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# A PRACTICAL SYSTEM FOR LEGAL RESEARCH

G. NICHOLAS HERMAN\*

## I. INTRODUCTION

Like all practical skills, learning legal research is a process of learning by doing. This means that it is not sufficient for students to merely learn about the primary and secondary sources most commonly used in such research. Rather, mastery of the skill depends upon the student's repeated utilization of these sources in a meaningful way and learning an *organized system* for using them.

This need for a systemic approach is most apparent to students when they are called upon to research and write their first memorandum of law. At this juncture, many are apt to bemoan: "What do I do now?" The exasperation stems not from a fundamental lack of knowledge about available research sources (which are covered by a number of able texts),<sup>1</sup> but from fundamental confusion about what sources to consult first, which ones to consult next, what authorities to prefer over others, and how to preserve one's research so that it is effectively employed in the writing process.

This essay intends to ease, if not obviate, that confusion. Discussed is a practical system for legal research that addresses how to get started, what research sources to consult and in what order, what authorities to choose, and a method for preserving research so that it can be retrieved effectively when writing a legal memorandum or brief. Two caveats are in order. First, it is assumed that the reader has a basic understanding of the general content and utility of the research sources discussed. Second, the use of computer-assisted legal research (WESTLAW or LEXIS) is reserved for another day. Finally, although those portions of the essay relating to state-law research are geared to North Carolina practice, the discussion should be easily adaptable for students or practitioners in other jurisdictions.

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1. *E.g.*, J. MYRON JACOBSTEIN ET AL., *LEGAL RESEARCH ILLUSTRATED* (6th ed. 1994); CHRISTINA L. KUNZ ET AL., *THE PROCESS OF LEGAL RESEARCH* (3d ed. 1992); CHRISTOPHER G. WREN & JILL R. WREN, *THE LEGAL RESEARCH MANUAL* (2d ed. 1986); LAUREL C. OATES ET AL., *THE LEGAL WRITING HANDBOOK* (1993); MORRIS L. COHEN ET AL., *HOW TO FIND THE LAW* (1989).

## II. GETTING STARTED & IDENTIFYING THE ISSUES

As a threshold matter, you should remember that authors of legal documents are writing for a purpose. The most common purposes are (1) to persuade a trial or appellate court (e.g., through a bench memorandum or appellate brief); (2) to evaluate the merits of a client's case (e.g., through an intra-office memorandum or client letter); (3) to answer a discrete legal question (e.g., the statute of limitations in a wrongful death case); or (4) to write a scholarly article (e.g., for a law review or other legal journal). Sometimes these purposes overlap. It is critical that you understand the purpose for which you are writing because it will dictate the scope of your research and the ultimate content of your written product. Regardless of your purpose, your research should encompass authorities on both sides of your issues.

Usually, the first step in any legal research problem is to identify the relevant issues. Here, it is imperative to have a *complete* understanding of the key facts. It is necessary to repeatedly remind yourself of those facts so that you do not go unnecessarily adrift in your identification of the issues and subsequent research.

Initially, try to identify potential issues intuitively. Ask yourself: "Can the judge really do that?"; "What is unfair about the factual scenario?"; "What areas of law might I look at to identify issues in the problem?" Similarly, at every step in your research and reasoning about the problem, continue to ask yourself whether the answers you are getting make sense. If not, further issue identification and research may be necessary.

On a more analytical level, issues may be identified by focusing on the following categories in relation to the facts at hand: (1) the persons or parties involved; (2) the item or subject matter of the controversy; (3) the timing and location of the situation; (4) the relief sought; (5) potential legal theories (causes of action and defenses); and, (6) procedural concerns.<sup>2</sup>

Next, as you begin to identify issues, list each one on a separate notebook page. Initially, your issues may take the form of very general legal concepts. For example, on one page you may have written at the top, "Double Jeopardy" or, in a contract problem, "Is the contract enforceable?" Then, on each separate page that lists a perceived issue, identify and list on that page *West's Digest* topics to research (e.g., "Constitutional Law," "Criminal Law," "Contracts"). If you are uncertain about the potential legal areas to research, consult a national

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2. KUNZ, *supra* note 1, at 17-18; See WREN *supra* note 1, at 33-36. See also JACOBSTEIN, *supra* note 1, at 16-17 (employing the so-called TARP Rule by examining the "thing," "action," "relief" sought, and "persons" or "parties" involved).

encyclopedia (e.g., *American Jurisprudence 2d*<sup>3</sup> or *Corpus Juris Secundum*), a state encyclopedia (e.g., *Strong's North Carolina Index 4th*), or a state-law treatise on the subject.<sup>4</sup>

As you conduct preliminary research, you will of course need to refine your issues. For example, the broadside contract issue stated above (“Is the contract enforceable?”) is of little help in conducting and organizing your research towards an informed answer. Thus, as your understanding of the law builds, you should break down the general issue into sub-issues (e.g., “Was there a valid offer?”; “Was there a valid acceptance?”; “Was there consideration?”). These sub-issues should then be transposed onto separate pages with research-area headings such as “validity of offer,” “validity of acceptance,” “validity of consideration.” Any one sub-issue may need to be broken down further. For example, “validity of consideration” might be broken down into research headings such as “adequacy,” “forbearance,” or “pre-existing liability.”

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3. For reasons of style and manageability, this author prefers *American Jurisprudence 2d* over *Corpus Juris Secundum*.

4. E.g., ALLYSON K. DUNCAN AND FRANCES P. SOLARI, *NORTH CAROLINA APPELLATE ADVOCACY* (1989); NOEL L. ALLEN, *ANTITRUST AND TRADE REGULATION: MONOPOLIES, RESTRAINTS OF TRADE, UNFAIR COMPETITION, CONSUMER PROTECTION: THE LAW IN NORTH CAROLINA* (1982); W. BRIAN HOWELL, *HOWELL'S SHUFORD NORTH CAROLINA CIVIL PRACTICE AND PROCEDURE* (4th ed. 1992); G. GRAY WILSON, *NORTH CAROLINA CIVIL PROCEDURE* (4th ed. 1992); HUGH G. CASEY, JR., *CASEY'S NORTH CAROLINA COLLECTIONS* (1986); EDMUND T. URBAN, *NORTH CAROLINA REAL PROPERTY MECHANICS' LIENS AND FUTURE ADVANCES: INCLUDING TITLE INSURANCE* (1989); RICHARD A. LORD & CHARLES C. LEWIS, *NORTH CAROLINA SECURITY INTERESTS* (1985); RUSSELL M. ROBINSON, *ROBINSON ON NORTH CAROLINA CORPORATION LAW* (4th ed. 1990); IRVING JOYNER, *CRIMINAL PROCEDURE IN NORTH CAROLINA* (1989); RONALD M. PRICE, *NORTH CAROLINA CRIMINAL TRIAL PRACTICE* (2d ed. 1985); SANDRA EDWARDS, *CHILDREN AND JUVENILES: THE LAW IN NORTH CAROLINA* (1981); LLOYD T. KELSO, *NORTH CAROLINA DIVORCE, ALIMONY AND CHILD CUSTODY: WITH FORMS* (2d Ed. 1989); ROBERT E. LEE, *NORTH CAROLINA FAMILY LAW* (4th ed. 1981); KENNETH S. BROUN, *BRANDIS AND BROWN ON NORTH CAROLINA EVIDENCE* (4th ed. 1993); LEONARD T. JERNIGAN JR., *NORTH CAROLINA WORKER'S COMPENSATION: LAW AND PRACTICE, WITH FORMS* (1988); JANICE L. MILLS, *NORTH CAROLINA LANDLORD AND TENANT BREACH AND REMEDIES: WITH FORMS* (1991); JAMES E. SNYDER JR., *NORTH CAROLINA AUTOMOBILE INSURANCE LAW* (1988); STEPHEN ALLRED, *EMPLOYMENT LAW: A GUIDE FOR NORTH CAROLINA PUBLIC EMPLOYERS* (1992); STEPHEN ALLRED, *LOCAL GOVERNMENT EMPLOYMENT LAW IN NORTH CAROLINA* (1990); JACK E. RUBY, *LABOR LAW: THE LAW IN NORTH CAROLINA* (1982); THOMAS H. AINSWORTH, III, *HIGHTOWER'S NORTH CAROLINA LAW OF DAMAGES* (2d ed. 1988); CHARLES E. DAYE & MARK W. MORRIS, *NORTH CAROLINA LAW OF TORTS* (1991); RONALD M. PRICE, *PERSONAL INJURY AND PROPERTY DAMAGE: DEFENSES AND IMMUNITIES, THE LAW IN NORTH CAROLINA* (1980); RICHARD C. RUSKELL & NANCY E. SETTLE, *PERSONAL INJURY AND PROPERTY DAMAGE, CAUSATION AND PARTIES: THE LAW IN NORTH CAROLINA* (1980); BARNEY FINBERG & EMILY HIGHTOWER, *PRODUCTS LIABILITY: THE LAW IN NORTH CAROLINA* (1980); JAMES A. WEBSTER, JR., *WEBSTER'S REAL ESTATE LAW IN NORTH CAROLINA: POSSESSORY ESTATES AND PRESENT INTERESTS IN REAL PROPERTY* (Patrick K. Hetrick & James B. McLaughlin, Jr. eds., 3d ed. 1988); JOHN P. HUGGARD, *THE ADMINISTRATION OF DECEDENTS' ESTATES IN NORTH CAROLINA* (1985); NORMAN A. WIGGINS & RICHARD L. BRAUN, *WILLS AND ADMINISTRATION OF ESTATES IN NORTH CAROLINA* (3d ed. 1993).

Finally, you should not be surprised to find that identifying legal issues may be quite difficult in a particular problem. Indeed, there will be occasions when you are initially confident about your selection of issues but later discover that your selection was misplaced. Thus, prepare to be flexible throughout your research. Above all, never lose sight of the particular facts of your problem. They are critical to the precision with which you identify your issues as a framework for subsequent research.

### III. GENERAL POINTS FOR PRESERVING & CONDUCTING RESEARCH

Whether you are conducting initial research for issue identification<sup>5</sup> or detailed research after the issues have been identified,<sup>6</sup> it is imperative that you preserve your research by writing down a *precise* recitation of the law gleaned from your research source, along with a complete *Bluebook*<sup>7</sup> citation to the case or other authority establishing the point of law chosen. For example, if you are researching a problem dealing with the Eighth Amendment, your research recitation might read:

In *Weems v. United States*, 217 U.S. 349 (1910), the Court established the principle of "proportionality" as a constitutional standard to determine whether a sentence is "cruel in its excess of imprisonment." *Id.* at 377. "Punishment for a crime should be graduated and proportioned to [the] offense." *Id.* at 367.

While a court reviewing a particular sentence may grant substantial deference to the authority of a legislature to establish punishments for crimes, no penalty is *per se* constitutional and even a single day in prison may be unconstitutional under the particular circumstances. *Robinson v. California*, 370 U.S. 660, 667 (1962).

The advantages of preserving your research with the precision illustrated above are that (1) you will not have to re-read a case or authority that you previously researched, and (2) you will be able to directly draw upon and edit your recitation when writing a memorandum or brief.

When conducting your research, focus on one discrete legal research area or issue at a time, not skipping from one to another. If, as you are researching one area of the law, you come across authorities or legal principles relevant to other aspects of your problem, make a note of those sources and read them when you undertake research on the issue to which they relate.

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5. See *supra* Section II.

6. See *infra* Sections IV and V.

7. THE BLUEBOOK, A UNIFORM SYSTEM OF CITATION (15th ed. 1991).

Photocopy a case or authority only if it is on “all fours” with the problem at hand, or if it has a lengthy quotation you want to preserve in its entirety. As discussed above, your written research recitations should otherwise serve as the raw material from which to write a memorandum or brief, in lieu of an unmanageable stack of photocopied authorities.

If you come across a case that appears to be dispositive of your problem, Shepardize it immediately. (Shepardize all other cases after you have completed all of your research and before you begin to write.) If *Shepard's* reveals that the dispositive case is still good law, you may be able to stop researching that topic. However, if you find yourself in this situation, you may wish to do enough additional research to assure yourself that there is no other applicable authority.

Finally, if one particular research source is not shedding any light on your problem, do not look forever at that source. Abandon it and go to another. If your research is thorough and methodical, critical authorities not found in one source will invariably turn up in another.

#### IV. RESEARCHING STATE LAW

When researching a state law problem, follow the steps below in the order given:

##### A. *Statutory Law*

1. First go to the index of the relevant statutes (e.g., *North Carolina General Statutes*) and search it for all potential statutory provisions pertinent to your problem. List citations to these provisions in your research notes under the relevant issue.

2. Read each statutory provision listed by going *first* to the supplement or pocket part,<sup>8</sup> and then to the main volume. Remember to read the whole statute, including definitional sections, any statement on legislative purpose,<sup>9</sup> any editor's notes, and the effective date of the statute. If the statute is relevant, write down the pertinent language verbatim, along with an exact citation; only photocopy a relevant statute if it is long.

3. Read the case annotations under each relevant statute (starting with those in the supplement or pocket part), and write down the cases you want to read, using the citation to the *National Reporter*

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8. Going first to the supplement or pocket part ensures finding the most recent statutes and cases.

9. There is no formal collection of legislative history in North Carolina such as that found in federal law.

*System*<sup>10</sup> (e.g., S.E. or S.E.2d for North Carolina). Then read each recorded case (from the *National Reporter System* volumes), and write down a complete and accurate recitation of the law pertinent to your problem, along with a *Bluebook* citation (including parallel cites) to the case from which the law is drawn.

4. When reading these cases, also make a note of the most pertinent *West's* Topics and Key Numbers from the headnotes, and make a list of any decisions cited by those cases that you may want to read later. These notes will be incorporated in steps one and two at Section IV. B. below.

5. If there are only a few or no case annotations under the relevant statute, Shepardize the statute and read the cases listed in accordance with step three above.

## B. Case Law

1. First go to the "Descriptive-Word Index" of the *West Digest* for your state (e.g., *West's North Carolina Digest 2d*), and search it for all potential Topics and Key Numbers pertinent to your problem. (Don't forget the pocket part.) Add these Topics and Key Numbers to the list you wrote down in step four at Section IV. A. above.

2. Read the paragraphs in the *Digest* under each Key Number (starting with the pocket part and then the main volume), and write down the cases you want to read, using the citation to the *National Reporter System*. Add to this list any cases you wrote down in step four at Section IV. A. above.

3. Read each case (starting with those listed from the pocket part) as published in the *National Reporter System* volumes,<sup>11</sup> and write down a complete and accurate recitation of the law pertinent to your problem, along with a *Bluebook* citation (including parallel cites) to the case from which the law is drawn. Of course, if these cases cite other worthwhile decisions, read them too.

4. If you find it necessary to research case law outside of your jurisdiction, follow steps two and three above by using *West's Decennial Digests* starting with the most current volumes.

5. Depending upon the nature of your research problem, it may be useful at the outset to consult the monographs published in *American Law Reports (A.L.R.)*. These articles<sup>12</sup> may be directly on point with

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10. It is important to read cases as they are published in *West's National Reporter System* so that you can avail yourself of the Topics and Key Numbers to *West's American Digest System*.

11. See *supra* note 9.

12. E.g., James L. Rigelhaupt, Jr., Annotation, *What Constitutes Penetration in Prosecution for Rape or Statutory Rape*, 76 A.L.R. 3d 163 (1977).

your overall problem. Always read the actual cases annotated in a particular monograph.

6. If your research problem involves the interpretation of a word or phrase, use *West's Words and Phrases*.

### C. *Other Sources*

Apart from statutory and case law, you may find it useful to consult other ("secondary") sources. Along with issue identification, these sources may be extremely helpful in your substantive research. Thus, as appropriate, consider consulting (1) state or national encyclopedias, (2) state<sup>13</sup> or national treatises,<sup>14</sup> (3) *Restatements of the Law*, (4) law review or other specialized journal articles (by using the *Current Law Index* or *Index to Legal Periodicals*), (5) Attorney General opinions, (6) appellate briefs in published cases, and, (7) law dictionaries.

## V. RESEARCHING FEDERAL LAW

When researching a federal-law problem, follow the steps below in the order given:

### A. *Statutory and Administrative Law*

1. First go to the index of either *United States Code Annotated (U.S.C.A.)*<sup>15</sup> or *United States Code Service (U.S.C.S.)*, and search it for all potential statutory provisions pertinent to your problem. List citations to these provisions in your research notes under the relevant issue.

2. Read each statutory provision listed by going *first* to the supplement or pocket part,<sup>16</sup> and then to the main volume. Examine the whole statute and any definitional sections. Read any editor's notes, noting the effective date of the statute, references to legislative history (e.g., *United States Code Congressional and Administrative News*), references to the *Code of Federal Regulations (CFR)*, and references to treatises and law review articles.<sup>17</sup> If the statute is relevant, write

13. See *supra* note 4.

14. E.g., SAMUEL WILLISTON, *A TREATISE ON THE LAW OF CONTRACTS* (Richard A. Lord, ed., 4th ed. 1990); PAUL H. ROBINSON, *CRIMINAL LAW DEFENSES* (1984); WAYNE R. LAFAYE, *SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT* (2d ed. 1987); WAYNE R. LAFAYE & JEROLD H. ISRAEL, *CRIMINAL PROCEDURE* (1984); HERBERT T. TIFFANY, *THE LAW OF REAL PROPERTY* (3d ed. 1939); CORNELIUS J. MOYNIHAN, *INTRODUCTION TO THE LAW OF REAL PROPERTY* (2d ed. 1987); W. PAGE KEETON ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS*, (5th ed. 1984); JAMES J. WHITE & ROBERT S. SUMMERS, *UNIFORM COMMERCIAL CODE* (3d ed. 1988); WAYNE R. LAFAYE & AUSTIN W. SCOTT, JR., *CRIMINAL LAW* (2d ed. 1986).

15. For reasons of style and manageability, this author prefers *United States Code Annotated* over *United States Code Service*.

16. See *supra* note 7.

17. These are routinely found under each statute in *United States Code Annotated*.

down the pertinent language verbatim, along with an exact citation. Only photocopy the statute if it is long.

3. Read the case annotations under each relevant statute (starting with the pocket part) and write down the cases you want to read. Then read each recorded case from the *National Reporter System* volumes (e.g., the *Supreme Court Reporter* for United States Supreme Court decisions)<sup>18</sup> and write down a complete and accurate recitation of the law pertinent to your problem, along with a *Bluebook* citation (including parallel cites) to the case from which the law is drawn.

4. When reading these cases, also make a note of the most pertinent *West's* Topics and Key Numbers from the headnotes, and make a list of any decisions cited by those cases that you may want to read later. These notes will be incorporated in steps one and two at Section V. B. below.

5. If there are only a few or no case annotations under the relevant statute, Shepardize the statute and read the cases listed in accordance with step three above.

6. For statutory construction and legislative history, research the citations to *United States Code Congressional and Administrative News* that you wrote down in step two above.<sup>19</sup>

7. For administrative regulations, research the citations to *CFR* that you wrote down in step two above.

## B. Case Law

1. First go to the "Descriptive-Word Index" volumes of the most recent *West's Federal Practice Digest* (e.g. *West's Federal Practice Digest, 4th*), and search it for all potential Topics and Key Numbers pertinent to your problem. (Don't forget the pocket part.) Add these Topics and Key Numbers to the list you wrote down in step four at Section V. A. above.

2. Read the paragraphs in the most recent *West Digest* under each Key Number (starting with the pocket part and then the main volume), and write down the cases you want to read. Do the same with the earlier *Digests* (e.g., *West's Federal Practice Digest 3rd*, *West's Federal Practice Digest 2nd*, *Modern Federal Practice Digest*, and —if necessary— *Federal Digest*). Add to this list any cases you wrote down in step four at Section V. A. above.

3. Read each case (starting with the most recent), and write down a complete and accurate recitation of the law pertinent to your prob-

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18. See *supra* note 9.

19. For more detailed research involving federal legislative history, see *supra* note 1, JACOBSTEIN at 179-219.

lem, along with a *Bluebook* citation (including parallel cites) to the case from which the law is drawn. Of course, if these cases cite other worthwhile decisions, read them too.

4. Depending upon the nature of your research problem, it may be useful (at the outset) to consult the monographs published in the federal edition of the *American Law Reports (A.L.R. Fed.)*. These articles may be directly on point with your overall problem. Always read the actual cases annotated in a particular monograph.

5. If your research problem involves the interpretation of a word or phrase, use *West's Words and Phrases*.

### C. Other Sources

Apart from statutory and case law, you may find it useful to consult other ("secondary") sources. Along with issue identification, these sources may be extremely helpful in your substantive research. Thus, as appropriate, consider consulting (1) national encyclopedias, (2) national treatises,<sup>20</sup> (3) law review or other specialized journal articles (by using the *Current Law Index* or *Index to Legal Periodicals*), (4) appellate briefs in published cases, and (5) law dictionaries.

## VI. WEIGHT OF AUTHORITY

### A. In General

When conducting and preserving your research, it is necessary to develop a sense for which authorities (among the many that may be available) will be most persuasive in your jurisdiction. First, as a general rule, choose the best *reasoned* cases. This is important because a case that merely states a legal proposition is less persuasive than one that explains *why* the court adopted the particular proposition and reached a particular result. A glib holding, except on an extremely well-settled rule of law, is of little guidance. Thus, on a controversial legal point, it does not matter so much if the case is old or was decided by a different jurisdiction so long as it is well reasoned.

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20. E.g., CHARLES A. WRIGHT, *FEDERAL PRACTICE AND PROCEDURE* (1969); MICHAEL H. GRAHAM, *HANDBOOK OF FEDERAL EVIDENCE* (3d ed. 1991); DAVID G. KNIBB, *FEDERAL COURT OF APPEALS MANUAL* (2d ed. 1990); DAVID B. SMITH, *PROSECUTION AND DEFENSE OF FORFEITURE CASES* (1991); THEODORE KHEEL, *LABOR LAW* (1972); FRANK P. GRAD, *TREATISE ON ENVIRONMENTAL LAW* (1973); CHARLES G. & HARRY N. ROSENFELD, *IMMIGRATION LAW AND PROCEDURE* (1990); ERNEST B. LIPSCOMB, III, *LIPSCOMB'S WALKER ON PATENTS* (3d ed. 1991); THOMAS J. MCCARTHY, *TRADEMARKS AND UNFAIR COMPETITION* (2d ed. 1984); J. VON KALINOWSKI, *ANTITRUST LAWS AND TRADE REGULATION* (1969); MERRICK T. ROSSEIN, *EMPLOYMENT DISCRIMINATION: LAW AND LITIGATION* (1990); CHESTER J. ANTEAU, *FEDERAL CIVIL RIGHTS ACTS: CIVIL PRACTICE* (2d ed. 1980); *SOCIAL SECURITY LAW & PRACTICE* (Clark Boardman ed., 1983-1991); HOWARD B. ABRAMS, *LAW OF COPYRIGHT* (1991); HAROLD S. BLOOMENTHAL, *SECURITIES AND FEDERAL CORPORATE LAW* (1972); JACOBS MERTENS, JR., *THE LAW OF FEDERAL INCOME TAXATION* (1992).

Second, try to choose cases with similar facts to your problem or, if you are distinguishing authority, cases with facts dissimilar to your problem or with reasoning that would not apply to your problem. Never choose a case with a similarity that has no meaningful parallel or a case with a distinction that has no meaningful difference.

Third, when you have a choice among a number of similar cases, choose (if available) a case decided by a widely-respected judge in your jurisdiction. The judge's own reputation can carry some weight that may spill over favorably onto your argument or contention. Of course, if you rely upon a case written by a highly respected judge, you should point out who wrote the opinion in your memorandum or brief.

### B. State-law Hierarchy

As a *rough guide* for prioritizing your choice of state-law authorities, the following constitute the most authoritative sources in descending order of persuasiveness:

- (1) United States Constitution, and United States Supreme Court decisions.
- (2) State constitution in your jurisdiction.
- (3) State statutes & administrative regulations in your jurisdiction.
- (4) State supreme court decisions in your jurisdiction.
- (5) State court of appeals decisions in your jurisdiction.
- (6) State treatises in your jurisdiction.<sup>21</sup>
- (7) State encyclopedia in your jurisdiction.<sup>22</sup>
- (8) State appellate court decisions from other jurisdictions.
- (9) *A.L.R.* Annotations.
- (10) State law review articles in your jurisdiction.
- (11) Analogous federal court of appeals decisions, and United States district court decisions (e.g., F.2d, F.3d, F. Supp.).
- (12) National encyclopedias, national treatises, and *Restatements of the Law*.
- (13) State law review articles from other jurisdictions.

### C. Federal-law Hierarchy

As a *rough guide* for prioritizing your choice of federal-law authorities, the following constitute the most authoritative sources in descending order of persuasiveness:

- (1) United States Constitution, and United States Supreme Court decisions.
- (2) *United States Code (U.S.C.)*, and *Code of Federal Regulations (CFR)*.

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21. See *supra* note 4.

22. E.g., STRONG'S NORTH CAROLINA INDEX 4TH (Lawyers Cooperative Publishing, 1991).

- (3) United States court of appeals decisions in your jurisdiction (e.g., for North Carolina, United States Court of Appeals for the Fourth Circuit).
- (4) United States court of appeals decisions from other jurisdictions.
- (5) United States district court decisions in your jurisdiction.
- (6) United States district court decisions from other jurisdictions.
- (7) National treatises.<sup>23</sup>
- (8) Law review articles.

## VII. WHAT TO LOOK FOR IN CASES

Apart from weight of authority, there are certain types of cases that you should look for in preparing to write a memorandum of law or brief. The most common types are as follows:

- (1). *Cases that State the Applicable Legal Principles*
  - a. Cases that state the general rule of law.
  - b. Cases that explain or clarify the meaning of the general rule.
  - c. Cases that state the legal test for sufficiency of proof (e.g., preponderance of the evidence; or clear, cogent and convincing evidence).
  - d. Cases that state the standard for appellate review.
  - e. Cases with "holdings" rather than mere dicta.
  - f. Cases with pithy, quotable language.
- (2). *Cases that Clarify Statutes or Administrative Regulations*
  - a. Cases that interpret the meaning of the statutory or regulatory language.
  - b. Cases stating the applicable rules of statutory construction when the statutory language is ambiguous.
  - c. Cases that speak to strict or liberal construction of statutes.
  - d. Cases discussing legislative history.
  - e. Cases construing similarly worded statutes.
- (3). *Cases that are Analogous or Distinguishable from Your Problem*<sup>24</sup>
  - a. Cases with similar "key" facts to your problem.
  - b. Cases with dissimilar "key" facts when distinguishing adverse authority.
  - c. Cases that are well reasoned.
- (4). *Authorities in Support of Changing the Law or Dealing with Unsettled Law*
  - a. Cases with dissenting or concurring opinions.
  - b. Cases discussing analogous "areas" of the law.
  - c. Cases discussing policy considerations.
  - e. Law review articles.
  - f. Criticisms in learned treatises.

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23. See *supra* note 19.

24. See also *supra* Section VI. A.

### VIII. FINALIZING YOUR RESEARCH NOTES

After you have completed your research, organize your research notes under each separate issue. For example, you may be able to collocate all of your research on "double jeopardy" into one issue: "Did the trial court err in convicting and sentencing the defendant on careless and reckless driving when he had previously been convicted of driving under the influence on the same facts in a prior proceeding?"

Next, read through your research notes under each issue and cross out or discard those notes that are no longer pertinent or useful to the analysis of your problem. In this regard, again bear in mind the particular purpose of your research and writing.<sup>25</sup> Conduct any further research if necessary.

Before beginning to write, Shepardize all authorities you intend to rely upon. (If you followed the technique of first researching authorities in the supplement or pocket part, it is unlikely your final research notes will contain authorities that were overruled or modified.) Nonetheless, final Shepardizing is essential to confirm the continuing validity of your authorities, and to find out any subsequent history (e.g., whether the case was affirmed, superseded, vacated, certiorari denied, etc.). As appropriate, add any subsequent appellate treatment to your citations.

Now you should be able to write your memorandum or brief by drawing directly from your final research notes.

### IX. CONCLUSION

The key to effective legal research is to be methodical and thorough. The practical system discussed above is designed to facilitate these attributes. If you follow all of the steps suggested in the order given, it is very unlikely that you will miss any crucial authorities pertinent to your problem.

Of course, this comprehensive system lends itself best to novel and complicated legal-research problems. Along with thoroughness, your goal is to "zero-in" on the answer to your problem as quickly as possible. Thus, particularly when the subject of your research is narrow, it is entirely appropriate for you to employ shortcuts to the overall system. Experience is the *sine qua non* of this efficiency. However, until that experience has been developed, it is hoped that the practical system detailed here will help advance your mastery of effective legal research.

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25. See *supra* Section II.