

PART I

GENERAL ISSUES IN
FORENSIC RESEARCH

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CHAPTER 1

Legal Research Techniques for Social Scientists

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INTRODUCTION

The range of legal topics into which psychology can offer insight is enormous. Similarly, psychologists can occupy a variety of roles as they contribute to the analysis of these legal questions. However, whether a psychologist is conducting research, working as a practitioner, or serving as an expert, a detailed knowledge of the substantive law, the operation of the legal system and its processes, and the content of legal policy debates is critical. Indeed, knowledge of the law has been identified as one of the core competencies of psycholegal scholars, with basic competence including knowledge of “the basic tools of law (e.g., legal processes, evidence), sources of law (e.g., common law, statutory law, constitutional law, administrative law), and the core substance of law itself (e.g., civil, criminal)” (Bersoff et al., 1997, p. 1305).

Skill in performing legal research is central to gaining this requisite legal knowledge. As Grisso and his colleagues (1982) have argued, proficiency with legal research is of particular importance for those

who will be performing psychological research on legal issues, since the relevance of their research will often depend on the care with which their studies are grounded conceptually in matters of law and legal precedent. Similarly, it is unlikely that professionals will stay abreast of the law that controls their practice unless they know where to “find” the law, how to interpret it, and how to keep abreast of any amendments to it. (p. 272)

To help legal psychologists attain this necessary competence with the law and legal materials, this chapter provides an introduction to the sources of law and the processes of legal research. Before probing the particulars of the

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structure of the law and how to do legal research, we describe in more detail the importance of legal research for legal psychologists.

KNOWLEDGE OF THE LAW

Across legal issues, areas of psychology, and professional roles, a working knowledge of the law that is relevant to one's area of research or practice is indispensable.

While it may not be essential for every legal psychologist to have extensive training in law, it is important that psychologists who work in the legal psychology area have an in-depth understanding of the law that pertains to their own areas of work.

(Ogloff, 2001, p. 11)

Without such an understanding of the relevant law, legal psychologists cannot be effective. In order to acquire this meaningful understanding of the law, researchers, practitioners, and experts all need to be able to conduct legal research. Effective legal research enables psychologists to design research programs that will be relevant to law and legal decision making, to frame and disseminate the results of psycholegal research in ways that will have meaning for legal actors, to identify broader questions that are of interest to the law and into which psychology can offer important insights, and to comply with ethical guidelines that call for an understanding of the law related to the relevant research or practice area.

DESIGNING RESEARCH WITH RELEVANCE TO LAW

A primary reason why psychologists working on legal topics must be familiar with the sources of law and how to do legal research is that it is difficult to design research that will be of relevance to legal doctrine, legal process, or policy debates in law without a grounding in the relevant law and practice. In order to design sophisticated research that addresses important legal questions in ways that are attuned to nuances in the law, researchers need to be aware of the relevant law and how it operates.

Wiener and his colleagues (2002) reviewed the research submitted to and published in *Law and Human Behavior* and found that the most common independent variable was the manipulation of a legal rule—with many studies examining the effect of a particular legal rule on judgments and decisions—and that almost all the studies published included some legal measure as a dependent variable. To design such studies well, it is important to know the relevant legal rules, their nuances and exceptions, and how they are applied. Similarly, it is important to know the legal meanings of the pertinent legal constructs. For example, without a working knowledge of how line-ups are conducted and of the legal rules governing them, it is difficult to

design a study of eyewitness identification that will have relevance to such procedures. Indeed, it has been by careful attention to such details that research on eyewitness identifications has had an impact on the legal system (Wells et al., 2000).

Unfortunately, legal psychologists have not always operated with a highly developed sense of the law—either its substance or the relevant procedure (Ogloff, 2001; Weiten & Diamond, 1979). To the extent that the measures that are created or the research procedures that are employed diverge from their legal counterparts, the research may be difficult to apply to the legal context. Research that employs measures and procedures that differ from the corresponding legal constructs and procedures should not be dismissed out of hand, nor, however, should such research be accepted uncritically. Instead, a more careful analysis is required. The key to this analysis is to examine whether the departure from the particular legal constructs or context at issue is a departure that has important implications for the interpretation and application of the research results.

Of particular concern would be instances in which the departure is likely to lead to different patterns of effects (see Robbennolt, 2002). For example, if an impoverished measure of a legal construct is likely to lead to a different set of results than a measure that is more legally informed—such as finding an effect when the impoverished measure is used, but not when the legally informed measure is used, or vice versa, or obtaining effects that point in opposite directions when using the two measures—application of the results obtained using the impoverished measure in the legal context cannot be done with a great deal of confidence. Similarly, naïve mistakes about the law—for example, conflating measures of guilt on the one hand and sentencing on the other (Weiten & Diamond, 1979) or misunderstandings of the factors that are relevant to a particular legal decision task—present problems for application of the research to the legal context.

On the other hand, there may be some departures that are less troubling. For example, imagine a set of studies that produce a pattern of results suggesting that people have trouble understanding jury instructions (see Ogloff & Rose, 2005, for a review). Imagine further that these studies used college students—who are collectively more highly educated than the typical jury pool—as study participants. One might have a relatively high level of confidence in concluding that jurors have difficulty understanding such instructions, because one would predict that actual jurors would demonstrate even lower levels of comprehension. Indeed, studies that have examined this issue have found that jury-eligible participants evidence even lower levels of jury instruction comprehension than do college student participants (Lynch & Haney, 2000).

As a practical matter, it is worth noting that deviations from the strictures of the substantive law or the practice setting—whether or not the particular deviation is likely to have significant implications for the interpretation and application of the results to the legal context—may have implications for how legal actors respond to the research findings. While decision makers ought to

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be most concerned with the external validity or generalizability of psychological research, they may instead focus on departures from the law as a proxy for external validity or as a convenient way in which to reject the research. Indeed, a representativeness heuristic may operate such that decision makers discount the usefulness of research that does not fully replicate the law or legal context (Kovera, McAuliff, & Herbert, 1999). Using the representativeness heuristic, decision makers make categorizations based on the degree to which the object of the evaluation is representative of the category to the neglect of other relevant considerations (Kahneman & Tversky, 1971). Accordingly, courts and other legal actors may dismiss research that, for example, does not use measures that are completely in accord with the legal constructs, that is not sensitive to exceptions to a rule, or that does not incorporate particular aspects of the relevant procedure.¹ While such an automatic rejection of otherwise useful research is problematic (Robbennolt, 2002), psychologists can address such tendencies by designing research that attends to the law and by critically justifying any deviations.

Of course, none of this analysis is possible if the ways in which the variables, measures, and context depart from the law and the legal context are not identified, and the relevant departures are unlikely to be recognized unless the researcher has become familiar with the relevant law.

FRAMING AND DISSEMINATING RESULTS

A second and related reason that psychologists ought to become skilled at finding and understanding the law is that familiarity with the law and legal considerations will help psychologists to present research results in ways that speak to lawyers and other legal actors (Bersoff et al., 1997). At a basic level, this follows from the previous argument—the results of psychological research will find more credibility among those in the legal system when they address questions of relevance to law. As Ogloff (2002) has argued,

psychologists who attempt to have their findings make their way into the legal system must be willing to meet legal professionals on their own terms . . . this requires having psychologists frame their work in legal terms and to ensure that it is legally relevant and valid. (p. 27)

1. Such criticism can be on the basis of substantive law or procedure. In *Lockhart v. McCree* (1986), the U.S. Supreme Court rejected the body of work on the death qualification of jurors because the participants “were not actual jurors sworn under oath to apply the law to the facts of an actual case involving the fate of an actual capital defendant.” Courts have rejected empirical studies of the comprehensibility of capital phase jury instructions on similar grounds (see, e.g., *State v. Deck*, 1999). Similarly, legal scholars have debated whether particular legal constructs have been operationalized in ways that sufficiently capture the underlying legal construct. For a recent debate in the context of the Fourth Amendment, see Kahan, Hoffman, and Braman (2009) and comments at <http://volokh.com/posts/1199994070.shtml> and http://www.concurringopinions.com/archives/2008/01/whose_eyes_in_s.html.

Beyond issues of research design, the choice of research questions, or the structure of particular measures, however, psychologists working on legal topics ought to be able to write or testify about their findings or the findings of others in ways that demonstrate some degree of sophistication with the relevant legal constructs. Researchers, practitioners, or expert witnesses who can explain how the psychological research fits into the substance of the law or has relevance for legal procedure, and who are sensitive to the relevant nuances in the law will likely be more successful in communicating with the relevant legal players. For example, to the extent that the substantive law varies across jurisdictions, a legally sophisticated psychologist will be aware of the variation, the policy judgments behind the different approaches, and the implications of such variation for the applicability of the research.

IDENTIFYING QUESTIONS OF INTEREST TO LAW

A third reason for psychologists working on legal topics to become more familiar with how to research the law is that a more sophisticated knowledge of the law can lead to the identification of a broader range of legal topics to which psychology and psychological research can make interesting contributions (Ogloff, 2002).

Many commentators have noted that psychologists have not conducted research about the full range of topics afforded by the law (Melton, Monahan, & Saks, 1987; Ogloff, 2002; Rachlinski, 2000; Saks, 1986; Wiener et al., 2002). While a great deal of excellent research has examined issues related to jury decision making, eyewitness testimony, and psychological assessment (Wiener et al., 2002), far less attention has been paid to how psychology might contribute to analyses of tax policy, contracts, property law, torts, estates and trusts, corporate and commercial law, health policy, civil procedure, elder law, labor law, environmental law, and many other legal topics. Similarly, while the focus of psychologists has been primarily, though not exclusively, on the behavior of jurors, witnesses, and criminals, the decisions of many other legal actors (e.g., judges, attorneys, litigants, corporate actors, physicians, and consumers) also present a host of interesting questions about law and human behavior. Although some first-rate research has started to address this broader range of topics and actors, this research has only begun to scratch the surface.

Relatedly, skill in finding the law can lead both to ideas for new research projects and to unique sets of materials for use in such studies. Enterprising researchers did just this in response to the U.S. Supreme Court's recent decision in *Scott v. Harris* (2007), a case that involved the assessment of whether a police officer used excessive force when he rammed his vehicle into the car of a fleeing suspect with whom he was engaged in a high-speed chase. In conjunction with its opinion, the Court posted a copy of the video footage from one of the police cruisers involved in the chase. Researchers who were attendant to such legal developments were able to capitalize on the availability of such evidence for use in constructing stimulus materials (Kahan, Hoffman, & Braman, 2009).

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As noted, however, legal psychologists have not always engaged fully with a broad range of legal issues, actors, and materials. As Michael Saks (1986) put it,

My warning is that our usefulness, both as scholars of the behavioral aspects of law and as applied researchers producing knowledge that can enlighten policy and practice, will be limited by the range of topics and issues we address. To be a field that studies law and human behavior is a grand and noble enterprise. To be the field that knows more than anyone would ever want to ask about a narrow assortment of issues is, to put it mildly, less grand. (p. 279)

In order to identify a broad range of promising areas for research, legal psychologists need to find and engage with an increasingly wide ranging set of legal resources. Without the ability to delve deeply into the law, contribution to an extensive range of legal topics will continue to be elusive.

ETHICS

A final reason for psychologists to become familiar with the law related to their area of research or practice is that it is ethically appropriate to do so. As a general matter, the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct provides that "psychologists provide services, teach, and conduct research only within the boundaries of their competence" (Standard 1.04 Boundaries of Competence).

With regard to psychologists working on legal issues more specifically, the 1991 Specialty Guidelines for Forensic Psychologists provide that "forensic psychologists have an obligation to maintain current knowledge of scientific, professional, and *legal* developments within their area of claimed competence" (Guideline VI.A; Committee on Ethical Guidelines for Forensic Psychologists, 1991). More recently, the Third Proposed Draft of the Revised Specialty Guidelines for Forensic Psychology (§ 4.04; Committee on the Revision of the Specialty Guidelines for Forensic Psychology, 2008) provides that

[f]orensic practitioners are responsible for a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, rules, and precedents that govern their participation in legal proceedings and that guide the impact of their services on service recipients.

Having a fundamental knowledge of the relevant law is aided by an ability to find and understand the applicable legal rules.

FINDING AND UNDERSTANDING THE LAW

It is clear that it is important for legal psychologists to have an understanding of those aspects of the law that are relevant to their research or practice. However, the law can be elusive, difficult to locate, and resistant to clear or

concise answers. In addition to helping the researcher reach an answer to a question about the law, legal research can reveal the complexity of questions regarding substantive or procedural legal rules. Therefore, good legal research requires both mastery of basic skills and careful analysis of the results.

In the U.S. legal system, law is the written product of several different governmental bodies. Most law takes the form of statutes, court opinions, and agency regulations, which are issued by legislatures, courts, and executive agencies, respectively. All of these texts overlap and intersect with each other to produce what we know as law. Finding the law on any given issue may require using all these sources in conjunction with each other, reading and interpreting the texts along with secondary sources that provide analysis and commentary.

THE INTERCONNECTEDNESS OF LAW

Consider one example. The Americans with Disabilities Act (ADA), a statute passed by the U.S. Congress, includes the general provision that no covered employer “shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment” (§ 12112(a)). Under the ADA, “disability” is defined as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual” (§ 12012(2)(A)).

The Equal Employment Opportunity Commission, an administrative agency, was authorized (42 U.S.C.A. § 12116) to promulgate the regulations necessary to implement the ADA. These regulations contain more detailed provisions related to how the general prohibition against disability discrimination will be carried out and enforced. One of the regulations issued permits an employer to defend against a claim of discrimination under the ADA by arguing that the worker’s disability poses “a direct threat to the health or safety of the individual or others in the workplace” (29 C.F.R. § 1630.15(b)(2)). The regulations further provide that a “direct threat” is one that involves “a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” The determination of whether there was a significant risk of substantial harm is to be based on “(1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm” (29 C.F.R. § 1630.2(r)).

When specific disputes arise between employers and employees under these statutory and regulatory provisions, the courts are called on to interpret the provisions and apply them to the particular facts of the cases. In one case, for example, the plaintiff, who worked for a contractor at an oil refinery, had hepatitis C, a disease of the liver. The refinery’s doctors concluded that exposure to the chemicals at the refinery would aggravate the plaintiff’s liver

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condition, and the refinery asked that he be reassigned to a job in which he would not be exposed or that he be removed from the refinery. The plaintiff was subsequently laid off. In considering the plaintiff's claim against the refinery, the courts had to determine (among other things) whether or not the plaintiff's medical condition posed a "direct threat" to his own health given the conditions in the workplace (*Chevron U.S.A., Inc. v. Echazabal*, 2002). The precise details of the worker's medical condition and the particular toxins at issue in the case were not specifically contemplated by the legislature when the statute was enacted or by the regulatory agency when the regulations were promulgated; therefore, the courts were needed to determine the outcome of this specific case under the relevant provisions.

Note that to have a nuanced sense of the operation of the ADA, one would need to become familiar with the general provisions of the statute, the details of the administrative regulations, and the relevant case law. This familiarity would need to extend well beyond the individual provisions and cases described here. In addition, a range of secondary sources can provide additional insight into the policies underlying the rules, how the rules have been applied, proposed alternatives, and so on. Of course, not all legal questions will directly implicate all of the sources described here. For example, some areas of law are predominantly characterized by case law and involve little statutory regulation. In any case, the relevant legal question should be investigated thoroughly to determine the range of applicable law.

JURISDICTION, STARE DECISIS, AND TYPES OF AUTHORITY

While the mechanics of finding the law are relatively straightforward, the process of legal research requires making decisions about the scope and direction of the search and analyzing the results. This decision making and analysis continue to drive the research process until the search is concluded and requires an understanding of several important concepts: *jurisdiction*, *stare decisis*, and *authority*. Jurisdiction refers to the power of a governmental body such as a court to exercise its power. Some courts have jurisdiction over certain types of cases, such as bankruptcy filings or estate settlements; others have more general jurisdiction. Most governmental bodies also have a geographical boundary that defines and limits their power, and the term *jurisdiction* can be used to describe that boundary. For example, the Supreme Court of Michigan has jurisdiction over cases arising in the state of Michigan, and Michigan statutes apply in Michigan.

Another concept that is important in the United States and other common law systems is the doctrine of *stare decisis* ("to stand by things decided"), which binds courts to follow law that has been previously settled. The requirement of adherence to the authority of prior decisions, or *precedent*, ensures a certain measure of consistency in the interpretation of law. Practitioners and researchers can use judicial decisions, therefore, to understand how a court will be bound in the future. The decisions of courts and the legal

authority they represent are massive; when considered in conjunction with the law created by legislatures and agencies, the magnitude and complexity of the law becomes apparent.

The process of legal research involves examining a variety of texts to determine the legal rules governing a given issue. But not all texts have equal value in this process—some have more *authority* than others. A researcher must always pay close attention to the source of the text (e.g., a court, a legislative body, or a scholar) as well as to the hierarchical relationship between governmental bodies. When called upon to resolve a dispute between parties, a court is bound only to follow *primary authority*—texts that are the law, as opposed to commentary on or analysis of the law. While the commentary of a legal scholar is useful as a resource for finding relevant law, for understanding the shape of the current law, or for insight into how the law may change in the future, such commentary is not binding on a court. Primary authority consists of the statutes, cases, and administrative regulations that come from lawmaking bodies.

Not all primary authority is binding, or *mandatory* authority, however. Statutes in a particular jurisdiction are mandatory in that jurisdiction; the court must recognize and follow them. Similarly, cases from the highest court in a jurisdiction are binding on courts within that jurisdiction. But cases from a neighboring state, or from lower courts—even one in the same jurisdiction—are not mandatory. They may, however, be used as *persuasive* authority.

SOURCES OF LAW: STATUTES, COURT DECISIONS, AND REGULATIONS

The primary sources of law in the United States can be organized according to the three branches of government that produce them: legislative, judicial, and executive. Each of these governmental bodies creates a different type of law: legislation, case law, and regulations.

The legislative branch (e.g., the U.S. Congress in the federal system) creates statutes such as the Americans with Disabilities Act (ADA), or the Civil Rights Act. The legislative process is formal and forward-looking and requires participation by the members of the legislative bodies in the jurisdiction, as well as signature by the Executive.

The judicial branch interprets the law by hearing and resolving disputes between parties. Courts in the judicial branch issue opinions that become binding on future parties according to the doctrine of *stare decisis*.

The executive branch enforces the law, and the administrative agencies that report to the executive branch implement legislation by issuing regulations and managing legislative programs. For example, the Social Security Administration is charged with the responsibility of managing the Social Security program.

The 51 parallel systems of lawmaking in the United States (one federal system, and 50 state systems) all create law. The U.S. Constitution delegates specific powers to the federal government and outlines the creation of the relevant governmental bodies. Those powers not delegated to the federal

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government by the U.S. Constitution are left in the hands of each of the states. Each state's constitution provides for the organization of the three branches of the state's government.

While they operate relatively independently, state and federal law may both operate to affect a legal problem. For example, while federal legislation provides protections to disabled persons under the ADA, state law may impose additional responsibilities on employers. Consider any current societal issue, such as the psychiatric treatment of mentally ill prisoners or the regulation of schools; both state and federal law from all three branches of government will likely be at work in defining the relevant rights and responsibilities. It is the complex interaction of all of these sources of law-making that can make certain aspects of legal research challenging.

The examples throughout the rest of this chapter are drawn from the federal system, but note that the structure of lawmaking bodies is mirrored for the most part in each of the 50 state systems.

STATUTES

Statutes, also referred to as legislation, or simply "laws," are laws drafted by a legislative body, such as the U.S. Congress. Statutes such as the Americans with Disabilities Act or the USA Patriot Act set out the rights and responsibilities of individuals and the government in a particular area. Such statutes define such things as the type of conduct prohibited or the category of people who are affected, and may provide for remedies if the statute is violated.

Statutes passed by the U.S. Congress are published individually and then assembled into the current legislative *Code*, which contains the current law in force. Codes are organized by subject with related statutes clustered together. The broadest subject categories in the Code are called *Titles*, and each Title of the Code is numbered. Within each Title, statutes are organized by topical chapters and subchapters, facilitating efficient research.

Reading and Using Statute Citations Citations to statutes are generally given in the following form:

Health Insurance Portability and Accountability Act, 42 U.S.C. §1301 (2000).

Similar to the format of most legal publications, this citation provides the statute's name, the volume number and the name of the publication where it can be found, the specific page or section number referred to, and the date. Most legal publications follow a highly condensed citation format based on a style guide called *The Bluebook*,² using standard abbreviations for legal

2. *The Bluebook* is the citation manual for legal publications; it also contains a list of abbreviations for court reporters and law journals, as well as the titles of official and unofficial publications of statutes and cases in the federal and state systems.

publications. The first number in a citation to a statute refers to the numbered Title. Since each Title of the Code represents a particular subject area, the Title's number is meaningful—a reader familiar with health care law would recognize this citation as being in the public health part of the Code. The next part of the citation is an abbreviation for the U.S. Code (U.S.C.). This is the publication to look for in the library's catalog, or to ask the librarian for help finding. Next, the citation refers to a particular section within Title 42—i.e., section 1301. And finally, the date in parentheses refers to the date of the particular *edition or update* of the U.S. Code that was used—not the date the statute came into effect.

In addition to the Code, two additional forms of legislation can be important: *session laws* and *bills*. Both of these represent earlier versions of a statute. When the idea for a law is first introduced in Congress, it is known as a *bill*. The bill is considered and debated, and if it is successfully voted in both houses and is signed by the President of the United States, it becomes law. The first publication of this new law is in a form known as the *session laws*, representing the collected laws of the Congressional session, arranged in the order in which they were signed into law. If you wish to research the background of a statute and its enactment in more detail, several sources in the library can help you explore the statute's *legislative history*.

Legislative history refers to a broad category of materials that are produced during the legislative process. These include Committee Reports, the transcripts of Hearings, and debates in Congress. For laws passed before 1972, most of these documents will be available only in print in your library. For laws passed after 1972, however, the online source LexisNexis Congressional (also known as Congressional Universe) is useful. Begin your work in Congressional Universe with the Public Law Number of the statute, e.g., P.L. 104-191.

Finding Statutes The Code is issued by three publishers, and each version has a slightly different name: The *United States Code*, abbreviated U.S.C., is published by the Government Printing Office (GPO). It is the “official” version of the code and contains only the text of the statutes. It is updated slowly and is generally more than a year out of date.

The two dominant legal publishers, Thomson West and LexisNexis, each produce their own editions of the Code. West's edition is called the *United States Code Annotated* and is abbreviated U.S.C.A. The LexisNexis edition is called the *United States Code Service*, and is abbreviated U.S.C.S. Although the *United States Code* contains the official version of the federal statutes, these two private publications are better suited to research and are held in print by most law libraries. In addition, the U.S.C.S. is available online through LexisNexis Academic, also known as Academic Universe, which is available at most universities. While they do not alter the text of the Code itself, both of the commercial publishers add substantial editorial enhancements to their editions, adding reference materials and notes called *annotations* to aid researchers, such as citations to cases that have interpreted the statute.

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The commercial publishers also provide better and more detailed indexes for finding statutes, and they update their versions of the Code to reflect new legislation much more quickly than the GPO's official version.

Federal statutes are also available in several free, online forms. One of the oldest is Cornell University's Legal Information Institute, at <http://www.law.cornell.edu/uscode/>. It is compiled from the House of Representatives' official version and allows simple searching and browsing. The *United States Code* is also available on the House Web site at <http://uscode.house.gov>, as well as the West-owned Findlaw at <http://caselaw.lp.findlaw.com/cascode/uscodes/toc.html> (which is supported by advertising). None of these free online versions contain the same level of editorial enhancement found in the privately published editions of the Code, but they are helpful for beginning research in an area or simply to look for the text of a particular Code section.

To find a relevant statute, use an index for the print versions or search one of the online databases previously described. It is important to consider particular statutory provisions in their proper context, reading neighboring sections as well as the headings for the subchapter and chapter that the sections fall under. The sections of a statute may work in tandem, and the operation of a particular section may be influenced by surrounding provisions. In addition, the first section of a subchapter or chapter is often a "purpose statement" for the statute and may also include definitions of terms as they are to be used in that statute. To find out how the statute has been applied and interpreted, look for relevant cases in the annotations, or search for cases through other means (see the following text).

Updating Statutes The *United States Code* is a snapshot of the laws in force at a particular date. To understand the current law, it is important to consider any amendments to the statute passed after that date. While the online versions are updated more frequently than print, you should still check the revision date (generally found at the top of the page) to determine how current that version is, as the Code is not updated in real time with the passage of new laws.

To check for current legislation that might affect the statute, examine the current *session laws*. These are published by GPO in a set of books called the *Statutes at Large*, but they are also available online on LexisNexis Academic and on the free site Thomas <http://thomas.loc.gov>, a service of the Library of Congress.

To check for current legislation on Thomas, for instance, use the Public Laws section of the site and search within the most current group of laws. Note that Public Laws are numbered consecutively, using a format that includes both the number of the Congressional term and the number of laws passed thus far in the term. Thus, the citation P.L. 107-1 means that it was the first public law passed in the 107th Congress. Search for the citation to the statute as a phrase (e.g., "42 U.S.C. 1301") or search by keyword using words from the heading of the statute. Sort through the results to look for any laws that indicate that they will amend the statute.

Even when statutes are written carefully, the drafters can not anticipate precisely what their effects will be until they become law. The courts will then be called upon to help interpret the statute and resolve conflicts.

CASES

The legal authority of cases is unique to common law systems and is closely linked to the doctrine of *stare decisis*. In the majority of the world's legal systems, laws are written in legislative codes and judges merely interpret those codes to resolve the dispute in front of them. In the United States, England, and other common-law countries, the courts have a different role—their decisions are given legal weight, or *precedent*. The tradition of recording precedent over time has created a substantial body of recorded, judge-made law.

Cases generally begin with a trial, heard in the designated *trial court* for the jurisdiction. Appeals are taken to the appropriate *intermediate appellate court*. Final appeals, if granted, are taken to the *court of last resort*. State courts of last resort have the last word on matters of state law, but matters of federal or U.S. constitutional law may be appealed to the U.S. Supreme Court. The Court has discretion to choose which cases to hear, and a very small number of these petitions are granted each year.

Courts make decisions in actual disputes between parties, whether civil or criminal.³ The trial court is responsible for resolving both issues of fact (e.g., “Did the driver run a red light?”) and issues of law (e.g., “Did the driver’s actions meet the standards for vehicular manslaughter under the relevant state statute?”). In jury trials, the judge is responsible for ruling on the admissibility of evidence and for instructing the jury on the relevant law, and the jury hears the evidence presented and issues its decision, which resolves issues of fact and applies the law to the facts found. In a bench trial, the judge takes on the fact-finding role. The fact-finding role of the trial court is important and is treated with deference by appellate courts; once the trial is concluded, parties generally do not have another opportunity to make any arguments regarding factual issues.

At the conclusion of a trial, the losing party may appeal the decision, arguing that the court made an error of law—that the judge excluded or admitted evidence erroneously, that the instructions that were given to the jury incorrectly stated the law, that the sentence was unconstitutional, and so on. Each jurisdiction has procedural rules that govern the filing of appeals, including the proper format for written petitions and *briefs*, which are written arguments that the parties present to the court. If the petition for appeal is accepted, the parties will generally submit written briefs to the court and

3. Not all disputes between parties result in consideration by a court, and not all trials result in decisions on the merits or in appeals (Felstiner, Abel, & Sarat, 1980-81; Guthrie, 2002). Thus, it is important to recognize that court opinions are not necessarily representative of the complete body of disputes.

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present *oral arguments* before the judge or panel of judges.⁴ The appellate court issues a decision contained in a written opinion, summarizing the history of the case, the arguments made, and the basis for the court's decision. In cases before a group of judges, such as the U.S. Supreme Court, individual judges may agree or disagree with the result, and they may also file opinions to express reasoning separate from the opinion of the court. These are called *concurring* or *dissenting* opinions.

Only the opinion of the court has precedential value, but these concurring and dissenting opinions may offer useful insight into legal debates. In addition, within a lengthy appellate opinion, a variety of statements may be made about the law. The only part of the court's opinion that is binding on future parties, however, is the *holding*, which is that part of the opinion that was necessary to resolve the case for the parties and that articulates the legal principle or principles for which the case stands. Many other portions of the court's opinion may look like new law, but statements in the case that go beyond the facts presented by the case are called *dicta* and are not binding. Careful reading of court opinions is necessary to recognize the holding and dicta.

In the federal system, the three levels of courts are structured as follows:⁵

1. The U.S. Supreme Court, the court of last resort.
2. Twelve regional Circuits, each with a court of appeals that hears appeals from the trial courts.
3. Multiple district courts (trial-level) within each of the Circuits. The regions are divided up along state borders, so that the 7th Circuit, for example, covers Illinois, Wisconsin, and Indiana. District courts sit in each of those states, so that there is a U.S. district court for the Southern District of Illinois, another in the Northern District of Illinois, and another in the Central District of Illinois.

Federal cases begin in district court. Following trial, the losing party may appeal the decision of the district court to the court of appeals for the relevant Circuit. The decision of the court of appeals is binding on district courts within that Circuit, as well as on itself. Over time, courts of appeal in the various circuits may interpret a provision differently, leading to a "split" in interpretation. Out of an interest in maintaining some uniformity in federal law, the U.S. Supreme Court is often called upon to resolve circuit splits by hearing an appeal from one or more of the courts of appeal.

4. These briefs and oral arguments are also relevant to legal psychologists—psychologists may author a brief as an *amicus curiae* or "friend of the court" (see Roesch et al., 1993) or get research ideas from briefs, may use oral arguments for research purposes (see, e.g., Wrightsman, 2008), and so on.

5. For more information about the federal court system, see the Administrative Office of the U.S. Courts, <http://www.uscourts.gov/>.

Each state also has its own court system, largely modeled on the federal system. In each state, there is a court of last resort (often, but not always, called the state's "Supreme Court"), a group of intermediate appellate courts, and a network of trial courts and other courts that hear specific kinds of cases.

Reading and Using Case Citations Citations to cases are nearly always to the opinions of appellate courts—the decisions that have precedential value. Citations follow the typical volume/publication/page number pattern found in legal citations:

Addington v. Texas, 441 U.S. 418 (1979).

After the name of the case is given, the citation indicates the volume number, the publication where the case may be found, and the page where the court's opinion begins. The abbreviation "U.S." stands for the United States Reports, which is the official reporter for U.S. Supreme Court decisions. The date in a case citation refers to the year the opinion was handed down.

With legal citations, the greatest challenge can be figuring out the publication abbreviations. Table 1.1 lists the major federal and state case reporters. For additional help, see a copy of *The Bluebook* or *Bieber's Dictionary of Legal Citations*. Note that most cases are published in more than one reporter and U.S. Supreme Court cases are published in at least three reporters. Citations to

Table 1.1
Federal and State Case Reporters

Jurisdiction	Reporters	Abbreviations
United States Supreme Court	United States Reports	U.S.
	West's Supreme Court Reporter	S.Ct.
	Supreme Court Reports, Lawyers' Ed.	L.Ed.
United States courts of appeal	Federal Reporter (and 2nd series, and 3rd series)	F., F.2d, F.3d.
United States district courts	Federal Supplement (and 2nd series)	F. Supp, F. Supp.2d.
Highest court of each state (grouped geographically)	Atlantic Reporter	A., A.2d
	North Eastern Reporter	N.E., N.E.2d
	Northwestern Reporter	N.W., N.W.2d
	Pacific Reporter	P., P.2d
	South Eastern Reporter	S.E., S.E.2d
	Southwestern Reporter	S.W., S.W.2d
	Southern Reporter	So., So.2d.

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alternative reporters are often provided in parentheses at the top of the opinion; these are called *parallel citations*.

Finding Cases Finding relevant case law requires paying close attention to both jurisdiction and the hierarchy of courts. The system of courts in the United States is vast; it ranges from the U.S. Supreme Court down to the traffic court in a particular city. Before beginning a search, take some time to decide whether federal or state cases are relevant and whether to limit the search to a particular circuit or state or to search for cases from any jurisdiction. Obviously, the wider the net is cast, the more time it will take to sort through the results. On the other hand, to get a broader sense of the case law and to catch circuit splits or differing approaches among states, a more expansive search might be appropriate.

A search for case law is typically a search for mandatory authority in the relevant jurisdiction. This may mean that a decision of the U.S. Supreme Court is most appropriate (for example, on a U.S. Constitutional issue), but for some issues state supreme court decisions are most relevant. If decisions from the highest court in the jurisdiction are not available, decisions from intermediate appellate courts may be appropriate, though it is important to be aware of their more limited applicability. Finally, note that because trial court cases have limited weight and often have limited *precedential value*—that is, they do not set out any new law for the courts to follow—they are not as routinely published.⁶

Research on cases can be done effectively on a database such as LexisNexis Academic or Westlaw Campus.⁷ These databases provide coverage of appellate case law (federal and state) and should serve the needs of most researchers. In addition to their availability via subscription databases, U. S. Supreme Court cases are available from numerous sources, including the Court's own Web site (<http://www.supremecourtus.gov>) and Findlaw (<http://www.findlaw.com>). The Web sites of most courts of appeal provide access to recent opinions issued by those courts, but state case law can be more difficult to access in electronic form without access to a subscription service.

It is possible to do effective research using print sources, but doing so is admittedly more time-consuming and requires access to a well-stocked law library.

Updating Case Law When a case is decided, it represents legal authority that must be followed by lower courts in the jurisdiction. Consider the possibility,

6. Selected decisions of the U.S. District Courts are published in the Federal Supplement, but many more are designated not for publication. State trial court decisions are also typically not published. The office of the clerk of the court may allow copying of unpublished materials, such as trial court rulings, court briefs, or trial transcripts.

7. While Westlaw Campus and LexisNexis Academic are available at many universities, check with the librarian for availability of these and any alternative resources.

however, that a decision was later appealed and overturned. Case reporters and online databases are not updated directly when later action by a case or statute affects its validity. To be sure that the case is still binding, it is important to update it using something called a *citor*. The original citor, which was initially developed in print, is called *Shepard's Citations*, and it is available on Academic Universe as well as on LexisNexis' pay-per-use service (via credit card).

The purpose of *Shepard's Citations* is twofold: to determine whether the holding in the case has not been overturned (i.e., that it is still "good law") and to provide additional research references related to the case. Two pieces of information are relevant to determining whether the case is good law: the subsequent procedural history of the case itself, which indicates whether any part of the court's holding was reversed on an appeal and the treatment of the case by other cases, which indicates whether the holding has been *overruled*. A court can overrule one of its earlier cases, such as the U.S. Supreme Court's overruling of *Bowers v. Hardwick* (1986), with its decision in *Lawrence v. Texas* (2003).

When a citation is entered into *Shepard's*, the service returns the procedural history of a case, gathering together the citations for opinions from the lower appellate court, any petitions for appeal, and opinions issued at later appeals. In addition, *Shepard's* returns a list of cases that have *cited* the case. When a court issues an opinion, the text is heavily footnoted to provide support for each point being expressed. *Shepard's* tracks this network of citations between cases so that the researcher can see how often later cases have cited to earlier cases. *Shepard's* also keeps track of the manner in which a case was cited by noting the court's attitude towards the cited case—whether it *questioned* the case's holding, *distinguished* the case, *overruled* it, or *followed* it.

REGULATIONS

The third source of lawmaking is the executive branch,⁸ which makes law through the rulemaking activity of administrative agencies.⁹ Agencies such as the Department of Health and Human Services or the Internal Revenue Service report to the executive branch, but their power to make law comes from the legislature. Thus, Congress will pass statutes—such as the Health Insurance Portability and Accountability Act (HIPAA) or the Internal Revenue Code—that maps out the basic contours of the law, but will charge the relevant agencies with making the more detailed *regulations*, also known as *rules*, that are necessary to implement the statutes and carry out any reporting or enforcement requirements.

8. The executive branch also produces law in the form of signed Treaties with foreign nations, Presidential Proclamations, and Executive Orders.

9. Note that administrative agencies also have a quasi-judicial function, in that they hold hearings and issue decisions, but the decisions do not bear the weight of authority that decisions from the judicial branch have.

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Administrative regulations have a constant and significant effect on people's daily lives, as they cover everything from airline safety to the release of new medicines to broadcast television standards. In researching legislation, it is important to pay attention to the mention of the role of any executive agencies with respect to the statute. Even if the statute itself does not mention an agency or implementing regulations explicitly, it is useful to conduct research to find out whether there are any regulations that affect the legal issue.

Regulations from federal agencies are published in the Code of Federal Regulations (CFR), which is published by the Government Printing Office (GPO). The CFR is organized much like the U.S. Code, using subject groups called Titles, with further division underneath the Titles that correspond to particular agencies—called chapters and parts. The numbered titles very roughly correspond to the subjects contained in the same numbered Titles of the United States Code, but all similarities between the two publications end there.

Each of the 50 states also has its own administrative agencies, which make regulations such as building codes and professional licensing regulations. These are generally contained in a separate publication called an administrative code.

Reading and Using Regulation Citations Federal regulations are cited as follows:

28 C.F.R. 549.43 (2007)

Like most other legal citations, the first number refers to the volume. In this case, it refers to *Title 28*, because the CFR is arranged in numbered titles. The abbreviation CFR stands for the *Code of Federal Regulations*, the official source for federal regulations that are currently in force. The number 549.43 refers to the Part and section number within Title 28. Finally, the number in parentheses refers to the year of the CFR (*not* the year when the regulation was issued).

Finding Regulations The only print publication of the CFR is the one printed by the GPO. However, there are numerous sources for the CFR online, including the subscription database LexisNexis Academic and the free site GPO Access, <http://www.gpoaccess.gov/cfr/index.html>, which offers both text and pdf images.

To find regulations governing a particular topic, one can either browse the list of agencies and their regulations or search the CFR by keyword. For example, to find regulations dealing with involuntary psychiatric care for prison inmates, one might search for “involuntary AND psychiatric AND prison.” Browse the list of results, choosing the summary for a quick view of the regulation. To view a more complete picture of this area of the CFR, go back to the search screen and choose “browse,” and browse the relevant

Title—in this case, Title 28, Judicial Administration—and the table of contents for the Part, reading the appropriate regulation in context. For more information on the organization of each agency, and the scope of their delegated lawmaking authority, see the United States Government Manual.

Updating Regulations The CFR is updated in parts, each at one of four scheduled times during the year. Online editions of the CFR are updated more frequently than print editions; the date at the top of the regulation indicates how current it is. In the interim, proposed and final rules are printed in the *Federal Register*, which is published daily. To update a regulation, check the table in the *Federal Register* called “List of CFR Sections Affected,” either in print or on GPO Access online (<http://www.gpoaccess.gov/fr/index.html>).

SECONDARY SOURCES

In addition to the primary sources of the law mentioned previously, another group of sources can be helpful for legal research: secondary sources. While they are not themselves law, the analysis and research references they offer can save considerable time. Some secondary sources are written specifically for law students, some for practitioners, some for other scholars, and some for laypersons. Note that some of these resources are available online, including law review articles, but many others are available only in print. If you have limited time to spend in the law library, these are the resources to focus on, as most others can be found electronically.

Treatises, Encyclopedias, and Other Books *Treatises* provide a detailed treatment of a broad area of the law, such as criminal procedure or family law. They can be used as a guide to this area of law throughout your research, or they can be used for a quick reference to something more specific, like the operation of the Federal Sentencing Guidelines or the best interests of the child standard. The best treatises are written by scholars who are the top experts in their field, and treatises are cited often in law review articles. Examples include *Prosser on Torts* and *Tribe’s Constitutional Law*. For treatises that are regularly updated, the publisher typically issues *pocket parts*, which are unbound pamphlets filed in the back of the book with any changes listed by page or section number. Researchers should be sure to check these.

Looseleafs are a specialized type of legal publication that integrates statutes, regulations, case law, expert commentary, and news about developments in a particular area of the law. They are generally the starting point and anchor resource for practitioners. But while looseleafs are intended primarily for attorneys, they can be useful for anyone seeking an integrated view of a particular problem in the law. They are published in binders that can be disassembled so that updated pages can be shipped and interfiled frequently.

To identify major and authoritative treatises and looseleafs in a particular area, ask the librarian for a recommendation, or browse the area of the library

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where materials on that topic are shelved. Be sure to ask whether treatises and looseleafs are shelved in a special area; in some law libraries they are kept in an area dedicated to high-use materials and can be checked out for only a few hours at a time. The constantly changing nature of these resources makes them prime candidates for well-designed online services, but not all publishers currently offer this service. A limited number of looseleaf titles are available online, some through databases such as LexisNexis Academic, and others through the publisher's own platform. Check with your librarian to see whether you have access to databases from BNA, CCH, Matthew Bender, or RIA, the leading looseleaf publishers.

For each state, additional resources such as *practice books*, *pattern jury instructions*, *CLE materials*, and *formbooks* are available and may be useful for gaining insight into practice issues or in developing stimulus materials. Practice books are published as a set for general practice in the state, or by subject such as family law. They attempt to synthesize law in the state and provide guidance for attorneys. Pattern jury instructions offer sample language for the court to use when instructing the jury about the law. They vary by type of case, and are often separated into two volumes: one for criminal trials, and one for civil trials. Continuing legal education (CLE) materials are produced by the state Bar Association or Bar Examiner's office and are designed for use with continuing education courses for practicing attorneys. Formbooks include basic general forms for procedural use (e.g., motions and orders) or for contracts or other legal transactions. There are many of these, including sets that are specific to major states and sets that are developed for specialized areas of practice. While they can be illustrative, users must be sure that a sample form published in one of them is consistent with current law.

Legal encyclopedias are specialized sets of books that provide an overview of all areas of the law. The national encyclopedias, *American Jurisprudence*, 2d and *Corpus Juris Secundum*, attempt to cover all the law in the United States, but they are too large and provide very shallow coverage. The encyclopedias include very detailed commentary on law across the country, and provide extensive references to statutes and cases, but the complexity and volume of U.S. law makes it impossible to adequately cover everything, and national coverage can be of limited use when jurisdiction matters. Some states have their own legal encyclopedias, and they provide better treatment of the law of the state.

Legal dictionaries such as *Black's Law Dictionary* define words and phrases as they are used in the legal context. Dictionaries can be helpful resources as you read cases and encounter Latin words or other unusual phrases. Legal dictionaries may also prove useful when assembling keywords to use in searching databases. Many terms have very specific meanings as they are used in the law, and their legal meanings can be quite different from the ways in which the terms are more commonly used in standard English or in the social sciences.

Law reviews, or *law journals*, contain articles that comment on, theorize about, or analyze law and legal topics. Some journals are published by law

schools, others by professional societies. The law school journals are edited by law students, who solicit articles from leading scholars. Shorter pieces are provided by selected student editors, commenting on recent cases or analyzing a particular area of the law. Law journal articles form the body of scholarly discussion about existing and developing law. While much of the work suggests new ways of analyzing legal issues, many articles also document and analyze settled law. And since legal writing tends to be heavily footnoted to provide foundation for the statements that an author is making, the footnotes in law review articles are valuable resources for research purposes. The quality of the article as a research resource, however, depends on the quality of the underlying primary authorities that the author cites. You *must* check the currency of the cases, statutes, and regulations cited in it to be sure that they reflect current law (see the preceding discussion).

The citation to a law review article consists of the author's name, the title of the article, the volume, journal name (abbreviated), the page number on which the article begins, and the date. Again, deciphering a publication's abbreviation can be tricky. See Table 1.2 for some standard abbreviations, and consult your library's copy of *Bieber's Dictionary of Legal Abbreviations* for a full list.

Relevant law review articles can be identified either by using specialized legal indexes such as Legaltrac or the Index to Legal Periodicals or resources such as LexisNexis Academic, Westlaw Campus, JSTOR, or even Google Scholar. In addition, the Social Science Research Network (SSRN; <http://www.ssrn.com>) provides access to recent and forthcoming scholarship.

FINAL COMMENT ON THE RESEARCH PROCESS

Be critical. When you choose a source, be aware of its purpose, its creator or publisher, and the intended audience. With single- and multi-volume treatises and other books, many of these questions can be answered by reading the introduction or the "how to use this publication" statement near the front of the first volume. For online databases, look for a descriptive statement about the database in your library's list of electronic resources. Similarly, it is important to learn the limits of a database's contents. Searching a database for a type of resource that is not contained there is a bit like fishing for salmon in your backyard pond. Find out whether the database is limited to materials published during the past 20 years or to materials published by the database's vendor or its parent company. Constantly challenge the comprehensiveness of the sources you are using; rarely will one source serve your legal research needs completely.

Be critical during the search process, as well, and use connectors like "AND" and "OR" when possible to narrow the search. Check the help section of the database to determine whether additional connectors or symbols are available. Proficient use of these connectors will eliminate

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Table 1.2
Standard Abbreviations

L. Rev.	Law Review
L.J.	Law Journal
U.	University
Behav.	Behavior
Forensic	Forensic
Hum.	Human
Interdisc.	Interdisciplinary
Just.	Justice
Psychol.	Psychology; Psychological
Psychiatry	Psychiatry
Res.	Research
Sci.	Science; Sciences; Scientific
Soc.	Social

irrelevant material from the search results, facilitating greater precision. At the same time, it is important not to sacrifice relevant materials in a quest for precision.

Finally, when the search results are returned, critically analyze them against the search query. Are there too many irrelevant items? Why? Keep in mind that with non-Google searching, the best results might not be at the top of the list. Most systems are still not capable of understanding plain English language requests; you may have to be creative with the terms you enter.

CONCLUSION

While the law can be complex and elusive, it can also be fascinating and enlightening. Legal psychologists who are equipped to do effective legal research have the tools with which to decipher the intricacies of the law. Armed with the skills of legal research, psychologists will be better positioned to undertake and communicate important empirical research that is relevant to the law.

RESOURCES FOR LEGAL RESEARCH

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|---|---|
| <p><i>The Bluebook: A Uniform System of Citation</i> (18th ed). (2005). Cambridge, MA: Harvard Law Review.</p> <p>Cohen, M. (2007). <i>Legal research in a nutshell</i>, 5th ed. Eagan, MN: Thomson West.</p> <p>Eis, A. (2008). <i>Legal looseleaves in print</i> (annual). Teaneck, NJ: Infosources Publishing.</p> | <p>Fine, T. M. (1997). <i>American legal systems: a resource and reference guide</i>. Cincinnati, OH: Anderson.</p> <p>Garner, B. A. (2009). <i>Black's law dictionary</i> (9th ed). St. Paul, MN: West Group.</p> <p>Prince, M. M. (2001). <i>Bieber's dictionary of legal citation</i> (5th ed). Buffalo, NY: W. S. Hein.</p> |
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