

# Death Penalty Law Research Guide

1<sup>st</sup> Edition

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## I. Introduction

Research into the death penalty and capital punishment can potentially cover a wide range of sources, areas of law, and media. The complexity of modern death penalty jurisprudence, and the disparity between state and federal approaches to the death penalty has resulted in the creation of an area of law that is simultaneously broad and deep. Issues of due process, cruel and unusual punishment, state sovereignty, habeas corpus, defendant's rights, prosecutorial discretion, victim's rights, and procedural finality are merely some of the issues that research into the death penalty can cover. Additionally, death penalty law is constantly affected by statutory law, case law, and the interplay of federal law and state law. With these complex legal relationships constantly pushing and pulling each other, it is easy to be initially overwhelmed by the thought of delving into this crucial area of the law. The purpose of the legal research guide on death penalty law is to ease the intimidation researchers may feel and provide a solid starting point for capital punishment research.

Death penalty law research may be approached in the same way as other legal research. Using a common research mnemonic device, "TAPP," death penalty researchers may be able to simplify and focus their searches, thus yielding more relevant and accurate results, regardless of the research medium (ie: print resources, internet resources, etc.). "TAPP," which stands for "things, actions (including defenses), people, and places," may be used as a way of initially dividing a search based on its contingent parts. For example, a search on habeas corpus law for a mentally ill defendant convicted of murder in Georgia as related to the death penalty may be initially divided as follows:

- T: habeas corpus, mental illness
- A: murder, insanity defense
- P: mentally ill defendant
- P: Georgia, U.S. Court of Appeals for the 11th Circuit

While this scheme to divide searches may seem elementary, it can be very helpful when researching death penalty law using certain sources, notably indexes, legal encyclopedia, and online databases. This scheme may also be used to get a better understanding of the scope of a search, as well as the likely areas of focus. For example, knowing that this research query is focused on Georgia, a researcher will know to only sources dealing directly with either the State of Georgia, or the 11th Circuit of which Georgia is a constituent. This can be helpful when dealing with vast online databases or prolific print resources.

The key to any successful search is to narrow and focus the search and to properly utilize research materials to their highest potential. This guide is intended to provide an understanding of how to do just that.

*Other possible search terms divided using the “TAPP” mnemonic may include:*

- T: race, victim impact statements, collateral review, direct appeal, federal habeas review, juries and jury instructions, aggravating factors, mitigating factors, future dangerousness, Coker v. Georgia, Furman v. Georgia, Atkins v. Virginia, “death is different” jurisprudence
- A: incapacitation, (un)constitutionality, put-upon rule, hearsay, post-conviction counsel, rape, felony murder, plea bargaining, (in)effectiveness of counsel, collateral review, discrimination
- P: juvenile offenders, black/white defendants, mentally retarded defendants, accomplices, victims
- P: federal district courts, state trial courts, U.S. Supreme Court, state supreme courts, federal appellate courts, judicial circuits, Georgia, Texas, Virginia, Connecticut, California

## II. Primary Sources

### 1. Introduction

Finding the relevant law on a death penalty issue from a primary source is perhaps the most important task for a death penalty researcher; it is also, in many ways, the most difficult task.

Death penalty law can vary widely from state to state, federal circuit to federal circuit. The death penalty practices of states generally and the federal government generally are also divergent. In no better way than by looking at the letter of the law in a jurisdiction can a death penalty researcher best understand the way capital punishment operates within that particular jurisdiction.

Thus, it is of crucial importance that any death penalty researcher effectively locates the most relevant law on his or her death penalty subject. Without accurate and relevant results into death penalty law, a death penalty researcher will be particularly ill-equipped to approach legal questions on their subject, since death penalty law is a particularly volatile area of the law.

The purpose of this section is to provide a foundation for approaching both statutory research and case law research, both of which are vital to effective death penalty law research generally. Using the “TAPP” mnemonic, and narrowing our research to specific searches in line with the particular facts of a case (rather than general searches), we can ensure we start off on the right foot with our search.

## 2. Statutes and Legislation

### A. Introduction

Statutes play a central role in death penalty law, shaping the procedural rules for death penalty cases, establishing the baseline eligibility standards for defendants (including age and mental capacity), and outlining the use of aggravating and mitigating circumstances in determining whether death-eligible defendants are ultimately sentenced to execution.

Statutory research is thus of central importance to practitioners and academics alike, since statutes establishes the foundation upon which the death penalty is carried out by states and the federal government. Statutes are also of crucial importance in establishing the procedural grounds for shifting capital cases from state courts and state review to federal habeas and appellate review. With the doctrine of procedural default dominating much of the consideration of judges presiding over capital cases, it is crucially important that researchers understand the procedures in place at both the state level and the federal level. No understanding of the pertinent procedural rules is complete without first looking at the particular state and federal statutes that establish capital punishment procedure.

Statutory research is also important for observing the standards set in place for determining which crimes receive the death penalty, and what the standards of proof are for making those determinations. On a merely intellectual level, it is curious to see the different standards in place for death eligibility in different jurisdictions, and academic researchers will find this kind of black-letter research illuminating.

Clearly, statutory research is not the end-all of death penalty research. Case law plays an enormous role in the interpretation and application of statutory law, and secondary sources can be helpful in illuminating certain curiosities about capital punishment. However, for most researchers, statutory research is the most

important task, and any researcher should ensure that he or she is diligent in looking up any statute relevant to their search query.

## B. Print Resources

### *i. Introduction*

Statutory print resources are truly undervalued materials. In many ways, they are superior to their online counterparts. Conducting statutory research using print resources is cheaper, often times quicker, and can be more fruitful than similar research conducted online. Effective use of various indexes, when available, can help researchers quickly find relevant material. Even for researchers who are adept with online resources, they may find using print resources to be a more pleasant experience. The best way to use print resources is to cross reference information from one source in another. For example, looking up information using the index of the official U.S. Code, and then checking the United States Code Annotated or United States Code Service can enhance any federal statutory research. Cross-referencing different sources is further discussed in the sections below. All-in-all, researchers should not ignore print resources. In fact, for death penalty statutory research, researchers may want to start out with print resources since doing so will help researchers view statutes within the context of other statutes and other Code sections. This can give researchers a greater understanding of both the meaning and operation of statutes.

### *ii. Statutes at Large*

The United States Statutes at Large is an official publication of the United States Government Printing Office that publishes the full text of every public law passed by the United States Congress. Statutes passed by Congress are published in the Statutes at Large long before being codified and published in the United States Code. As such, the Statutes at Large is a more recently updated resource than the U.S. Code. However, the Statutes at Large is itself behind by a few years. For the most up-to-date information on federal statutory law, researchers should reference the

United States Code Congressional and Administrative News (West), discussed on page 11.

Unfortunately for researchers, the Statutes at Large does not have an index or digest volume. As such, the only way to find information in it is to know the Public Law Number of the statute you are researching, or to know during which session of Congress a statute was passed and to look it up manually within the appropriate volume. Because of this limitation, the print version of the Statutes at Large is best used when citing to referring to the officially published text of a statute is necessary, and when the researcher knows precisely what he or she is looking up (namely, that he or she knows the Public Law Number of the statute he or she is researching).

Assuming that a researcher knows precisely what he or she is looking for (ie: the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214), he or she can look up the appropriate volume of the Statutes at Large and find the full, official text of the statute, as well as citations to the legislative history of the statute. The Statutes at Large also contains information, in the margins of the statute, that indicate where each section of the statute is or will be codified in the U.S. Code. This information can be useful when conducting further research into the statute since researchers can cross reference the Code section indicated in the statutes at large with either the United States Code Annotated (discussed at page 9) or the United States Code Service (discussed at page 10), which will provide more information on that particular section of the statute. Because the Statutes at Large do not provide much more information than what has been discussed already in this section, most statutory research should be conducted using other available resources.

### *iii. United States Code*

The United States Code is the official statutory code for federal law in the United States. New editions of the Code are published roughly every six years, meaning that print versions of the Code may not always contain the most up-to-date

statutory information. For more up-to-date statutory information, researchers should refer to the Statutes at Large, discussed on page 5, and the United States Code Congressional and Administrative News, discussed on page 11. The Code also has supplemental volumes which include more recent additions to the U.S Code. These supplemental volumes, which contain updated indexes and popular names tables, should be referenced in addition to the main volumes of the Code in order to ensure a comprehensive search of the Code.

Despite the infrequency with which the official Code is updated, it remains an immensely important resource for statutory research. The Code itself provides a General Index and a Popular Names Index that is helpful in finding relevant sections of the Code in every category of federal statutory law. Because the Code is divided into a number of Titles, each covering a specific area of law, many statutes are broken up among the various Titles, especially when the statutes touch upon diverse areas of the law. For example, while most death penalty-related statutes are codified within Title 18 of the Code (dealing with “Crimes and Criminal Procedure”), some portions of statutes are codified in Title 38<sup>1</sup> (dealing with “Veterans Benefits”), among others. Using the General Index and the Popular Names Index, discussed below, will help quickly find sections relevant to federal death penalty law that may be scattered throughout the Code.

#### a. General Index

The General Index is a word index, akin to West’s Descriptive Word Index, that allows researchers to find Code sections based on their subject matter. The section of the General Index that most directly relates to the death penalty is, appropriately enough, filed under “Death Penalty.”<sup>2</sup> Within this section of the General Index, researchers can find a number of subtopics, each referring to a specific section of the

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<sup>1</sup> See, e.g., 38 U.S.C. § 1973; 38 U.S.C. § 1954.

<sup>2</sup> The General Index section on “Sentence and Punishment” may also include relevant information, however the subsection on the death penalty refers back to the “Death Penalty” section.

Code that covers that subtopic. For instance, the subsection on “Aggravating Factors” refers readers to 18 U.S.C. § 3592, the U.S. Code section on federal statutory aggravating and mitigating factors. A great way to take advantage of the General Index is to first find relevant Code sections using the Index, then look up the relevant Code sections in either the United States Code Annotated, or the United States Code Service. Unless researchers need to refer to the official Code publication, looking up Code sections in either of these two unofficial publications can greatly enhance the fruitfulness of the researcher’s efforts.

#### b. Popular Names Index

The U.S. Code also has a Popular Names Index volume in which researchers can look up the popular or short form names of statutes, and then find limited information on the statute, namely the Public Law Number and the citation to the statute in the Statutes at Large. The Popular Names Index is located in the final volume of the U.S. Code, as well as the final volume of U.S. Code supplements. It should be noted that the Popular Names Index of the supplemental volumes of the Code include the popular names only of the acts within the supplement, and do not include the popular names of acts within the main volumes of the Code. As such, if a researcher fails to find a listing for a statute within the Popular Names Index of the Code supplement, he should refer to the Popular Names Index of the main volume, which will include the remainder of the Popular Names Index. For example, researchers will fail to find a listing for the Antiterrorism and Effective Death Penalty Act of 1996 in the Popular Names Index of the Code supplement, but will find a listing for the Act in the Popular Names Index of the main volume of the Code.

Because of the limited utility of the Popular Names Index, it is not a terribly valuable resource for researchers. Its best use is to find statutes by name, which will lead researchers to the statute’s citation within the Statutes at Large, as well as some limited information on its codification within the U.S. Code.

#### *iv. United States Code Annotated (West)*

The United States Code Annotated (USCA) is a publication produced by West that includes the full text of the entire U.S. Code, the U.S. Constitution, and various federal rules, including annotations and commentaries on the meaning, interpretation, operation, and treatment of those sources. Because of these annotations, the USCA is preferable to the official U.S. Code for research purposes.

Like the U.S. Code, the USCA maintains a General Index that is used in the same way as the official U.S. Code General Index. The USCA General Index is organized alphabetically by topic, and just like in the U.S. Code General Index, the most relevant section within the USCA General Index is the “Death Penalty” section.<sup>3</sup> Within this section, researchers can find a number of subtopics dealing with every issue regarding the death penalty that has some relevant codification within the U.S. Code or within any of the aforementioned sources (ie: the U.S. Constitution, federal rules, etc.). However, unlike in the official U.S. Code or official versions of the Constitution or federal rules, the USCA version of those sources contains invaluable commentary and annotations that can propel research forward. For example, the USCA General Digest subsection under “Death Penalty” on the aggravating factors for espionage refers researchers to 18 U.S.C. § 3592. Looking this section up in the USCA will reveal the full text of that section, plus notes on the various treatment of that section within the courts. For example, one note indicates that the “especially heinous, atrocious, cruel, or depraved” aggravating factor is not unconstitutional under either the Fifth or Eighth Amendments, and provides a citation to the case that held that outcome.<sup>4</sup>

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<sup>3</sup> I suspect, though have not confirmed, that the USCA General Index is a nearly identical duplication of the official U.S. Code General Index, but with some additional citations to USCA-specific sections.

<sup>4</sup> 18 U.S.C.A. § 3592 note 1 (West 2000) (citing *U.S. v. Chanthadara*, 928 F. Supp. 1055 (D. Kan. 1996)).

The USCA also maintains pocket part updates, so researchers should be keen to always check the inside of the back cover of every USCA volume they reference to ensure that they get the most up-to-date information and commentary on the sections they researched.

Finally, like the U.S. Code, the USCA maintains a statutory tables index in which researchers can look up statutes by public law number, and find where each section of that law has been codified. Looking up the Antiterrorism and Effective Death Penalty Act, for example, reveals that the Act has been codified across the entire U.S. Code, with sections appearing under Titles 8, 18, 42, 50, and others. The USCA statutory tables index can thus be very helpful in pinpointing precisely where statutes have been codified.

#### *v. United States Code Service (Lexis)*

The United States Code Service (USCS), published by Lexis, is nearly identical to the United States Code Annotated published by West in that it provides annotations and commentary for every section of the U.S. Code, as well as for the U.S. Constitution and various federal rules. Because of the identical way in which both sources are organized, and because of the identical purpose and function of both, this section will not concern itself with how to use the USCS, since readers can use the same approach to using the USCS as using the USCA, discussed in the previous section starting on page 9. Rather, this section will only stress that, though the two publications are organized in nearly identical ways, and though they both contain similar annotations and information, they do not provide identical information. As such, researchers who check one source should invariably check the other, since there may be different information or citations provided in each. As with the USCA, the USCS maintains pocket part updates at the end of every main volume.

Researchers should never fail to check those pocket parts for additional and more recent annotations. One thing that is different in the USCS is that the USCS maintains additional indexes at the end of every volume pertaining to a Code Title. So, for example, the final volume on Title 18 contains a word index specifically for

that Title. The final volume for every Code Title contains a Title-specific index, which can help in narrowing the scope of a search to a specific Title. Because Code Titles pertain to specific areas of the law, these Title-specific indexes can be helpful in limiting a search to the area of law represented in the Title. However, not all sections of the Code relevant to the death penalty are codified within Title 18, for example, so using the Title-specific index to limit a search to that Title may result in incomplete search results.

*vi. United States Code Congressional and Administrative News (West)*

The United States Code Congressional and Administrative News (USCCAN), published by West, publishes federal laws passed by Congress and which are normally published in the Statutes at Large. The main key difference between the Statutes at Large and USCCAN is that USCCAN provides legislative histories for the laws it publishes, when available. USCCAN is divided into volumes pertaining to specific congressional sessions. The final volumes for every congressional session contain legislative history materials for the statutes passed within that session. For example, the volume for the 1994 Federal Death Penalty Act, Pub. L. No. 103-322 Title VI, 108 Stat. 1959, contains a citation to the legislative history of the act, located within the legislative history volume for that congressional session. The USCCAN legislative history volume for the 103rd Congressional session, during which the 1994 Federal Death Penalty Act was passed, contains roughly eighty pages worth of legislative history materials, including citations to those materials and the full text of those materials. For researchers looking into the development and creation of federal death penalty laws, these legislative materials can be invaluable. USCCAN provides the best (and really only) compilations of federal legislative history materials in print among the sources discussed in this guide. In addition to legislative history materials, USCCAN provides popular names indexes, statutory tables, and word indexes for each congressional session. This can be helpful for finding additional related statutes passed during a particular congressional session. However, there is no index covering the entire USCCAN

collection. As such, USCCAN is best used when researchers know precisely what they are looking for within a particular volume or series of volumes.

### *vii. State Codes, Statutes, and Legislation*

State statutory materials are published in much the same way that federal statutory materials are published. Generally, there are compilations of state statutes with annotations, plus digests and indexes for navigating through the material. West publishes many of these state statutory series, and they are organized in much the same way that West's United States Code Annotated is organized. For these reasons, researchers can use the same methodology for approaching state statutory research in print as is described in the section of this guide on using the United States Code Annotated, starting on page 9. Just like the USCA, West's state statutory series include annotated versions of the state constitution and of state procedures and rules. These resources can thus be tremendously helpful in finding relevant statutory materials. Because each statutory volume is different, they cannot be effectively discussed in full in this section. However, by learning how to navigate through the USCA and other federal statutory materials, researchers should feel comfortable with conducting similar research using state statutory materials. The print research materials for each of these jurisdictions are nearly identical, so even unfamiliar state statutory materials can be easily navigated using familiar research methodologies.

## **C. Online Resources**

### *i. Lexis-Nexis*

Lexis-Nexis maintains its online statutory databases in the "Federal Legal – U.S." and "States Legal – U.S." sections on its "Search by Source" page. Clicking on the "Federal Legal – U.S." link reveals a number of useful resources for navigating through Lexis's statutory materials, including Lexis's own United States Code Service and a database for the United States Statutes at Large. Clicking on the United States Code Service link will open up the table of contents for the United States Code Service, which can

be manually browsed. Unfortunately, there is no index, so navigating through the Code Service can be difficult and frustrating.

While there is a search function for Lexis's Code Service, it does not yield desired results as quickly as Westlaw's search function. Lexis allows you to either search through the table of contents of the United States Code Service, or to search through the text of it. A search of the table of contents is limited since it only searches through the titles of each of the code sections. As such, even when a simple search for "death" is conducted, it produces numerous irrelevant results since the issue of death appears in a number of Code sections wholly unrelated to the death penalty. A more specific search for "death penalty" yields no results from the U.S. Code at all. The best bet a research has is to conduct a search through the text of the Code Service and to evaluate each search results individually. As with any kind of text-based searching, it is best to be as specific as possible. However, with the difficulty of knowing which terminology to search, this can be a frustrating effort. Unfortunately, there does not seem to be a better way of conducting statutory research since, again, there is no index to the United States Code Service.

Neither is there a table of contents for the United States Statutes at Large database that Lexis maintains. Thus, the only option for searching through this database is to conduct text-based searches, which presents all the difficulties associated with text-based searching. The best way to overcome the difficulties associated with text-based searching is to make wise use of the field options. For example, using the "Short-Title" field option coupled with the term "Antiterrorism and Effective Death Penalty Act" leads directly to the full text of the AEDPA. Entering that search term without the "Short-Title" field option yields eight results, the seventh of which is the actual text of the AEDPA. Thus, using the field option greatly reduced the workload involved in finding the most relevant material.

Lexis also maintains an extensive database on state statutes and codes. Like the United States Code Service, the state codes maintained by Lexis are generally divided by subject areas and thus have tables of contents that can be browsed. In

some states, portions relevant to the death penalty may be classified under the state Penal Code. In other states, those relevant portions may be classified under the state Criminal Code. Accordingly, it is worth looking at the table of contents of these codes first rather than conducting text-based searches, in order to avoid the pitfalls of trying to figure out the right synonym when conducting a text-based search (ie: “capital felony” versus “capital offense,” etc). Generally, the most relevant results will be yielded by a perusal of the table of contents rather than a text-based search. However, where text-based searches are necessary, researchers should take advantage of the field options to pinpoint the scope of the search and directly target their queries.

### *ii. Westlaw*

Finding statutes on Westlaw is a much easier endeavor than finding them on Lexis-Nexis. To find a statute on Westlaw, simply select the jurisdiction for which you want to conduct statutory research (ie: All Federal), and then select “Statutes Index” from the upper right-hand corner of the search page. Assuming we had selected “All Federal” as the jurisdiction we were researching, and were now at the Statutes Index page, we could search through the index to see all of the relevant federal statutes codified in the U.S. Code. The Statutes Index page allows for quick searching of the index, making navigating through it even easier. The index is arranged alphabetically, and as such entering “death penalty” in the search box of the “A” section of the Statutes Index page will immediately take you to the Antiterrorism and Effective Death Penalty Act of 1996, one of the most important federal death penalty statutes in the U.S. Code. Continuing the search will take you to “Capital Offenses” within the “C” section of the index, from which researchers can click on the link and be directed to a comprehensive list of U.S. Code sections touching upon various aspects of the imposition of the death penalty, including the

code sections governing aggravating factors,<sup>5</sup> capital habeas corpus,<sup>6</sup> and the imposition of death for treason,<sup>7</sup> among countless others.

Westlaw also offers searching for statutes by popular name, which can be helpful when searching for statutes when the popular name of the statute is known but not its citation or location within the U.S. Code. The popular names index can be accessed by clicking on the “Pop. Name Table” link at the upper right-hand corner of the search screen for statutes. Contained within the popular names index is the Antiterrorism and Effective Death Penalty Act of 1996, the full text of which is directly accessible from the index.

Other federal statute materials can be found within the Westlaw Directory, and include the Westlaw U.S. Public Laws databases. Unfortunately, there is no online index for these databases, and they can only be accessed by conducting a terms search. This poses a number of difficulties for researchers since even a simple search for “Antiterrorism and Effective Death Penalty Act” failed to yield the public law result for that case. Rather, the yielded results included sections of other laws that amended parts of the AEDPA. Numerous variations were tried, including “AEDPA,” “A.E.D.P.A.,” and “Antiterrorism and Effective Death Penalty Act of 1996,” but none yielded the full text of the public law. Interestingly enough, the search did yield public laws that were enacted by the same Congress and which were companion pieces to the AEDPA. Even when field options were specified during the search (ie: searching through the summary of the law by using the summary field constrictor), the search did not yield the text of the AEDPA. The inability of these searches to yield satisfactory results highlights one disappointing limitation of what was an otherwise impressive statutory database.

State statutes can similarly be searched for, either through their table of contents or through the Statutory Index for that state’s code, or both, depending on the state.

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<sup>5</sup> 18 U.S.C. § 3592.

<sup>6</sup> 28 U.S.C. 2261 *et seq.*

<sup>7</sup> 18 U.S.C. 2381.

When available, the table of contents should be browsed first since it is usually better organized than the index. By browsing the table of contents, you can start with a broad topic and then narrow the focus of the search. With the index, most of the categories are already narrowed, resulting in a much higher number of categories initially displayed, which can be overwhelming.

### 3. Case Law

#### A. Introduction

If statutes provide the skeleton for death penalty law, case law certainly provides the body and life. Without case law, the meaning of death penalty statutes outlining standards for death-eligibility would remain ambiguous, and there would be no indications as to how the death penalty actually operates within a jurisdiction. For example, statutory language, such as “atrocious, heinous, or cruel” would be without meaning in the absence of case law to interpret and apply it. Thus, case law research is an indispensable companion to statutory research, and should be conducted with as much diligence and thoroughness.

As with statutory research, it is highly important that case law research be focused on the specific jurisdiction pertaining to the search query. Thus, research into state law should be first conducted within the case law of that specific state, followed by case law from the federal circuit to which that state belongs, if appropriate. Additionally, U.S. Supreme Court case law should be referenced whenever a researcher is conducting any kind of research into federal case law, or whenever there is an aspect of state death penalty law that has been challenged on constitutional grounds. Because each federal appellate circuit has its own unique make-up of jurisprudential philosophies, it may be helpful to conduct broader searches into how different circuits interpret federal law. However, the starting point for federal appellate law should be circuit to which the states relevant to the search query belong.

Also, because of the frequently shifting nature of court jurisprudence – both at the state and federal level – on death penalty case law and legislation, it is of vital importance that cases be properly checked for treatment by other courts. This section will discuss how to use some of the more common citator services provided by West and Lexis-Nexis to check for treatment. In addition, this section will discuss how to utilize citator services to find case law treatment of death penalty statutes.

## B. Print Resources

### i. Federal Court Reporters and Decisions

#### a. United States Supreme Court

Decisions of the United States Supreme Court are published in three main series: the United States Reports, the Supreme Court Reporter (West), and the United States Supreme Court Reports, Lawyer's Edition (Lexis). The United States Reports are the official publication of U.S. Supreme Court cases, and the Supreme Court Reporter and the Supreme Court Reports, Lawyer's Edition are unofficial publications. For this reason, the United States Reports should be referenced when researching the official decision of cases; for other research purposes, the Supreme Court Reporter and the Lawyer's Edition should be referenced. The value of each resource to death penalty research is elaborated upon below.

#### 1. United States Reports

As the official publication of U.S. Supreme Court cases, the United States Reports should be the publication cited to in all legal materials, when available. However, beyond this use, the United States Reports are less useful for research purposes. Within each volume, the United States Reports contain only an official list of presiding Justices, a list of U.S. Supreme Court cases included the volume, a table of cases cited by the court in their opinions published in the volume, and a table of statutes cited by the court in their opinions published in the volume. The United States Reports also include, obviously, officially published Court decisions. For exploratory research purposes, these materials are of little value. Volume 408 of the United States Reports, for example, contains no information within it that would indicate that *Furman v. Georgia*,<sup>8</sup> published within its pages, is a landmark death penalty case. The only way to find this out is to find *Furman* and read it. The United States Reports series does not include an index or encyclopedia, or any other

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<sup>8</sup> 408 U.S. 238 (1972) (declaring the death penalty, as practiced at the time by a number of states, unconstitutional).

reference materials than the ones already mentioned. As such, the United States Reports should be avoided for exploratory research purposes, and should only be consulted when referencing the official publication for United States Supreme Court cases is necessary.

## *2. Supreme Court Reporter (West)*

The Supreme Court Reporter, published by West, contains a tremendous amount of information, though finding that information involves a few more steps than finding similar information using Lexis's Lawyer's Edition. Nonetheless, the extra effort is worth it.

To effectively use the Supreme Court Reporter, researchers should first use the Descriptive Word Index volume of the Supreme Court Reporter. This volume contains within it Key Number citations for specific areas of law. For death penalty researchers, this volume is particularly necessary since the Supreme Court Reporter Digest does not contain a specific section dedicated to death penalty issues. Rather, virtually all of the Key Numbers related to the death penalty are contained in various parts of the Key Numbers section on sentencing and punishment, with additional Key Numbers in the criminal law and constitutional law sections. The Descriptive Word Index volume brings together all of these scattered key number sections, eliminating the need to pour over multiple volumes of the Supreme Court Reporter Digest when searching for relevant material.

The Descriptive Word Index includes a section, appropriately classified under "Death Penalty," dedicated to Key Numbers relating to death penalty cases. These Key Numbers touch upon nearly every conceivable area of death penalty law, including topics such as the age of the victim and offender, the brutality of the offense under death penalty law, future dangerousness of the offender, mental health issues, jury issues, proportionality issues, and post-conviction relief, among a multitude of other topics. Assuming, for example, a researcher were looking for information on statutory creation of mitigating factors, the researcher need only

first look in the Descriptive Word Index, scan the “Death Penalty” section until he or she finds the subsection on Statutes, and then finds the subtopic of “Aggravating circumstances, creation and definition,” which is tied to Key Number 1625 of the Sentencing and Punishment section of the Digest. Looking up that Key Number in the Digest reveals a number of Supreme Court cases on that issue, including *Zant v. Stephens*, 462 U.S. 862 (1983); *Proffitt v. Florida*, 428 U.S. 242 (1976); and *Arave v. Creech*, 507 U.S. 463 (1993), among many others. This section also contains brief summaries of the main points of law in each case, and includes citations to the official United States Reports volume in which the case was published, as well as the Supreme Court Reporter and Lawyer’s Edition volumes in which the case is published.

Cases published in the main volumes of the Supreme Court Reporter include summaries of the background of the case of the holding in the case. Also included are related Key Numbers that summarize and categorize the main points of law in the case. Cases are also accompanied by a syllabus which, though not an official part of the opinion, are provided by the Reporter of Decisions of the Court and summarize the posture and underlying reasoning behind the case. Finally, there are citations to petitioner and respondent briefs, when available, as well as any appendixes included in the opinion by the Court.

Though the Supreme Court Reporter requires slightly more effort to navigate than does the Lawyer’s Edition, it remains an incredibly powerful resource. Researchers should be aware that Digest volumes and Index volumes contain pocket parts that should always be referenced for updated material. Additionally, there are Interim Editions and paperback editions that include cases from more recent Court terms that have yet to be published in a bound, hardback edition.

### *3. United States Supreme Court Reports, Lawyer’s Edition (Lexis)*

The United States Supreme Court Reports, Lawyer’s Edition (Lawyer’s Edition), published by Lexis, is an invaluable print resource for conducting research into

United States Supreme Court cases dealing with the death penalty. Unlike the official United States Reports, the Lawyer's Edition maintains an index volume that allows researchers to find Supreme Court cases according to legal subject matter area. The index's section on "Capital Offenses and Punishment" is extensive. This section includes parallel citations to the official reporter, the Lawyer's Edition, and the Supreme Court Reporter by West for a number of death penalty cases, including those dealing with the use of aggravating and mitigating circumstances, burdens of proof, commutation of sentence, civil rights and discrimination, insanity, ineffective assistance of counsel, and many, many more topics. This kind of detailed cataloging of Supreme Court cases is invaluable for death penalty researchers, who will likely find relevant cases with ease by simply referring to this digest. The only downside to the index is that, while it contains citations to cases, it does not include the name of cases. For example, the index case citation for the topic of "Interracial crime, defendant constitutionally entitled to have prospective jurors informed of race of victim and questioned on racial bias" includes a citation to "90 L. Ed. 2d 27, 476 U.S. 28, 106 S. Ct. 1683" but does not mention the name of the case (*Turner v. Murray*) or the year in which the decision was published (1986). However, the index does cite to the first page of the decision, from which the name of the case can be easily gleaned.

The Lawyer's Edition also maintains a separate digest series, separate from the index, that contains more detailed information than the index, including case names and summaries. Whereas the index is contained within only a few volumes, the digest is published in several volumes. The digest also contains cross-references to relevant portions of the digest that touch upon the summarized case. For example, a case may be summarized in the "Criminal Law" section and contain a cross-reference to the "Constitutional Law" section of the digest. For death penalty researchers, the most relevant section of the digest is contained within the "Criminal Law" section, starting at § 91, "(F) Death Sentence," which contains information on Supreme Court cases dealing with every aspect of federal death penalty case law. Digest volumes typically have pocket parts that should be referenced for recentness.

Once a case is found in the appropriate Lawyer's Edition volume, a plethora of supplemental information is included with the decision of the case, including citations to pertinent American Jurisprudence and American Law Reports sections, citations to Lexis Headnotes topics and subtopics, citations to pertinent constitutional provisions, summaries of the opinions and holdings within the case, and much more information. The end of each volume also contains further annotations and briefs submitted for the cases reported in the volume. However, full briefs are available for only some of the cases. Other cases, including *Turner*, have only summaries of the briefs submitted for that case. Nonetheless, the information in this supplemental section can be invaluable for researchers.

The Lawyer's Edition also maintains a number of supplemental volumes, including a statutory tables volume, a later case service volume, and a citator service and corrections volume. The statutory tables volume allows researchers to look up provisions of the United States Constitution, the United States Code, statutes published in the Statutes at Large, and various federal rules, and reference Supreme Court cases that deal with those areas. For death penalty researchers, this can be immensely helpful since a researcher need only look up, for example, the Eighth Amendment and instantly be able to see citations to a number of Court cases that deal with it. The later case service volume contains updated information on the treatment of cases published within certain volumes by future courts. It also contains some commentary and analysis, and other relevant information for selected volumes. The citator service and corrections volume includes updated information on the treatment of cases by future courts, as well as corrected information for cases published in the Lawyer's Edition. Because of the importance of having both correct and up-to-date information, these supplemental volumes should always be consulted.

Finally, there is a Lawyer's Edition Advance volume that contains more recent cases that have yet to be published in hardback bound volume. For the most recent court cases, these Advance volumes should be consulted.

## b. Federal District and Appellate Courts

### 1. *Federal Reporter (West)*

The Federal Reporter, published by West, is the predominant case reporter for cases from the Federal Appellate Courts, including the various circuit courts and the Federal Court of Claims. Every case published within the Federal Reporter has summaries of its main points of law listed before the opinion of the case. Each summary is assigned a Key Number, which reflects how that summary has been classified within the case Digest. Most of the case summaries that pertain to death penalty law are classified under the “Sentencing and Punishment” Key Numbers topic.

The best way to find cases is to use the Federal Reporter’s Descriptive Word Index. Like the Descriptive Word Index for the Supreme Court Reporter, the Index for the Federal Reporter allows researchers to look up topics and find the Key Number category under which that topic is classified. In line with West’s policy of uniformity in its Key Numbers classification system, the same Key Numbers pertaining to the death penalty for Supreme Court Cases also pertain to the death penalty for other federal court cases, including those reported in the Federal Reporter. As such, the most directly relevant topics to the death penalty in the Federal Reporter Descriptive Word Index are, appropriately enough, located under “Death Penalty,” just as they were in the Supreme Court Reporter Descriptive Word Index. Under “Death Penalty” are a number of subtopics, each pertaining to a specific area of death penalty case law, including “aggravating circumstances,” “evidence admissibility,” and “mental competency of defendant,” among countless others. Next to each subtopic is a reference to the Key Number category directly related to that subtopic. Once a researcher has found a Key Number, he or she can look that Key Number up in the Federal Practice Digest (West’s digest for the Federal Reporter series), which compiles all the relevant point of law summaries for that subtopic and lists them alongside one another, with direct citations to the cases from which they came. Thus, researchers can get a quick glimpse into the major

points of law on a specific topic of the death penalty, and proceed further with their research by looking up the cited cases from which the summaries were taken.

Researchers should be aware that volumes of the Descriptive Word Index and of the Federal Practice Digest contain pocket parts on the inside of the back cover which contain updated Key Number references and summaries. As such, researchers should always refer to these pocket parts for the most recent information.

## *2. Federal Supplement (West)*

The Federal Supplement, published by West, publishes cases from the nation's various federal district courts. Like the Federal Reporter, the Federal Supplement is best searched using the Descriptive Word Index, followed by the Federal Practice Digest (which lists both district court and court of appeals opinions). Because the search methodology for the Federal Supplement is identical to that used for the Federal Reporter, researchers should refer to the previous section, starting at page 23, for more detailed information on finding death penalty-related cases in the Federal Supplement.

### *ii. State Court Reporters and Decisions*

State court cases are reported in both official state reporters and the national reporters published by West. For many states, cases are officially and exclusively published in the West national reporters. Because each state has a different policy on where its decisions are officially published, researchers should reference the Bluebook or otherwise verify which publications to cite when citing cases. For research purposes, however, West's publications are much more preferable, since official state reporters not published by West generally do not have indexes or other digest materials to help researchers find specific case law.

#### *a. Official Reporters*

As stated above, official state case reporters are generally unhelpful when it comes to conducting case law research because few, if any, provide digest materials or

index materials to help navigate through them. The real importance of official reporters come from the fact that they contain the official printings of case law for their respective states, and that they may need to be cited over all other reporters according to standard Bluebook citation rules. For exact information on which reporters should be cited to for specific states and jurisdictions, researchers should refer to the Bluebook or official citation guidelines for their jurisdiction.

#### b. West National Reporters

For research purposes, no other state case reporter provides better resources than West's national reporters. Because of the uniform organization of West's Key Numbers system and Digest system, researchers should refer to the section on conducting print research using the Federal Reporter, located on page 23, which outlines how to conduct case research using West's print materials.

#### iii. *Legal Encyclopedias*

##### a. Corpus Juris Secundum

Corpus Juris Secundum (CJS) operates like many primary source compilations in that there is an accompanying terms digest in which researchers can look up legal topics and which provide references to main volumes of CJS for pertinent case information on that topic. The digest topics most relevant for death penalty research are listed under "Capital Offenses" in the General Digest of CJS. Topics listed under "Capital Offenses" include topics dealing with aggravating factors, competency, and jury issues.

One confusing aspect about using CJS in print for death penalty research is that the references in the General Digest seemed to only vaguely, if at all, relate to death penalty cases. Some references, including the one for aggravating factors, seemed to refer to sections of the digest that had absolutely nothing to do with capital offenses, or even aggravating circumstances. Also, because CJS volumes do not contain volume-specific indexes at the end of each volume, there is no real way to get around this difficulty, as is possible for American Jurisprudence (see section on

American Jurisprudence in print, starting on page 26). These peculiarities only exacerbated the fact that CJS seems to contain only few references to death penalty-related topics in its General Digest. For these reasons, CJS in print is not the best secondary source available for death penalty research. However, it may be worth a look if other sources yield unsatisfactory results. Unfortunately, CJS is unlikely to provide much more information than what is already included in other sources. CJS maintains supplemental volume updates for its General Digest, and pocket part updates for its main volumes. Researchers should always refer to these updated materials when conducting research using CJS. Because of the difficulties in using the print version of CJS, researchers are better off using other print resources first, or the online version of CJS which does not suffer from the same inaccuracies.

For information on accessing the online version of CJS, refer to the section on Westlaw treatises at page 47.

#### b. American Jurisprudence

American Jurisprudence (AmJur) is a legal encyclopedia organized much in the same way that Corpus Juris Secundum is organized. The AmJur series is a compilation of legal citations and summaries of cases on a wide range of legal topics. Normally, the best way to navigate through this encyclopedia would be to use the AmJur General Index, which is arranged alphabetically by topic. The most relevant topics in the Index for death penalty law are listed under “Capital Offenses and Punishment.” Unfortunately, the AmJur General Index, like the one for CJS, is rife with incorrect references that do not lead to accurate information on death penalty law. For example, the reference for aggravating circumstances under “Capital Offenses and Punishment” cites to a section of the main volume that pertains to the right to a speedy trial, and which has nothing to do with the issue of aggravating circumstances generally, or at all. An interesting curiosity about these inaccuracies is that they are not reproduced in the word index for each of the main volumes. For example, the word index for one of the main volumes on criminal law contains a reference for “aggravating circumstances” to a section not mentioned at all in the

General Index. As happens to be the case, the reference in the main volume index points to the correct section of that volume dealing with aggravating circumstances.

This curiosity presents both an opportunity and a difficulty for researchers. The opportunity is that researchers may still be able to find relevant information in AmJur despite the inaccuracies of the General Index. The difficulty is that in order to find relevant information, researchers will have to individually search the indexes of each AmJur volume. One way to reduce this burden is to focus on the indexes for the AmJur volumes dealing specifically with criminal law or other areas related to the death penalty. However, because information for these areas may be contained within a number of different volumes, this can still require tremendous effort. Because of the difficulty in using AmJur for the reasons described above, researchers are better off either using other research materials first, or using the online version of AmJur, which does not suffer from the same difficulties as the print version.

For information on accessing the online version of American Jurisprudence, refer to the section on Westlaw treatises at page 47, and the section on Lexis-Nexis treatises on page 49.

### c. American Law Reports

The American Law Reports (ALR) are an important resource in nearly every area of law, including death penalty law. They include detailed analysis of a wide range of issues, and include annotations and case citations to help researchers identify black letter law on their subject.

For death penalty researchers, both the ALR Series reporters and the ALR Federal reporters are of value. The ALR Series reporters cover state cases, while the ALR Federal reporters cover federal cases, including those from district and appellate courts. ALR reporters also include citations to legal encyclopedia resources, including the American Jurisprudence Series and Corpus Juris Secundum, which are discussed on pages 26 and 25, respectively.

As with all digest resources like the American Law Reports, researchers should be keen to always check for pocket parts located at the end of every volume. Failing to do so may result in retrieving outdated, and therefore largely useless material.

For information on accessing the online version of the American Law Reports, refer to the section on Westlaw treatises at page 47.

### *1. American Law Reports Series*

The American Law Reports Series (ALR Series) covers state cases, including death penalty cases. The best way to maneuver through the vast library of ALR Series volumes is to first consult the ALR Series Digest, typically shelved immediately after the final ALR Series volume. The ALR Series Digest is arranged alphabetically by area of law topic. For death penalty researchers, the most immediately pertinent section is filed under “Criminal Law,” subsection VI, “Judgment or Sentence; Punishment.”<sup>9</sup> This subsection is further divided into more specific subtopics on the issue of judgment and sentencing, including “Cruel and Unusual Punishment,” “Punishment of Second Offenses and Habitual Criminals,” “Suspension or Stay of Imposition or Execution of Sentence,” and “Parole; Probation; Reprieve; Pardon; Commutation,” among others. The only subsection containing the words “death penalty” is “§ 181 Death Penalty and Mode of Executing It,” which itself only includes a citation to American Jurisprudence. However, other subsections cite to the ALR Series volumes, which contain direct citations to state-specific case law.

Researchers should be aware that the ALR Series Volumes do not themselves contain pocket parts with updated materials. Rather, there is a separate library of supplemental ALR Series materials called the “ALR Later Case Service” that contains updated case law for the ALR Series. The Later Case Service is divided into a number of volumes, each providing updated information for a specified range of

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<sup>9</sup> The ALR Series Digest section on “Sentence and Punishment” refers researchers to subsection VI of the Criminal Law section without providing any additional citations or references, and there is no Digest section on “Capital Punishment” or “Death Penalty.”

ALR Series volumes. The Later Case Service volumes also contain pocket parts within them, providing even more recently updated information. Researchers should be keen to reference these supplemental materials always.

## *2. American Law Reports Federal*

The American Law Reports Federal (ALR Federal) covers federal law in the same way that the ALR Series covers state law. Like the ALR Series, the ALR Federal maintains a digest which provides the best resource for finding material within the ALR Federal volumes. The ALR Federal Digest is also divided alphabetically by area of law topic, the most relevant to death penalty law being the “Capital Offenses and Punishment” section.<sup>10</sup> This section covers a number of sub-areas of death penalty law, including the operation of the 1994 Death Penalty Act, the use of aggravating and mitigating factors, and the issue of deterrent effect arguments in death penalty law.

The ALR Federal volumes include summaries of the relevant case law on the issue, with citations to both cases and other supplemental materials, including American Jurisprudence. Generally, the ALR Federal covers death penalty topics with greater depth than does the ALR Series.

The ALR Federal series also contains another separately maintained digest called the ALR Federal Tables digest. This digest contains an alphabetically-arranged listing of every case listed in the ALR Federal, with information on which ALR volumes and sections mentions it. For example, looking up *Furman v. Georgia*<sup>11</sup> in the ALR Federal Tables digest reveals that *Furman* is discussed in 6 ALR Fed 2d 213, § 13.

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<sup>10</sup> The ALR Federal Digest section on “Death Penalty” refers researchers to the section on “Capital Offenses and Punishment,” without providing any additional information or references.

<sup>11</sup> 408 U.S. 238 (1972) (declaring the death penalty, as practiced at the time by a number of states, unconstitutional).

Unlike the ALR Series, each ALR Federal volume contains its own pocket part, which researchers should never fail to reference for updated material.

### C. Online Resources

#### i. Introduction

Like statutory research, case research in recent years has become increasingly digitized, and more and more sources are being put online. Some print resources are even becoming obsolete – namely citators like Shepard’s – and are now almost exclusively online resources. Because of the ease with which cases can be looked up and Shepardized for validity, many researchers are turning primarily to online research. Because Lexis-Nexis and Westlaw offer convenient links to other related materials, including links to online legal encyclopedias and treatises, it is easy to see why online research is the preferred method of research for so many people. This section is dedicated to helping death penalty researchers maneuver through these online databases for case research, and to help them take full advantage of the services offered by these resources.

To ensure that online case research yields the best results, we will use two seminal cases from the area of death penalty law to help us measure the success of the methodology presented below. The idea is that if we conduct searches that yield these cases, which are central to death penalty case law, then we can be sure that the research methodology presented below is sound and will yield accurate and relevant results. The two test cases will be *Atkins v. Virginia*<sup>12</sup> and *Coker v. Georgia*.<sup>13</sup> It should be noted that, using the TAPP mnemonic, we can help guide our search. In the first instance, we will be looking for federal case law on the issue

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<sup>12</sup> 536 U.S. 304 (2002) (holding that the execution of the mentally retarded violates the Eighth Amendment’s ban on cruel and unusual punishment).

<sup>13</sup> 433 U.S. 584 (1977) (holding that the Eighth Amendment’s ban on cruel and unusual punishment precluded the imposition of the death penalty for the crime of rape of an adult women when the victim was not murdered).

of the execution of mentally retarded defendants. Thus, our TAPP categories may look like this:

- T: Eighth Amendment, Cruel and Unusual Punishment
- A: executions, mental incapacity, mental retardation defense
- P: mentally retarded defendant, mentally incapacitated defendant
- P: U.S. Supreme Court, federal appellate courts

In the second instance, we will be looking for federal case law on the issue of the imposition of the death sentence for a defendant convicted only of the rape of an adult woman. Thus, our TAPP categories may look like this:

- T: Cruel and Unusual Punishment
- A: executions, proportionality
- P: defendant convicted of rape, rape victim not murdered
- P: U.S. Supreme Court, federal appellate courts

By dividing the search query into these categories we can get a better sense of what the search may entail, and we will be better able to identify relevant case markers and directory topics within the Lexis and Westlaw case law directories.

As a final note, the sections on conducting online case research into Lexis-Nexis and Westlaw are meant to demonstrate how case law research is best done using these online resources by providing a sample search procedure for finding relevant case law. Online case law research can be performed any number of ways, but the methods demonstrated in the subsequent sections are generally the easiest ways and yield the most accurate results. The hope is that by demonstrating how to conduct one sample search in each of these resources, researchers will be learn how to conduct searches for other topics.

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## *ii. Lexis-Nexis*

### a. Case Research

The best way to start off with case research on Lexis-Nexis is to use its Headnotes catalogue, which operates in the same way that an index to a legal encyclopedia does. To access Lexis's Headnotes, click on the "Search" tab near the top of the page, and then click on the "by Topic or Headnote" link just below the tab. The Headnotes page will contain two search options. The first is to do a text-based search for headnotes. The second option is to browse through Lexis's headnotes catalogue. In order to avoid the pitfalls of finding the right search phrase among a nearly infinite number of synonymous search phrases, it is best to start off by browsing through the Lexis headnotes catalogue.

The catalogue is divided into a number of different areas of laws. The most clearly relevant for death penalty research is the "Criminal Law & Procedure" headnote. Clicking on that headnote will open up a list of subtopics related to criminal law and procedure, many of which are directly relevant to death penalty law. A sample of related subtopics includes Counsel, Juries & Jurors, Defenses, Jury Instructions, Postconviction Proceedings, Appeals, Habeas Corpus, and most obviously, Sentencing.

Assuming we were searching for the federal case law on the execution of mentally retarded persons, but did not know the name of the controlling case on the issue, this would Lexis's headnotes page on Criminal Law & Procedure would be a great place to start. Knowing that we were dealing with the issue of sentencing mentally retarded persons to death, the best place to go on the subtopics page would intuitively be the "Sentencing" subtopic. Please note, when navigating through the subtopics, researchers should click on the little plus sign next to the subtopic, rather than clicking on the subtopic itself. Clicking on the plus sign will open up more subtopic listings, while clicking on the subtopic link will open up a search page, which should not happen until the researcher has narrowed down their headnotes to the headnote most directly relevant to their research query.

Clicking on the plus sign next to Sentencing will open up more subtopics, including the subtopics of “Imposition,” “Mental Incapacity,” and “Proportionality,” all of which are potentially relevant to our search for the federal case controlling the imposition of the death penalty on mentally retarded persons. Before selecting a headnote to search, it is best to continue clicking on the plus signs next to relevant headnotes to see if its subtopics further bring you closer to the topic of your search query. For example, clicking on the plus sign next to the “Imposition” subtopic reveals subtopics on “Evidence,” “Findings,” “Statutory Maximums,” and “Victim Statements,” among others, but none that seem directly related to the issue of executing mentally retarded defendants. Similarly, the subtopic of “Proportionality” has no plus sign next to it, indicating there are no narrower subtopics before that heading. Because the “Mental Incapacity” subtopic seems most directly related to the issue of the execution of the mentally retarded, that is where we shall focus our search. Because there is no plus sign next to the subtopic of “Mental Incapacity,” we must click on the subtopic link to continue our search.

Doing so will open up a search page in which we indicate the jurisdiction, sources, and search terms we want to search. Because we are interested only in federal case law, we need only indicate “Federal” as our jurisdiction, and because we are looking for the controlling law on the matter, we need only indicate “U.S. Supreme Court Cases, Lawyers’ Edition” as the source we will search. Finally, because we are looking for case law on the execution of mentally retarded persons, we can input “mentally retarded” or “mental retardation” as our search terms, though search terms are optional. In order to avoid the pitfalls of synonymous search terminology, we should leave the “Search Terms” option blank, and add search terms only if our first search does not yield satisfactory results.

Entering no search terms yields over eighty Supreme Court cases on the issue of mental incapacity and the imposition of the death penalty. Without having to go back to the previous search page to narrow down the search by adding search terms, we can instead use the “FOCUS” search box near the top of the page, which will conduct a search through the yielded results. Because it would be onerous to go

through each individual case to check its relevance, the FOCUS box is a great resource to help narrow down the search to the most relevant results. Entering “mentally retarded” into the FOCUS search box reduces the number of yielded cases to just under twenty cases, a much more manageable quantity and one more directly related to our search query.

Lexis provides an “Overview” statement, which quickly summarizes the core issues and holding of the yielded cases. By reading these overview statements, researchers can quickly determine the usefulness of the yielded cases, which are arranged by descending order of recentness. Reading the overview summaries of the first two cases yielded by our FOCUS search indicate that they are not directly relevant to our issue, which is the constitutionality of executing the mentally retarded under the Eighth Amendment. However, the overview of the third yielded case reads: “Noting a national consensus against imposing the death penalty on mentally retarded offenders, the Court concluded such punishment was excessive and held that the Eighth Amendment restricts a state's power to take the life of a such an offender.” This case is directly relevant to our search query, and just so happens to be the case of *Atkins v. Virginia*, the 2002 U.S. Supreme Court case that banned the imposition of the death penalty against mentally retarded defendants. Our search methodology seems to be sound since it yielded the seminal case on this issue. However, our research is only half completed at this point. The next important step is to check the validity of the case to see if it still carries precedential weight. For this, we use Lexis’s Shepard’s citator, discussed in the next section.

#### b. Shepard’s

Lexis-Nexis’s online citator is the Shepard’s citator, which is perhaps the most well known legal citator service. As mentioned in the introduction of this section on online case research, Lexis has integrated its citator service into its online case research system. This means that any time a case appears as part of a search, or is looked up directly, a small icon will appear near it indicating its subsequent

treatment as law by other courts. Depending on the treatment of the case, the icon will change to either indicate positive treatment, negative treatment, or neutral treatment. The most important function of the icon is that it serves as a link to view the full Shepard's report on how the case has been treated as law.

Taking the *Atkins v. Virginia* case that was yielded in our search in the previous section, we can see that in both the search results page next to the name of the case, and near the top of the page when the full text of the case is loaded, appears a small red icon in the shape of a stop sign. This is the Shepard's icon, and the fact it is currently in the shape of a red hexagon indicates that the case has been treated negatively by future courts. Clicking on the icon reveals the full Shepard's report for *Atkins*, including negative treatment of that case. Because we are concerned about federal law on the subject, we want to see if the U.S. Supreme Court reversed its own opinion, or if the U.S. Congress enacted a constitutional amendment superseding the *Atkins* decision (which is the only way a U.S. Supreme Court ruling on the U.S. Constitution can be legislatively overruled). The Shepard's report allows us to view the entire history, or only the negative, positive, or neutral history. Because the negative history is what most concerns us, we can click on the "All Neg" link near the top of the page to narrow the Shepard's report accordingly. Doing so will show that *Atkins* has been distinguished from many subsequent cases, all on the lower appellate levels and state supreme court levels. Nonetheless, neither the U.S. Supreme Court nor the U.S. Congress has overruled *Atkins*, and as such it remains the controlling law on the issue of the constitutionality of the execution of mentally retarded defendants.

For those practicing at the lower appellate level, finding how the case has been distinguished by lower courts and state supreme courts can be immensely important, since how a case has been treated is virtually as important as what the case itself says. Shepard's conveniently divides its summary report by jurisdiction, so that jurisdiction-specific cases can be easily identified and accessed directly from the Shepard's report. As such, the Shepard's citator on Lexis is an invaluable

resource for researchers, and can serve as a launching pad for further research into case law.

A novel way to find pertinent case law using Shepard's and other citator services is to Shepardize statutes and other legislative materials. Doing so will bring up a list of cases that cite the statute in a summary format similar to when a case is Shepardized. This can be a tremendous resource for researchers looking into both statutory law and the case law that interprets it.

### *iii. Westlaw*

#### a. Case Research

Like Lexis-Nexis, Westlaw maintains a law topics directory from which case research is best done. Called Key Numbers, the Westlaw system operates in much the same way that Lexis's Headnotes function. Key Numbers are divided by subject matter area, and contain with them increasingly narrower subtopics that can help focus a researcher's search efforts. Also like Lexis's Headnotes, Westlaw's Key Numbers system is really the best way to find the most relevant case law on most any legal topics, including the wide array of topics within death penalty law.

To access Westlaw's Key Numbers directory, first go to the Key Numbers link at the top center of the Westlaw research page, then click on the "West Key Number Digest Outline" link. This opens up the Key Numbers directory, containing over 450 Key Number topics. The Key Number most directly related to the issue of death penalty law is Key Number 350H, "Sentencing and Punishment." Clicking on the plus sign next to the Key Number reveals a number of subtopics that are different than the subtopics contained with Lexis's HeadNotes directory. The Key Number subtopic most relevant for death penalty research is subtopic VIII of Key Number 350H, simply called "The Death Penalty." This subtopic is further divided into narrower categories, including "Persons Eligible," "Factors Affecting Imposition in General," "Factors Related to Offense," "Factors Related to Offender," "Factors Related to Status of Victim," "Proceedings," and "Execution of Sentence of Death." From these

subtopics, which are further divided into even narrower topics, you can find most any relevant death penalty case.

Assuming we were doing case law research into whether a defendant convicted only of the rape of an adult woman could be sentenced to death, for which *Coker v. Georgia* would provide the controlling case law, we should be able to find that case by first browsing through Westlaw's Key Number directory and then conducting a search once we have found the narrowest key number relevant to our query.

To further narrow the search, we can proceed to click on the plus sign next to "Factors Related to Offense," since we are primarily interested in whether the death sentence can be imposed on a defendant convicted only of rape. Clicking the plus sign reveals even more narrowed categories, including "Nature of Degree of Offense," which seems to be the best suited for finding what the case law is on the death penalty for rape. Clicking on the plus sign next to "Nature of Degree of Offense" reveals two more categories, "In General," and "Murder." Since our case expressly does not include murder, we can conduct our search using the "In General" category. To search a category, first click on the check box next to the category, then click "Search Selected" at the bottom of the page. While multiple Key Number categories and subcategories can be searched simultaneously, researchers should always be aware that doing so may result in a greater number of search results, thus increasing the likelihood that irrelevant material will be yielded. For this reason, it is advisable that searches first be conducted within the narrowest Key Number category, with other related categories added only if the initial search yields unsatisfactory results.

Clicking the "Search Selected" button will open a search page where researchers can indicate the jurisdiction they want to search and where they have the option of including search terms related to their query. Researchers also have the option of searching reference materials as well, though this will entail higher costs for searchers. Finally, researchers can choose to order the yielded results by their recentness, or by how frequently cited they have been. Because we are searching

for the controlling law on the issue of rape and the imposition of death, selecting “Most Cited Cases” is probably the better ordering option. Also, because our search specifically involves rape, we should enter “rape” as a search term. Finally, since we are interested only in the federal case law on the matter, we should select “Federal” and “U.S. Supreme Court” as our jurisdiction.

Conducting the search with these terms yields only one result: *Coker v. Georgia*.

Again, as with conducting case law research on Lexis-Nexis, finding the case is only the first step. The second step is to ensure that the case is still valid authority. For this, Westlaw provides its own citator service, called KeyCite. Keycite is discussed below.

#### b. KeyCite

As with Lexis-Nexis’s Shepard’s service, Westlaw’s KeyCite service inserts a little icon adjacent to every case search result and at the top of the full text of every case. The icon, like the Shepard’s icon on Lexis, changes according to how the case has been treated. For *Coker*, the KeyCite icon indicates that it has had some negative treatment by future courts, but has not been overruled. Clicking on the icon will lead directly to the full KeyCite report, which indicates that *Coker* has been distinguished by a number of lower federal appellate courts and by some state supreme courts, but that its holding has not been treated negatively by the U.S. Supreme Court, and that it has not been superseded by an act of Congress.<sup>14</sup> As

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<sup>14</sup> At the time of this writing, the U.S. Supreme Court had yet to decide on *Kennedy v. Louisiana*, a case in which the *Coker* precedent would be re-examined by the Court. Depending on the outcome of *Kennedy*, the *Coker* decision may or may not continue to be the controlling case law standard for this issue. This fact only further reinforces the need to do put a case through a citator service like Shepard’s or KeyCite in order to fully understand the precedential authority of a case. It also highlights the importance of keeping up-to-date on relevant current events, since nowhere in the KeyCite report does it indicate that the *Coker* decision is being re-examined by the Court in *Kennedy*. This highlights one limitation of any citator service report. However, both Shepard’s and KeyCite offer services that alert users whenever there has been a change in the subsequent history of a case. For example,

such, *Coker* remains the controlling case law on the matter of whether a defendant may be executed for the rape of an adult woman who is not killed.

KeyCite also allows users to view a graphical representation of the history of a case, which can help users visualize how the case has been treated. Normally, the practical value of this feature does not quite reach the novelty value of it, since the graphical view offers little advantage over the standard textual KeyCite report. However, for death penalty research, the graphical view may help researchers better understand the procedural history of a case, since it neatly produces a hierarchical flow chart that indicates any kind of habeas or parallel review by other courts, in addition to any other kind of relevant case history. Because it is of tremendous importance for death penalty researchers to understand the procedural posture of a case (given the central role played by both standard procedure and habeas procedure, and the unique intermingling of federal and state procedures in death penalty cases), this graphical representation can be helpful.

Like in Lexis-Nexis, a novel way to find pertinent case law using KeyCite is to KeyCite statutes and other legislative materials. Doing so will bring up a list of cases that cite the statute in a summary format similar to when a case is KeyCited. This can be a tremendous resource for researchers looking into both statutory law and the case law that interprets it.

#### *iv. HeinOnline*

HeinOnline maintains image files of nearly every volume of the United States Reports, the official case publication of the United States Supreme Court. For this reason, HeinOnline can be a useful resource. However, HeinOnline's search functions are severely limited as compared to the more robust search capabilities of Lexis-Nexis and Westlaw, and as such is less useful for conducting case law research.

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signing up for an alert for *Coker* will ensure that a researcher is notified if and when *Coker* is re-examined in *Kennedy* or any other case. This function can be invaluable for keeping up-to-date on relevant case law.

For example, searching through HeinOnline's holdings yields only the name and citation of cases, and does not include any summaries of the holding or any overview of the case. As such, researchers would have to perform the onerous task of reading through every yielded result to assess its relevance to the researcher's query. While conducting a search for "death penalty and rape" did yield *Coker v. Georgia* as the second hit, without knowing beforehand that *Coker* was the name of the case that provided the controlling law on that subject, researchers would be forced to read through the first yielded result before moving onto *Coker*. If the results had been arranged by recentness, the *Coker* decision would not have appeared until the near end of the results page, and the researcher would have had to wade through many more irrelevant cases. Additionally, because HeinOnline does not provide a citator service, it is impossible for a researcher using HeinOnline to determine the precedential authority of a case pulled up. As such, HeinOnline is best used as an archive for U.S. Reports images, rather than as a primary research tool.

#### 4. Procedure

Because procedures for the administration of the death penalty vary widely from jurisdiction to jurisdiction, it can be difficult to find information on specific procedural practices. For a general overview of death penalty procedure, researchers should look to Randall Coyne's and Lyn Entzeroth's book "Capital Punishment and the Judicial Process."<sup>15</sup> Their book offers information on a wide range of procedure-related issues, including constitutional limitations on death eligibility, the role of aggravating and mitigating factors, the use of psychiatric experts, information on federal habeas corpus review, including information on state barriers to federal review, and the selection of a capital jury, among other topics. Because capital procedures are really an amalgamation of related procedures ubiquitous in the legal system, including rules of evidence, sentencing rules, and others, this section is dedicated to finding compilations of court rules for specific jurisdictions, namely states. From this basic guide, researchers should be able to find the relevant information they are seeking.

Lexis-Nexis and Westlaw provide procedural material on specific jurisdictions on their databases. Lexis's sources on jurisdiction-specific procedures are maintained in its "States Legal – U.S." section, and are divided by state. With a particular state's legal page, court rules can be accessed by selecting the "Find Statutes, Regulations, Administrative Materials & Court Rules" link, and then clicking "Court Rules" on the right-hand side of the page. Doing this for Texas, for example, will show the TX – Texas State & Federal Court Rules section, which contains information on Texas State rules of evidence, rules of judicial administration, code of judicial conduct, disciplinary rules of professional conduct, and the rules of disciplinary procedure, among others. Also contained within this source are rules on the selection and appointment of counsel in death penalty cases and representation in state death penalty habeas corpus proceedings under 28 U.S.C. § 2254. The best way to

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<sup>15</sup> RANDALL COYNE & LYN ENTZEROTH, CAPITAL PUNISHMENT AND THE JUDICIAL PROCESS (2006).

navigate through these sources is to browse the table of contents of the source, and, if necessary, to conduct a search of the table of contents rather than a search of the text of the source itself. Limited searches to the table of contents will help with controlling the accuracy of yielded results, and will also help researchers more quickly determine if the material they need is contained within the source.

Westlaw also maintains a wide selection of court rules, accessible from the Westlaw Directory under “U.S. State Materials,” “U.S. States,” and then within the individual state being researched. Once a state has been selected, the relevant rules and materials are located within the “Court Rules & Orders” link. Doing this for California, for example, will reveal the California Court Rules treatise, among other potentially relevant treatises. As on Lexis-Nexis, the best way to maneuver through these sources is to browse through their Table of Contents. Browsing the Table of Contents of the California Court Rules treatise will reveal rules of evidence from the evidence code, rules for the California Supreme Court and other lower courts, rules from the penal code, and other relevant rules. However, it should be noted that not all of the court rules materials will be browsable. The Criminal Justice – California Court Rules treatise, for example, does not have a Table of Contents.

## 5. Jury Instructions

The importance of jury instructions in death penalty cases is evident from the abundance of court cases regarding the propriety of certain jury instructions over others. As such, it can be useful to conduct research into how juries are instructed in order to get a better understanding of how the death penalty is administered. The best way to find relevant jury instructions is through online resources, particularly Lexis-Nexis and Westlaw.

Lexis offers federal death penalty jury instructions in its Modern Federal Jury Instructions – Criminal treatise. The treatise is accessible by clicking the “Briefs, Motions, Pleadings, & Verdicts” link on Lexis, then “Jury Instructions,” “Federal Jury Instructions,” and finally “Modern Federal Jury Instructions – Criminal.” The best way to navigate through the treatise is to browse through the table of contents. The death penalty jury instruction is available under “General Instructions,” then “Chapter 9A Federal Death Penalty.” In this chapter, you can read sections providing an introduction to the use of jury instructions for death penalty cases, a description of the penalty phase under the Federal Death Penalty Act, a section on treatment of intent, aggravating factors, and mitigating factors, information on determination of sentences, and a sample special verdict form.

Lexis also maintains a limited selection of sample jury instructions for state death penalty cases. For California, for example, Lexis offers the California Jury Instructions Criminal treatise. Part 8(I)(B) of this treatise offers an introduction to death penalty cases in California, with sections on findings of mental retardation during the penalty phase, factors for consideration, conviction of other crimes, and concluding instructions, among other information. Unfortunately, Lexis offers jury instructions for fewer than twenty death penalty states, and even then some state jury instructions treatises (including the one for Texas) do not offer specific instructions related to death penalty cases. Thus Lexis’s offerings can be hit or miss, and are far from comprehensive. However, the offerings they do have are very

valuable for death penalty researchers looking into death penalty-related jury instructions.

Westlaw maintains many of the same jury instructions holdings as Lexis-Nexis, including the abovementioned Modern Federal Jury Instructions – Criminal and California Jury Instructions Criminal. These jury instruction treatises can be found by going to the Westlaw Directory, clicking on the “Litigation” link, then clicking on the “Jury Instructions” link, and finally by clicking on the “Pattern Jury Instructions” link. Another link located below the one for pattern jury instructions, titled “Jury Instruction Filings” can also be useful because it includes instructions submitted in actual cases, rather than the model instructions provided in the materials from the pattern jury instructions listing. Like Lexis-Nexis, Westlaw organizes its materials alphabetically by State name. Lexis-Nexis maintains a similar offering of jury instructions filings for specific states and jurisdictions.

Like Lexis, Westlaw allows for Table of Contents browsing of its jury instruction sources. This may not be readily apparent to researchers, however, since clicking on a source will automatically open a search box. However, in the upper right-hand part of the search screen, there is a link to the Table of Contents of the source. As with searching on Lexis-Nexis, browsing the Table of Contents of sources is much preferred to conducting text-based searches since it allows researchers to avoid the pitfalls of having to figure out which synonymous search phrases will yield the best results, and it allows cost-conscious researchers to avoid having to pay for multiple, costly searches.

## III. Secondary Sources

### 1. Introduction

In the world of death penalty law, primary sources reign supreme. However, secondary sources can play an important role both in understanding the progression of capital punishment, and in analyzing crucial issues at the forefront of death penalty law.

While death penalty law lacks the kinds of legal titans whose secondary sources materials serve as persuasive authority for the purposes of adjudication (there are no Wigmores or Corbins for the death penalty), secondary sources may nonetheless highlight certain developments or issues concerning the death penalty that can be valuable. For the practitioner, secondary sources play a limited role, but for the academic, secondary sources can be immensely helpful in understanding death penalty law doctrine and the impact and implications of the death penalty more generally.

Histories and accounts of the death penalty can be incredibly informative and may provide insights into the development of pertinent legal doctrine and the social developments that influence death penalty law and jurisprudence. Books, law review articles, and legislative histories can provide relevant background and can shed light on the trajectory of death penalty law. For this reason, secondary sources can be useful to death penalty researches of all stripes, even if the practical value of these sources is limited.

Because of the diverse array of secondary sources that deal with capital punishment, navigating these sources can be daunting. This section is devoted to helping death penalty researchers wade the secondary source waters and find relevant secondary material.

## 2. Treatises

### A. Introduction

Unlike more commercial areas of law, such as contracts, death penalty law does not have authoritative treatises that are referenced and cited by jurists as being particularly authoritative on the subject. This likely stems from the complicated nature of death penalty law, and the idiosyncratic application of death penalty law from jurisdiction to jurisdiction. As frequently stated throughout this research guide, jurisprudential and legislative philosophies on the death penalty vary greatly, and no single source is considered to be authoritative.

Nonetheless, there are some sources that remain distinct from other sources in that they attempt to provide a holistic view of the status of death penalty law in America, as opposed to simply providing histories or critiques of capital punishment. Despite not being incorporated as persuasive or authoritative sources the way Wigmore and Corbin have been incorporated into contract law, I believe there are sources which can be considered death penalty treatises<sup>16</sup> insofar as they “[deal] formally and systematically with [this] subject.”<sup>17</sup> This section is dedicated to finding those sources.

It should be noted that death penalty law treatises should not be cited as authority, persuasive or otherwise, and should be viewed as background sources that provide insight and information into how the death penalty works in America, and how death penalty philosophy is shaped and applied. Death penalty treatises are best reserved for either academic research, or for background research that may help inform a practitioner’s legal arguments. They should not be treated as legal authorities in any way. Properly using treatises will help ensure fruitful research and will help researchers avoid the murky pitfalls of inappropriate legal application.

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<sup>16</sup> See, e.g., THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES, (Hugo Adam Bedeau, ed., 1997)

<sup>17</sup> New Oxford American Dictionary definition of a treatise

## B. Westlaw

Westlaw maintains some very helpful treatises that cover, inter alia, death penalty law and procedure. Notable treatises include Wright and Miller's Federal Practice and Procedure<sup>18</sup>, which includes relevant sections on federal death penalty law, and LaFave *et al*'s Criminal Procedure, which contains thorough discussions of criminal procedure and relevant death penalty cases and issues.<sup>19</sup>

Finding legal treatises on Westlaw is a little tricky, since the listing of Secondary Sources on the main page does not contain a link to legal treatises, and clicking the "Additional materials" link does not reveal any treatises. Rather, as with other resources on Westlaw, the best way to access Westlaw's extensive listing of legal treatises is to click on the "Directory" link at the top-center of the page, and then to click on the "Treatises, CLEs, Practice Guides" link. Unfortunately, as the link title suggests, clicking on the "Treatises, CLEs, Practice Guides" link will reveal Westlaw's complete listing of those sources, un-separated by source type. In other words, the listing of treatises is interspersed with Westlaw's offerings of CLE materials and Practice Guides. While there is a link that allows you to view only Westlaw's listing of CLE materials and Practice Guides, combined, there is no link that will show a dedicated listing of only treatise materials.

However, there is a link that allows researchers to conduct a search of all of Westlaw's treatise materials. The link, "Texts and Treatises", opens up a search page where researchers can conduct either a Terms and Connectors search or a Natural Language Search. As with most text searching, the most relevant results will be yielded when the researcher has a specific query in mind. For example, a search of "death penalty" will yield far more results than a more specific search which includes information on the defendant, the jurisdiction, the nature of the crime, and the specific issue to be addressed (ie: effectiveness of counsel or mitigating

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<sup>18</sup> Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure (2008).

<sup>19</sup> Wayne R. LaFave et al., Criminal Procedure (2008).

evidence). Text searches are generally not recommended for someone without a specific search query in mind, since the potential for fruitless searching is high. Because the language of death penalty law includes many interchangeable synonyms,<sup>20</sup> full text searches should be reserved for when researchers fully understand the content of the source they are searching and the vocabulary that the source uses.

Because a text search of the “Texts and Treatises” database searches a large number of treatises dealing with different areas of law, the results that are yielded may be irrelevant or incongruous with the researcher’s intended query. For example, searches of the “Texts and Treatises” database may yield results from criminal procedure manuals of specific states, or on jurisprudential guides to specific jurisdictions. Because the potential for a large number of irrelevant results is high, it is very important that this database be searched (if at all) with a tightly controlled and focused vocabulary that expresses the relevant jurisdiction (ie: state or federal), the specific defendant class (ie: juveniles or the mentally ill), specific offenses (ie: first degree murder or felony murder), and any other relevant information (ie: habeas corpus or insanity defense). It is always best to start with a highly focused search and then broaden the search by using less specific vocabulary, if needed. Doing this greatly improves the probability that relevant results will be yielded quickly, and allows the researcher to slowly broaden the scope of his or her search until the relevant material is found.

Another way to navigate through the treatise list to look at the list of sources on the “Treatises, CLEs, Practice Guides” page and explore treatises individually. While this is not the quickest method of going through these sources, it does increase the probability that relevant search results will be yielded since researchers will know exactly which source they are searching through. In exploring these sources

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<sup>20</sup> Examples of interchangeable synonyms include “death penalty” and “capital punishment”; “capital offense” and “capital felony”; and “mentally ill” and “mentally incompetent,” among others.

individually, it is best to look at the table of contents for each source, rather than conducting a text search, because of the difficulty of knowing the precise vocabulary that will yield the best results. Tables of contents can be accessed by clicking on the Table of Contents link at the upper right-hand part of the page after a treatise has been selected, though it should be noted that not all treatise materials have a table of contents. Additionally, browsing the table of contents allows the researcher to hone in on the exact information he or she needs, while also being able to understand the context in which that information is placed within the source. Understanding the context will help with knowing how to best use the source, and may help the researcher find additional information that might become relevant over the course of the researcher's investigation.

*A sampling of other relevant treatises available on Westlaw includes:*

- Criminal Practice Manual
- Federal Evidence (Mueller & Kirkpatrick)
- Indiana Practice Series – Criminal Procedure Pretrial; Indiana Practice Series – Criminal Procedure Trial
- Jury Selection: The Law, Art, and Science of Selecting a Jury
- Legal Ethics – The Lawyer's Deskbook on Professional Responsibility; Legal Malpractice
- Manual on Recurring Problems in Criminal Trials
- Corpus Juris Secundum (CJS)
- American Jurisprudence (AmJur)
- West's American Law Reports (A.L.R.) Digest
- Federal Practice & Procedure

### C. Lexis-Nexis

Lexis-Nexis maintains a deep and extensive online library of death penalty-related treatise materials, though they remain largely hidden from view. A cursory perusal of their treatise library reveals little relevant material on death penalty law, but a closer examination of their legal treatises yields a great deal of relevant material useful for academic and practical purposes alike.

Finding Lexis's treatise materials poses the biggest obstacle. To find the relevant materials, a researcher should first click on the "Secondary Legal" link on the

“Search by Source” page of the Lexis research site. Then, click on the “Area of Law Treatises” link near the center of the “Secondary Legal” page. Clicking on this link opens up an intimidatingly long list of treatise guides on different areas of law. The researcher may immediately notice that none of the treatise guides are directly related to the death penalty, capital punishment, or even sentencing law, while not surprisingly there are treatise materials on more general areas of law like contracts. However, it is on this page and within the listed materials that death penalty researchers will find a veritable treasure trove of materials. Additional treatise materials may be found by browsing through the various other subsections of the Secondary Legal section of Lexis-Nexis. In particular, the “Jurisprudences & Encyclopedias” section has a link to American Jurisprudence, one of the most widely used legal encyclopedias and one of the most helpful for conducting death penalty research.

While it is impractical to explore each relevant treatise in this guide, it is worth exploring one treatise as an example of the kind of material that can be uncovered from the listed materials. The list contains many state-specific treatises that deal with state case law and jurisprudence on specific legal issues. Many of the listed sources deal with the criminal law of death penalty states, and it is within these treatises that death penalty researchers will find their most fruitful results.

Taking, for example, the Texas Sentencing<sup>21</sup> treatise located on the treatise list, we can find a great deal of information on materials dealing with capital punishment sentencing in that state.<sup>22</sup> By browsing this treatise’s Table of Contents, we first find

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<sup>21</sup> Matthew Bender & Co. (2007).

<sup>22</sup> Because of the wide-ranging vocabulary of death penalty law, it may be difficult to find precise information without knowing the precise language adopted by the writers of these treatises. For example, someone may find nothing when doing a search for “capital offense” though may find a great deal of information when doing a search for “capital felony” within the same source material. For this reason, it is suggested that death penalty researchers first look at the table of contents for these treatises rather than proceeding immediately to a full-text search of the treatise. Browsing the table of contents may help a researcher immediately find relevant

a chapter on “Punishment Ranges”, and then find a sub-chapter on “Felony Offenses.” Clicking on the “Felony Offenses” link brings us to the text of that sub-chapter of the Texas Sentencing treatise. On this page, a great deal of information is displayed. To quickly find relevant information on capital punishment, it may be helpful to conduct a browser search/find for generally related materials. For example, conducting a browser search for the term “capital” brings us to the section of the text dealing with capital felonies. As it happens, it is in this part of the text where the most relevant information on death penalty sentencing in Texas will be found within this treatise. Though the text of the “Capital Felony” section consists of a mere few sentences, the section does cite to footnotes that provide further information. For example, footnote 7 cites to a portion of the Texas State Code that deals directly with the death penalty. Footnote 8 cites, inter alia, to the landmark U.S. Supreme Court case of *Roper v. Simmons*.<sup>23</sup> Footnote 9 includes information on finding information on Texas death penalty sentencing procedure. Because this treatise is online, these footnotes contain direct links to the text of these citations, conveniently allowing a death penalty researcher to move from this source to other sources within the Lexis database. As such, Lexis’s online treatises can serve as good starting points for death penalty-related searches. However, finding this information can be burdensome because it is hidden. As such, researchers should be open-minded and creative with how they approach searches conducted within these materials.

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material, while conducting a full-text search may frustrate both the researcher and his or her search if precise and accurate language is not used in the search. As with all legal database searches, if a researcher is conducting a full-text search, it is best to use precise and controlled vocabulary when conducting a search. Particularly useful on Lexis is the ability to search for terms that appear within a set range from one another (ie: within the same paragraph, or within a set number of words from one another). Properly and effectively using these search functions will yield more relevant results.

<sup>23</sup> 543 U.S. 551 (2005)

Because Lexis, like West, maintains exclusive contracts to publish specific treatises online, it may be helpful for a death penalty researcher to consult both online databases, if possible, since searches in each database may yield different results.

*A sampling of other relevant treatises available on Lexis includes:*

- California Evidence Courtroom Manual
- Criminal Jury Instructions for the District of Columbia
- Florida Criminal Defense Trial Manual; Florida Evidence Manual
- Georgia Criminal Law Case Finder
- Kentucky Instructions to Juries – Criminal
- Michie’s VA Jurisprudence on Criminal Law; Virginia Evidentiary Foundations
- American Jurisprudence (AmJur)
- American Law Reports

#### **D. The Legal Information Buyer’s Guide and Reference Manual**

The Legal Information Buyer’s Guide and Reference Manual is a reference publication with compiled information on books, treatises, and other reference materials covering a wide range of law. It is available at the law school library Reference Desk, as well as Level 5 of the library (though check Morris for precise location and availability).

Initially, a death penalty researcher looking at this Manual may be puzzled at why it is included in this research guide since the guide does not contain a section dedicated to the death penalty, capital punishment, habeas corpus, general punishment, or even sentencing law. While the Manual does omit information on those specific areas of law, it nonetheless remains very useful at compiling information on other areas of law relevant to death penalty research.

Specifically, the Manual provides information on treatises and reference materials that cover state case law, state statutory law, and state procedure. For example, the

Manual's section on Texas contains information on compilations of Texas state codes and session laws,<sup>24</sup> Texas court reports,<sup>25</sup> Texas court rules,<sup>26</sup> and digests covering Texas state jurisprudence.<sup>27</sup> The Manual contains similar information for other capital punishment states, including Alabama, California, Florida, and Georgia, among others.

Many of the materials referenced in the Manual are available at the Yale Law School library, and many (particularly materials published by West and Lexis-Nexis) are available online. While the Manual may not provide direct information on death penalty law treatises, it does provide information on treatises covering related areas of law, including procedure, statutory law, and case law. As such, for researchers who may not know which sources to consult on these areas of law, it can be valuable.

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<sup>24</sup> VERNON'S ANNOTATED TEXAS STATUTES AND CODES (West).

<sup>25</sup> TEXAS CASES, 1<sup>ST</sup> – TD. (WEST); SOUTHWESTERN REPORTER (West).

<sup>26</sup> TEXAS RULES OF COURT: STATE AND FEDERAL (West); VERNON'S TEXAS RULES ANNOTATED – CIVIL PROCEDURE (West).

<sup>27</sup> TEXAS JURISPRUDENCE 3D. (West).

### 3. Law Review Articles

#### A. Introduction

Law review articles, despite their typically academic content and audience, can be of great use for both academic researchers and practitioners alike. Law review articles relevant to death penalty research touch upon a wide array of legal areas, including criminal law and procedure, jurisprudence, and theory. They can provide positive accounts of the law as it is today, or they can provide valuable histories of how death penalty law and related areas of law have changed over time. They can help identify current trends in death penalty law, or they can present normative arguments for how death penalty law should be changed or amended. For all death penalty researchers, law review articles can be very valuable. This section is dedicated to helping death penalty researchers find the most relevant articles on their research area.

#### B. Print Sources

##### *i. Morris*

Yale Law School maintains an extensive, though not complete collection of many major law reviews. Using Morris, the law school's library database, you can find both electronic resources linking to law reviews, and print versions of various law reviews.

The most convenient way to find law journals using Morris is to do a search for it using the Morris search function. Simply type the name of the law review or journal into the search box, and select "Journal Title" from the drop down menu or select the "Journal Title" radio button, depending on which screen the search is being conducted. For many journals, there will be search results linking to electronic resources for the searched journal, as well as print resources indicating the library location and date range indicating how far back the law library's collection runs for that particular journal. Electronic resources are denoted by a computer icon, and

printed materials are denoted by an open book icon with the words “printed materials” appearing beneath.

Researchers can also browse journal listings by entering “law reviews” into the search box and selecting the “subject matter” option (or the “subject” option, depending on the search page) and hitting the search button. Please be advised that searching “law journals” will yield inaccurate results. The search results for “law reviews” will open up an extensive listing of law reviews divided by geographic location. As such, this method of searching for law review should be reserved for when researchers know the geographic location of the law review they are researching. Generally, this way of finding law reviews is inefficient, and researchers are better served by doing a direct search for the law review or journal they are researching.

Specific law review articles cannot be searched for using Morris. Morris’s limited functionality does not allow for journal article searching, and Morris is best used for finding law journals themselves, rather than the specific articles contained within them.

Orbis, Yale University’s library online database, is similarly limited in its functionality, and search results for law reviews and journals are mirrors of searches conducted on the law school’s dedicated Morris site. As such, it is best to use Morris rather than Orbis, since Orbis’s law-related holdings are virtually all housed at the law school or the law school’s offsite archive, which are all catalogued on Morris.

### C. Online Sources

#### *i. Lexis-Nexis*

Lexis maintains an extensive database of law review and law journal articles. Available under “Law Reviews & Journals” under their “Secondary Legal” section, Lexis allows users to either search general journal databases (such as the “US and Canadian Law Reviews, Combined” database), or more specific databases, such as

the “ABA Journal” database. Lexis also allows users to search databases containing journals arranged by topic, jurisdiction, or school.

For conducting research, these databases can be very helpful. Searches conducted on these databases should be approached as any other database search, with specificity of terms being the key to finding accurate and relevant results. As with any other kind of database researching, users should be aware that death penalty law in particular is filled with interchangeable synonyms, which can make finding relevant results particularly difficult. For example, searching “death penalty” will yield different results than searching “capital punishment.” Similarly, searching “capital offense” will yield different results than searching “capital felony” or “capital crime.”

Also, in order to help find the most relevant results, it is best to take advantage of Lexis’s segment searching, which allows users to search terms within the various fields of the law review article, including the summary field and the topic field. These two fields in particular can be very helpful in narrowing the number of law review articles yielded during the search since doing a general terms and connectors search or natural language search will yield all law review articles that contain the phrases “death penalty” or “capital punishment” within the text of the article, even if the article does not have to do primarily with that topic. Alternatively, Lexis also allows users to search only the text of articles, or only the titles of articles. By using the right terms and connectors and the right segment searches, researchers can construct very specific search queries that may yield the best results. For example, searching

SUMMARY ("death penalty" & "future dangerousness")

yielded 54 results, all of which had directly to do with the issue of future dangerousness in death penalty law. Similarly, searching

SUMMARY ("capital punishment" & "future dangerousness")

yielded 13 results, each having directly to do with the issue of future dangerousness and capital punishment. These search results simultaneously highlight the importance of using the right segment searches to find the most relevant material, and in conducting multiple searches using synonymous terms and phrases in order to find a larger quantity of more relevant material.

Part of the key to conducting the most successful searches is to not only enter the right search terms, but also to search the right databases. While conducting a general search in the most broad journal database will yield a large number of results, not all of the results of that search will be relevant, and researchers may find themselves wading through a lot of irrelevant material. As such, researchers should take advantage of the specificity allowed by Lexis in searching databases with narrower coverage. Below is a list of databases that are of particular interest to death penalty researchers. It should be kept in mind, however, that many death penalty-related journal articles are published in general law reviews, like the Yale Law Journal or the Harvard Law Review, so searches of databases of general law reviews can be helpful. However, topic-specific databases should also be exploited for their clear relevance to death penalty law.

*Particularly relevant journal databases on Lexis include:*

- ABA Criminal Justice database
- Law Practice database
- ABA Journal database
- Criminal Law Review Articles database
- Military Law Reviews, Combined database
- Constitutional Law Law Reviews database

## *ii. Westlaw*

Westlaw offers a similar journal search database under their “Secondary Legal” section, though the Westlaw directory of law review databases does not offer databases based on topic of law or jurisdiction. The result is that the number of

searchable databases is lower, and that there are fewer databases of particular relevance to death penalty researchers. However, Westlaw does maintain an extensive general database that covers virtually all of the journals covered in the Lexis general database.

The same principles apply for Westlaw as they do for Lexis and any kind of database searching: specificity is key! Westlaw also offers segment searching, but their offering of segment fields is not as extensive as Lexis's. The only available segments when searching Westlaw's general journal database – Journals and Law Reviews - US – are citation, prelim, title, source, author, and text. Because of this limited functionality, searching Westlaw for death penalty-related journal articles can be a more involved process, and can be less fruitful. The fact that Westlaw also automatically groups search results by which journal they were published in, rather than by relevance, makes the search process more grueling than on Lexis, where searches are automatically sorted by relevance.

Finding the right databases on Westlaw is also less intuitive than on Lexis because clicking on the "Journals and Law Reviews" link on the main search page will not open up the directory page. Rather, that link opens up a search page, where you can conduct a search of Westlaw's general journal database. For those who seek more precision in their searches, or for those who are simply cost-conscious, this kind of general searching can yield a greater amount of irrelevant material, and is more expensive to conduct than more focused searches of specific databases. To find Westlaw's more specific databases, researchers should go to the Westlaw Directory and then click on the "Law Reviews" link under the "Legal Periodical & Current Awareness" section. From this page, researchers can browse Westlaw's database offerings for journal searching. However, journals are divided only by first letter and state of origin. There are no topic-specific journal databases.

For these reasons, Westlaw is less preferable than Lexis when it comes to searching for death penalty law review articles. The lack of topic-specific databases, and the

lack of more segment search options means that researchers will have greater difficulty finding articles using Westlaw than they likely would using Lexis.

### *iii. HeinOnline*

HeinOnline maintains an extensive, though incomplete, collection of law journal articles from nearly every major law journal. The main research page of HeinOnline includes links to their Law Journal Library, with sub-links to “American Bar Association Journals,” “Core U.S./Most Cited Law Journals,” “Criminal Justice Journals,” and “Most-Cited Law Journals,” among others. For our purposes, these four links will be the most directly useful. All four links will lead to both directories of the specified law journal database, and to a “Citation Navigator” search function that allows for searching for articles by citation.

Additionally, HeinOnline offers a general terms search engine for searching through its various holdings. However, this search function is not nearly as robust as the search functions offered by Lexis and Westlaw for their databases. While this search option is available for conducting journal database searches for all of HeinOnline’s journal holdings, for the sake of focusing the search and controlling the number of yielded search results, it is advisable to first click on one of the four links mentioned above before conducting a search. This can help narrow the search and will help yield more relevant results. To search each database, first click on the database name (ie: click on the “American Bar Association Journals” link), and then click on the “Search” tab near the top-left of the page.

For each database link, this will open up a search tool that allows for either basic searching, or advanced searching. As with most searching, the best searches are conducted using the advanced search function. HeinOnline’s advanced search function displays all the journals in the specified database, and allows for either individual searching of one or multiple databases, or for searching the entire catalogue of journals in the database. To narrow down the list of yielded results to those most directly appropriate for journal-related searching, only the “Articles,”

“Comments,” and “Notes” buttons should be checked under “Section Types To Search.” To the extent that book reviews may be important to the researcher’s search, the “Reviews” option may also be checked. There is an option to include electronically maintained journal articles that are held outside of the HeinOnline database. For the sake of expanding the scope of the search, this option should be checked. For researchers who only want to yield results that are published in print format, this box should be unchecked. Keep in mind, the more precise options that are set (ie: specified date ranges, specified journals, etc.), the more precise the yielded results will be.

Once all of the relevant options are checked, researchers must choose which search terms they will input. As with all database searching, the more precise the language, the better the results. For example, searching (“death penalty” & “Coker v. Georgia”) will yield results directly related to that case, the issue of cruel and unusual punishment under the Eighth Amendment for the crime of rape, and other directly related articles. Alternatively, searching just “death penalty” or just “Coker v. Georgia” will yield different results that may or may not be directly related to the researcher’s intended query. For a list of possible search terms that can help narrow the yielded search results to more directly relevant materials, see the TAPP examples table in the Introduction to this guide.<sup>28</sup>

#### *iv. Official Journal Websites*

Most American law journals maintain websites, and some include archived and searchable holdings that may be valuable for death penalty researchers, particularly because many of these holdings are accessible at no cost. While the best law journal searching is conducted using either Lexis-Nexis, Westlaw, or HeinOnline, researchers may nonetheless find it useful to go directly to the websites of individual law journals and conduct searching there. Each journal, however, has a different policy on how to maintain its holdings and how much of their archive to

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<sup>28</sup> See *supra*, p. 5.

make accessible to the general public for free. Many journals only provide information on what is being published in the current issue, while others allow for full-text access to its holdings going back many issues.

FindLaw maintains an online listing of American Law Reviews and Journals on its website (*available at* <http://stu.findlaw.com/journals/>), and provides links to law reviews divided by major area. For death penalty research, the most important journal listings by subject matter are listings for Civil Rights, Constitutional Law, Criminal Law, Ethics and Professional Responsibility, Forensics, Jurisprudence, and Litigation. These listings, and the General Law Reviews listing, provide links to the websites of each specific law journal.

#### 4. Legislative Histories

As with most areas of law, finding legislative histories for death penalty-related statutes can be difficult. Legislative histories carry virtually no practical weight in the administration of capital punishment and in the development of capital punishment jurisprudence. However, they can be of value to researchers conducting historical research into the development of state and federal death penalty statutes. Unfortunately, there is no single, definitive source for legislative history materials. Even the federal government does not regularly publish legislative materials in a single source, and as such research into legislative histories can be frustrating. State legislative histories are a near nightmare to navigate through, and many come in unconventional forms, including newspaper clippings and audiotapes.

Generally, the best way to find legislative histories for statutes is to first find the statute itself and see if the source publishing the statute includes any information on legislative history for that statute.<sup>29</sup> Common statutory publications, such as the United States Statutes at Large, the United States Code Congressional and Administrative News (West) (USCCAN), and the Congressional Information Service (CIS) often provide information on how to find the legislative histories of statutes, when available. Much of this information is available on the online counterparts to these publications.

For example, Lexis-Nexis provides links to a CIS legislative history document<sup>30</sup> for the Antiterrorism and Effective Death Penalty Act (AEDPA).<sup>31</sup> The CIS legislative document for the AEDPA provides information on related Congressional hearings, a summary of the main points of the Act, related bills submitted to Congress, and various citations to the Congressional Record. Westlaw similarly provides legislative history information on their online site, and in their print publications.

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<sup>29</sup> See *supra* p. 4 for information on finding statutes.

<sup>30</sup> 104 CIS Legis. Hist. P.L. 132.

<sup>31</sup> Pub. L. No. 104-132, 110 Stat. 1214 (1996).

HeinOnline also offers a limited selection of legislative history materials in their online U.S. Federal Legislative History Library. Like their other databases, this database may be searched or browsed. For the purposes of finding relevant materials more quickly, the legislative history information should be browsed for rather than searched for when the researcher has the relevant information that would allow for effective browsing (namely the Congressional session number for the statute they are researching). For example, to find legislative history information on the AEDPA, a researcher need only click on the “Sources of Compiled Legislative History Database” link, click on the “104th Congress (1995-96)” link, and then click on the “Antiterrorism and Effective Death Penalty Act” link. The information for the AEDPA includes primarily links and citations to various articles related to the AEDPA. HeinOnline’s legislative history holdings are limited, but can be an important resource for research into this area. HeinOnline maintains another legislative history database called the U.S. Federal Legislative History Title Collection, though its holdings are even more limited than that of the Sources of Compiled Legislative History Database. Probably the only tangentially related legislative history provided in the Title Collection are the materials related to the 1964 Civil Rights Act.<sup>32</sup>

Finding legislative history information for state statutes can be more difficult. Luckily, the University of Indiana School of Law Library maintains research guides on how to conduct legislative history research for all fifty states.<sup>33</sup> Because of the widely varying degree to which individual states maintain legislative histories, these research guides are invaluable to any researcher conducting research in this area.

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<sup>32</sup> Pub. L. No. 88-352, 78 Stat. 241.

<sup>33</sup> The guides are available at [http://www.law.indiana.edu/library/services/sta\\_leg.shtml](http://www.law.indiana.edu/library/services/sta_leg.shtml).

## 5. Books

### A. Introduction

As in most areas of law and life, books serve a very important role in providing useful information and insight into death penalty law. Certain books, like David M. Oshinsky's "Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice," offer compelling histories on the development of death penalty law, while other books like Katherine Norgard's "Hard to Place: A Crime of Alcohol" offer accounts on more narrowly focused aspects of the death penalty, in her case the impact a capital charge has on a defendant's family.

The diverse offerings of books on death penalty law are at once a blessing in that they provide wide-ranging and fruitful discussions of many different areas of law, and also a burden in that the availability of so many choices can pose difficulties for researchers wading through all these books in search of the best sources. This section is dedicated to help death penalty researchers navigate the wide array of book offerings and find the best materials related to their specific death penalty research area.

As such, this section will not explain how to find specific sources (ie: how to conduct a search for a specific title), since how to conduct this kind of search is usually evident on any library database. Rather, this section is more concerned with searching for books by subject matter and finding the most relevant results.

As with all keyword and subject matter searching, death penalty researchers can find it particularly difficult to find relevant results given the seemingly endless number of synonymous search terms. The best way to overcome this difficulty is to be as precise as possible in constructing search terms, and to take advantage of Boolean connectors in order to focus searches. Boolean functionality is available on Morris, Orbis, and Worldcat, and should be exploited in order to improve the accuracy and relevance of book searches.

Finally, it should be noted that a great starting place for finding excellent books on various areas of capital punishment is the Death Penalty Information Center's book list, available at <http://www.deathpenaltyinfo.org/> under "Resources," then "Books." The Center's book list is conveniently divided by sub-topic, including books on clemency, costs associated with the death penalty, mental illness and mental retardation, innocence, moral and religious issues concerning the death penalty, and the impact of the death penalty on defendants and their families. For any death penalty researcher looking for relevant books, the Center's list may offer some good initial material.

### B. Morris

Morris, Yale Law School's library database, has a modest holding of death penalty-related books. A keyword search for "death penalty" yields just under 140 results, mostly printed materials.<sup>34</sup> A keyword search for "capital punishment" yields 185 results, with no doubt some overlap with the results yielded in the "death penalty" search.

As mentioned in the introduction to this section, the best way to find relevant results is to use specific controlled vocabulary. For example, searching ("death penalty" and "habeas corpus") will yield books that touch on both subjects, and the daunting number of results listed when "death penalty" is searched is reduced to a manageable and easily navigable 13 results, each dealing with the death penalty and habeas corpus in their own way.

However, coming up with a list of search results is merely the first step to a successful book search. Researchers must also find the most relevant books among the yielded search results. This can be a challenging step, since relevance is entirely dependant on how the researcher intends to use books in his or her work, and whether the researcher is looking for specific material or merely an overview of a specific sub-area of death penalty law.

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<sup>34</sup> As of April 14, 2008.

Either way, researchers using Morris have the option of looking at the Table of Contents for many of the titles contained in the Morris database. A brief perusal of the table of contents for the yielded search results can be helpful in determining the worth of a particular book for the researcher's specific purposes. In addition, Morris allows users to post and view user-submitted reviews of books contained in the database, though this function is of limited use since few people seem to take advantage of this feature and none of the yielded results for any of the search terms used above contained any reviews. Morris also allows users to rate books on a five-star scale, though like the book review feature, this rating feature does not seem to be widely used.

Morris also has a new, though currently un-finalized feature called Encore that allows researchers to take advantage of some advanced features like relevancy rankings of search results and a list of recently added books on the researcher's subject matter. While Encore's feature list is impressive, it sadly failed to deliver. Searching for ("death penalty" and "mental illness") and ("death penalty" and "habeas corpus") yielded no results in Encore, despite having yielded many results when a normal Morris search was conducted. Encore does offer suggested search terms when a search term yields no results, though sadly the suggested search terms were not immediately relevant to the actual search terms. For example, when the search for ("death penalty" and "habeas corpus") yielded no results, Encore asked "Did you mean: the death penalty and racial bias?" Until these quirks are ironed out, researchers are better off using the normal Morris search function, which seems to work well.

### C. Orbis

Orbis, Yale University's library database, is a separately managed database that has not yet incorporated Yale Law School's Morris system. As such, searches conducted on Orbis will not list Yale Law School's library holdings, and searches conducted on Morris will not yield Yale University's library holdings, though Morris does provide a link to the Orbis database on its search pages.

Orbis's holdings on death penalty related materials seem to be not much more extensive than the law school's holdings. Nevertheless, Orbis is worth searching because of the fact that Yale University maintains separate holdings from the law school, and, as previous stated, the two library databases do not reference each other's holdings.

Orbis has an advanced search function that can be helpful in formulating precise searches, though this function does not do much more than a Boolean-constructed search on the "simple search" page. However, for researchers who have difficulty with Boolean searches, the advanced search function can be helpful. Also, the advanced search function does allow for a simultaneous searching of keywords, subjects, titles, notes, authors, and a number of other term types. This can be helpful for persons searching for a specific title, though it provides few practical advantages for researchers conducting subject matter searches, since they will be searching keyword terms primarily anyway.

As with Morris, Orbis is best searched using a controlled vocabulary that narrowly focuses the search terms to specific subject matter. When search results are yielded, the challenge, as when using Morris, is to find the most relevant sources among the yielded results. Orbis offers Table of Contents summaries for some of its holdings, and does offer a somewhat convoluted Contents summary of some holdings. These are the best ways to see if the yielded search result is relevant to the researcher's specific query. Orbis also allows search results to be ordered by publishing date, meaning that the most recently published materials can be listed first. To the extent that relevance is related to how recent a source is, this can be a useful function. Orbis also allows users to restrict their search results to printed materials, online materials, journals, online journals, and English-language materials. Again, to the extent that these restrictions help narrow searches so that they yield more relevant results, these functions can be helpful.

Researchers can also use Orbis to search other university library databases, including the library databases at Columbia and Princeton Universities, which are

accessed under the “Library Catalogues” tab. Yale University also participates in the Interlibrary Loan program, allowing researchers to access books from an even wider array of college and university holdings. When searching these databases, the basics of death penalty database searching remains the same, and search queries should be as narrowly focused as possible.

#### D. WorldCat

Available at <http://www.worldcat.org>, Worldcat is an online library network that allows users to search the holdings of libraries from all around the world, many of which contain books that are exclusive to that library. While Worldcat does not lend out books itself, users can check to see if their local libraries have the books yielded during a search. While this limits the usefulness of Worldcat as a database, it remains a very useful resource for finding books related to a topic. Worldcat does include links for purchasing books as well, which can be helpful for obtaining a book when it is unavailable at a local library. A simple search for “death penalty” yielded over 2,000 results, indicating that it is has by far the most extensive catalogue for death penalty-related books out of the three databases discussed in this section, which is unsurprising given the scope of the entire Worldcat project.

Searching for books using Worldcat is similar to searching for books using Morris or Orbis, though the Worldcat interface is preferable in many ways to either Morris or Orbis. For example, the search results page automatically lists results in order of relevance based on how closely the yielded results match the search terms, and there are options on the side to further narrow the results based on source type (ie: books, online materials, etc), author, year of publication, and general topic (ie: law, sociology, philosophy, etc). This kind of functionality makes Worldcat a very powerful tool for book searches, and use of these category options can help researchers more quickly find books directly related to their search query.

Worldcat also offers advanced search capabilities that allow for specifying the content type of search results, the format of search results, and language, among

other options. While these options can be helpful, they probably will not result results that are substantially better than the results yielded by a basic search. At best, the advanced search may help save some clicks of the mouse since it allows searches to be pre-narrowed along some of the same categories previously discussed (ie: language, source type, and general subject matter). The advanced search function does seem to yield slightly different results than the basic search, however. For example, using the advanced search function to search for Keyword: habeas corpus, Subject: death penalty, yielded results in a different order than when (“death penalty” and “habeas corpus”) was searched using the basic search function. For this reason, it might be helpful to conduct a search twice, once using each search function. As with Orbis, results can be arranged according to publishing date, which helpful for when the relevance of search results is based on how recent it is.

## 6. BNA Criminal Law Reporter

The Bureau of National Affairs (BNA) Criminal Law Reporter is a publication available both in print from the Bureau or online from the Bureau and Lexis-Nexis, which provides information on developments and commentary on criminal law. It is updated automatically on the Lexis-Nexis database, and it is compiled and printed on a quarterly basis. The BNA offers notification services geared toward providing automated updates on specific topics of interest, though this service is not available on Lexis-Nexis (though Lexis-Nexis's own notification system may be able to provide essentially the same functionality).

For a death penalty researcher, the BNA Criminal Law Reporter may serve as a useful tool for remaining current and up-to-date on capital punishment matters. The Reporter provides summaries on recent capital cases and relevant changes in death penalty law that may be of concern to practitioners and legal observers. The Reporter also provides commentary on court decisions in capital cases and topics including the constitutionality of the Antiterrorism and Effective Death Penalty Act.

The easiest and most effective way to access the Criminal Law Reporter is to use Lexis-Nexis to search the BNA archive (located in the "Secondary Legal" section of the "Legal" tab of the "Search by Source" main tab). Once on the BNA page in Lexis-Nexis, the Criminal Law Reporter can be accessed by clicking on the "Criminal Law" link and the "BNA Criminal Law Reporter" link on the next page. Clicking on the "BNA Criminal Law Reporter" link opens up a page where you view the most recent Criminal Law Reporter articles, conduct a full-text search of archived Criminal Law Reporter articles, or conduct a full-text search of all Criminal Law Reporter articles (both current and archived).

Generally, the most relevant results will be yielded with a full-text search of all Criminal Law Reporter articles. For the cost-conscious, a search of all Criminal Law Reporter articles may be a concern since searching that database is more expensive than searching the narrower, archived database, and is more expensive than

browsing through current Criminal Law Reporter articles. However, by choosing to either browse recent articles, or by searching the archive, you may inadvertently exclude relevant articles dealing with the subject matter of your search. For this reason, it is prudent to search the complete Criminal Law Reporter database, unless you are sure that the article you are looking for is located either among the recent articles, or within the archived articles.

Searches of the Criminal Law Reporter database (either archived or full) functions in the same way as any Lexis-Nexis search, with the ability to conduct either natural language searches or terms and connectors searches. As with most online searching, it is best to use a terms and connectors search in order to yield the most relevant results. For example, a search of (“capital punishment” /5 “Georgia”) yields more relevant results on capital punishment in Georgia than would a natural language search of “capital punishment in Georgia.”

While the Criminal Law Reporter database is not fully comprehensive, in that it does not necessarily cover every case or every issue concerning capital punishment, it does provide a great tool for capital punishment researchers looking for topical and relevant information and commentary.

## IV. Conclusion

This guide has been designed with the goal of providing useful, basic information on how to conduct death penalty research. Because of the wide-ranging nature of death penalty law, this guide is not meant to be fully comprehensive. In fact, it is doubtful that any single guide can comprehensively account for all the possible sources and all the possible research methodologies that are relevant to death penalty law. However, researchers can be given an idea of where to start, and this guide hopes to do just that.

Researchers should be aware that death penalty law is not its own area of the law. In reality, it is an amalgamation of many distinct areas of law, each operating inter-relatedly within our system of capital punishment. Federal and state constitutional law, criminal law, civil rights law, and procedure, among countless other areas of law, combine and interact to form what is somewhat deceptively called death penalty law in this guide. Death penalty law is not a uniform set of law. Rather, it is a complex web of law that this guide tries to make navigable.

A few things to keep in mind will help death penalty law researchers figure out how to maneuver through this web without getting tangled.

First, do be limited to searching for “Death Penalty” sections of digests, encyclopedias, and indexes. While these sections are good places to start out, they are not the end-game of death penalty research. They are merely great places to start research, not end it. Researchers should be keen to look at related areas of law, where answers not otherwise contained within the neatly organized “death penalty” section may lay. These areas may include criminal law and procedure, constitutional law, habeas corpus law, etc.

Second, researchers should always, ALWAYS, check for pocket parts and updated supplements to research materials, particularly when conducting print-based research, since online sources tend to be updated automatically. Nothing is worse

for a researcher than to mistakenly believe that an old case or statute is controlling when in fact it has been superseded, overruled, struck down, or replaced.

Finally, researchers should rely on their own ingenuity and creativity. This guide is not meant to be an authoritative source on conducting death penalty research. It is, after all, a guide, not an authority. Researchers will be in the best position to understand what works well and what does not. Mixing and matching sources, and relying on certain sources and not others for certain kinds of research tasks, will almost certainly yield better results. Do not try to fit a square peg into a round hole. If a source is not working well, then try another source. Eventually, research into this area of law will become second nature, as researchers familiarize themselves with which sources and methodologies work best for certain research tasks. To the extent that this guide helps make death penalty research second nature, it has done its job.