

More on the American Scene

Virginia Wise, Lecturer at Harvard Law School, specialising in legal information and legal research, wrote (while visiting ANU), to R J Angyal with some comments on his two articles "Understanding and Using Citations to American Cases" (Bar News Winter 1992) and "Researching American Authorities" (Bar News Spring/Summer 1992).

Thank you for your nice letter and for the articles. You did an admirable job of condensing the complex subject of American legal research. I have just a few comments, in case you do this kind of thing again. The first is that the *Uniform System of Citation* came out with the 15th edition in 1991 (maybe after you had already submitted your article). The 15th ed. made some fairly significant changes in citation practice which you may find interesting. The first is to drop the requirement for citation to official reporters and require only citation to the West regional reporters unless one is practising in that particular jurisdiction. Thus, a Massachusetts lawyer practising in Massachusetts could still have to cite the official *Massachusetts Reports* (Mass.) and could optionally cite the regional reporter (N.E., N.E.2d). But lawyers practising in New Jersey who wished to cite a Massachusetts case could cite only the N.E. or N.E.2d. This codifies the actual practice as you indicate in your article, that is, most people have access to, and use, as a practical matter, the West regional reporters only. Of course, your point about the importance of indicating the court which decided the case when citing the Regional reporters is crucial. This has interesting ripple effects on the practice of Shepardizing, making it more important than ever to Shepardize both the official and unofficial cites. Both Lexis and Westlaw now have star paging for some official and most of the West reporters so that one can easily use the online services without having to actually check the bound volumes if one wants to cite particular language within a case.

Another important change in the 15th edition is to provide for citation to material which only appears in electronic format (primarily Lexis and Westlaw) if it does not yet appear in any printed form. This grants a certain legitimacy to online sources which they might not have possessed before this rule change.

Another change requires that in citing journal articles and book material, one must provide the full first name of the author. I applaud this change because it makes things easier to follow up (avoiding the nightmare of looking in an online service for D Smith). The inside story is that it was seen by the editors as a blow against sexism. The notion is that when initials only are used, everyone assumes the cited authors are men. Using first names would allow women to be more easily identified and therefore get more credit for their work.

Finally, the 15th ed. has a greatly expanded and improved international and foreign law section. I'd be curious to know whether Australian lawyers think the Australian section is adequate. I have regular consultations with the Bluebook editors so I could probably actually get any suggested changes implemented!

A few other minor clarifications from the article, *Researching American Authorities: An Introduction*.

Looseleaf Services - The CCH Tax Reporter is the *Standard Federal Tax Reporter*, not the *Federal Standard Tax Reporter*.

Digests - It's better to indicate Federal digest series as a group of items consisting of the *Federal Digest* 1789-1938, *Modern Federal Practice Digest* 1938-1961, *Federal Practice Digest 2d* 1961-75, *Federal Practice Digest 3d* 1975-ending date depends on letter of alphabet, *West's Federal Practice Digest 4th*, beginning date depends on letter of alphabet, approximately 1980. There is no such thing as the *Federal Reporter Digest* nor is there a *Northeastern Digest* any more. West is cutting back on the Regional digests; I believe only the Atlantic and Pacific are being published currently and as a practical matter, very few lawyers use them (the exception being in the three states where there is no state digest). Most rely either on the individual state digests which cover both state and Federal cases arising in that jurisdiction, the Federal digest series described above or the Decennial Digests updated with the General Digests.

Shepard's Citators - This paragraph is somewhat misleading. There are Shepard's for the Regional reporters but there is a big difference between the Regional Reporter Shepards and the state Shepard's which each have a Regional Reporter section for citations to decisions of that state. Say one has a cite to 142 P.2d 238, a Nevada Supreme Court case and wants to Shepardize it. In *Shepard's Nevada Citations*, one could turn to the P2d section, look up the citation and find citations to other Nevada cases which cited 142 P.2d 238. In *Shepard's Pacific Reporter Citations*, if one looks up 142 P.2d 238, one will find citations from non-Nevada jurisdictions, say if a Michigan court cited this Nevada case. Shepard's are available on both Lexis and Westlaw along with several other new citation services Auto-Cite, Insta-Cite, Quickcite, Lexcite, Checkcite, Westcheck. But online Shepard's are not equivalent to the print Shepard's in coverage therefore libraries which cancel their subscriptions thinking that online Shepard's are equivalent to print Shepard's are sadly mistaken. Of course, it's hard to explain Shepard's in a paragraph because it's so complex.

Computerised legal research - The only quarrel I have with this is the implication that Lexis and Westlaw are primarily case law retrieval systems. In fact, of course, statutes, regulations, court rules, full texts of law review articles and texts, indexes and secondary material now have an equally important place in these online systems.

American Law Reports - ALR is also difficult to do in a paragraph. The most direct way to say it, I think, is that there is a multivolume index, the *ALR Index*, which covers the ALR2d, 3d, 4th, 5th and Federal and that one should always consult the Historical Annotations table to see if an annotation has been superseded or supplemented. There is no

comprehensive index which includes the *ALR*, first series. There are several separate digests for this series but again, American lawyers seldom use them. In addition to AutoCite which does give ALR cites as you indicate, ALR2d-5th and Federal are also online in full text on Lexis so that any word or phrase in the text can also be searched.

Understanding and Using American Cases

To understand the structure of the American court system, it would be well worth any Australian lawyer's money to invest in the annual *BNA Directory of Federal and State Courts, Judges and Clerks* which has good charts explaining the individual state and Federal court systems as well as addresses and phone numbers. Two alternatives which are not updated as often are the *Want's US-State Court Directory* and the

American Bench, a hardbound volume. This is a case where pictures are often worth a thousand words.

I could not tell in this article whether you were trying to explain *Uniform System of Citation* form or giving citation the way an Australian court would expect to see them. If you were trying to recreate Bluebook form, your citation example for Gideon at the top of p.6 contains a couple of errors. The *Supreme Court Reporter* is cited S.Ct. not Sup.Ct. and there should be commas, not semicolons between the reporter citations I believe. (I don't have my Bluebook with me.)

I realise many of these are niggling little points and probably more than you or any other Australian lawyer actually cares to know about the details. I applaud your efforts to educate Australian lawyers about American legal research. □

The Readers Course - February 1993 - A Reader's Perspective

38 Barristers, 34 Queen's Counsel, 1 Chief Justice, 1 Immediate past Chief Justice, 1 Attorney-General, 3 Registrars, 1 Deputy Chief Magistrate, 3 Supreme Court Judges, 1 District Court Judge, 1 Land & Environment Court Judge, 1 Family Court Judge, 1 whacky NIDA teacher, 1 Commissioner for the Star Chambers, 1 Chief Judge of the Compensation Court, 1 Coroner, a few dead bodies and many other members of the profession all contributed to our readers course.

They are those who gave their time, energy and commitment to what was a gruelling, pleasurable, horrible, entertaining, educational and downright tiring four weeks for members of the profession who mistakenly thought it was a good idea to test their powers of persuasion against others in our time-honoured adversary system by coming to the bar.

Of those 91 mentioned above, 89 posed varying interrogatories to the following effect:

"Well, I don't know why you are coming to the bar. I guess you are all masochists, fools, independently wealthy or certifiably insane."

These gratuitous offerings were then coupled with:

"Well, I suppose you thought it was hard passing law school, going to the college, becoming solicitors and then doing the readers course because that's nothing compared to the curtain of financial adversity through which you will now pass!"

and other such words of encouragement.

Generally though, the Bar Association and specifically Phil Greenwood, who doubled as a 60 minute man and Kelly Wright who doubled as a mother, organiser, educator, photocopier person and many other roles, provided a thoroughly worthwhile course of training.

The contributions included a welcome from the President who cautioned us to watch out for the demon drink and to also take care of your relationships. Whether the two were related was not clear - one suspects so.

Also a practically instructive lecture from the Chief Justice who compelled us to prepare, prepare, prepare and then

prepare some more.

Paul Donohoe QC won the most appeared lecturer award as well as receiving the inaugural Readers Award for "Contributions to Sexism", which he later sought to clarify.

Peter Graham QC left no stone unturned nor any reader unflummoxed as he briefed us on interlocutory procedures as used in the great brick supplier case.

Rick Burbidge QC lectured us on how to ask questions in cross-examination while telling us not to ask him any questions.

The Honourable Attorney-General, Mr Hannaford, won the prestigious "you can believe me" award.

All in all - no-one this writer knows had bad words to say. All were educated. Some were educated a lot. Most had a good time and everyone was glad the 12 hour days were over.

The course finished off with a sumptuous dinner which most attended. Esprit de corps was the order of the night with close new friendships forged in revelry.

Thanks Kelly and Phil; and thanks Phil for being the worm; and thanks Eva for all the photocopying.

□ Lewis Tyndall

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