

What Every Lawyer Should Know about Effective Alternative Research Techniques

Gimme 5 is one in an occasional series offering tips to attorneys on various areas of legal practice.

1 **Go 21st century: Use Google or any other general search engine as a legal research tool.**

Why not? You do it for other kinds of research. In fact, Google.com and the like can be remarkably helpful with threshold legal research on just about any topic. You will unearth troves of articles about important and interesting statutes and appellate decisions, and often the statutes and decisions themselves. An Internet search can be particularly useful as a prelude to a Lexis, Westlaw or manual—you remember books, don't you—search for out-of-state authority. Explore your topic on the Internet, note which jurisdictions yield the best hits, and *then*, armed with your preliminary findings, turn to your legal research provider of choice.

2 **Go retro: Try searching in the First or Second Series of California Appellate Reports.**

Particularly when searching for those seemingly obvious and yet maddeningly elusive bread-and-butter propositions, try limiting your search to the First or Second Series of California Appellate Reports, which together comprise Court of Appeal decisions filed between 1906 and October 1969.

Here's why: The current practice of selective publication began only in 1964. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, Sec. 705, pp. 739-740 [recounting adoption of Rule 976 of the California Rules of Court, establishing standards for publication of appellate decisions].)

Before that, *all* Court of Appeal decisions (like all California Supreme Court decisions to this day) were published, including those that dealt exclusively with routine applications of settled law to particular facts.

The First Series (1906 to 1934) can be pretty antiquated (though still good for bedrock propositions), but the Second Series, particularly toward the end, is relatively modern. The early series' decisions often present expansive discussion of basic topics. Today that type of decision frequently goes unpublished, but the older, published ones are fair game for citation. Indeed, they are often cited in modern decisions, so once you find a couple of First or Second Series cases that stand for the proposition you want, they can serve as a springboard for additional research in the current Fourth Series.

3 **Make like a judge: Try using the California Judges Benchbooks.**

West publishes a series of five compact practice volumes designed for use by judges. These five California Judges Benchbooks, produced by the California Center for Judicial Education and Research (CJER), provide advice

on handling the full array of matters that come up in *Civil Proceedings Before Trial, Discovery, Trial, After Trial, and Small Claims Court and Consumer*. That same advice is available to any lawyer who leafs through these volumes. You won't learn the judges' secret handshake, but these books do provide a different perspective from that seen in practice guides pitched to lawyers and often is quite useful.

4 **Talk it out: If Lexis and Westlaw aren't producing results, bounce your search objectives off others to help change the vocabulary of your query.**

We've all had the experience of searching in vain for authority that we are certain must exist. Often the problem lies in becoming hung up on particular search words. To break out of that rut, try this: Tell a colleague or (sometimes better yet) a nonlawyer or two about what you are looking for, and ask them to summarize it back to you in their own words. Listen to the particular words they use, and reformulate your search accordingly. If that doesn't produce results, try paying a visit to www.thesaurus.com.

5 **Start a personal database: Keep a list of cases that stand for principles useful to your particular practice.**

As an appellate lawyer, I'm partial to *In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 408-409, and *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1449-1450 [both explaining the highly specialized nature of appellate practice and encouraging the practice of engaging appellate counsel], *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266 [reviewing the bases on which appellate courts will entertain extraordinary writ petitions], and *People v. Jackson* (1992) 10 Cal.App.4th 13, 19 [explaining the distinctions among "the three primary standards of review which guide appellate courts: abuse of discretion, substantial evidence, and de novo or independent review"]. Taking the time now to make a list of cases useful to your particular practice can save you time in the trenches and help you to sound sharp in your papers, in court, and on the telephone.

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