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# What Users Want: A Contextual Overview of Open Access Legal Resources in the United States

Brian T. Detweiler

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**Abstract.** This paper discusses various open access legal resources in the United States from a practical perspective and explores how government, academia and the private sector have addressed the needs of legal researchers in the United States. After a brief overview of the U.S. legal system, these websites will be explored from the perspectives of two different users, a solo practitioner and a layperson, in hopes of elucidating the effectiveness and current limitations of these resources as well as their potential for greater utilization.

**Keywords:** U.S. law, legal research, legal information, open access, LII, OLRC, U.S. Code, CFR, e-CFR, Google Scholar.

## 1. The U.S. Legal System

Although an extended discussion of the American system of government is beyond the scope of this paper, it is essential to have at least a cursory understanding of the American legal system in order to better understand and place into context the materials sought and utilized by researchers of U.S. law. Accordingly, a simplified description follows below for Conference participants who are unfamiliar with the U.S. legal system.<sup>1</sup>

### 1.1 GOVERNMENTAL STRUCTURE

After gaining their independence from Great Britain, America's founders remained fearful of concentrating power in a particular individual, body or branch of government. Consequently, the duties and powers of the nascent government were ultimately apportioned under the U.S. Constitution, both between the three branches of government, and between the states and the federal government. This delineation became known as separation of powers.<sup>2</sup> Under this doctrine, in its most basic form, each branch of the federal government can be thought of as having one or two primary duties:

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<sup>1</sup> For a more detailed overview of the U.S. legal system, see (Neacșu, 2005).

<sup>2</sup> Cf. The American concept of separation of powers is both more amorphous and quite distinct from European civil jurisdictions where it is simply associated with the supremacy of the legislative branch (Glendon, 2008).

- The legislative branch, composed of the elected members of the U.S. House of Representatives and Senate, is tasked with enacting legislation at the national level pursuant to Article I of the U.S. Constitution.<sup>3</sup> Following passage, those laws that are both permanent and of general applicability are arranged by subject and published in the U.S. Code (Bisset, 2006).<sup>4</sup>
- The executive branch, which is headed by the President and includes various federal agencies,<sup>5</sup> is charged with enforcing federal law, as provided in Article II of the U.S. Constitution. Meanwhile, the large body of administrative law promulgated by these agencies is finalized in the Federal Register before being organized by subject and ultimately published in the Code of Federal Regulations (CFR).<sup>6</sup>
- The judicial branch, embodied by the different levels of the federal judiciary, provides a forum for litigating cases arising under federal law or meeting certain jurisdictional requirements.<sup>7</sup> Federal courts are also responsible for reviewing agency adjudications as well as interpreting and applying agency rules and the laws enacted by Congress in the cases before them (Barkan, 2009). Finally, it is the duty of the federal judiciary to ensure that those rules and statutes do not violate the U.S. Constitution.<sup>8</sup>

In practice, however, the interrelation of the three branches is much more complex, with varying degrees of oversight, delegation, and other aspects of their duties and interactions blurring the lines between them.<sup>9</sup> For example, Congress frequently delegates its legislative authority by statute, allowing federal agencies to create binding law by promulgating

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<sup>3</sup> For an excellent online infographic on the U.S. legislative process, see (Wirth, 2010).

<sup>4</sup> Cf. “Unlike civil law systems, in the American legal system there is no presumption that a statute will apply to every legal problem or that codes are comprehensive statements of the law” (Barkan, 2009).

<sup>5</sup> While some agencies are nominally regarded as “independent” from the President, a better approach may be to consider all agencies as falling under executive authority, but with varying degrees of independence (Datla and Revesz, 2013).

<sup>6</sup> For an overview of the historical background and publication process for agency rules, see (McKinney, 2012).

<sup>7</sup> Federal jurisdiction can be categorized into four main objectives under Article III of the U.S. Constitution: (i) protecting and enforcing federal authority; (ii) resolving foreign affairs issues; (iii) adjudicating interstate disputes; and (iv) providing an impartial tribunal in which citizens of different states can litigate without fear of state court bias (Fallon, 2009).

<sup>8</sup> This role was expressed in the seminal case of *Marbury v. Madison*, 5 US 137, 177-178 (1803), where the Court held: “[i]t is emphatically the province and duty of the judicial department to say what the law is. . . [and] if a law be in opposition to the constitution . . . and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.”

<sup>9</sup> One legal scholar believes “the phrase ‘shared powers’ says it better” (Verkuil, 1989).

rules in the CFR while many agencies also exercise quasi-judicial powers to adjudicate disputes arising from enforcement of their rules (Fox, 2012).

## 1.2 COMMON LAW

In addition to legislative enactments and executive rulemaking, under the common law system that the U.S. inherited from Great Britain, courts can also create law when deciding cases through the binding nature of judicial precedent known as *stare decisis*. Black's Law Dictionary describes *stare decisis* as "[t]he doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation." In reality, the controlling nature of legal precedent in the U.S. is somewhat more limited than the definition suggests, as the jurisdictional and hierarchical organization of the judiciary will determine whether previous rulings are binding on other courts (Barkan, 2009), and a number of additional considerations may sometimes compel courts to limit or overrule their own decisions.<sup>10</sup>

Researchers from civil jurisdictions can be forgiven for lamenting the seemingly chaotic nature of common law, and they would not be the first scholars to do so.<sup>11</sup> Unfortunately, even today, this volatility can complicate one's ability to conduct accurate and comprehensive legal research, particularly when utilizing open access resources.

## 1.3 SUMMARY

This basic understanding of the branches of government and of the common law system should at least provide a contextual starting point for

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<sup>10</sup> U.S. Supreme Court Justice Stephen Breyer discussed these factors in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US 833, 854-55 (1992), stating "it is common wisdom that the rule of *stare decisis* is not an 'inexorable command' ... [r]ather, when this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case. Thus, for example, we may ask whether the rule has proven to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification." Researchers must also be aware of the distinctions between holding and dictum, see (Greenawalt, 2009), and published and unpublished decisions, see (Gerken, 2004).

<sup>11</sup> "Turning from the study of the English, to the study of the Roman Law, you escape from the empire of chaos and darkness, to a world which seems by comparison, the region of order and light" (Austin, 1832).

researching U.S. law. While this paper will focus on federal resources because of their wider applicability, it is also worth noting that the governmental structure of the fifty states and the U.S. territories largely mirror the structure of the federal government described above. And at every level of government, each of these ostensibly independent, yet interrelated branches produce materials that may be necessary for conducting legal research.

## 2. Open Access Resources

Thanks to the efforts of individuals in academia, the government, and the private sector, access to most primary law in the U.S. is now freely available online. In fact, users often have a number of different options to consider when researching U.S. law. Consequently, this paper will focus on what the author considers to be the best open access resources currently available. The author also hopes that analysis of these websites will be more illustrative if they are explored in the context of two hypothetical research problems, each viewed from the perspective of a different user. In the first example, a solo practitioner must search the Internal Revenue Code to answer a client's question regarding potential tax liability arising from his appearance on a television game show, while the second involves a farmer who would like to research the regulation of organic farming in the U.S.

### 2.1 FEDERAL STATUTES

Mary, a solo practitioner who handles mostly family law matters receives an email from a client asking whether the \$10,000 Jet Ski he won on a television game show must be reported as income. Since paying for access to federal materials may be impractical for a solo attorney who works primarily with state law,<sup>12</sup> she may find herself outside of both her comfort zone and her commercial database subscription, but the answer is available for free online if she knows where to look. By consulting the resources below she should be able to find it relatively quickly.

#### 2.1.1 *Legal Information Institute*

Established in 1992 and dedicated to providing free access to the law (Pratt, 2008), the breadth of coverage on the Legal Information Institute (LII)

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<sup>12</sup> Solo practitioners with a basic state plan wishing to add federal materials to their subscription would have to pay an additional \$1236 – \$6,780 per year, depending on their provider and state (Svengalis, 2012).

website<sup>13</sup> easily places it among the most valuable open access legal resources in the United States. As an attorney, Mary would probably assume that the answer to her client's question can be found by consulting the Internal Revenue Code, located in Title 26 of the U.S. Code. And LII may be the first place she looks, both because of its standing in the legal community (Pratt, 2008), and its prevalence in search engine results.<sup>14</sup>

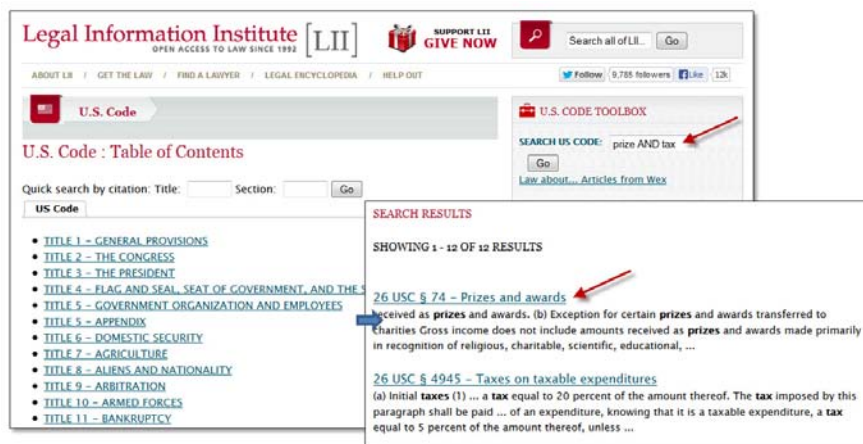


Figure 1. Searching LII's U.S. Code.

Once on LII's U.S. Code homepage<sup>15</sup> Mary can search the text of the entire U.S. Code using the search field on the upper right-hand side of the screen, as shown in Figure 1; however, LII does not provide researchers with the ability to search within individual titles or other specific areas of the Code, nor does it allow them to narrow search results once they have been returned. As a result, users may need to scan through irrelevant results that could otherwise have been eliminated, although this limitation seems to have been mitigated by recent improvements to LII's search engine.<sup>16</sup> Currently, a search of prize AND tax returns only twelve results, with 26 U.S.C. § 74 appearing first, indicating that the Jet Ski must indeed be reported as income.

<sup>13</sup> Available at: <http://www.law.cornell.edu/>.

<sup>14</sup> Searches in both Bing and Google returned links to the IRS's website first, where hyperlinks send users to LII, while directly below the IRS results, direct links to the Internal Revenue Code on LII's website were provided.

<sup>15</sup> Available at: <http://www.law.cornell.edu/uscode/text>.

<sup>16</sup> Had Mary searched "prize AND tax" in LII's U.S. Code prior to mid-June 2013, she would have had to browse through a number of extraneous results, including Code sections dealing with enemy vessels captured during times of war (10 USC §§ 7651 et seq.) and prizes awarded by government agencies (15 USC § 3719), before finding the relevant section on the fourth page.

LII's default version of the U.S. Code is an unofficial preliminary edition with a notice of currency above the text of the statute referencing the most recent public law for which the Code has been updated. In addition to this more up-to-date version, users can also use the tabs below the heading to navigate to the section as it appears in the latest official edition of the U.S. Code,<sup>17</sup> as well as to locate additional information under the "Notes" tab, which includes citations for the section as enacted, along with subsequent amendments and limited background information.<sup>18</sup> Additionally, an "Updates" tab allows users to verify that no recent legislation has been passed affecting the section,<sup>19</sup> while in some instances, (although not for 26 USC 74,) LII also offers an "Authorities (CFR)" tab providing citations to the Code of Federal Regulations when U.S. Code sections delegate rulemaking authority to federal agencies.

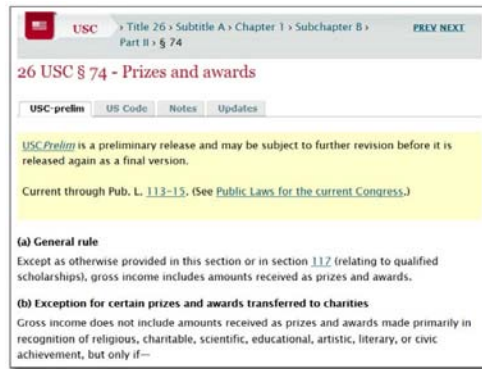


Figure 2. 26 U.S.C. § 74 on LII.

In addition to the features described above, LII also provides a popular name table to find statutes by their common name,<sup>20</sup> and an RSS Feed capability to notify users when changes to particular Code titles are made. And while the latter feature has the potential to compete with the updating services offered by commercial databases, it does not appear to have been updated since 2010.<sup>21</sup>

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<sup>17</sup> "The official version of the U.S. Code as released by the U.S. Government Printing Office can be as many as 15-18 months out-of-sync with current legislation...Bear in mind [however,] that while USC-Prelim is far more current than the official release, these updates may be subject to further revision" (LII, 2012a).

<sup>18</sup> The information in the Notes tab can be used to investigate the legislative history of a particular statute, which can be useful for discerning legislative intent when the text of a law is ambiguous.

<sup>19</sup> If the table under the Updates tab is empty, the user knows her section is still valid through the most recent update to the Classification Table, which is indicated in bold. If new legislation is listed, the user can then follow the hyperlinks to investigate changes to the law.

<sup>20</sup> Available at: <http://www.law.cornell.edu/topn/A>.

<sup>21</sup> See: <http://feeds.feedburner.com/cornell/nZJE>.

### 2.1.2 Office of the Law Revision Counsel

Mary may also have elected to conduct her research using another outstanding open access resource, the U.S. Code Online, published by the Office of the Law Revision Counsel (OLRC) of the U.S. House of Representatives.<sup>22</sup> The OLRC has been responsible for publishing the U.S. Code since the Office was established by statute in 1974,<sup>23</sup> and it released an updated Beta version of its electronic U.S. Code last year (Schuman, 2012).



Figure 3. OLRC's U.S. Code advanced search interface.

One key advantage of the OLRC's U.S. Code over LII's version is the ability to search within individual titles using their advanced search interface. Since Mary can assume that her answer is in the Internal Revenue Code, she can use that feature to narrow down her search to Title 26, which has only 14 occurrences of the word "prize" and wherein the third search result is the relevant section. As shown in Figure 3, the OLRC site also offers field limitation options using the drop-down menu to the right of the search field as well as basic Boolean search capabilities.<sup>24</sup> Lastly, researchers can use the top drop-down menu to search the Code or view particular sections as they appeared on different dates, a useful feature if, for example, Mary's client was being audited based on a tax return he submitted for a previous year.

<sup>22</sup> Available at: <http://uscodebeta.house.gov>.

<sup>23</sup> See: <http://uscode.house.gov/about/info.shtml>.

<sup>24</sup> See: <http://uscodebeta.house.gov/static/help.html>.



Like LII, OLRC also offers a popular name table,<sup>25</sup> while its version of the U.S. Code is generally current through the previous business day, making it the most up-to-date version available, either commercially or among open access providers. The OLRC provides clear notices of currency below the top heading when viewing individual sections while any changes to the law after the date of currency are supposed to be indicated in a list of “Pending Updates,”<sup>26</sup> though this seems to be a non-issue given the speed with which the site is updated. Researchers can also check the Classification Tables link to view a list of all changes in U.S. Code order for both the preceding year and the current congressional session.<sup>27</sup>

### 2.1.3 Summary

Both LII and OLRC provide free, straightforward access to the U.S. Code, but a lack of annotations<sup>28</sup> and other editorial features like citators<sup>29</sup> limits their utility compared to commercial resources. For instance, had Mary located the statute using Westlaw Classic she could have scanned the annotations to find a reference to 26 CFR § 1.74-1(a)(2), which would have told her that her client must report the fair market value of his prize, as well as summaries of caselaw providing guidance on calculating that figure.<sup>30</sup> And while these features were not strictly necessary to answer her client’s question in this instance, there may be times where annotations and citators are vitally important, meaning that attorneys in particular may be hesitant to rely on open access resources until these capabilities are developed.

## 2.2 FEDERAL REGULATIONS

Dwight, a farmer with some information literacy skills but no legal training would like to investigate converting to organic farming methods after noticing the cost discrepancies between regular produce and items labeled “USDA Organic” at his local supermarket. While conducting some

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<sup>25</sup> Available at: <http://uscodebeta.house.gov/popularnames/popularnames.htm>.

<sup>26</sup> See: <http://uscodebeta.house.gov/currency/currency.shtml>.

<sup>27</sup> Available at: <http://uscodebeta.house.gov/classification/tables.shtml>.

<sup>28</sup> “Annotations are references to relevant judicial or administrative decisions, administrative code sections, encyclopedias, attorney general opinions, legislative history materials, law reviews, and treatises” (Berring, 2005).

<sup>29</sup> “Legal citation services (citators) identify where a specific source (cited authority, case, or statute) has been cited in another source (citing authority)...[allowing researchers] to ensure that the authorities they rely on continue to represent ‘good’ law” (Barkan, 2009).

<sup>30</sup> Westlaw’s “Notes of Decisions” for 26 USC § 74 reference a Tax Court case, *McCoy v. Commissioner of Internal Revenue*, 38 TC 841 (1962), where fair-market value was calculated based on market value at the time of receipt rather than the amount paid by the purchaser.

preliminary research on Wikipedia, Dwight notices a reference to the CFR and decides to investigate further.

### 2.2.1 Electronic Code of Federal Regulations

Dwight may begin his research on the clunky and confusing CFR Annual Edition website<sup>31</sup> because of its greater prominence in search engine results; however, the e-CFR<sup>32</sup> is a much easier-to-use resource so we will assume he finds the link on the Annual Edition website or by scrolling down further through his initial search results. Like the Annual Edition, the e-CFR is published by the Government Printing Office (GPO) on its Federal Digital System website, better known as FDsys. Unfortunately, despite the e-CFR's advantages over the Annual Edition in terms of ease-of-use and utility, the GPO seems rather uninterested in marketing this excellent resource.<sup>33</sup>

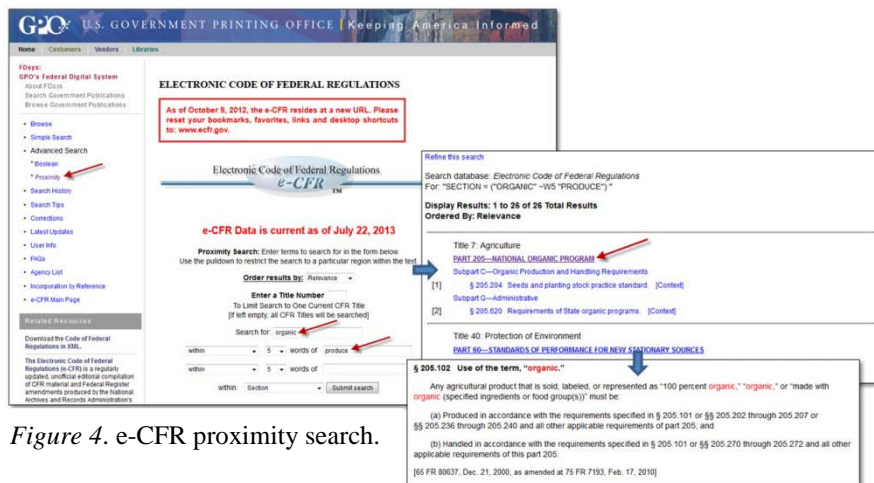


Figure 4. e-CFR proximity search.

The e-CFR offers links to a basic search option along with two advanced search features, Boolean and proximity searching, on the left-hand side of each web page. Assuming Dwight enters the term “organic” into the “Simple Search” field, he would receive nearly 4,000 results; however, the

<sup>31</sup> Available at:

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

<sup>32</sup> Available at: <http://www.ecfr.gov>.

<sup>33</sup> Researchers browsing the CFR (Annual Edition) can find a link to the e-CFR on the left-hand column of their screen under “Related Resources,” but because of its dull and uninformative description users may be discouraged from investigating it. Additionally, the GPO provides no description of the e-CFR for inclusion on the results screen of online search engines, see <http://www.google.com/#q=code+of+federal+regulations>.

second entry will provide him with the information he needs.<sup>34</sup> And should Dwight choose one of the advanced options and search organic AND produce, or “organic” within five words of “produce,” as shown in Figure 4, his results would be even more accurate.

After clicking on Part 205—National Organic Program, Dwight can browse a table of contents with hyperlinks to the full text of each of the Program’s sections and scroll below the table of contents to find the Program’s statutory authority as well as a citation to the Federal Register and the date that the Program was initially adopted.<sup>35</sup> Although locating the current National Organic Program regulations would likely satisfy Dwight’s immediate informational needs, researchers can also view past versions of rules using the aforementioned CFR Annual Edition website.<sup>36</sup>

Meanwhile, users wishing to conduct background research on a particular rule can input the Federal Register citations from the e-CFR into the search field on the Federal Register website<sup>37</sup> and view rules as they appeared in their original form along with background information on the reasoning behind a rule’s adoption and how the agency responded to comments submitted by those potentially affected by the rule when it was proposed. Unfortunately, because these options are not highlighted in the e-CFR, and the citations are not hyperlinked, users without legal training may not know to look for them.

Users will also see the clear notices of currency at the top of all search and results screens, which generally indicate that the e-CFR has been updated within 2-3 business days. Unfortunately, what Dwight and many other researchers may not know, because it is



Figure 5. Updating with the CFR Parts Affected.

<sup>34</sup> The regulations governing the USDA’s National Organic Program appear under Title 7 of the Code of Federal Regulations in Part 205.

<sup>35</sup> The National Organic Program was finalized on December 21, 2000 at 65 FR 80637.

<sup>36</sup> Available at:

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>. The Annual Edition allows browsing by title, part and section back to 1996, but does not offer word searching capabilities aside from GPO’s site-wide Advanced Search interface, available at: <http://www.gpo.gov/fdsys/search/advanced/advsearchpage.action>.

<sup>37</sup> Available at: <https://www.federalregister.gov/>. The Federal Register website offers a searchable database with coverage from 1994 to the current issue.

not referenced anywhere on the e-CFR website, is that they can update their material to the day using the online CFR Parts Affected, as shown in Figure 5.<sup>38</sup> Should a particular title and part appear after entering the relevant date range, the user will have to investigate further using the links to the Federal Register, while if the relevant citation does not appear, they will know that no changes have been implemented.

### 2.2.2 Summary

Like the statutory resources discussed previously, the e-CFR is an excellent open access resource whose value is limited only by the lack of editorial content typically found in commercial databases. Additionally, integrating existing government resources into the e-CFR, perhaps by hyper-linking Federal Register citations and providing information and links to the CFR Parts Affected, would better serve non-attorney users who may not know to look for them.

## 2.3 STATE & LOCAL MATERIALS

The multitude of state law resources can be about as diverse as the states themselves, and while legal materials for each state are freely available online, they are generally scattered over multiple websites for each jurisdiction and with varying degrees of functionality (Anderson, 2010). Consequently, aggregator sites like LII<sup>39</sup> and WashLaw<sup>40</sup> are particularly helpful because they provide single, static locations where users can find links to statutes, regulations, caselaw and more without having to track down websites for each branch of government.

In addition to state and federal materials, attorneys and the general public may also have to research local ordinances. Currently, the most exhaustive open access resource in this area is Municode,<sup>41</sup> which offers free access to an extensive collection of municipal codes organized by state. Municode provides a word search capability and also allows for searching within specific parts of a code. Researchers who are unable to find a particular code on Municode, are advised to check another municipal code site, General Code,<sup>42</sup> before contacting a local library in the municipality or local the seat of government for assistance.

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<sup>38</sup> Available at:

<http://www.gpo.gov/fdsys/browse/collectionCfrFR.action?collectionCode=CFRPARTS>.

<sup>39</sup> Available at: <http://www.law.cornell.edu/states/listing>.

<sup>40</sup> Available at: <http://www.washlaw.edu/>.

<sup>41</sup> Available at: <http://www.municode.com/library/>.

<sup>42</sup> Available at: <http://www.generalcode.com/codification/ecode/library>. General Code's coverage is particularly strong for the Mid-Atlantic region.

## 2.4 CASELAW

Returning to our earlier hypothetical situations, Mary or Dwight may utilize any number of different open access resources to search for caselaw applying or interpreting 26 U.S.C. § 74 or 7 CFR, Part 205, including Justia,<sup>43</sup> FindLaw,<sup>44</sup> and the Public Library of Law,<sup>45</sup> all of which allow word searching and citation entry to locate cases. Unfortunately, the utility of any but the most recent decisions will be severely compromised by the fact that researchers using these databases are currently unable to determine whether a particular case's holdings are still valid, as they easily can with Westlaw or Lexis.<sup>46</sup>

Currently, the only open access website providing a citator function for U.S. caselaw comparable to the more comprehensive commercial databases is Google Scholar.<sup>47</sup> Last year, Google improved this feature, labeled “How cited,” by organizing citing authorities based on the extent to which the underlying case was discussed, as shown under the “Cited by” column in Figure 6 (Black, 2012). And while utilizing Google Scholar's citator remains much more labor intensive than its commercial counterparts, whose topical headnotes and prominent color-coded indicators allow for quick verification with a minimal amount of additional reading, this feature nevertheless represents an exciting development for the open access movement in the U.S.

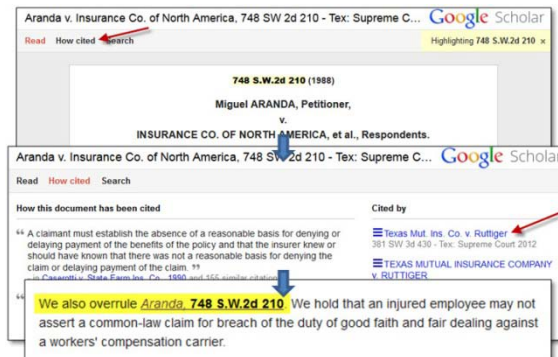


Figure 6. Using “How cited” on Google Scholar.

<sup>43</sup> Available at: <http://law.justia.com/cases/>.

<sup>44</sup> Available at: <http://www.findlaw.com/casecode/>.

<sup>45</sup> Available at: <http://www.plol.org/Pages/Search.aspx>.

<sup>46</sup> “Online access to citation information, generally speaking, is an incredible boon to legal research. Lawyers and law students—for years befuddled by the “What Your Library Should Contain” message on Shepard’s pamphlets—can now simply press a button and read, print, or download a computer display” (Ogden, 1993). See also (Berring, 2000), discussing the “organic” nature of caselaw and how legal researchers have become “paranoid compulsives in their quest for all relevant information.”

<sup>47</sup> Available at: <http://scholar.google.com/>.

### 3. Conclusion

While the resources described above provide attorneys and the general public with free access to searchable, user-friendly databases containing primary law materials, their ultimate value is often limited because they lack the editorial enhancements of commercial legal publications and databases. And while primary law itself is part of the public domain in the U.S. (Carroll, 2006), online access to the supplementary and analytical materials necessary for comprehensive research is currently limited to those who are able to pay for subscriptions to commercial databases. Additionally, the laborious nature of compiling and updating this information makes it unlikely that these materials will become freely available without a major paradigm shift in legal publishing (Finet, 1999).

A more promising near-term prospect may be for the legal academy to address the current information divide regarding access to topical secondary resources.<sup>48</sup> While many law schools are already moving towards open access models for scholarly journals, faculty should also be encouraged to author practical, practitioner-oriented materials for publication on their university's institutional repositories or in other open access venues (Milles, 2006).<sup>49</sup> Free access to these materials would help to democratize the legal profession by providing valuable and reliable information to solo, small firm, and public sector attorneys who may otherwise have only limited access to commercially produced secondary resources.<sup>50</sup>

It should also be noted that even as the cost of legal materials continues to rise (Svengalis, 2012), these expenses are nevertheless dwarfed by the time and money that American attorneys invest to enter the profession.<sup>51</sup> Consequently, practitioners, whose licenses and livelihoods depend on finding accurate information, may be hesitant to utilize these new resources unless they can be sure that the information they find is trustworthy and, in

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<sup>48</sup> "Secondary sources are materials about the law that are used to explain, interpret, develop, locate, or update primary sources" (Barkan, 2009).

<sup>49</sup> See also (Canick, 2013), arguing that law schools should establish student-authored and edited practice guides in lieu of traditional law journals and encourage faculty to publish open access practice materials rather than through commercial publishers.

<sup>50</sup> The traditional cost structure for computer-assisted legal research favors large firms who can pass subscription costs on to wealthy clients, while many solo practitioners, small firm and government attorneys must utilize modified versions of the databases with more limited access (Arewa, 2006).

<sup>51</sup> In 2011, the average debt for private law school graduates was nearly \$125,000 while students at public law schools faced an average debt burden of over \$75,000 upon graduation (Cassens Weiss, 2012).

the case of litigators, potentially persuasive to a court.<sup>52</sup> Thus, the participation of faculty and the imprimatur of their law schools would be essential for such an effort to have a real impact on the profession.

Of course, those without any legal training or the means to hire an attorney may also have urgent research needs, although they are generally looking for more basic information, presented in language that is comprehensible to the average person. And while faculty members who are subject matter experts in their respective fields of study may be in the best position to author the complex materials desired by members of the bar, those working in campus legal aid clinics, law libraries and in other public service capacities are more likely to be conversant with the legal issues facing underserved populations in their communities. Therefore, they would seem to be in the best position to publish the more rudimentary information and straightforward guidance needed by the general public.

A concerted effort by law librarians and clinical faculty around the U.S. would provide helpful information to those in need while also increasing the visibility of participating institutions through the creation of viable open access alternatives to the popular self-help publications marketed by Nolo and others. Eventually, once such resources become established, law school alumni and other attorneys may seek to publish materials there as well, both as a service to their communities and also to increase their name recognition among a large base of potential clients. In fact, LII has already taken the first steps in this area, providing professionally authored definitions and short encyclopedic entries on different aspects and areas of the law on its WEX website.<sup>53</sup>

The resources discussed above are hopefully just the beginning in a larger movement that will continue to break down the barriers between citizens and the law. By creating a large body of open access secondary materials for practitioners and the public, and by eventually integrating annotations and user-friendly verification capabilities into the existing structure of freely available primary law, we can ensure greater equality in access to legal information. In the words of LII co-founder Thomas Bruce, “Ultimately we’re talking about empowering citizens and hopefully changing the relationship between citizens and government for the better” (LII, 2012b).

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<sup>52</sup> Cf. (Barkan, 2009), stating that while secondary resources can be cited as persuasive authority, “it should be noted...that the writings of legal scholars are generally not held in the same levels of esteem in common law systems as in civil law systems.”

<sup>53</sup> Available at: <http://www.law.cornell.edu/wex/>.

## References

- Anderson, S. et al. (2010), *2009-10 updates to the state-by-state report on authentication of online legal resources*, available at: <http://aallnet.org/Documents/Government-Relations/authen-rprt-updates/2009aallauthenticationreportupdates.pdf> (accessed 27 July 2013).
- Arewa, O.B. (2006), *Open access in a closed universe: Lexis, Westlaw, law schools, and the legal information market*, *Lewis & Clark Law Review*, Vol. 10, No. 4, pp. 797-839.
- Austin, J. (1832), *An outline of a course of lectures on general jurisprudence, or the philosophy of positive law*, in *The Province of Jurisprudence Determined*, John Murray, London.
- Barkan, S.M., Mersky, R.M., and Dunn, D.J. (2009), *Fundamentals of Legal Research*, 9th ed., Foundation Press, New York, NY.
- Berring, R.C. (2000), *Legal information and the search for cognitive authority*, *California Law Review*, Vol. 88, No. 6, pp. 1673-1708.
- Berring, R.C. and Edinger, E.A. (2005), *Finding the Law*, 12th ed., Thomson/West, St. Paul, MN.
- Bisset, J. and Heinen, M. (2006), *Reference from coast to coast: Our uncodified puzzlers*, available at: <http://www.llrx.com/columns/reference47.htm> (accessed 26 July 2013).
- Black, N. (2012), *Using Google Scholar to conduct free legal research*, available at: <http://www.mycase.com/blog/tag/legal-information-institute/> (accessed 29 July 2013).
- Black's Law Dictionary (2009), 9th ed., Thomson Reuters, St. Paul, MN.
- Canick, S. (2013), *Library services for the self-interested law school: Enhancing the visibility of faculty scholarship*, *Law Library Journal*, Vol. 105, No. 2, pp. 175-198.
- Carroll, M.W. (2006), *The movement for open access law*, *Lewis & Clark Law Review*. Vol. 10, No. 4, pp. 741-760.
- Cassens Weiss, D. (2012) *Average debt of private law school grads is \$125K; It's highest at these five schools*, available at: [http://www.abajournal.com/news/article/average\\_debt\\_load\\_of\\_private\\_law\\_grads\\_is\\_125k\\_these\\_five\\_schools\\_lead\\_to\\_m/](http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m/) (accessed 28 July 2013).
- Datla, K. and Revesz, R.L. (2013), *Deconstructing independent agencies (and executive agencies)*, *Cornell Law Review*, Vol. 98, No. 4, pp. 769-843.
- Fallon, R.H., Manning, J.F., Meltzer, D.J., and Shapiro, D.L. (2009), *Hart and Wechsler's The Federal Courts and the Federal System*, 6th ed., Foundation Press, New York, NY.
- Finet, S., (1999), *On the road to the emerald city: Reducing the cost of living in the new legal information landscape*, *Legal Reference Services Quarterly*, Vol. 17, No. 1, pp. 7-12.
- Fox, W.F. (2012), *Understanding Administrative Law*, 6<sup>th</sup> ed., LexisNexis, New Providence, NJ.
- Gerken, J.L. (2004), *A librarian's guide to unpublished judicial opinions*, *Law Library Journal*. Vol. 96, No. 3, pp. 475-501.
- Glendon, M.A., Carozza, P.B. and Picker, C.B. (2008), *Comparative Legal Traditions in a Nutshell*, 3rd ed., Thomson/West, St. Paul, MN.



- Greenawalt, K. (1989), *Reflections on holding and dictum*, Journal of Legal Education, Vol. 39, No. 3, pp. 431-442.
- Legal Information Institute (2012a), *LII's U.S. Code more current than ever with new USC-Prelim feature*, available at: <http://blog.law.cornell.edu/blog/2012/04/30/liis-u-s-code-more-current-than-ever-with-new-usc-prelim-feature/> (accessed 27 July 2013).
- Legal Information Institute (2012b), *Knowledge = Power: Legal Information Institute [LII]*, available at: <http://www.youtube.com/watch?v=5mi6K06z6yI> (accessed 28 July 2013).
- McKinney, R.J. (2012), *A research guide to the Federal Register and the Code of Federal Regulations*, available at: <http://www.llsdc.org/fed-reg-cfr/> (accessed 26 July 2013).
- Milles, J.G. (2006). *Redefining open access for the legal information market*, Law Library Journal, Vol. 98, No. 4, pp. 619-637.
- Neacșu, D.E. (2005), *Introduction to U.S. Law and Legal Research*, Transnational Publishers, Ardsley, NY.
- Ogden, P. (1993), *Mastering the lawless science of our law: A story of legal citation indexes*, Law Library Journal, Vol. 85, No. 1, pp. 1-48.
- Pratt, J. (2008), *The Legal Information Institute: The first and the future*, Cornell Law Forum: Faculty Edition, Vol. 34, No. 3, pp. 18-21.
- Schuman, D. (2012), *Testers wanted: Beta website for US Code now online*, <http://sunlightfoundation.com/blog/2012/11/13/testers-wanted-beta-website-for-us-code-now-online/> (accessed 27 July 2013).
- Svengalis, K.F. (2012) *Legal Information Buyer's Guide & Reference Manual*, New England LawPress, North Stonington, CT.
- Verkuil, P.R. (1989), *Separation of powers, the rule of law and the idea of independence*, William & Mary Law Review, Vol. 30 No. 2, pp. 301-341.
- Wirth, M. and Cooper Guasco, S. (2010), *How our laws are made*, available at: <http://www.mikewirthart.com/wp-content/uploads/2010/06/howlawsmadeWIRTH2.jpg> (accessed 26 July 2013).