"A Case Like Mine from Georgia" A Note on Legal Research

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She looked pale—but determined. Dressed in black from head to toe, she was unmistakeably a "new" widow. She immediately informed me that her husband had recently "passed away" —his body had been found on a lower parapet of a tall office building. Although it was winter, a window was open above him on one of the upper floors; this, it developed, was the floor on which he was last seen alive. He had been a chronic sufferer from a heart condition which caused periodic attacks of "air hunger". The insurance company, a Georgia corporation, had refused to pay the claim for "accidental death". I suggested that she see her lawyer. With ill-concealed impatience, she informed me that she had not been able to get any satisfaction from him and wanted to "look into it" for herself. I selected from the encyclopedias and texts the most elementary discussions of "accidental death". She read a little, then began to wander around the library. I found something more specific. She glanced at it, then began to wander again. Finally, thoroughly exasperated, with a distinct note of distrust and disgust in her voice, she exclaimed, "I do not see why you bring me all of these books. I made a simple request of you. *All I want is a case just like mine from Georgia!*" She left in a huff, thoroughly convinced that I did not want to help her and half-believing that I was secretly in league with the insurance company against her.

Bless her heart, poor soul, she will never know that a good part of every law librarian's time is spent in search of "a case just like mine" from Georgia, or some other jurisdiction. Lawyers are prophets-for-hire and legal researchers are occupied with sampling studies in prediction. Little did she realize that analogy is peculiarly the technique of the law and that there is a continuous and unremitting search for the "case on all fours". Jurors, it is assumed, know *no* law; lawyers are required to know *some* law; laymen are presumed to know *the* law; only law librarians are expected to know *all* the law. The plight of the legal researcher was put rather colorfully by Justice Ervin, of this Court, when he said: "I spend half my time looking for a picture of a horse like the one I have. I find lots of horses. Many of them look like mine, but I keep on looking, hoping I will find one that has written under it, *This is a horse like yours.*"

Within narrow limits, legal research may be a science. On a clear-cut question, most competent researchers will

eventually find substantially all of the cases squarely on a given point. Recently, we briefed the question of the constitutionality of parking meters; later a brief of the Attorney General on the question was examined and revealed exactly the same cases. However, in the final analysis, legal research is an art, not a science. Certainly, the researcher must know what books touch the field and the extent of their coverage, but beyond this many factors—familiarity with the legal principles involved, a vivid sense of analogy, a quick mind, a penetrating insight, a lively imagination—may make all the difference in the world as regards the results of different researchers.

Of course, all legal problems do not yield to the same approach. There are special problems, such as questions arising out of the Restatement or one of the Uniform laws (in these the researcher turns immediately to the *Restatement in the Courts* or *Uniform Laws, Annotated*). There are other problems which suggest a particular approach, as, for example, where the answer turns on a definition (recently, in a case involving a covenant against a "two-family dwelling", *Words & Phrases* was more helpful than any other work). In yet other cases, the *Index to Legal Periodicals* yields fruitful law review discussions (this is particularly true in new fields, such as labor law, or fields of current, intense activity and change, such as civil rights). Other "special situations" will be remembered by every researcher.

When due allowance is made for these fairly numerous "special situations", most experienced legal researchers have a reasonably well-defined "pattern of approach". This "pattern" will differ widely from one researcher to another, reflecting personal preferences, but each will tend to fit into something of a standardized approach. Outside of the legal bibliography manuals, which sometimes approach this in their "surveys of legal materials", I do not recall ever having seen an outline of such a "typical" approach of a researcher. A natural reluctance to expose one's shortcomings to the public gaze is understandable. Perhaps the need of setting it down never occurred to anyone, or the difficulty of doing so persuasively was too much for others who attempted it. Whatever the reasons for the non-existence of such "confessions of a legal researcher", I should be sufficiently warned to turn a deaf ear to the honeyed entreaty of the editor that I expose my ignorance for the enlightenment and amusement of my colleagues. However, for fifteen years I have "re-briefed" questions which several hundred lawyers—most of them good lawyers—have presented. I have noted *their* methods—and weaknesses. Against this experience I have modified and expanded my own approach. At least I had the satisfaction recently of hearing that a student law review editor had undertaken a case-note on a case reflecting my briefing—and had been forced to abandon it because the case itself had exhausted the pertinent authorities. Perhaps, I *have* learned something. If I have, maybe it will, here and there, offer a bit of help to others or, better still, encourage some other worker in the

vineyard to set down his or her working technique. Only through such "pooled experience" can we hope to build up a body of practical and helpful professional knowledge. If there are better approaches to legal research, the ensuing criticisms and suggestions should bring them to light. But, somebody must start it. Here it goes:

First of all, *state the question for investigation as clearly and concisely as possible in terms of recognized legal terminology and concepts.* Most legal questions arise among laymen. These must be restated in terms of legal concepts before legal learning can be brought to bear upon the problem. Lawyers sometimes fail to make their clients see the "legal question" involved and, more rarely, they themselves fail to see it in its full implications. Once the controversy is restated, the next step is to determine the general category of the law into which it falls. Let's take an actual case: Deceased's will left real estate to his wife without limitations, adding at the end of the section, "I do not want my wife to take up with any other man; if she does, this real estate goes to my estate." The wife re-married. Does she own the realty in *fee simple?* The general category is clearly "real property". Next we determine the major sub-heads under which it falls. One of these, we decide, might be "future interests" and another "wills". Then we study the statement of the question for specific key-words; we note there readily—"remarriage" and "widow" and later, after some thought, add "conditions subsequent" and "defeasible fee". We are now ready for the books, passing over for later checking the works on the most general of the subjects, Real Property, and directing our attention to the texts on Future Interests and Wills. In these texts, we check the key-words "remarriage", "widow", "conditions subsequent" and "defeasible fee". Under Future Interests we examine first, Simes on *Future Interests* and under Wills, Page on *Wills,* as these are two major and recent works in these fields. Having noted the specific text statements on the question, and the authorities cited, we do the same for other standard textbooks on Future Interests, Wills and Real Property. At this point we appraise what we have found and conclude that the stronger position is that the wife takes an absolute fee, the restraint upon remarriage having failed. Before leaving the textbooks, we check the case citations to be sure that we have the National Reporter citation for each case; we will need these later to determine the appropriate Key-Numbers.

Some lawyers prefer to go directly from the textbooks to the Key-Numbers in the American Digest System. My own preference is to go next to the encyclopedias and annotated reports, as often an annotation will collect a high percentage of all the cases on the point in question. The publishers claim that the *A.L.R.-L.R.A.* notes brief about 40% of the questions; even if this estimate is high, the percentage is still high enough to encourage turning to them early in the search. Another reason for turning early to the encyclopedias is that their statements of the pertinent rule of

law are often later than those in textbooks and, particularly as to *C.J.S.*, constitute the most recent, definitive statement of the law on a specific subject. From *C.J.S.* I note the case citations, then turn to the reference in *C.J.* for the earlier cases. Next the rule and cases are taken from *Am. Jur.;* if a case-note from *A.L.R.-L.R.A.* is given, this is examined carefully. Where there is a case-note in point, it is brought to date by checking the Blue Book and all cases are listed. It will be noted that *Am. Jur.* is here used not only as an encyclopedia, but also as the best index to the *A.L.R.-L.R.A.* notes.

My next step is to go to the American Digest System. By examining the head-notes in a half-dozen of the most pointed cases, and noting the Key-Number assigned to the appropriate head-notes in the Reporters, it is a simple matter of following this Key-Number through the Digest System to locate all of the cases regarded as pertinent by the editors. This process should uncover additional cases *and* verify the case-name and citations of *all* previous cases found; if it does not do so, you are, at least, in the strong position of having several different sets of editors checking against each other for you. In this phase of the investigation, special care is shown to recent cases, particularly those since the dates of compilation of the textbooks and encyclopedias. In new or rapidly developing fields, these recent cases sometimes bring into the rule a new emphasis or even change the weight of authority. This is an important step; lawyers who omit it—as a few do—are sometimes embarrassed later by their oversight.

From the Digest System we turn to the *Index of Legal Periodicals.* Often enough to justify this search, a comprehensive article on the precise question by a specialist will discuss minor aspects of the problem not treated by any of the previous authorities. Often, too, such an article will evaluate many of the cases already accumulated from other sources. Before leaving the Index, we check our list of cases in the *Index to Case Notes.* One or two such case-notes, pin-pointing the precise question, may be invaluable both in phrasing the rule of law and in furnishing authorities.

The results of the various steps outlined are a number of quotations, with supporting citations. Unless the number of cases is quite large or the same cases have been repeatedly cited by several authors for the same proposition, we finally turn to *Shepard's Reporter Citations* for other citations of the appropriate head-notes in the cases we have. In all events it is well to run the leading cases, and the local cases, through Shepard, as a final safeguard against serious oversight.

The work-sheets from this series of investigations now supplies the basic raw material for an authoritative opinion on the *general* law of the question we investigated. This should supply an ample back-drop against which to present such limited case and statutory authority as the local jurisdiction may have upon the question. There is still the task of selection, of evaluation, of logical organization, and of composition, but these lie beyond the realm of pure legal research. They are matters involving the highest form of creative artistry in law, and in

these fields there will be a much greater diversity of opinion than in the more prosaic matters of legal research.

The approach which I have outlined begins with the textbooks, because I prefer to begin my search from the authoritative statement of a specialist. I have seen others start with the encyclopedias and still others, usually young men with law review backgrounds, turn first to the American Digest System. I am not seeking converts; I am merely giving a report on "legal research in action". In advocating my approach I would scarcely go as far as President Hutchins (appraising the University of Chicago) in saying that it isn't a very good one, but is the best one there is. Nor will I go to the other extreme of the mountaineer's domestic credo as he brought his fourth wife home, "I can be larnt, but I'm powerful sot in my ways and its got to be moren just better fer to change me." It does have the advantage of leading systematically from textbooks through the encyclopedias, the annotated cases, the Digest System and the law reviews, with an incidental check of the "Index to Case-Notes" and Shepard's Citators. A cagey, old lawyer several years ago searched this library several days, only to find one case on his point in this country—and that was against him. He hid the book. It took us a week to find it—to be cited against him. I do not guarantee that the research approach I have outlined will find every "case just like mine from Georgia". But—if it doesn't, I'll half-suspect that someone has hid the book.