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■ Deborah E. Bouchoux

LEGAL RESEARCH EXPLAINED

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Law & Business

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Legal Research Explained

Second Edition

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Washington, D.C.



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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 LexisNexis 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, LexisNexis 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* (Second 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 LexisNexis, 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.
- **CyberSites:** 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 both *Bluebook* and *ALWD* form, in a simple chart format, showing that in many instances the citation form in *The Bluebook* and in *ALWD* are the same. 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. When only one citation is given in the text, it is given in *Bluebook* form.

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 LexisNexis and Westlaw, and Chapter Eleven includes a Frequently Asked Questions section on Shepardizing.

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

- New practice tips and help tips are included in several chapters.
- Chapter 4 (Case Law) includes new information relating to the use and citation of “unpublished” opinions and information about the 2009 launch of Google Scholar, which allows free and easy access to federal and state court cases.
- Chapter 6 (Secondary Authorities) provides information on the dangers of metadata embedded in forms.
- Chapter 8 (the Digital Library) includes updated information on LexisNexis and its new “Easy Search” feature.
- Chapter 9 (E-Research) includes new material on legal databases available for “apps” on iPhones and other similar devices.
- Chapter 10 (Citation Form) provides new information on the online *Bluebook*.
- Chapter 11 (Updating) requires readers to complete an assignment so they can compare and contrast validating cases using Shepard’s on LexisNexis and using Westlaw’s KeyCite.
- All new research assignments and Internet legal research assignments have been included.

Textbook Resources

The companion website for *Legal Research Explained*, available at http://www.aspenparalegal.com/bouchoux_explained, includes additional resources for students and instructors, including the following:

- Study aids to help students master the key concepts for this course. Visit the site to access interactive StudyMate exercises such as flash cards, matching, fill-in-the-blank, and crosswords. These activities are also available for download to an iPod or other hand-held device.
- Instructor resources to accompany the text.
- Links to helpful websites and updates.

The text comes packaged with four months of prepaid access to Loislaw’s online legal research database, at <http://www.loislawschool.com>.

Blackboard and eCollege course materials are available to supplement this text. This online courseware is designed to streamline the teaching of the course, providing valuable resources from the book in an accessible electronic format.

Instructor resources to accompany this text include a comprehensive Instructor’s Manual, Test Bank, and PowerPoint slides. All of these materials are available on a CD-ROM or for download from our companion website.

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 directions. 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 LexisNexis or Westlaw, or on the Internet.

Deborah E. Bouchoux, Esq.

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