

Jump Start Your Brief

Bigelow Spring 2008 Research Assignment

I. GOALS OF THIS CLASS

- Students will learn how to use research statutory law at both federal and state levels.
- Students will learn strategies for researching the law for an appellate brief, including:
 - updating authority from the lower court,
 - use of secondary sources,
 - the rules of practice for the appellate court, and
 - sources for locating briefs

II. HOW TO RESEARCH STATUTES

Publication of Statutes

- Slip laws: When laws are first passed, they are issued as pamphlets called “slip laws.” Federal slip laws are assigned public law numbers (e.g., Pub L. No. 107-173).
- Session laws: A body of statutes published in chronological order; pre-Code form. Federal session laws are published as *United States Statutes at Large* (e.g., 116 Stat. 543).
- Code: Finally, laws are organized into the various titles in an official code. The official codification for federal laws is the *United States Code* (e.g., 8 U.S.C. § 1701).

U.S. Code (in print and online)

- The Bluebook requires citation to the official version of the Code, which is the U.S.C. However, the U.S.C. is only published every 6 years and is behind schedule (e.g., current edition is still 2000).
- The U.S.C. is divided by broad subjects into 50 titles (see <http://www.gpoaccess.gov/uscode/browse.html>)
- Example: 18 U.S.C. § 2511 (under CHAPTER 119--WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS)
- Definitions and other preliminary material often appear at the beginning of a series of statutory sections (e.g., 18 U.S.C. § 2510 Definitions).
- After the text of the statute are notes detailing the various amendments relating to the law and cross references (e.g. Public Law and Statutes at Large references).


U.S. Code Service (in print and on LexisNexis)

- Example: 18 U.S.C. § 2511
- The publisher adds a variety of annotations, such as History, Ancillary Laws and Directives, Research Guide, and Interpretative Notes and Decisions.
- Annotated statutes are updated in print by “pocket parts.”
- Using Get a Document, type in the citation: 18 U.S.C. § 2511
- Use TOC link in top left corner to locate the section in the statutory framework.
- Practitioner's Toolbox has direct links to annotations.
- History
- Research Guide

- Under [Interpretive Notes and Directives](#) select [7. Intent](#).
- There are 13 cases; select the second one down, [U.S. v. McIntyre](#).
- Use [Shepard's](#), [Table of Authorities](#), and [headnotes](#) to examine and update authority and find other relevant cases. You should also use annotations to the CA penal code and secondary sources to find other relevant cases.

U.S. Code Annotated (in print and on Westlaw)

- Using [Find & Print](#), type in the citation: 18 U.S.C. § 2511
- Use [Table of Contents](#) link in the left frame to locate the section in the statutory framework.
- Use [Section Outline](#) for an overview of the statute (useful if your statute is long).
- Use [Results Plus](#), and the outline of other resources below it, for secondary sources, legislative history, cross references or other resources depending on the statute.
- [Historical and Statutory Notes](#)
- [Law Review Commentaries](#)
- [Library References and Research References](#)
- Return to 18 U.S.C. § 2511, go to [Notes of Decisions](#) in left frame, and select [Intent](#)
- There are 27 cases; select the fifth one down, [Earley v. Smoot](#)

- The annotation provides both the case citation and the relevant headnote.
- Select [Telecommunications](#)  [1436](#) and restrict to California
- There are 46 cases.

- Return to 18 U.S.C. § 2511 and pull up Earley v. Smoot; note that selecting Headnote 3 from the case will do the exact same thing as selecting the headnote from the statute's Notes of Decisions.
- Use [Keycite](#) and [Table of Authorities](#) to examine and update authority and find other relevant cases. You should also use annotations to the CA penal code and secondary sources to find other relevant cases.

III. RESEARCH FOR AN APPELLATE BRIEF

a. Secondary sources

Treatise in Westlaw:

Directory location: All Databases > U.S. State Materials > Other States > California > Forms, Treatises, CLEs, and Other Practice Material > California Criminal Law

Database Identifier: WITCRIM

Treatise in LexisNexis:

Legal > States Legal – U.S. > California > Search Analysis & CLE Materials > Criminal Law & Procedure > Appeals and Writs in Criminal Cases

- Expand **CRIMINAL APPEALS IN CALIFORNIA STATE COURTS**
- Expand CHAPTER 4. HANDLING A CRIMINAL APPEAL
- Expand III. BASIC PRINCIPLES OF APPELLATE REVIEW
- Expand B. STANDARDS OF REVIEW
- You may wish to explore this further along with other secondary sources listed on the resource list, especially the California state legal encyclopedias.

b. Rules of practice for appellate courts

You will need to be aware of the difference between rules of general applicability (e.g., California Criminal Rules) and local court rules (e.g., Rules for California Appellate Courts).

If you were actually filing this brief with the California Court of Appeals, you would need to closely follow Cal. Rules of Court, Rules 8.360, 8.200, and 8.204, which provide very specific instructions about when and how to file your brief. Individual courts of appeals also have the authority to supplement or modify the appellate court rules, so you must also be aware of any local rules for your court.

For example, the Federal Rules of Appellate Procedure sets page limits for reply briefs, but the D.C. Circuit regulates brief length by the number of *words*. The Fourth Circuit's local rules mandate that footnotes in printed briefs meet the same minimum size requirements as text.

Court rules can usually be found on the court's website, as well as in LexisNexis and Westlaw.

c. Locating example briefs – on Westlaw and LexisNexis

In LexisNexis

Legal > States Legal–U.S. > California > California State Briefs and Motions

Coverage: LexisNexis has selected briefs and motions from California state cases, including the supreme, appeal and superior court levels, beginning in 2000.

To limit your results to briefs in the Court of Appeals, Second District, use Document Segments DOCUMENT-TYPE (brief) and COURT (second district).

In Westlaw

Directory location: All Databases > U.S. State Materials > Other States > California > Briefs > California Court of Appeals Briefs

Database Identifier: CA-APP-BRIEF

Coverage: Westlaw has selected California Courts of Appeal briefs in PDF format, with coverage beginning in 1998.

To limit your results to briefs in the Second District, do a Terms and Connectors search with "second district" in the PRELIM field.

IV. CONCLUSION

The librarians are available to meet with you for research help. You may stop by the reference desk with your questions or arrange for a meeting with a librarian. To do the later, use our Ask a Law Librarian form at:

<http://www.lib.uchicago.edu/e/law/using/reference/ask.html>