

Criminal Procedure and Practice



James Wirrell
Pacific McGeorge School of Law

Research in the Real World
Friday, May 22, 2009

Outline

1. Real world research vs. academic legal research
2. Specific areas of research for criminal law attorneys
 - a. Preliminaries
 - b. Know the law
 - c. Preparing your case
 - d. Rules of evidence
 - e. Court rules
 - f. Jury instructions
 - g. Tracking your case
 - h. Knowing the defendants and their partners-in-crime
3. Sources to Use
 - a. Practice Guides
 - b. Treatises
 - c. Form books
 - d. Witkins
 - e. Statutes
 - f. Case law
 - g. Association websites
 - h. Court websites
 - i. Fee databases
 - j. Inmate information

1. Real world research vs. academic legal research

Real world legal research differs from legal research in law school. Some of these differences are:

Legal research in law school

Don't copy other students' work

Westlaw and Lexis is free and unlimited

Busy schedule with little time for each assignment

Sweet-talk or debate your way out of late penalties

Research focused on abstract issues

Real world legal research

Copy others' research whenever possible

Westlaw and Lexis costs or limited access to free version at law library

Much busier schedule with even less time for each assignment

Sorry, courts don't accept any excuses for late filings or missed appearances

Research specific people, events, locales

So, when in practice, keep on the look out for:

- Existing resources which have done the work for you, such as brief banks
- All-in-one practice guides that are liked by experienced attorneys
- Collective resources from specific attorney sub-groups (e.g. defense lawyer association)
- Useful free and subscription sites for practitioners

2. Specific areas of research for criminal law attorneys

a) Preliminaries

- Know your jurisdiction and time
- Research the law that applies to your case
 - Correct jurisdiction - federal or state
 - In case of previous statutes - which law applies?
 - Look to the date the event in question occurred
- What court should you be in?
 - Court rules and forms

b) Know the law

- Familiarize yourself with the relevant legal issues
 - Statutes govern
 - Court decisions interpret statutes

c) Preparing your case

- Know procedure
 - What motions to file and when
 - Deadlines
- Background checks of parties and witnesses
- Forms
- Sentences
 - What is the probable sentence for the offense if convicted?
 - Plea bargaining

d) Rules of evidence

- Know what can be admitted or excluded

e) Court rules

- Follow for correct form for motions, pleadings, briefs and for deadlines

f) Jury instructions

- Tells jury what the issues to be decided are
- Jury instructions suggestions are submitted by attorneys

g) Tracking your case

- Track your cases as they proceed through the courts
- Track many cases

h) Knowing the defendants and their partners-in-crime

- If you are public defender, learn about your client including why they are in jail, when the next court date is, what bail is, etc.
- Learn about out of county warrants, etc.

3. Sources to Use

a) Practice Guides

- Practical “how to” manuals covering all aspects of case
- Combine secondary commentary with citations to primary law
- Written for practitioners
 - “How to” manuals
 - Includes tips on deadlines, forms, how to handle specific situations, checklists
- Publishers
 - CEB - Continuing Education of the Bar
 - Matthew Bender (Lexis)
 - West
- California Practice Guides
 - *Appeals and Writs in Criminal Cases* (CEB)
 - *California Criminal Defense Practice* (Matthew Bender)
 - *California Criminal Law Forms Manual* (CEB)
 - *California Criminal Law Procedure and Practice* (CEB)
 - *California Criminal Practice, Motions, Jury Instructions and Sentencing* (West)
 - *Criminal Defense Techniques* (Lexis)
 - *Criminal Law Action Guide* (CEB)
 - *Criminal Law Deskbook* (Lexis)
 - *Criminal Practice Guide* (West)
 - *Criminal Practice Manual* (West)
- General Practice Guides
 - *Wharton’s Criminal Procedure* (West)
 - *Defense of Drunk Driving Cases* (Matthew Bender)
- *California Criminal Law Procedure and Practice*
 - Reputed by California criminal attorneys as the “Crim Law Bible”
 - McGeorge criminal law alum says “worth every penny”
 - One volume, updated and republished annually
 - Covers: Client interview, pre-trial negotiation, motions and deadlines, trial preparation, jury trial, sentencing, post conviction duties, and more

b) Treatises

- Provide more in-depth coverage of specific issues
- Good to build up basic knowledge of subject area
 - Treatises explain issues
 - Discuss areas of law
- Can be a fine line between treatise and practice guide
- California Treatises
 - *California Criminal Law*, annual, by Levenson & Ricciardulli
 - *Levenson on California Criminal Procedure*, annual, by Levenson
 - *California Criminal Discovery*, by Pipes et.al.
- General Treatises
 - *Criminal Procedure*, 2d ed., by LaFave
 - *Federal Practice and Procedure*, (Wright and Miller)
 - *Moore's Federal Practice*
 - *Search and Seizure*, 4th ed., by LaFave
 - *Searches & Seizures, Arrests and Confessions*, 2d ed., by Ringel
 - *Substantive Criminal Law*, 2d ed., by LaFave

c) Form books

- Copies of forms to submit to court
- Many forms can be found in practice guides in print or online
- If using a print practice guide, look for an included CD
 - *California Criminal Law Forms Manual* (CEB) has a CD included
 - Download and complete the forms you need

d) Witkins

- Quick overview of topic
- Like an encyclopedia
- Quick introduction to law
- References to primary authority
- *California Criminal Law*
- Updated annually
- Available in print, Westlaw and Lexis

e) Statutes

- Primary authority dealing with topic
- West's and Deering's California Penal Code
 - Annotated
 - Provide text of statute, history of statute and citations to cases interpreting statute
- Westlaw and Lexis
- Both Lexis and Westlaw provide a similar looking history of statute and amendments
 - When statute first enacted
 - Subsequent amendments
 - Where to find amendments
- Official California Legislative Information
 - Copy of penal code online

f) Case law

- Interprets statutes or common law
- Case reporters
- Westlaw and Lexis
- Free or low cost sites
 - California official courts page offers limited Lexis access
 - Loislaw, FastCase, VersusLaw, Findlaw
 - Free West and Lexis Public Access at McGeorge and other law libraries

g) Association websites

- Memo banks
 - Shared banks of memos written by attorneys
 - Three ways to access memo banks
 - Operated by particular firm or institution
 - Organizational bank - affinity based organization has memo bank
 - Informally shared amongst defense attorneys
- California Public Defender's Association
 - www.cpda.org
 - Cases, statutes, listserve and brief bank
- California District Attorney's Association
 - <http://www.cdaa.org/>
- Inquire where you work about brief banks and affinity based associations

h) Court websites

- Provide several types of information
- Jury Instructions
 - <http://www.courtinfo.ca.gov/jury/criminaljuryinstructions/>
 - Complete CALCRIM jury instructions and users guide
- Docket information and scheduling
 - <http://www.saccourt.com/> (click on "case index" on RH side)
 - Status of case and next date
 - Charges, co-defendants, prior local criminal history

i) Fee databases

- Sentencing calculation software
 - CrimeTime (California edition)
 - See what probable sentencing will be for charges
 - <http://www.placergroup.com/>

j) Inmate information

- Sacramento Sheriff's Department
 - <http://www.sacsheriff.com> (click of inmate information on LH side)
 - Information includes next court date, bail amount, charges, booking and arrest date, where the inmate is being housed, etc.