



Union Legal Research's Top 10 Tips for Effective Legal Research and Writing

I've been performing legal research and writing for attorneys for more than 30 years. I'd like to think that a few best practices or worthwhile tips penetrated my noggin in that time. Some of these little nuggets of wisdom will seem like commonsense once you read them, but there are some that may not be in your research and writing regimen.

Here are 10 items that you should remember for effective legal research and writing:

10. *Expand your thinking.*

Nothing coming up in your jurisdiction? Look elsewhere. If we research the issue thoroughly, there just may not be any caselaw, meaning that your court hasn't decided this issue or at least specifically discussed this question.

An issue of first impression? Perhaps. But see if the corresponding state/federal courts have discussed the issue. Also look at other courts in your federal circuit. Nothing? OK, search your ALL-EVERYTHING database and see if something will come up. Even if you find an Alaska case, and your litigation is in Texas, take a look at the decision. Yes, we're brilliant, but there's a tiny chance that you're not entering the key search terms correctly for Texas. Maybe the courts in your jurisdiction call them "property boundaries" not "property lines" or "borders."

This can make a major difference. In my work for attorneys, I approach an issue by continuing to cast a wider and wider net until I find something somewhere. If and when I do (like the Alaska case above), I review the search terms to see if I missed a synonym or some other way of phrasing the issue. Then I double-back to the original jurisdiction and try it again with these new terms.

9. *Cut Out the unnecessary wordiness.*

Think about a clean, sleek idea. Now write it down. You're not getting paid by the word, and no judge decides a case or a motion based on word count.

Use an active voice and keep your language concrete. In addition, strike all of the words that aren't helpful. With this in mind, see number 8.

8. *Ease up on the legalese.*

"Firstly, it has been determined that said vehicle entered the aforementioned intersection during the course of the rain storm for the purpose of transporting the defendant to the retail establishment, owing to the fact that he was in close proximity thereto."

"The defendant was going to the store in the rain when he entered the intersection."

Which do you think the judge will like reading more? The first sentence of gobbly gook totaling 41 words, or the concise 18 words in the second?

Take it from Supreme Court Justice Ruth Bader Ginsburg, “If you can say it in plain English, you should.”

7. **Shepardize.**

No duh, right? But you’d be surprised the number of pleadings and briefs I see that opposing counsel cites to cases that have been distinguished, overruled, reversed or otherwise diminished. This gives me an easy target to shoot down the opposing counsel’s argument. And if I’m feeling a bit snarky, I may write something to this effect:

Opposing counsel has cited as support, Talley v. Howsley, 142 Tex. 81, 83, 176 S.W.2d 158, 159 (Tex. 1943). However, this Court distinguished Talley in Thigpen v. Locke, 6 Tex. Sup. Ct. J. 157, 363 S.W.2d 247 (Tex. 1962). As a result, opposing counsel’s contention is not the prevailing view, and his argument is without merit.

I just like the judge to know which side was thorough in their research, and which side was lazy or missed this subsequent history.

Besides, my client (the attorney) has the final say, so she can strike the snark or tone down my utter and complete disdain for opposing counsel’s attempt at legal research.

6. **Know the Rules.**

Follow the rules for submitting materials to the court. Every court has different rules about the type and size of font, page restrictions, and how and if you’re allowed to attach an appendix (and what’s that page limit?). Citing to the record on appeal also can flummox some practitioners.

And if you think judges don’t mind, think again. The Third Circuit once suggested that an attorney should be liable for malpractice for a brief that was totally non-compliant with Circuit rules!

5. **You Don’t Know What You Don’t Know about the Law.**

Are you aware that a new state supreme court decision came out last week that takes the wind out of the sails of your argument? You better be.

Thorough research will entail looking for recent decisions that may impact your case, as well as recently enacted statutes.

4. **Do Do Your Due Diligence.**

There are plenty of memes that can help you with the proper use of *there*, *they’re*, and *their*, so keep an eye out for commonly misused words. You probably have some idea of the words that trip you up. *Do you imply or infer. Is it lay or lie?* Those are two sets on my list. Here are some other common legal terms that may give you problems:



- Emigrate (leave your country for another) vs. Immigrate (come in a foreign land)
- Ensure (make sure) vs. Insure (protect against loss)
- Imminent (soon) vs. Eminent (prominent)
- Moot (no longer a deciding factor) vs. Mute (silent)

Be certain you're using these words appropriately. It would be a shame for the judge to take out her red marker and correct your brief before rejecting it!

3. Go “Old School” When Editing.

Yes, we're all in a rush, but even that extra proofread on the PC or laptop may not be as effective as printing a hard copy, sitting in a quiet spot, and reviewing it again. This is real challenge for me because my brain thinks it's smarter ~~that~~ than I am. As I proof read, my brain approves “that” instead of “than,” and spellcheck may not pick “that” up as a grammatical error.

The best way to proofread? Print out two hard copies, grab your assistant and read the document OUT LOUD to one another. This is totally old school. When I was a legal editor at BNA, there were two individuals who sat in an office facing each other with the copy propped up, reading aloud and comparing the words at a moderate pace, spelling out any uncommon words.

Try it. I bet you ~~find~~ find several errors this way that you hadn't before.

2. Racing to the Deadline.

Some attorneys are over-confident in their ability to crank out a brief in “one take”—or without major revision.

I've assisted some attorneys who give me an assignment to write a brief for them within a few hours of the court filing deadline. Then they start panicking. Understand that once the guts of the brief are completed, there are several steps of formatting that must be done. The Table of Contents and the Table of Authorities, as well as any appendices, cannot be constructed until the finishing touches are put on the arguments.

I like to give myself three hours to do the formatting. This includes setting the tabs so you get consistent page references in your tables, like this:

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<i>Webb v. Standard Oil Co.</i> , 414 F.2d 320 (5th Cir. 1969).....	9

Also, remember that every reference to a legal authority must be tracked in the Table of Authorities. So, if you decide to add a two-paragraph section on page 4, it will push the rest of the text down and change most of the page numbers. This can be irritating for someone under a deadline, so don't do it!

Read through the draft and sign off on it. Then let me whip it into filing shape.

And the Number One Tip for Effective Legal Writing...

If you still don't feel confident or don't have time, just contact Union Legal Research!

As I mentioned, I've been doing this for over 30 years. I know how to conduct legal research—I was a Reference Attorney at Westlaw for my first five years at Thomson West. This experience taught me how to construct queries and how to plan a search strategy. I took 50 calls or more every day in which I helped attorneys with their research.

I was also the Director of Library Services for a large law firm, and now I also edit treatises for Lexis. In addition to legal research and writing, I also offer competitive intelligence, blogging, and article drafting.

Trust me to get the job done right and on time.

Kurt R. Mattson, J.D. LL.M., M.L.I.S. is president of Union Legal Research. With more than 30 years of legal writing experience nationally, he provides timely legal research and writing for attorneys and law firms. Among his clients are personal injury firms, solo litigators, large law firms, and several family law attorneys.

Kurt assists busy attorneys with legal research and memos on difficult issues; drafting pleadings, briefs and motions for on-going cases; writing appellate briefs; and other forms of litigation prep.

Kurt spent 17 years at Westlaw and now writes and edits several publications for Lexis. He received his J.D. from William Mitchell College of Law and his Masters of Law (LL.M. in Labor and Employment) from George Washington University. He received a Masters of Library Information Science (MLIS) from Wayne State University.

He is a contributor to business and legal publications, such as *AALL Spectrum*, *Vegas Legal Magazine*, and *Nevada Lawyer*.

