

THE PROCESS OF LEGAL RESEARCH

FIFTH EDITION

CHRISTINA L. KUNZ
DEBORAH A. SCHMEDEMANN
MATTHEW P. DOWNS
ANN L. BATESON



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THE PROCESS OF LEGAL RESEARCH

Fifth Edition

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Professor of Law

Deborah A. Schmedemann

Professor of Law

Matthew P. Downs

Professor of Law

Ann L. Bateston

Director of the Law Library

Associate Dean

Professor of Law

all of William Mitchell College of Law



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PREFACE

The first edition of this book was published in 1986, nearly fifteen years ago. Since then, legal research has changed little and greatly.

What has changed little is legal authority. Now, as then, the purpose of legal research is to locate pertinent cases, statutes, and rules—the law—governing the client’s situation. Now, as then, commentators’ discussion of the law is used to lead one to the law and to help one fully understand the law. Now, as then, it is critical for new researchers to learn how the law is made, how different lawmaking bodies interact, how to discern which law is applicable when, how to read the law carefully, and how to integrate the insights of commentators. As with all earlier editions, this book emphasizes these matters. Today, as always, you must master these fundamentals to research competently.

What has changed greatly is the technology of legal research. Legal materials have long been published, of course, in books and microforms (such as microfilm and microfiche). With the development of computers and related technology, legal research has become a multimedia endeavor. The researcher now has a (sometimes bewilderingly) wide range of options for locating a governing statute, for example: books, online subscription services offered by private publishers, CD-ROMs, Internet web sites maintained by the government, and so forth. Indeed, some sources and tools are available only in computer-based media.

Technological change has brought other changes as well. The rate of product development has increased rapidly. Sources published in books tend to change infrequently; computer-based sources are reprogrammed far more easily and, hence, far more often. Furthermore, the corporate structure of legal publishing is in flux, with large, well established companies merging and small, new companies arising.

So, it is an interesting time to be teaching and learning legal research. For us, it has been a challenge to write about a moving target. And we suspect you will find it challenging to adjust your research techniques on a nearly continual basis as publishers change their products.

In writing this book, we chose to take the following approach: As noted above, we have set forth at some length what you need to know about legal authority. Then we have described what we deem the “best practices” currently employed by lawyers as they research a particular type of legal authority. Some practices have been in use for many years and likely will continue to be best practices. Others are newer and may well evolve as technology and research sources evolve. We have sought to cover the basics as to the various practices; we hope that you will learn and appreciate the analytical processes lawyers employ in legal research. We have not discussed

the mechanics and details of the best practices at length; these matters change, and you will be able to learn them easily enough once you master the basics.

A final observation: Excellent researchers are curious, persistent, flexible people. We hope you approach this book with curiosity, persistence, and flexibility. If you do, we believe you will learn a great deal about an important and interesting process.

A Note to Professors: If you have used previous editions of this book, you will notice a number of changes in this edition. Regarding the text, we would flag the following:

- expanded and somewhat reconceived discussions of the core analytical steps of legal research—generating research terms and issues, looking up concepts, and searching for words;
- substantial discussion of the Internet and CD-ROM research, along with discussion of subscription online services (primarily, but not exclusively, LEXIS and Westlaw);
- coverage of new products, such as KeyCite, Congressional Universe, and THOMAS;
- presentation of what we deem to be the handful of best research practices currently available for each type of authority, each separately presented so as to permit you to choose which to teach when;
- strengthened discussion of the authoritativeness of various legal authorities in our complex federal system;
- reconfiguration of the text into smaller chapters, grouped into units of related materials; and
- a cleaner layout, with simpler presentation of exhibits and illustrations alongside text.

Regarding the problem sets, we would flag the following:

- all new research situations for the problem sets;
- a problem set for rules of legal ethics;
- problem set design that reflects increasing levels of autonomy and source-neutrality as one moves from beginning chapters (commentary) to more advanced chapters (such as administrative materials);
- self-verifying answers to some questions (in which students attach copies or printouts); and
- more questions requiring students to link their research results to legal analysis of the facts of the situation.

We hope these changes work well for you and your students.

*Deborah Schmedemann
Matthew Downs
Ann Bateson
Christina Kunz*

St. Paul, Minnesota
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More so than other publications by law school faculty, this book draws on the talents and hard work of the College's professional librarians: Anne Anderson, Mary Ann Archer, Anna Cherry, Pat Dolan, Elvira Embser, Paul Healey, Mary Rumsey, and Paddy Satzer. They tracked down the sources, answered our questions, and offered top-notch suggestions. Paddy Satzer prepared the Index as well.

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The College's faculty and administration have shown considerable interest and support for the project. In particular, we want to thank current Dean Harry Haynsworth for his generous support.

This book has been blessed with talented professionals on the publisher's end of the phone. Larry Wexler, our editor on this edition, presided over the complex process of assembling this complicated book with great patience and a sharp eye for detail. We want to recognize the work of Karen Quigley in the redesign of the book and Kathy Porzio in coordinating its manufacture and production. We are grateful for the efforts of the following people who nurtured this book and its predecessors for the past (nearly) twenty years: Nick Niemeyer and Richard Heuser (formerly at Little, Brown and Company), Carol McGechan, Elizabeth Kenny, and Melody Davies.

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CHAPTER 12: CODES AND SESSION LAWS

Illustration 12-3: Outline of Federal Statute re Disability Discrimination, from *United States Code*. Vol. 23, pp. 643-644 (1994).

Illustration 12-7: Portion of Public Law 101-336, from *Statutes at Large*. Vol. 104, p. 369, 1990.

Illustration 12-9: Facsimile Citation List, from U.S. House of Representatives Code Web Site. Nov. 4, 1999.

CHAPTER 13: LEGISLATIVE PROCESS MATERIALS

Illustration 13-1: Senate Bill, from U.S. Government Printing Office. 101st Congress S. 933.

Illustration 13-4: Floor Debate, from *Congressional Record*. Vol. 136, p. 13,063, 1990.

Illustration 13-10: Bill Summary & Status Report for Enacted Bill, from THOMAS. Report for S. 933. Jan. 21, 2000.

Illustration 13-11: History of Bills and Resolutions, from *Congressional Record*. Vol. 136, p. 2523, 1990.

Illustration 13-12: Title Keyword Index, from *Monthly Catalog of U.S. Government Publications*. P. I-3452, July 1991.

Illustration 13-13: Document Description, from *Monthly Catalog of U.S. Government Publications*. P. 195, July 1991.

Illustration 13-16: Bill Summary & Status Report for Pending Bill, from THOMAS. Report for S. 121. Jan. 21, 2000.

CHAPTER 14: REGULATIONS

Illustration 14-1: National Labor Relations Board Regulation, from *Code of Federal Regulations*. Title 29, § 103.2, p. 111, 1999.

Illustration 14-3: List of CFR Titles, Chapters, Subchapters, and Parts, from *CFR Index*. P. 903, 1999.

Illustration 14-4: CFR Parallel Table of Authorities and Rules, from *CFR Index*. P. 759, 1999.

Illustration 14-5: Final Rule, from *Federal Register*. Vol. 38, no. 44, pp. 6176-6177, Mar. 7, 1973.