

## REAL WORLD LEGAL RESEARCH Linda Spath

Time for this presentation is 45 minutes and consists of 4 parts:

- I. **Expectations** – 10 minutes
  1. What *you* should expect
  2. What is expected of you?
- II. **Key California Practice Materials** – 15 minutes
- III. **Sample Questions** – 15 minutes
- IV. **Your Questions** – 5 minutes

### What *You* Should Expect when doing real world legal research

Expect

1. **Uncertainty** – You should expect to feel uncertain when starting your research. You probably will not know the subject area, the jargon, or the best place to start your research.

Expect

2. **Different time pressures, turnaround times** – time may be short, e.g., need answer for a client meeting this afternoon.

Expect

3. **To Wish you had taken that advanced legal research class** – it may not be too late before you graduate. I highly recommend that you take advantage of the class taught at Boalt.

Expect

4. **Help from your librarians**. Librarians are not brought in just for the summer, but assist attorneys with their research year round.

Expect

5. **Attention to costs** – especially *this year*, especially at *private law firms*.

## What is Expected of *You* as a legal researcher?

### 1. Work Efficiently

#### (a) By Understanding the Mission Before Starting Your Research

You may receive written assignments, but be prepared for the hallway request.

You may need to conduct an informal research interview. Have your mental checklist ready so you walk away with the information needed.

Key details include:

1. What is the **issue**? **Restating the issue to the requestor is an effective way of insuring that you are on track.**
2. What is the **jurisdiction**? California? Other state? State or federal?
- 3 What is the desired **format** – report in person, short memo
4. What is the requestor's **timeline** (appearances can be deceiving)

#### *Most Difficult*

#### (b) Starting Slow to Go Fast: Make a Research Plan

No matter short the assignment, you should have a plan. You probably will change it as you go along, but start with a plan. [Plan may be to go the library.]

Stop from time to time and reassess your plan. Bonus: Your plan will turn into a helpful research trail.

### 2. Conduct Cost-Effective Research

One of the best ways to do cost-effective research is to find someone who has done the work for you.

Do this by **Starting Secondary**:

- a) Ask **your librarian** to recommend a treatise that addresses your issue. If your firm does not own the book needed, your librarian can usually borrow it for you on a timely basis.
- b) **Use Online Book Catalogs**: Boalt's LawCat, San Francisco County's Law Library
- c) **Browse Lexis & Westlaw menus** to *identify* a treatise & scan the table of contents; **use** the *print*

~d) *If you are at a private law firm*, locate a relevant memo or form in your **firm's internal work product**. Most firms have **searchable** document management systems that you will learn about during your law firm orientation.

~e) Access *other attorneys'* work product – ask your librarian about locating **sample pleadings** filed with federal and state courts. Your librarian also can assist you in locating **sample agreements** in exhibits to SEC filings.

## Why use a treatise?

You have Lexis and Westlaw conveniently at your desktop. Why should you get up and walk to the library, which may be several floors away?

There many good reasons to start with books – here are 6

1. **Books Provide Specialized Expertise** – You may feel uncertain, but someone has done the work for you and done it extremely well. An attorney with expertise in the area of interest to you has spend years – perhaps a lifetime - pulling together the relevant California statutes, regulations, cases; adding analysis, practice tips; warnings of pitfalls. Start your research plan with *find out* if there is a practice book that targets your research issue.
2. **Books have Structure** – books are **organized** and usually offer (a) **multiple access points**, such as, table of contents, and indexes by topic, statute section and case name. Books also provide abundant references to related information.
3. **You will use Lexis & Westlaw more effectively if you understand how the books work.**
4. **Speed** – In many ways, books are faster than Lexis or Westlaw. Books on a given topic are generally shelved together, so you can quickly pull together and review key print resources.
5. **Saving Money** – Books are free for you to use. You won't lose sleep over costs for 3 hours spent reading a CEB treatise will show up on a client pre-bill weeks from now. You *might* lose sleep over how much you may have spent during your 3 hours on Westlaw. Know what you are spending when you are online – transactional or time?
6. **Stopping** – It is easier to stop your research when using books, especially when you do not find a clear answer or any answer at all. Your comfort level will be much higher if you can itemize the key print resources you consulted rather than reporting that “you could not find it on Lexis or Westlaw.”

## Let's take a look at California Practice Materials

**The primary purpose of practice books is to help attorneys practice law.** Think of them as instruction guides for specific areas of law. They generally include lots of information on important procedures that need to be followed as well as discussing substantive law. They provide tips, strategy, and warnings.

**Publishers of California legal materials** (listed on the handout) range from the families of Thomson West and Reed Elsevier --- to the local independent publisher, California Continuing Education of the Bar --- to publishers of a single title.

**A word about Families. Families matter because books published within the same family generally refer to each other. If you get stuck on an issue, make sure you consult books from different families.**

Let's look at some key titles of two major publishers of California Practice Materials.

2 from the **Thomson family**, which includes West Group, Rutter Group, Westlaw, and KeyCite

2 from the **Reed Elsevier family**, which includes Matthew Bender, Lexis, and Shepard's

**We will consider:**

- 1. Scope**
- 2. How to Access**
- 3. How to check for currency**

## 1. THE WITKIN LIBRARY (a member of the Thomson West family)

**Started by Bernie Witkin as a one volume treatise, it is today a library of 25 volumes** continued by a team of attorneys.

- a. Witkin has been cited by the California Supreme Court and Courts of Appeal over **20,000 times**. In the last year alone, Witkin has been cited y those courts **977** times. In 2008 YTD 4/5/08 Witkin has been cited **239** times.
- b. Bernie was legendary even in his own time and is the only known California legal scholar to have a rock song written in his honor. The lyrics go something like, "he put his words on paper, but they are worth their weight in gold."

The California State Law Library was renamed the **Witkin State Law Library of California** in Bernie's honor.

### **SCOPE:**

**"Witkin" generally refers to Witkin's *Summary of California Law*, a 10 volume set that covers broad substantive law areas. Volume One. Contracts is the most popular volume.**

**But Witkin includes three other sets: *California Civil Procedure*, *California Evidence Law*, and *California Criminal Law & Procedure*.**

**All sets provide helpful, practical overviews of California law, discusses the relevant California statutes and cases, and include extensive cites to secondary sources.**

**Access (for Summary): vol. 16 - Topical index followed by chapter outlines; vol. 15 – Table of cases, Table of code sections, Table of California Code of Regulations (2+ pages), Table of US Code, Table of CA & U.S. constitutions, and Table of Court Rules**

**Currency check: bound volume + annual pocket part or annual supplementary pamphlet.**

This treatise unique to California will spoil you. It is a sad day when I have to tell an attorney that there is no Witkin for Wyoming. Or Wisconsin.

TWO **WORKHORSES** from the Reed Elsevier family – ONE FOR LITIGATION, ONE FOR TRANSACTIONS  
You may go right by them because of the title emphasis on *forms*, but they are so much more.

On the litigation side

## 2. **California Forms of Pleading and Practice Annotated (55 volumes)**

### **SCOPE:**

**Provides encyclopedic coverage of all civil practice areas with detailed analysis of the law along checklists and research guides – and forms. Covers** all of the basic topics you would expect, such as contract, corporations, non-profit corporations, partnership, **but also topics such as** Act of God; Bridges; Continuing Duties During Litigation; Election Campaigns; Games, Sports & Athletics; Lost Papers; Motion Pictures; Name, Change of; Patents and Inventions; Points and Authorities; Investigations by Public Agencies; Vexatious Litigants; and Zoning. <http://bookstore.lexis.com/bookstore/product/10290.html>

### **Access:**

Lazy approach: scan spines – topics are in alphabetical order. Spine shows beginning and ending topic for that volume. Or, use the detailed **2** volume index shelved at the end of the set.

Let's say you consulted Witkin first and found a statute or case that seemed right on point. Use the CFP&P Table of Statutes or Table of Cases index volumes to locate where that statute or case is discussed in CFP&P.

**v. 1 Contents:** List A: Alphabetical List of Chapters; List B: Topical List of Chapters and Special Features and Finding Aids, including New Developments by Year; Procedural Guide for Civil Actions; Table of Affirmative Defenses; and Table of Limitation Periods.

### **-Taxicabs –**

**Currency:** this loose-leaf has interfiled pages, but some loose-leaf sets have update at front or back (with tab like Miller & Starr or perhaps different colored paper)

Taxicabs - (**5/00**): no changes to make since 5/00

I. Introduction – **Scope** of Chapter, **Cross-References** [Refers to Ch.2 **Procedural Guide for Civil Actions** (p. 544-5)], **Governing Law** §544.10 (p. 544-5, 544-6)

II. Research Guide – State Constitution, State Statutes, Decisions, Law Reviews, *Text references* [**families**]

There is a reference to Witkin at present. (p. 544-18)

III. Essential Allegations

IV. Forms

### 3. California Legal Forms Transaction Guide (36 volumes)

#### **SCOPE:**

Provides step-by-step guidance through all **non-litigation practice areas** likely to be encountered in a typical practice, including: Business and Non-Profit Organizations; Real Estate Transactions; Commercial Transactions; Wills and Trusts; and Contracts

#### ***Plus –found in volume one alone:***

**Role of Counsel in Starting a New Business**

**Regulation of Employers** (California and federal laws)

**Overview of Employee Benefits**

**Insurance Considerations in Business Formation**

#### **Access:**

Topical Index – very detailed (*entire* volume)

Table of Statutes

**Currency:** like CFP&P, this loose-leaf has interfiled pages

CLFTG takes a transactional approach. Each chapter is complete in itself and organized according to the chronological sequence of a typical transaction.

Each chapter includes:

- (a) **Scope note**, which provides a short overview of the chapter and references to related chapters.
- (b) **Research Guide**, which provides a complete listing of relevant statutes, regulations, and secondary sources.
- (c) **Legal Background**, which provides a detailed analysis of the law applicable to the particular transaction, with particular emphasis on potential problem areas, as well as discussion of the practical aspects of the transaction that practitioners need to know.
- (d) **Transaction Guide**
- (e) **Forms** - Offers guidance through the drafting and filing of all the requisite forms.

#### 4. **Rutter Guides** (a member of the Thomson West family)

##### **SCOPE:**

Rutter Guides are concise, generally sets of 1 to 4 loose-leaf volumes) “how to do it” books that cover about **21 California-specific** practice areas. Separate sets cover litigation in California *state* and California *federal* courts. These guides are written by well-respected judges and attorneys who are experts in the field of law concerned. Guides provide information in bullet points and include practice pointers, strategic advice, and procedural checklists.

##### **Access:**

Jump into these guides by using the outline at the front of the book or the index, which is very good.

##### **Currency:**

**Loose-leaf with interfiled pages; annual update. Check front of volume 1**

Attorneys refer to these guides by **author name**, such as “**Weil & Brown**” or by **color** (the “**red set**” is California Practice Guide: ***Federal*** Civil Procedure Before Trial.)

**California Practice Guide on California Corporations – Green**

5. A few words about the esteemed local publisher, **CALIFORNIA CONTINUING EDUCATION OF THE BAR, generally referred to as “CEB”**

**SCOPE:**

The Rutter Group offers a handful of books. CEB, founded by the University of California and the State Bar of California in 1947, offers a **catalog full** of high-quality California-specific treatises and Action Guides.

CEB deserves an entire research session. I especially like Onlaw’s **free links to California statutes and cases.**

Authors of CEB books are distinguished, practicing attorneys – or judges – who are experts in their fields. [California Supreme Court associate justice Kathryn Werdegar was a former director of CEB’s criminal law division.]

CEB treatises are generally small loose-leaf sets of 1 to 4 volumes, which include many practice tips and checklists.

The focus is on keeping California attorneys current with the latest developments in both substantive and procedural law. A major new CEB title: **California Law of Contracts.**

**Access:**

Index by topic, statute, case name

**Currency:**

Annual updates; interfiled pages