find and analyze the law and to communicate their findings, usually in writing. Many other professions also find legal research skills useful. Police officers, for example, often refer to code sections and case law in their jobs. Although this textbook is intended primarily for students pursuing a career as a legal professional, it provides a basic framework for legal research that any student should be able to follow. The subject matter of each chapter is introduced in a hypothetical factual scenario, found in a note from the desk of W. J. Bryan, Esq. As you go through the text, you will learn where and how laws are published, how to find the law, how to analyze a factual situation and apply the relevant legal principles, and how to communicate your findings to clients, other attorneys, and the court. You will also learn how to access legal information through the Internet and how to evaluate online information. At the end of each chapter are several practical research, analysis, and writing exercises. Some exercises can be completed with materials found in the text. Others require that you visit a law library or access the Internet. In addition to the exercises found at the end of the chapters, Appendixes A and B contain several hypothetical cases for research and writing assignments.

Preparing for Legal Research

As you develop your research skills, you will also develop your legal vocabulary. Initially, legal terminology may present problems for you. When you read cases,

statutes, or other legal source material, you are reading material written by lawyers (or judges) for other lawyers. Many terms used in the law are not common in everyday language. Latin terminology is used to express some legal concepts. Many words that you *think* you understand have special meanings when used in a legal context. A **legal dictionary** is an essential tool that defines and explains legal terms. Another tool is a **legal thesaurus**. This provides synonyms for legal terms. This is particularly helpful when you use an **index**. Table 1-1 shows common legal terms used in case law. Review this list and see how many you understand without the use of a legal dictionary or thesaurus.

legal dictionary

A dictionary defining and explaining legal terms.

legal thesaurus

A book providing synonyms for legal words.

index

A list of words and phrases that reflects the topics covered in the book.

Legal Research and Law Practice

Although legal professionals and paraprofessionals spend considerable time studying the law before working in the field, they do not know the answer to every legal question. Even the most experienced lawyers must research the law. Laws change constantly. Legislatures routinely enact, amend, or repeal statutes. Courts decide new cases every day. Even constitutions are amended. When lawyers make legal arguments in court or give legal advice to clients, they must be certain about the current state of the law. Because laws are not the same throughout the various states, lawyers must be certain about the law in their jurisdiction. This often requires legal research.

The researcher's job starts with identifying the nature of the client's legal problem and researching laws related to that problem. It does not stop with just finding the law. The law must be analyzed in relation to the facts of the particular case and the results of the research and analysis explained, usually in written form, to the appropriate person. See Box 1-1. This person may be a client, another attorney, or a judge. Thus, the legal research process usually involves three steps—finding the law, analyzing the law, and then preparing a written explanation or argument based on the law.

TABLE 1-1 Legal Terminology

Affirm	Precedent
Appeal	Real party in interest
Appellant	Remand
Appellee	Respondent
Civil	Reverse
Criminal	<i>Stare decisis</i>
Defendant	Writ of certiorari
Motion for summary judgment	Writ of habeas corpus
Plaintiff	Writ of mandate

BOX 1-1 THE LEGAL RESEARCH PROCESS

- ✓ Identify factual question raised by the client's problem.
- ✓ Find law that applies to factual question.
- ✓ Analyze law in relationship to factual question.
- ✓ Communicate findings.

The Role of the Researcher

Only attorneys can give legal advice to clients. Therefore, if you are not an attorney, your legal research should be under the general supervision of an attorney, who must review the research before a client is advised of the findings.

As a research assistant, you may find yourself engaged in various responsibilities, including:

- Gathering or verifying the facts that raise a legal question
- Summarizing the facts
- Conducting legal research
- Summarizing relevant law
- Drafting legal memoranda
- Reviewing legal memoranda for technical requirements
- Checking the citations in memoranda
- Reviewing legal memoranda from opposing counsel

Whatever your responsibilities are, realize that the attorney always expects accuracy and thoroughness. The attorney often relies on your research when advising clients or when arguing matters in court. Even if your job responsibilities do not include working as a research assistant for an attorney, if you work in a law office, you often need to perform legal research for your own benefit. Legal research, analysis, and writing skills contribute greatly to your success in a law office.



The Writer's Corner

IRAC

How to Organize Most Legal Writing

At first, legal writing seems daunting. Questions of where to begin and how to begin can seem overwhelming. The good news is that most legal writing follows a very simple formula. At the core of a legal discussion or argument there are four absolutely necessary sections: the **ISSUE**, the **RULE** of law, the **ANALYSIS/APPLICATION** of the law to the facts of the case you are working on, and the **CONCLUSION**. (This formula is often referred to as the IRAC method.)

When you add a concise **INTRODUCTION** and a Statement of **FACTS**, you have the outline of most legal analysis.

Keep in mind that the reader needs the document organized such that it is easy to read. When drafting a document, simply adhere to this basic formula and the reader—your audience—will easily follow your logic.

Under this formula, the basic outline of most legal memoranda is:

Introduction

(concise overview for the reader)

Statement of Facts

(summary of all key facts and helpful explanatory facts)

Issue

(the legal question(s) to be analyzed under the applicable rule(s) of law)

Rule

(state and explain the rule(s))

Analysis/Application

(analyze/apply the rule(s) of law to the key facts)

Conclusion

(state the conclusion you reach after your analysis)

Remember—you take this approach with each issue. If your case involves three issues, you will go through this process three times.

As you study law notice how this is the formula for most legal writing, including case law decisions. Basic writing skills are also essential in legal writing. At the end of each chapter is an exercise to see if you can “write it right.”

A Point to Remember

A nonlawyer, such as a paralegal or a law clerk, cannot give legal advice. To do so is the unauthorized practice of law and is unethical, not to mention illegal. Paralegals or clerks who do legal research should report their findings to a supervising attorney. All legal advice to a client must come from an attorney.

1-2 THE U.S. LEGAL SYSTEM

The ability to engage in effective legal research requires a basic understanding of the U.S. legal system. Several principles of government affect the way our laws are published and applied. One of the most important concepts is federalism. In the United States, government operates under a principle called *federalism*, which means that separate governments, federal and state, regulate citizens. Each government makes its own laws. When researching an issue, you face different sets of laws for each state and for the federal government. A key feature of legal publications is that separate publications often exist for federal law and for that of each individual state. Even though some secondary sources attempt to discuss all laws, many legal publications (especially primary sources of law) contain law related only to a specific jurisdiction, that is, only federal law or only the law of one state. When you begin research, you save time, and are more accurate, if you focus on publications that contain the proper law. See Box 1-2. As you continue with your legal education, your ability to do this will improve.

Sometimes your research shows that both state and federal laws apply. For example, consider the Meyers case mentioned at the beginning of the chapter. In this case, the defendant is charged with the crime of murder. This is a state crime, and a state court will hear the case. However, the U.S. Constitution controls the question of the legality of a search that prohibits unreasonable searches and seizures. To complicate matters, the state in which Meyers resides may also have constitutional provisions regulating unreasonable searches by police. Researching this type of case can be difficult. Keep in mind that where a conflict exists between state and federal law, federal law controls. This is because of the “Supremacy Clause” of the Constitution (Article VI): “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” When a state passes a law that conflicts with the Constitution, the U.S. Supreme Court has the power to declare that state law unconstitutional and unenforceable. Like the concept of federalism, the Supremacy Clause is important to legal research.

federalism

A system of government in which the people are regulated by both federal and state governments.

BOX 1-2 RESEARCH CHECKLIST

Before You Begin

- ✓ Review the factual situation.
- ✓ Determine whether federal law, state law, or both control the factual situation.
- ✓ Use research materials that contain the proper law.

1-3 SOURCES OF U.S. LAW

In both federal and state systems, laws come from the same types of sources. U.S. law is found in four sources: constitutions, statutes, administrative rules or regulations, and case law decisions. All governments, state and federal, have constitutions generally published in various sources. Other laws come from our legislatures, courts, and administrative agencies. Both the federal and state legislatures enact statutory laws, published in codes. Federal courts and state courts are responsible for case law found in case reporters. Administrative agencies exist on both federal and state levels from which we derive administrative rules or regulations.

Constitutional Law

The federal government and all states have constitutions, documents whose primary purpose is to establish the government and define its functions and obligations in relation to the people. The U.S. Constitution establishes and defines the role of the federal government and its relation to the people of the United States. The U.S. Constitution applies only to the federal government, unless expressly made applicable to individual states. Each state constitution establishes and defines the role of the state government and its relationship to citizens of that state. The various constitutions are published in numerous ways, often with the statutory law for the jurisdiction. The U.S. Constitution can be found with the U.S. Codes, and state constitutions are usually found with the state codes.

Statutory Law

Statutory law results from legislative action. The federal and state legislatures enact laws that are then sent to the chief executive (the president or the governor) for approval. After they are signed (or a veto properly overridden), the laws are organized and published in codes. The code for the United States is the *United States Code*. Legislatures also empower the courts to enact rules, known as *rules of court*, which govern practice in the courts. In addition, local governing bodies (cities and counties) enact laws, often known as *local ordinances* or *municipal codes*.

Administrative Regulations

In order for the government to perform all of its tasks, legislatures created various agencies to handle specific jobs. For example, Congress created the Securities and Exchange Commission (SEC) to handle corporate stock transactions. Agencies generally have the power to make necessary rules or regulations. These are *administrative regulations*. Administrative agencies exist in the federal government as well as in each state.

Case Law

The English *common law* plays an important role in the U.S. legal system. Common law is based on the concept of *precedent* or *stare decisis*, rather than an exhaustive system of written laws or rules. When parties have a legal problem, their dispute comes before a judge who decides the case. The decision becomes a precedent. Then, if the same type of factual dispute comes before a court in the future, the judge follows the decision of the first case. Although the federal

common law

Body of law developed through the courts.

precedent

The example set by the decision of an earlier court for similar cases or similar legal questions that arise in later cases.

stare decisis

“It stands decided”; another term for precedent.

government, as well as the states, has codified considerable law, precedent still plays an important role. U.S. courts have the role of interpreting other laws and applying these laws to different factual disputes. Case law results from selected decisions made by various *appellate* courts, including the U.S. Supreme Court. It does not come from trial court decisions. The concept of *stare decisis* is discussed in more detail in Chapter 3.

Relationship between Sources of Law

When you research an issue, you often find that more than one primary source of law applies. In the U.S. legal system, the courts have the power to interpret the U.S. Constitution, state constitutions, federal and state codes, and federal and state administrative regulations. See Box 1-3. Thorough research requires that when you find constitutional or statutory law (including administrative regulations), you must also determine if case law interprets these laws.

BOX 1-3 PRIMARY SOURCES OF LAW

Federal Law	State Law
U.S. Constitution	State constitution
U.S. Code	State codes
Federal administrative regulations	State administrative regulations
Federal cases	State cases

1-4 LEGAL PUBLICATIONS

Law is published in the same types of materials as any other information, that is, books, periodicals such as magazines or newspapers, and electronic media. Published law is either a **primary source** of law or a **secondary source** of law. The former is a work that contains the law, such as publications of constitutions, statutes, administrative regulations, and cases. Publications of statutes are sometimes called **code books**. Publications of cases are **case reporters**. Secondary sources of law are publications that explain or discuss the law (e.g., legal encyclopedias and journals). Secondary sources are helpful in finding and understanding the primary law. The goal of legal research is to find a primary source of law that controls your factual situation or answers your legal question.

Until recently, the term *law publication* referred to books or magazines. Today, a broader definition is necessary. Primary and secondary sources of law are published not only in books but also in electronic form. Today, many legal researchers rely heavily on the Internet, including fee-based services such as **Lexis** (Lexis Advance) and **Westlaw**. These sites provide access to vast amounts of primary and secondary sources of law. The Internet provides access to numerous other fee-based and free sites containing legal information. *CD-ROM and DVD libraries* containing both primary and secondary sources are also available.

Two major publishers are responsible for many legal publications. These publishers are Thomson Reuters/West and Lexis Law Publishing, and they produce many materials in both print and electronic formats. Each of these publishers adds helpful editorial features to their legal publications to assist the researcher. As you proceed through this text, these features will be introduced and explained.

primary source

A work that contains the law.

secondary source

A tool used to help understand the law; one such tool is a legal encyclopedia that explains the law.

code books

Books that contain codes or statutes.

case reporters

Books that contain case decisions from the courts.

Lexis

A computer-assisted legal research service.

Westlaw

A computer-assisted legal research service.

1-5 THE LAW LIBRARY

Traditional Law Libraries

law library
A library that is dedicated to legal resource material.

One of the prerequisites to doing legal research is familiarity with the *law library*, which is a library dedicated to legal resource material. Many law firms maintain their own law libraries. These libraries vary in size and content and may contain small collections of basic law books or extensive collections of legal research material. Some larger law firms even employ law librarians to maintain their libraries.

If you need a comprehensive legal library, you might use a county law library or that of a nearby law school. These libraries generally contain primary and secondary sources related to the laws of your state as well as materials related to the laws of the United States. Most likely, these libraries also contain primary and secondary sources concerning the laws of other states and of foreign nations. County law libraries are often open to the public. Law school libraries, on the other hand, may be available to you only if your law firm has a special arrangement with the school.

A Point to Remember

You should make every effort to become familiar with your firm’s law library as soon as possible. Knowing what resources are immediately available can save you time and worry.

Types of Legal Materials

See Figure 1-1 for a list of the specific types of books found in most law libraries. Many law libraries also provide electronically stored information. Today legal

FIGURE 1-1 Types of Legal Materials

Case Reporters	Large sets of books containing written case decisions or opinions from state and federal courts
Code Books	Sets of books containing either federal or state statutory law organized in a topical order; may also contain copies of the federal or state constitution
Encyclopedias	Multivolume sets of books that explain the law; they are organized alphabetically by topic; some explain American law in general, others are limited to explanations of laws in a single state
Digests	Multivolume sets of books that act as a detailed topical index to case reporters; are organized topically and contain short summaries of cases
Looseleaf Service	A type of legal work, usually concerning a single legal topic (such as family law), where the written material is kept in a pull-apart binder. The material is continually updated. When laws are changed the publisher sends replacement pages to the subscribers of the service. Pages with the old law are removed and replaced with new pages that reflect the changes in the law
Treatises	Usually single books published on one legal subject
Form Books	Books containing forms that lawyers use to prepare legal documents; sometimes referred to as <i>practice books</i>
Legal Periodicals	Magazines, journals, and newspapers related to the practice of law; included are law reviews and journals published regularly by law schools

materials are found not only in print but also on DVDs and CD-ROMs, and many law libraries make these available to researchers.

In addition to law libraries, legal collections are often included in many general libraries, although these collections are not as comprehensive as those found in law libraries. Your local public library may have copies of your state codes, federal codes, or case law. Many university or college libraries contain a wide array of legal materials.

Virtual Law Libraries

In addition to the traditional law library, today's researcher has access to vast amounts of legal materials through online subscription sources, such as Lexis, Westlaw, and Bloomberg Law. Many of the same books that are accessed in traditional libraries can be accessed and searched through these online services. For this reason, familiarity with traditional print resources is important. A list of some of the materials found on Westlaw is found in Figure 1-2. Selected research materials are also available through many free Internet sites. The federal and state governments, as well as many law schools, maintain free websites with limited legal materials. Many commercial sites also feature legal materials. A researcher can usually find primary law (i.e., constitutions, codes, and cases) for free. However, because of copyright issues, only limited secondary source materials are available.

In a virtual law library, researchers can find legal material from the convenience of their own desk at almost any time of the day or night. The researcher needs a computer and an Internet connection. However, reliability of free Internet sites is always a concern, and the researcher must be careful in relying on such sites. If researchers want to access Westlaw, Lexis, or Bloomberg Law, they also need a fee-based subscription.

Features of Legal Publications

Learning to do legal research requires a great deal of time and effort. However, in some respects, legal research is similar to general research, and law books and periodicals are often similar to nonlegal materials. Most law books (except for case reporters) have an extensive *table of contents* and index. The table of contents, like that of any book, is an outline of the material covered in the book. The index is a list of words and phrases that reflect the topics covered. Using both enables you to find any particular topic in the book. When using legal periodicals, you can locate specific topics in indexes that resemble the Readers' Guide to Periodical Literature that you probably used when writing research papers in high school and college.

table of contents

An outline of the material covered in the book or document.

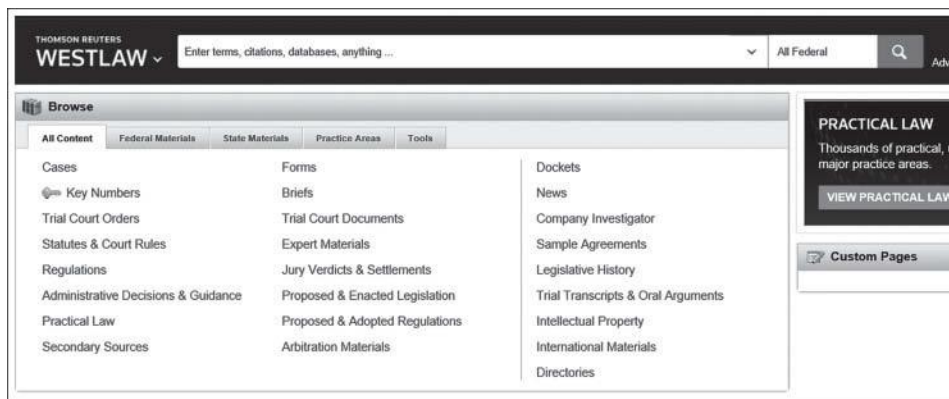


FIGURE 1-2 Westlaw Directory

BOX 1-4 COMMON FEATURES OF LAW BOOKS**Many Law Publications Contain:**

- ✓ Directions for using the book or set
- ✓ Explanation of abbreviations used in the book
- ✓ Table of contents
- ✓ Index
- ✓ Table of cases
- ✓ Table of statutes
- ✓ Supplements

table of cases

A common feature of legal publications containing the names of all cases cited in the book or document.

table of statutes

A common feature of legal publications containing a list of all statutes or codes that are referenced in the book.

table of abbreviations

A common feature of legal publications containing an explanation of all abbreviations found in the book.

pocket part

A removable supplement; includes all changes or additions to the material contained in the hardbound volume.

Many law books contain various tables, either in the front or in the back, such as a *table of cases*, a *table of statutes*, and a *table of abbreviations*. These generally include references cited within the book.

One aspect of law books is unique, however: they must be current. Because the law is constantly changing, law books must reflect those changes. Many law books are therefore supplemented regularly by *pocket part* supplements that contain recent changes in the law and which slip into an opening on the inside of the back binding. See Box 1-4 for a list of common features of law books.

A Point to Remember

When using any law book, always check the back to see if there is a pocket part supplement. If so, be sure to read any section addressing your topic.

1-6 INTERNET AND LEGAL RESEARCH

Almost all legal research material can be found online. Primary law, including federal and state published cases, codes and constitutions are generally published by or under contract with the government and as such are usually not subject to copyright laws. As a result, this type of law is often found on many freely accessible websites as well as on subscription-based sites such as Westlaw and Lexis Advance. However, freely accessible sites contain only the law. Subscription-based sites often include various editorial enhancements that aid in the research process. (These enhancements are discussed in subsequent chapters.)

Westlaw and Lexis Advance are complete libraries, providing access to all types of legal research materials. No freely accessible website does this. Many freely accessible sites provide access to limited materials, that is, a particular state code or a particular state database of cases. However, some generally available free sites serve as portals, or gateways, to a complete virtual library of primary law and, sometimes, selected secondary source materials. Notable among these is the Law Library of Congress, law.gov or <http://www.loc.gov/law/>.

This site offers links to state and federal law as well as to numerous sources of international law. Through its “Guide to Online Law,” it offers access to federal and state constitutions, codes, cases, and regulations. It also offers links to selected online law reviews and other secondary sources. See Figure 1-3 for a list of the general topics available through this free site.

By exploring these topics, you can see a full list of available materials. Portions of this site are discussed in more detail in subsequent chapters.

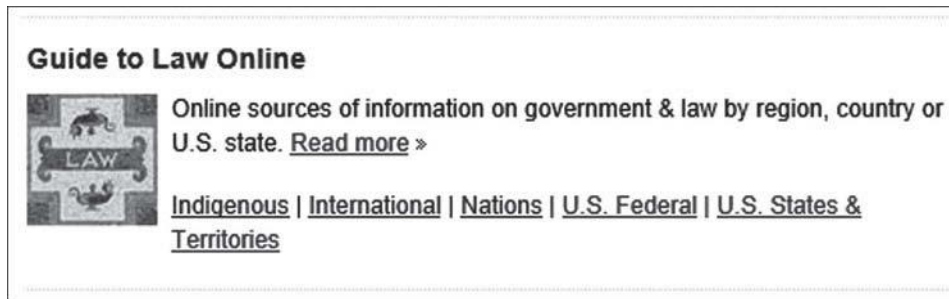


FIGURE 1-3

1-7 LEGAL CITATION

In conducting legal research, you must be familiar with special abbreviations, known as **legal citations**, used to describe resource material. If you have ever written a term paper and used footnotes or a bibliography, you know that there are standard abbreviations for research sources such as books, magazines, and encyclopedias. The same is true for legal resource materials. An abbreviated or shorthand way of referring to a particular legal source is called a *legal citation*. Understanding legal citations is important to finding the law, reading the law, and writing legal documents. Legal citations tell us where and how to find cases, codes, and secondary sources. All of these sources describe the law, using legal citations to tell the reader where to find additional law. Legal citations are also important to legal writing. When you write about a legal issue, you must always cite your authority for any legal principle or concept. You must use accepted legal citations in doing this.

The leading authority for legal citation form is *A Uniform System of Citation* and commonly referred to as *The Bluebook*. This publication provides citation format and accepted abbreviations for almost all legal materials, both federal and state. While it is the most commonly used authority for citations, it is not the only one. The *ALWD Citation Manual*, created by the Association of Legal Writing Directors, is another popular citation guide. In addition, your state may publish its own style manual or have rules regarding legal citation. Because of the importance of legal citations, each chapter in this text contains a feature, “Citation Matters,” dedicated to specific citation issues. This citation information is taken from *The Bluebook: A Uniform System of Citation* (Harvard 20th ed. 2015).

Learning to cite correctly and consistently is essential. *The Bluebook* is a reference manual. It has more citation rules than you will ever need to learn. However, this tool is indispensable. The “rules” and conventions are all here. It takes patience to become familiar with *The Bluebook*. Take the time to look through this tool before you need to find answers quickly. The index to *The Bluebook* is excellent: Use it. The following is an overview of the citations to describe the common sources of our laws.

legal citations

Special abbreviations used to describe resource material.

Case Law

The U.S. Supreme Court Most case citations follow this basic format:

Name	Volume	Reporter	Page	Year
<i>Miranda v. Arizona</i> ,	384	U.S.	436	(1966)

Miranda v. Arizona is the name of the case. Case names are underlined or italicized. This makes them easy to see on the page.

The *Miranda* case is located in volume 384 of the *United States Reports*. The *United States Reports* is the official reporter for U.S. Supreme Court cases. It is “official” because it is published by the U.S. government. The proper abbreviation for this reporter is “U.S.”

In volume 384, the *Miranda* case is located at page 436. The case was decided in 1966. The year is placed in parentheses.

This information allows anyone looking at the citation to locate the actual decision.

All U.S. Supreme Court cases are located in print form in three separate reporters, published by three different publishers. The full citation for the *Miranda* case is as follows:

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
86 S. Ct. 1602 and 16 L. Ed. 2d 694 are referred to as *parallel citations*.

A Point to Remember

When you refer to or “cite” a case, be sure to provide your reader with a complete citation. Use the name, volume, reporter, page number, year, and, if necessary, the parallel citations.

GO TO: *The Bluebook*, Table 1

State Case Law State cases are cited much the same as Supreme Court cases. Sometimes, though, states have their own citation rules that provide alternative ways of citing.

For example, in the state of California, either of the following citations is correct for a California case.

Long Beach v. Superior Court, 64 Cal. App. 3d 65, 134 Cal. Rptr. 468 (1976).

or

Long Beach v. Superior Court (1976) 64 Cal.App.3d 65, 134 Cal.Rptr. 468.

In California and other states, there is an unofficial publisher of state case law. In the citation here, Cal. Rptr. is the abbreviation for the California Reporter, published by West Publishing. 134 Cal. Rptr. 468 is the parallel citation.

Sometimes you will see references to “regional reporters.” The regional reporter abbreviations follow.

Atlantic Reporter	A.2d
North Eastern Reporter	N.E.2d
North Western Reporter	N.W.2d
Pacific Reporter	P.2d
Southern Reporter	So. 2d
South Eastern Reporter	S.E.2d
South Western Reporter	S.W.2d

The *2d* following the regional reporter abbreviation indicates that each of these reporters is in the second series.

A Point to Remember

Most legal sources follow the general format of

Title

Volume

Book or reporter (abbreviated)

Page

Year

When you are looking at an unfamiliar citation, try to identify these elements. This will enable you to understand the various citations you come across in your legal studies.

GO TO: *The Bluebook*, Table 1

United States Constitution

The Fourteenth Amendment to the United States Constitution is written as follows:

U.S. Const. amend. XIV.

If you want to indicate a certain section of the Amendment you add: § 1

The full citation looks like this:

U.S. Const. amend. XIV, § 1.

GO TO: *The Bluebook*, Rule 11

The United States Code (Statutes)

The United States Code is cited in the following manner:

Number of Code Title	Code	Section Cited	Date
28	U.S.C.	§ 1291	(XXXX)

The proper cite is 28 U.S.C. § 1291 (XXXX).

GO TO: *The Bluebook*, Rule 12

State Codes (Statutes)

A statute citation must show

1. the numbers of the statutory topic,
2. the abbreviated name of the publication,
3. the specific statute or section of the statute, and
4. the year of the publication.

Examples

Ariz. Rev. Stat. Ann. § ## (XXXX)	Arizona Revised Statutes Annotated
Cal. Educ. Code § ## (XXXX)	California Education Code
Conn. Gen. Stat. § ## (XXXX)	Connecticut General Statutes
Ind. Code § ## (XXXX)	Indiana Code

GO TO: *The Bluebook*, Table 1

Legal citation rules are often complex. Each chapter in this text highlights an important aspect of these rules in a feature entitled “Citation Matters.”

Online Research

The Internet provides access to a great deal of legal information, both free and fee based. Some of this information is useful and accurate. However, some information is outdated and inaccurate. Anyone can create and maintain his or her own web page, and legal information can be posted by anyone. Using a general search engine such as Google may lead you to unreliable sites. Be careful to evaluate the source of the information you locate. Always check to see who publishes the information you find and when it was last updated. One very reliable source is the law library website of the Library of Congress (<http://www.loc.gov/law/index.php>). This site provides extensive information about the U.S. legal system, as well as links to numerous sources of law. Here you will also find guides to the legislative and judicial processes of the United States (Link to Guide to Law Online).

It is impossible to provide a complete and accurate list of great legal research sites. However, this text suggests certain websites and provides tips to help you navigate the Internet successfully. In addition to the website discussed in this chapter, the following sites lead you to virtual libraries, where you can access different legal sources without cost.

<http://www.gpo.gov/fdsys/>
U.S. Government Publishing Office
www.law.cornell.edu
Legal Information Institute

For an online legal dictionary, go to the following website:
<http://dictionary.law.com/>

For an online guide to citing legal publications, go to the following website:
<http://www.law.cornell.edu/citation/>

An understanding of the U.S. legal system is important to the research process. To learn more about it, check the “educational resources” on <http://www.uscourts.gov/>.

CITATION MATTERS

WHY LEGAL CITATION MATTERS

The term *citation* refers to special information provided by the author of a document. A legal citation shows the reader the origin of the cited authority. Everyone is familiar with the use of quotations. When you use a quote, you must indicate the origin of the quote. Generally, the citation to the original material follows the quoted language. The same is true in legal writing, only we take it a bit further. Most legal writing informs or convinces. The best way to do that is to show the reader where the ideas originated, whether or not a quote is used.

Case law provides good examples of citation use in legal writing. Sometimes it seems as though every sentence has a citation following it. That can make reading legal material tedious and slow. But because legal citations alert the reader to the origin of the material, they are a critical element of legal writing. When a judge writes a decision in a case, that judge strives to explain the reasons for that decision. Often these reasons originate in previously decided cases, and citations to these cases are included.

When attorneys write legal memoranda, they must provide legal authority for the statements they make. Previous cases carry what we call a “weight of authority”—something that personal opinion does not carry. A court is not interested in personal opinions. It is interested in the legal authority that supports the opinion. Courts and other attorneys sometimes need to read the authorities that are cited in memoranda or briefs. It is essential, therefore, that citations be accurate.

In your legal writing, you should strive to cite carefully and completely. Appendix C provides a basic overview of citation. Read it carefully and begin to learn the basic rules of legal citation. Review the use of legal citations below:

The United States Constitution guarantees the right to trial by jury in order to prevent oppression by the government. U.S. Const. amend. VI and XIV; *Duncan v. State of La.*, 391 U.S. 145, 194 (1968).

This sentence is a statement of law, not an opinion: “The United States Constitution guarantees the right to trial by jury in order to prevent oppression by the government.” The writer shows his audience that the guarantee of a jury trial is found in the U.S. Constitution under Amendments Six and Fourteen. The citation to a U.S. Supreme Court case further supports this same statement. A period separated by a semicolon separates the two citations. The second sentence is a *citation sentence*.

The *name* of the case is *Duncan v. State of La.* The name of a case is italicized or underlined, never both.

This case is found in the United States Reports. *U.S.* is the proper abbreviation for the *official reporter* of U.S. Supreme Court case law.

This case is located in *volume* 391, and the *first page* of the case is 145. The writer also provided a “pinpoint cite” for the page in the case where the Court addresses the right to trial by jury. The pinpoint cite is to page 194.

The *year of the decision* is 1968. Notice that the year is placed at the end of the citation, and it must be placed in parentheses.

The citation manual used in the preparation of this text is *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass’n et al. eds., 20th ed. 2015).

CHAPTER SUMMARY

Legal research usually involves finding the law that applies to a specific factual question. Because lawyers must know the current law in their jurisdiction, even the most experienced legal practitioners do research before advising a client or arguing a matter before a court. Paralegals and law clerks often do legal research; indeed, many nonlegal professionals find this competency to be an important tool.

The total process of legal research involves identifying the factual issue, finding the law, applying the law to the factual situation, and communicating these findings. While paralegals and law clerks often perform the research, they should do so under the supervision of a lawyer. Accuracy and thoroughness are essential. Paralegals and other nonattorneys must be careful not to give legal advice to a client because to do so constitutes the unauthorized practice of law and is unethical and illegal.

Before you begin any legal research, you must understand the U.S. legal system. This system was founded on the principle of federalism, which means that two separate governments, federal and state, regulate citizens. The laws of each government are usually found in separate publications. When you research a factual issue, either federal or state law generally controls it, although at times both may apply. Determining which law applies to a factual question is one of the first decisions a researcher must make.

All laws, whether state or federal, are published in constitutions, statutes or codes, administrative regulations, and cases. Case law stems from the English common law, a system where laws developed through the courts and through case decisions. The common law was based on the concept of precedent or *stare decisis*, which means that once a court decided a factual dispute, the same factual dispute in the future had to be decided in the same way. In the United States, case law results from decisions from the appellate and supreme courts in the federal and state systems.

Legal publications include primary and secondary sources of the law. A primary source includes the law itself (constitutions, cases, statutes, and administrative regulations). Secondary sources, such as legal encyclopedias and journals, help explain and find the primary source of law. Legal publications are published in printed as well as in electronic formats.

Legal research is usually conducted in law libraries found in most law offices. Counties and law schools also maintain large law libraries. Materials there resemble materials found in any library. Law books contain many of the same features found in reference books, such as a table of contents and an index. In addition, many law books contain tables of cases, tables of statutes, and tables of abbreviations used in the book. Many books also include pocket part supplements that keep the work up to date.

TERMS TO REMEMBER

legal dictionary
 legal thesaurus
 index
 federalism
 common law
 precedent
stare decisis

primary source
 secondary source
 code books
 case reporters
 Lexis
 Westlaw
 law library

table of contents
 table of cases
 table of statutes
 table of abbreviations
 pocket part
 legal citations

QUESTIONS FOR REVIEW

1. Explain the process of legal research, analysis, and writing.
2. Discuss the various sources of U.S. law.
3. Explain the concept of federalism and how it affects legal research.
4. What are the primary sources of law in the United States?
5. What is the difference between a primary source of law and a secondary source of law?
6. What types of legal materials are found in law libraries?
7. Describe some of the common features of legal publications.

CAN YOU FIGURE IT OUT?

1. Refer to Figure 1-1, “Types of Legal Materials.” One of the most famous cases decided by the U.S. Supreme Court is the case of *Miranda v. Arizona*. In which type of legal material would you expect to find that case? In which type of legal materials would you expect to find discussions or analysis of that case?
2. Refer to Figure 1-2, Westlaw screen. This screen contains general categories of materials (i.e., Federal Materials, State Materials, etc.) and sub-categories (i.e., Cases, etc.). In which general and sub-categories of material would you expect to find the case of *Miranda v. Arizona*? In which general categories would you expect to find discussions or analysis of that case?

TEST YOURSELF (Check Your Answers in Appendix G)

1. Using a legal dictionary, define the following terms: *en banc*, *petitioner*, and *per curiam*.
2. Are the following situations controlled by federal law, by state law, or by both?
 - a. Jackson is arrested for possession of narcotics. The drugs were found after Jackson was stopped for speeding. The officer states that as he was writing a ticket for Jackson, the officer noted the smell of marijuana, ordered the driver out of the car, searched the vehicle, and found the drugs. Jackson is charged with possession of marijuana, a state crime. The case is filed in state court. Which law controls the case?
 - b. Adams, a resident of Texas, is involved in an automobile accident with Brown, a resident of California. The accident is Adams’s fault and Brown is injured. Brown wants to sue. The accident occurred in California. In which court should the lawsuit be filed, and which law should apply?
3. In Appendix F find the case of *Ohio v. Robinette*, a U.S. Supreme Court case dealing with the questions of federalism and how federal and state laws interact. Read the case and answer the following question: Did federal drug laws apply to this case? Why or why not?
4. Access the Law Library of Congress. Under the Guide to Law Online, link to U.S. Federal. Among the various sources on this page is a list of Legal Guides, the first of which is Guide to Law Online: Criminal Justice System. What are the names of the other legal guides?

TEST YOURSELF—WRITE IT RIGHT Effective Sentence Structure

Too often sentences are hard to follow, making a reader re-read or pause to consider the meaning of the sentence. Sometimes sentences seem awkward or unclear because the words are not in the best order. The construction of most sentences should follow the format of: actor ➡ action ➡ object.

For example: Bobby kicked the ball.
actor ➡ action ➡ object

When we read just the “working words,” the sentence says “Bobby kicked ball.”

Consider this poor example: The ball was kicked by Bobby.
object ➡ action ➡ actor

When we read just the “working words,” here the sentence says “ball kicked Bobby.” This does not work.

Writers need to edit for this problem. When we read just the working words, readers should understand the meaning of the sentence.

Now, You Try It

(Check Your Answers in Appendix G)

Rewrite the following sentences to create the effective sentence structure of actor ➡ action ➡ object.

1. The game was won by the Blackhawks.
2. The puck was shot by Crosby.
3. The jury verdict was read by the Judge.
4. A response must, within 60 days after service of the order, be filed with the court.

CITATION EXERCISES

Using Section 1-7, answer the following questions.

1. What is missing from these citations?
 - a. *Roe v. Wade*, 410 U.S. 113.
 - b. *Marbury*, 5 U.S. 137 (1803).
 - c. *Brandenburg v. Ohio*, U.S. 444.
2. Correct the following citations.
 - a. Arizona Rev. Stat. Ann. § ## (year).
 - b. Ariz. Rev Stat. Ann. ## (year).
 - c. Conn General Stat § ## (year).
3. Correct the following citations.
 - a. 28 USC Section 1291 (year).
 - b. US Const Amend. XIV.



FROM THE WRITER'S CORNER How to Organize Most Legal Writing

1. What does IRAC stand for?
2. List the basic outline of most legal memoranda.

ASSIGNMENTS AND EXERCISES

RESEARCH EXERCISES

1. Using a legal dictionary, define the terms in Table 1-1.
2. Using a legal thesaurus, find different words for each of the terms in Table 1-1.
3. Visit the law library that you will use to do your legal research assignments. Locate the following legal sources:

The United States Code

A case reporter containing decisions from the U.S. Supreme Court

Your state code

Case reporters containing case law from your state

Review the list of common features of law books found in Box 1-4 earlier in this chapter. Which of these features is found in each of the legal sources listed here?

ANALYSIS AND WRITING ASSIGNMENTS

4. Consider the following questions and state whether you would begin your research in state or federal sources.
 - a. Can a client who filed bankruptcy five years ago file for bankruptcy again?
 - b. If a person took \$10,000 from an employer without permission but paid it back when discovered, could that person be charged with any crime?
 - c. What are the elements of the crime of counterfeiting?
 - d. Mary's boss told her that if she did not have sex with him, she would not get a raise. What are Mary's options?
 - e. Terry is a word processor, and he developed carpal tunnel syndrome. Terry's doctor says it is a result of Terry's job. What rights does Terry have?

5. In Appendix F find the case of *Ohio v. Robinette*, a U.S. Supreme Court case dealing with the questions of federalism and how federal and state laws interact. Read the case and answer the following questions.
 - a. What primary source of law is the Court interpreting in this case?
 - b. Is there a conflict between the state and federal search and seizure laws in this case?
 - c. If you were researching a similar search and seizure issue in your state, would you rely on the case of *Ohio v. Robinette* (a) if the issue revolved around your state's constitution or (b) if the issue revolved around the meaning of the U.S. Constitution?

ONLINE RESEARCH EXERCISES

Review the websites listed in this chapter (in the “Online Legal Research” feature).

6. Which of these sources, if any, provide access to your state's constitution?
7. Which of these sources, if any, provide access to your state codes?
8. Which of these sources, if any, provide access to your state cases? If they do provide access to your state cases, for what years are cases provided?
9. Access the Law Library of Congress and find the Guide to Law Online. Which Guide would you link to for laws from your state?

CASE PROJECT

IN-CLASS SMALL GROUP WORK

Select one hypothetical case from those found in Appendix A. (Your instructor may assign a specific case.)

Read the facts carefully and make a list of all legal terms found in the factual scenario. Which of these terms appear in Table 1-1? Discuss the terms. List and explain

those terms that are familiar to you. Make a list of those terms you do not recognize.

When you have access to a legal dictionary, define all legal terms found in the factual situation. Compare the dictionary definitions with your group's understanding of the terms.

chapter **two**

THE STARTING POINT: ANALYZING FACTS AND IDENTIFYING LEGAL ISSUES

SKILL OBJECTIVES FOR CHAPTER 2

When you complete chapter 2, you should be able to

- State and describe the three basic factual categories.
- Explain how to compare case law facts with a client's factual situation.
- Describe how to identify legal issues in a client's factual situation.
- Describe how to identify legal issues in a reported case law decision.
- Provide examples of good issue statements.



CHAPTER OUTLINE

- 2-1** Introduction
- 2-2** Understand and Analyze the Facts
- 2-3** Sort the Facts of a Client's Case
- 2-4** Compare Case Law Facts with Your Client's Facts
- 2-5** Legal Issues
- 2-6** Identify the Legal Issues
Issues in Your Client's Case
Issues in a Reported Case
- 2-7** Writing Issue Statements
- 2-8** Sample Case File

From the Desk of W. J. Bryan, Esq.

To: Research Assistant
FROM: W. J. Bryan
RE: Meyers Matter
DATE:/OPEN

The office just received additional information on the Meyers murder case. We now have copies of the search warrant and a copy of the transcript from the grand jury hearing that resulted in Mr. Meyers's indictment for murder. The search warrant allows the police to search our client's house for drugs and drug paraphernalia. During their search, the police found and seized a bloody rag. Forensic evidence indicates that the blood belongs to a murder victim. Carefully read all the new documents, and identify and summarize all facts that are relevant to legality of the search and seizure. After you do that, try to find case law that will help our client.

2-1 INTRODUCTION

As described in the previous chapter, the legal research process consists of finding law, analyzing the law and the facts of your case, and communicating the results of your research and analysis to interested parties. This process usually begins with determining the important facts in your client's case and then identifying the legal question or issues in that case. This chapter discusses the importance of the facts and legal issues to the research process and provides some methods of analyzing the facts and identifying the issues.

At the beginning of the research process, a clear understanding of the facts involved in a client's situation is essential. No legal research is productive until the researcher acquires a good picture of the client's facts. A good client interview produces a factually rich picture of the events and people involved in the client's situation. Sometimes, additional interviews and investigation are necessary. Ascertain and place into perspective all relevant facts before beginning legal research. Students who are new to the law may be tempted to begin research projects prior to establishing a clear picture of the events involved in the case. This is a time-consuming error. Until the facts are well established, researching the law is impossible. Contrary to what one might initially think, the facts determine the area of law to be researched. Facts are found in many places: client interviews, witness interviews, relevant documents, depositions, and other discovery. A thorough understanding of the facts enables the researcher to focus on those most significant, thereby leading the researcher to pinpoint the relevant area of law.

2-2 UNDERSTAND AND ANALYZE THE FACTS

The attorney handling the Meyers case wants his research assistant to find case law that helps his client. In his note, Attorney Bryan gives an important instruction to his assistant. Identification of the relevant facts precedes researching the law. Research is usually undertaken as a direct result of a set of facts: The facts come first, and then the law is applied to those facts. The researcher must begin by categorizing or analyzing the known facts. Obviously, some are more important

than others. Your subsequent research assists you in determining which ones are *most* relevant. There are three basic categories of facts:

- Relevant facts
- Explanatory facts
- Legally unimportant facts

Once you gather all of the known facts, the next step is to place them into one of these categories. However, determining relevant facts requires that the researcher have at least a general understanding of the legal principles governing the case. You cannot determine what facts are legally important if you are very unfamiliar with the law. For example, if you know nothing about the criminal law, you might not know whether the contents of a search warrant are important. If you are unfamiliar with the area of law, you must perform some general legal research first. Become familiar with the basic legal principles and then analyze your client's facts. As your research continues, you might also have to reevaluate how to categorize the facts.

Relevant Facts: Relevant facts are essential; do not ignore them. They are legally and factually important. There may be several ways to identify them in a factual situation: (1) remove the fact and ask yourself if it *significantly* changes the situation, and (2) change the fact and ask yourself if it *significantly* changes the situation. If either alters the fact situation, it is probably a relevant fact.

Explanatory Facts: Explanatory facts clarify the relevant facts. They enable the researcher to grasp the entire picture of the events by supplementing and explaining the relevant facts. They often provide color or depth of understanding to the situation.

Legally Unimportant Facts: Put aside legally unimportant facts during legal research. They play no real role in the legal situation. They do not belong in your written analysis of the case. There are several ways to identify them: (1) remove the fact and ask yourself if it significantly changes the situation, and (2) change the fact and ask yourself if it significantly changes the situation. If the answer to either question is “no, it does not alter the fact situation,” the fact is probably legally unimportant.

2-3 SORT THE FACTS OF A CLIENT'S CASE

Categorizing your client's facts helps you focus your research. Remember from Chapter 1 that when you research you look for primary law (case law, statutory law, and constitutional law). Because of the rule of *stare decisis*, relevant case law includes cases where the courts have decided the same or similar factual questions. Relevant statutory law includes laws or rules applicable to your factual situation. In any event, identification of the relevant facts in your client's case is essential.

A Point to Remember

The relevant and explanatory facts are the focal points for the researcher. The key here is to recognize and put aside the legally unimportant facts. Sorting the facts enables you to zoom in on the relevant facts and highlight missing facts.

The ultimate sorting of the facts is best left to those trained in the law. Clients are often ill equipped to categorize facts. What is important to a client may be legally irrelevant. However, always let the client tell the entire story. Do not encourage a client to edit the facts. Sometimes facts that appear unimportant initially take on special significance as the litigation or the case moves forward.

2-4 COMPARE CASE LAW FACTS WITH YOUR CLIENT'S FACTS

If your research is focused on case law, you must compare your client's factual situation with those found in published cases. Before determining that specific cases apply to your client's situation, you must determine that the nature of the dispute or the issue is similar. The researcher looks for factually and legally similar cases to compare with the client's case. Identifying issues is addressed later in this chapter.

A process of comparison of relevant facts is a good starting place in the legal analysis process. Factual comparison usually takes place after the researcher clarifies the client facts and locates case law that may be applicable to the client's legal situation. The effective legal researcher works to locate *case law* that is as factually similar to the client facts as possible. Because our legal system is based on *precedent*, the sorting and comparison of facts are essential *legal analysis* skills.

case law

A collection of reported cases.

precedent

The example set by the decision of an earlier court for similar cases or similar legal questions that arise in later cases.

legal analysis

The process of comparing and contrasting facts and legal issues.

SORTING THE FACTS

Consider the following factual situation.

Rimma was traveling at 40 miles per hour (mph) on a city street when Emerson, moving at 65 mph, ran into the back of Rimma's vehicle. Emerson's vehicle was a new black Jeep Cherokee. Rimma was driving a four-year-old green Volvo. Emerson did not notice that traffic was slowing and that Rimma's brake lights were on. Emerson was talking on a cell phone, and he was in a hurry to get to his office. He was returning from an appointment with his physician. Emerson took a strong sedative about 30 minutes prior to the accident. He has been under a great deal of stress recently. There was serious damage to Rimma's car. She was injured. Because of the accident, Rimma could not get to her job that evening, due to lack of transportation. Rimma is a 22-year-old exotic dancer. She had a contract for a special engagement that evening, which would have paid her \$1,000.00. Emerson is an automobile salesperson. Your office represents Rimma in an action against Emerson.

It is not always clear in which category a particular fact belongs. What is most important is that you begin to sort them. You are not discarding them, only sorting them. As research continues, the researcher may move the facts from one category to another.

Sort the facts discussed here into the following three categories.

Relevant Facts

1. Emerson was driving under the influence of a narcotic.
2. Emerson was exceeding a safe driving speed under the conditions.
3. Emerson's vehicle struck Rimma's vehicle.
4. Rimma's vehicle was damaged because of Emerson's actions.
5. Rimma lost wages because of Emerson's actions.

Explanatory Facts

1. Emerson was hurrying while returning to his office.
2. Emerson was talking on his cellular phone.
3. Emerson was returning from a visit to his physician.
4. Emerson was traveling at 65 mph while Rimma slowed to 40 mph.
5. Emerson did not notice that traffic was slowing down and did not see Rimma's brake lights.

Legally Unimportant Facts (remember these facts will not be used, but they should be identified)

1. Rimma is an exotic dancer.
2. Emerson is a car salesperson.
3. Rimma's car is a green Volvo.
4. Emerson's car is a new black Jeep Cherokee.

The fact category for any given fact may change if the fact pattern is changed. For example: Does the fact pattern change if Emerson's car was malfunctioning and the accelerator was stuck? Does the fact pattern change if Rimma was traveling at 40 mph in a 65 mph zone and was legally intoxicated? Obviously, the answer to both questions is "of course that changes the situation." You can see that changes in the facts may change the overall factual analysis of the case.

Factual comparison at first may seem confusing and somewhat arbitrary. However, once you establish a process, the confusion dissolves. When you compare the client's facts with those of a reported case, look for the following:

- Factual similarities
- Factual unknowns
- Factual differences

	Client's Case	Published Case
Factual Similarities:		
Factual Unknowns:		
Factual Differences:		

This chart enables you to easily compare and contrast the facts of your client's case with those of a reported case. A good number of similarities of relevant facts indicate that the case *may* apply in your client's situation. Conversely, a good number of differences in the relevant facts indicate that the case *may not* apply. When there are significant gaps or unknown facts, the reported case probably does not apply to your client's case. As a legal researcher, you are looking for cases that are factually and legally very similar to the one you are researching.

2-5 LEGAL ISSUES

Once the client's factual situation is clear, you can consider what the issues may be. Ask yourself the following question as you begin each legal research assignment: Do I understand the client's problems? If the answer is yes, you are ready

to attempt to identify the issues or problems presented by the client's facts. If you are unclear on the legal issues, ask your supervisor for guidance.

Legal issues are specific questions raised by the facts. Think of it this way: An incident occurs, and now you need to give the factual situation a legal label. Properly identifying these “legal labels” helps you locate relevant law. After careful review of a fact pattern, the legal researcher must begin to identify the area of law involved. Once this is known (e.g., contract law, tort law, or family law), identification of the issues must occur. Review the factual situation in the case of *Rimma v. Emerson* described earlier in this chapter. This case involves the general area of tort law. The issue is therefore related to tort law. In very general terms, a question raised by these facts is “Did Emerson commit a tort?” This question or issue is much too broad and will not help in your research. Specific identification of the issue and the relevant facts is essential. A specific area of law involved here is negligence, a part of tort law. However, asking “Was Emerson negligent?” is also too broad. The issue must be stated specifically in relationship to the facts of the case. A better way to state the issue might be “Was Emerson negligent when he drove his car on a city street at 65 mph while he was under the influence of drugs, and rear-ended a vehicle driven by Rimma, damaging the car and injuring Rimma?” This is a more complete issue statement. To ask simply “Was Emerson negligent?” is not enough; the facts are missing.

Another way to think of issues is that they are the questions the parties to a lawsuit bring to the court for resolution. The court resolves the legal issues. Sometimes issues are called **questions presented**—meaning the questions presented to the court for resolution.

questions presented

A statement of the legal issue presented to the court for resolution.

2-6 IDENTIFY THE LEGAL ISSUES

Issues in Your Client's Case

pleadings

The formal, written allegations filed with the court by both sides to a lawsuit; claims and defenses are clearly set out so that both parties are placed on notice of the position of the opposing party.

causes of action

The basis upon which a lawsuit may be brought to the court.

affirmative defenses

Defenses raised by the defendant in the answer; reasons why the plaintiff should not recover even if all of the allegations of the complaint are true.

Once **pleadings** are filed in a case, go to the pleadings and read about the causes of action involved to help establish the issues. **Causes of action** or **affirmative defenses** in pleadings contain the issues. For example, if you read the complaint filed by Rimma against Emerson, you would probably find a cause of action labeled “negligence.” When you read this cause of action, you see that Rimma claims (1) that Emerson was driving his car on a public road, (2) that he drove negligently in that he was under the influence of drugs and was not paying attention to traffic, (3) that he rear-ended the vehicle driven by Rimma, and (4) that he caused damage to the car and injury to Rimma. In this type of civil lawsuit, one of the questions the court must decide is whether Emerson was negligent, if Rimma's claims are true. Let us look at this issue statement again: “Was Emerson negligent when he drove his car on a city street at 65 mph while he was under the influence of drugs, and rear-ended a vehicle driven by Rimma, damaging the car and injuring Rimma?” Note how the claims or allegations in a cause of action relate to the way a proper issue statement is phrased. Of course, not all legal issues relate to the existence of a cause of action. Sometimes procedural problems or questions of the admissibility of evidence may also be a legal issue in a case. If you are in doubt about the specific legal issue you are researching, always ask your supervisor for initial guidance. As with your analysis of relevant facts, your specific legal questions may change as you do more research and find out more about the relevant law.

Issues in a Reported Case

Once you identify the issues in your client's case, you must look for case law dealing with the same issue and similar fact pattern. In reported cases, the court explains the legal issues. Usually, the issues are stated after the court explains the factual background of the case and the **judicial history** of the case. The court in some instances actually states "The first issue is ..." or "The question before this court involves..." This is the clearest indication of the issue. Many cases involve more than one issue. The court usually indicates when it is moving from one issue to the next. The excerpt from the *Kyllo* case that follows provides a typical example of the way in which a court introduces issues.

In some cases, the Court makes it very easy to locate the issue. For example: "In this case, we consider whether the Fourth Amendment permits the seizure of contraband detected through a police officer's sense of touch during a protective patdown search." This is the first sentence written by the Court in *Minnesota v. Dickerson*, 508 U.S. 366 (1993). It precedes the facts and the judicial history. This is a good example of Justice White letting the reader know exactly what question the Court would answer. In *Bush v. Gore*, 531 U.S. 98 (2000) the opinion opens with: "The petition presents the following questions: whether the Florida Supreme Court established new standards for resolving Presidential election contests, thereby violating Art. II, § 1, cl. 2 of the United States Constitution and failing to comply with 3 U.S.C. § 5, and whether the use of standardless manual recounts violates the Equal Protection and Due Process Clauses." This is an example of an issue statement that contains several questions.

judicial history

The legal (courtroom) history of a case.

A Point to Remember

Case law instructs and guides the legal community. It is written not so much for the parties involved in the litigation as for those who will read it in search of case law relevant to their client's situation. The parties to the litigation are primarily concerned with the outcome of the case. The legal researcher is concerned with the legal reasoning or legal analysis provided by the court.



The Writer's Corner

An Issue Includes the Legal Question and the Key Facts

It can be tempting to state an issue as "Did the defendant commit robbery?"

This might be a good starting place in your research and analysis; however, you need more when you write an issue in a memorandum—predictive or persuasive.

Imagine saying to your supervisor: "The question is whether the defendant committed robbery." Your supervisor will simply look at you with a blank stare. This statement does not provide a basis for analysis of the question. It is fine as the starting place in your research and analysis. It is inadequate once it is placed into writing.

Your research will lead you to the following definition. The elements of robbery are:

1. the felonious taking
2. of the personal property of another

3. from their person or immediate presence
4. against their will
5. accomplished by means of force or fear.

Combination of these elements with the facts of a case might produce the following issue:

"Did the defendant commit robbery when he pushed the victim to the ground and grabbed her purse from her hand, while she was kicking at him and yelling for help?"

This is something the supervisor will understand. This question weaves the legal issue—robbery—with the key facts of the case.

Issues have two elements—legal and factual.

2-7 WRITING ISSUE STATEMENTS

An issue statement sets forth the legal question, and it provides the reader with the most significant facts. State the issue as a question. Remember, it is the question presented to the court for resolution.

For example, John is the second baseman of the Hidden Valley Ranger softball team. He is its best hitter. After striking out, he carelessly tosses the wooden bat 16 feet behind him, hitting and injuring Rachael, a 10-year-old spectator. The Rangers lost the final game of the season due to John's striking out.

Your initial research tells you that a cause of action for negligence has four **elements**: (1) a duty on the part of the defendant to act in a safe manner, (2) breach of the duty to behave in a safe manner, (3) causation (of the injury or damage), and (4) damage to the plaintiff. On a very basic level, the question in the fact pattern above is this: "Was John negligent?" However, this question does not provide the reader with enough information. A better, more specific issue statement is this: "Was John negligent when he carelessly tossed a wooden baseball bat into the crowd injuring a spectator standing 16 feet away?" This question or issue statement provides the reader with a clear picture of what happened. By placing the most relevant facts into the issue, the reader may easily look at the four elements of negligence and decide whether the plaintiff makes a **prima facie case** for negligence.

Read the excerpt from the *Kyllo* case, looking for facts and issues.

elements

The components of a cause of action or of a statute.

prima facie case

On first view or on its face; for example, the plaintiff presented a strong *prima facie* case for establishing the negligence of the defendant.

CASE EXCERPT *Kyllo v. United States*, 533 U.S. 27 (2001)



Justice Scalia delivered the opinion of the Court.

This case presents the question whether the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home constitutes a "search" within the meaning of the Fourth Amendment.

I

In 1991 Agent William Elliott of the United States Department of the Interior came to suspect that marijuana was being grown in the home belonging to petitioner Danny Kyllo, part of a triplex on Rhododendron Drive in Florence, Oregon. Indoor marijuana growth typically requires high-intensity lamps. In order to determine whether an amount of heat was emanating from petitioner's home

consistent with the use of such lamps, at 3:20 a.m. on January 16, 1992, Agent Elliott and Dan Haas used an AgemaThermovision 210 thermal imager to scan the triplex. Thermal imagers detect infrared radiation, which virtually all objects emit but which is not visible to the naked eye. The imager converts radiation into images based on relative warmth—black is cool, white is hot, shades of gray connote relative differences; in that respect, it operates somewhat like a video camera showing heat images. The scan of Kyllo's home took only a few minutes and was performed from the passenger seat of Agent Elliott's vehicle across the street from the front of the house and also from the street in back of the house. The scan showed that the roof over the garage and a side wall of petitioner's home were relatively hot compared to the rest of the home and substantially

warmer than neighboring homes in the triplex. Agent Elliott concluded that petitioner was using halide lights to grow marijuana in his house, which indeed he was. Based on tips from informants, utility bills, and the thermal imaging, a Federal Magistrate Judge issued a warrant authorizing a search of petitioner's home, and the agents found an indoor growing operation involving more than 100 plants. Petitioner was indicted on one count of manufacturing marijuana, in violation of 21 U.S.C. § 841(a)(1). He unsuccessfully moved to suppress the evidence seized from his home and then entered a conditional guilty plea.

The Court of Appeals for the Ninth Circuit remanded the case for an evidentiary hearing regarding the intrusiveness of thermal imaging. On remand the District Court found that the Agema 210 "is a non-intrusive device which emits no rays or beams and shows a crude visual image of the heat being radiated from the outside of the house"; it "did not show any people or activity within the walls of the structure"; "[t]he device used cannot penetrate walls or windows to reveal conversations or human activities"; and "[n]o intimate details of the home were observed." Supp. App. to Pet. for Cert. 39-40. Based on these findings, the District Court upheld the validity of the warrant that relied in part upon the thermal imaging, and reaffirmed its denial of the motion to suppress. A divided Court of Appeals initially reversed, 140 F. 3d 1249 (1998), but that opinion was withdrawn and the panel (after a change in composition) affirmed, 190 F. 3d 1041 (1999), with Judge Noonan dissenting. The court held that petitioner had shown no subjective expectation of privacy because he had made no attempt to conceal the heat escaping from his home, *id.*, at 1046, and even if

he had, there was no objectively reasonable expectation of privacy because the imager "did not expose any intimate details of Kyllo's life," only "amorphous 'hot spots' on the roof and exterior wall," *id.*, at 1047. We granted certiorari. 530 U.S. 1305 (2000).

II

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." "At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no. *See Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *Payton v. New York*, 445 U.S. 573, 586 (1980).

On the other hand, the antecedent question of whether or not a Fourth Amendment "search" has occurred is not so simple under our precedent. The permissibility of ordinary visual surveillance of a home used to be clear because, well into the 20th century, our Fourth Amendment jurisprudence was tied to common-law trespass. *See, e.g., Goldman v. United States*, 316 U.S. 129, 134-136 (1942); *Olmstead v. United States*, 277 U.S. 438, 464-466 (1928). Cf. *Silverman v. United States*, *supra*, at 510-512 (technical trespass not necessary for Fourth Amendment violation; it suffices if there is "actual intrusion into a constitutionally protected area"). Visual surveillance was unquestionably lawful because " 'the eye cannot by the laws of England be guilty of a trespass.' " *Boyd v. United States*,

116 U.S. 616, 628 (1886) (quoting *Entick v. Carrington*, 19 How. St. Tr. 1029, 95 Eng. Rep. 807 (K. B. 1765)). We have since decoupled violation of a person's Fourth Amendment rights from trespassory violation of his property, see *Rakas v. Illinois*, 439 U.S. 128, 143 (1978), but the lawfulness of warrantless visual surveillance of a home has still been preserved. As we observed in *California v. Ciraolo*, 476 U.S. 207, 213 (1986), "[t]he Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares."

One might think that the new validating rationale would be that examining the portion of a house that is in plain public view, while it is a "search" despite the absence of trespass, is not an "unreasonable" one under the Fourth Amendment. See *Minnesota v. Carter*, 525 U.S. 83, 104 (1998) (*Breyer, J.*, concurring in judgment). But in fact we have held that visual observation is no "search" at all—perhaps in order to preserve somewhat more intact our doctrine that warrantless searches are presumptively unconstitutional. See *Dow Chemical Co. v. United States*, 476 U.S. 227, 234–235, 239 (1986). In assessing when a search is not a search, we have applied somewhat in reverse the principle first enunciated in *Katz v. United States*, 389 U.S. 347 (1967). *Katz* involved eavesdropping by means of an electronic listening device placed on the outside of a telephone booth—a location not within the catalog ("persons, houses, papers, and effects") that the Fourth Amendment protects against unreasonable searches. We held that the Fourth Amendment nonetheless protected *Katz* from the

warrantless eavesdropping because he "justifiably relied" upon the privacy of the telephone booth. *Id.*, at 353. As Justice Harlan's oft-quoted concurrence described it, a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable. See *id.*, at 361. We have subsequently applied this principle to hold that a Fourth Amendment search does *not* occur—even when the explicitly protected location of a *house* is concerned—unless "the individual manifested a subjective expectation of privacy in the object of the challenged search," and "society [is] willing to recognize that expectation as reasonable." *Ciraolo*, *supra*, at 211. We have applied this test in holding that it is not a search for the police to use a pen register at the phone company to determine what numbers were dialed in a private home, *Smith v. Maryland*, 442 U.S. 735, 743–744 (1979), and we have applied the test on two different occasions in holding that aerial surveillance of private homes and surrounding areas does not constitute a search, *Ciraolo*, *supra*; *Florida v. Riley*, 488 U.S. 445 (1989).

The present case involves officers on a public street engaged in more than naked-eye surveillance of a home. We have previously reserved judgment as to how much technological enhancement of ordinary perception from such a vantage point, if any, is too much. While we upheld enhanced aerial photography of an industrial complex in *Dow Chemical*, we noted that we found "it important that this is *not* an area immediately adjacent to a private home, where privacy expectations are most heightened," 476 U.S., at 237, n. 4 (emphasis in original).

2-8 SAMPLE CASE FILE

Figure 2-1 contains the instructions your teacher might provide with the sample case file shown in Figure 2-2. A case file contains the documents pertaining to a case. Each client has a case file. As a case moves forward, the file grows. Sometimes a client's case may require many physical files to organize and preserve all of the documents generated by the legal matter. The sample in Figure 2-2 shows the portion of the file that contains the documents relevant to a research project. Figure 2-2 also includes a memo from the assigning attorney and relevant documents.

You may come back to this research case file in the weeks ahead, when you are ready to create a research strategy and begin the research on this case file. You will notice that the dates are shown as 20XX; this allows your teacher to provide current dates for the case file.

CASE FILE

INSTRUCTIONS FOR BAYLOR OFFICE MEMORANDUM

For this assignment, you are to write a memorandum. This time, however, you are also doing the research for the memo. You will conduct your initial research using print resources. Once you find appropriate primary sources, you can download and/or read them online. Although we live in a technological world, attorneys still use print sources for research. Practice in this is essential to developing the skills you will need as an attorney. You must also “validate” any authority you use in your memo. (This means you must either “Shepardize” or Key Cite the authorities—this should be done online.)

Follow these instructions with the documents contained in your file. You have all you need to research, and now write the office memorandum for this project.

The memorandum will contain the following sections, unless your instructor assigns another format:

- Statement of Facts
- Questions Presented (Issues)
- Argument
 - Using a thesis paragraph
 - Using topic sentences
 - Using appropriate point headings
- Conclusion

The educational goals of this assignment are:

1. To gain or improve the following skills:
 - Skill in research (federal sources)
 - Skill in validating sources
 - Skill in legal citation
 - Skill in organizing a multi-issue memorandum
 - Skill in synthesizing and explaining clearly a complex series of rules
 - Skill in analogical reasoning (contrasting favorably and distinguishing)
 - Skill in converting predictive writing to persuasive writing
2. To gain additional practice in the following skills, which you used in prior assignments:
 - Skill in identifying legal issues arising in a client's case
 - Skill in combining rules from statutes with rules from cases when writing a rule explanation

FIGURE 2-1 Case File

FIGURE 2-1 (continued)

- Skill in anticipating and responding to opposing arguments
- Skill in outlining the elements of legal rules
- Skill in thinking and writing in the classic IRAC paradigm: issue, rules, application, and conclusion
- Skill in drafting issue statements
- Skill in applying legal rules to the facts of a given case
- Skills in writing thesis paragraphs
- Skills in writing and using topic sentences and thesis statements in the context of a legal office memo

FIGURE 2-2 Memo to Research Associate

Memo to Research Associate

FROM: Assistant U.S. Attorney

TO: Research Associate

DATE: January 23, 20XX

RE: Potential Criminal Complaint (*United States v. Baylor*)

We recently received a file from the F.B.I. involving the commission of a credit card/access card fraud and need you to research some questions and prepare a memo. Very briefly, the case involves a young man who used ATM and credit cards belonging to his deceased mother. Unfortunately, this individual appears to have fled the country and prosecution against him at this time is unlikely. However, the investigation into this matter shows that the young man's girlfriend (Melyssa Baylor) willingly accepted and kept property acquired with the credit card and assisted her boyfriend in evading arrest. We will not file charges for receiving stolen property because we cannot establish that she knew the ring was stolen when she first accepted it. However, I would like to file charges against her for being an accessory after the fact. I am attaching a copy of an application for a search warrant in which the investigating F.B.I. agent details the facts of this case and his justification for searching the Baylor residence. Also attached is a copy of the search warrant and the return of the warrant. The return of the warrant lists the items found during the search of the Baylor residence.

Please review these documents and review the federal statutes dealing with accessory after the fact and credit card fraud. Do some preliminary research regarding our charging Ms. Baylor with being an accessory after the fact. There should be ample case law related to this issue, but it would be a good idea to get an overview of this offense by checking some sources such as Am. Jur. or A.L.R. (The federal jury instructions might also provide some help.) There may be many issues in this case. We will need to prove the elements of this offense as listed in the code. One of those elements requires that we prove that the underlying felony also occurred. At this point, please concentrate on the following questions:

1. Can we meet the requirement of the accessory statute requiring that the accused had knowledge that someone committed a federal offense?
2. Does it matter that we cannot find Baylor's boyfriend to arrest and prosecute him for the underlying felony?
3. Can we support the element of the underlying felony requiring that the property obtained by fraud be valued at \$1,000 or more?

I scheduled a tentative meeting time early next week for us to discuss your preliminary findings. Until then, limit your research to the above questions. If you identify any other potential problems make a note of them, but do not spend time researching them. When we meet next week, we will discuss the issues.