

ASPEN COLLEGE SERIES

■ Deborah E. Bouchoux

LEGAL RESEARCH EXPLAINED

FOURTH EDITION



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ASPEN COLLEGE SERIES

Legal Research Explained

Fourth Edition

Deborah E. Bouchoux, Esq.

Georgetown University

Washington, D.C.



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For Grant Edward Bouchoux, Ryan James Bouchoux,
Benjamin Carsten Burnette, and Kate Emilia Burnette

Preface

Introduction

Legal research is likely the most “hands on” subject you will take in the course of your legal education. Although numerous books discuss research methods and techniques, there is no substitute for actually performing the task of legal research. Thus, you will learn the most about legal research, which shortcuts are invaluable, and which techniques are nonproductive, only by *doing* legal research.

Today’s legal research projects are simultaneously easier and more difficult than they were years ago. They are easier because there are numerous sources for researchers to consult (including conventional print sources, the computerized legal research systems such as Lexis Advance and Westlaw, and the Internet), and they are more difficult for the same reason. There are so many sources to consult that deciding where to begin and what resources to consult calls for careful analysis of the quality of sources and the economics of a research project so you can obtain the best answer to a legal question in the most efficient manner and at the lowest cost to the client.

To that end, library research assignments are placed at the conclusion of each chapter so you can see and use the books discussed in each chapter. Similarly, each chapter includes an Internet Assignment, requiring you to locate information pertinent to the chapter by accessing well-known Internet sites.

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.

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, Lexis Advance or Westlaw, 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. 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.

Consider researching 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 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 share or copy answers from others. 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 in a class, but in whether you can be depended upon to research an issue competently.

Structure of the Text

You will be expected “to hit the ground running” when you get a job, yet there is often a significant gap between what is learned in the classroom and the way to apply this knowledge in the real world of a law office environment. *Legal Research Explained* (Fourth Edition) is meant to bridge this gap by combining a thorough grounding in legal research with a pragmatic approach to the types of legal research assignments you will find in the “real world.”

The text is divided into five main sections: The first section begins with a review of the American legal system and discusses the primary authorities used in legal research (namely, cases, constitutions, and statutes that are binding on courts); the second section covers the secondary sources used in legal research that are used to comment upon, explain, and help you locate the primary sources; the third section focuses on computer-assisted legal research using Lexis Advance, Westlaw, and the Internet; the fourth section covers citation form for the authorities previously introduced and how to ensure that these sources are still “good law”; and the final section provides an overview of the legal research process, discussing how to begin and end research projects.

Each chapter and section builds on the previous one. For example, once you read Chapter Two’s discussion of the federal and state court structure, you will be ready to understand Chapter Three’s discussion on reading cases that interpret statutes, paying special attention to cases from higher courts. Similarly, once you read Chapter Four and understand the elements of cases and how they are published, you will be ready for the discussion in Chapter Five about how to locate cases using digests. The text concludes with a pragmatic overview of how to tackle a research problem.

Features of the Text

The text includes a number of features to enhance learning. Each chapter includes the following features:

- **Chapter Overview.** Each chapter begins with a preview of the material that will be presented in the chapter.
- **Key Terms.** The key terms and concepts used in the chapter are presented in italics and are defined in the Glossary at the end of the text.
- **Practice Tips.** Each chapter includes one or more pragmatic practice tips, linking the material in the chapter to “real world” experience.
- **Ethics Alerts.** Each chapter includes an ethics note or comment relating to the material discussed in the chapter.
- **Help Lines.** Each chapter includes at least one “go to” reference source, giving a telephone number or website to call or refer to for additional information on the material discussed in the chapter.
- **Internet Resources.** At the conclusion of each chapter, websites are given where you can locate additional information on the topics covered in the chapter. 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.
- **Research and Other Assignments.** Each chapter includes questions requiring you to use the sets of books or other resources discussed in that chapter. You should never have to use a book or set of books that have not been discussed in the chapter you have read or a preceding chapter.
- **Internet Assignments.** Each chapter includes a series of practical questions that require readers to locate information pertinent to the chapter by accessing well-known legal or general-usage Internet sites.
- **Citation Form.** Each chapter demonstrates citation form for the resources discussed in that chapter, in *Bluebook* form. All citations in *Bluebook* form are displayed in the format used by practitioners, not in the “LARGE AND SMALL CAP” format used for law review articles and journals. 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.”

Each chapter also includes charts, graphs, sample forms, and other instructional aids, as needed. For example, Chapter Four includes a chart showing commonly used abbreviations for legal resources, Chapter Eight includes a chart comparing the terms and connectors used by Lexis Advance and Westlaw, and Chapter Twelve provides a blueprint for conducting legal research and a research project planner.

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

- New practice tips and help tips are included in several chapters.
- Chapter Three (Statutory Law) includes a discussion of the new titles added to the United States Code
- Discussion of the 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 Six), 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.
- Extensively revised discussion of computer-assisted legal research in Chapter Eight:
 - 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.
- New information on practical concerns in citing to the Internet in Chapter Nine 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.
- Revamped discussion of citation form (Chapter Ten), 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*.
- The information relating to Shepardizing using print volumes of *Shepard's* in Chapter Eleven 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.
- Information on new research management tools such as Zotero, Juris-M, and Evernote.
- All new research assignments and Internet legal research assignments have been included.

Textbook Resources

The companion website for *Legal Research Explained* includes additional resources for students and instructors.

Instructor's resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides. All of these resources are available for download at the companion website for this text.

Final Thoughts

When you begin reading this book, most of you will be unfamiliar with cases, statutes, constitutions, or the numerous other legal authorities. As you advance in your research class and complete the assignments in the 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 techniques as well as familiarity with the numerous sets of law books and electronic sources that you will be required to use in your profession.

The vast number of legal authorities available in both 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, or on the Internet.

Deborah E. Bouchoux, Esq.

Summer 2016

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