

ASPEN COLLEGE SERIES

■ Deborah E. Bouchoux

LEGAL RESEARCH AND WRITING FOR PARALEGALS

EIGHTH EDITION



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ASPEN COLLEGE SERIES

Legal Research and Writing for Paralegals

Eighth Edition

Deborah E. Bouchoux, Esq.

Georgetown University

Washington, D.C.



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Legal Research and Writing for Paralegals

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For my husband, Don, and my children,
Meaghan, Elizabeth, Patrick, and Robert,
who have provided immeasurable support
and inspiration in helping me achieve my
goal of writing a legal research and writing
textbook for paralegal students.

Preface

You will soon discover that legal research is truly a “hands-on” subject. Although there are numerous books to be found that discuss methods and techniques, there is no substitute for actually performing the task of legal research. A simple analogy can be drawn to driving a car: You may find several manuals that discuss driving and provide tips on better driving, but simply reading about operating a car is not a substitute for actually driving a car yourself. Similarly, you will learn the most about legal research, about which shortcuts are invaluable, and about which techniques are non-productive, only by doing legal research. To that end, library assignments are placed at the conclusion of each chapter so you can see and use the books discussed in each chapter. You should never have to use a book or set of books that have not been discussed in the chapter you have finished reading or any preceding chapter. Take the time to explore the books by reviewing the foreword, table of contents, and index found in each volume. Familiarize yourself with all of the features of the books or electronic resources you use, and you will simplify your legal research.

Performing legal research can be both frustrating and gratifying. It can be frustrating because there is often no one perfect answer and because there are no established guidelines on how much research to do and when to stop. On the other hand, legal research is gratifying because you will be engaged in a task that requires you to do something and one in which you will be rewarded by finding the right case, statute, or other authority.

You should view legal research as an exciting treasure hunt—a search for the best authorities to answer a question or legal issue. In this sense, the task of using and exploring the law library or the Internet for answers to legal issues or questions should be a welcome relief from the assignments of other classes, which may be passive in nature and involve copious amounts of reading.

I would encourage you to research with other students if you are comfortable doing so. Often you will learn a great deal by comparing notes with others who may be able to share successful strategies for effectively using various books or electronic resources or finding the answers to research problems. Naturally, sharing ideas and tips for research

techniques should not be viewed as an excuse not to do the work yourself or a license to use answers discussed by others. In other words, you should research with other students (if you find it useful to do so), but you should never write together. Not only is this practice dishonest, but it will prevent you from effectively learning the skill of legal research. Ultimately, an employer is not interested in how many “points” you obtained on a class exercise or what grade you obtained, but in whether you can be depended upon to research an issue competently. As adult learners and professionals, you should concentrate on learning the skill of legal research rather than focusing on the number of right answers you can obtain.

Although this text shows case names and book titles in italics, underlining or underscoring is also acceptable according to *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass’n et al. eds., 20th ed. 2015), which is the standard reference tool for citation form. There is variation among practitioners, so check with your firm or office to determine if there is a preference. Unless otherwise noted, all citations given in *Bluebook* form are displayed in the format used by practitioners, not in the LARGE AND SMALL CAP format used in academic writing. Most citation examples are fictitious.

In 2000, the Association of Legal Writing Directors introduced a new citation manual, now in its fifth edition: ALWD & Coleen M. Barger, *ALWD Guide to Legal Citation* (5th ed. 2014). This manual, referred to as ALWD (pronounced “all wood”), provided a user-friendly alternative to *The Bluebook*. After the first edition of ALWD was published in 2000, each edition steadily crept closer to *Bluebook* citation format, and with the publication of the fifth edition in 2014, it is identical to *The Bluebook* in all critical respects. Thus, the focus of this text is on *The Bluebook* because it is the citation manual used in nearly all law firms and the one you will be expected to have “on the job.”

When you begin reading this book, most of you will be unfamiliar with cases, statutes, constitutions, or the numerous other legal authorities. As you progress in class and through the chapters and assignments in this text, you will readily be able to measure your progress. When you complete this text and your legal research class, you will have gained thorough mastery of legal research and writing techniques as well as familiarity with the numerous sets of law books and electronic resources that you will be required to use in your profession.

This eighth edition of the text provides several new features, including the following:

- Discussion of new titles added to the United States Code.
- Discussion of new website GovInfo (the intended successor to FDsys) for free, official, and authenticated documents from all three branches of the government.
- Discussion of new sources for conducting research, such as the Law Review Commons (Chapter 6), which provides free access to thousands of law review articles.
- Discussion of new tools such as Lexis for Microsoft Office and Thomson Reuters’s Drafting Assistant, which can check citation

formats and quotations, prepare tables of authorities, and assist with proofreading.

- Revamped discussion of citation form (Chapter 8), including the following:
 - Discussion of *The Indigo Book: A Manual of Legal Citation* and Professor Peter W. Martin's *Introduction to Basic Legal Citation*, both of which are free, online citation manuals that follow *Bluebook* form but provide clear and articulate explanations and examples.
 - Tips on updating your *Bluebook* and truncating long and unwieldy URLs.
 - An all-new section on citing to the Internet with extensive examples and discussion of new *Bluebook* rules on citing to archival URLs and social media.
 - Enhanced discussion of citation software and automatic citation tools such as Lexis for Microsoft Office, Thomson Reuters's Drafting Assistant, Zotero, and Juris-M.
 - Elimination of material on *ALWD* citation form, now that *ALWD*'s rules and format are virtually identical to *The Bluebook*.
- Extensively revised discussion of computer-assisted legal research in Chapter 11:
 - Targeted focus on the new platforms Lexis Advance (which is replacing Lexis) and Westlaw (previously called WestlawNext) and their research-friendly features.
 - Discussion of Ravel Law, the newest entrant into computer-assisted legal research.
 - Assignments for both Lexis Advance and Westlaw so users may see the similarities and differences in the two systems.
- The information relating to Shepardizing using print volumes of *Shepard's* in Chapter 9 has been moved to its own back-of-the-book Appendix. Because so few law firms and libraries subscribe to the print volumes and updating now is done nearly exclusively electronically, this older material was moved out of the main volume.
- New information on practical concerns in citing to the Internet in Chapter 12 with regard to its reliability and currency, citing to sources such as Wikipedia, and the issue of "link rot," or the disappearance of websites and hyperlinks that make it impossible to find Internet sources.
- Practical writing tips such as using Word Clouds to provide a visual demonstration of the depth of a discussion.
- Information on new research management tools such as Zotero, Juris-M, and Evernote.
- All new Discussion Questions and Internet Legal Research Assignments.

Additionally, new Practice Tips, websites, and sample documents are included, such as a Practice Tip in Chapter 8 on using Lexis Advance and

Westlaw to help you format your citations. Reflecting the continuing and dramatic effect of the Internet on legal research and the ever-increasing accessibility of resources in cyberspace, new websites and blog sites are provided, and links for Web-based tutorials are given when applicable. Chapter 13 (which provides an overview of the legal research process) includes a full range of open-ended research questions, requiring readers to use and apply all skills learned in previous chapters to obtain answers to these research questions.

The vast number of legal authorities available both in a conventional law library and through digital law libraries means that effective legal researchers are flexible. Sometimes the materials you need are not on the shelves, and you will need to switch direction. Sometimes new methods of locating materials emerge. In any event, you will find legal research an interesting hunt for the authorities you need, whether in conventional print sources, on Lexis Advance or Westlaw (the computer-assisted legal research systems), or on the Internet.

At the time of the writing of this eighth edition, FDsys, the comprehensive website of the U.S. Government Publishing Office, was in the process of migrating its vast collection of federal materials to GovInfo, located at <https://govinfo.gov>, and currently in its test or beta stage. Researchers may need to use both sites to obtain various federal documents.

Although every effort has been made to refer to useful websites, those sites can change both their content and addresses without notice. References to websites are not endorsements of those sites.

Textbook Resources

Instructor resources to accompany the text, including a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides, are available on the Companion Website for this book.

Deborah E. Bouchoux, Esq.

Summer 2016

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