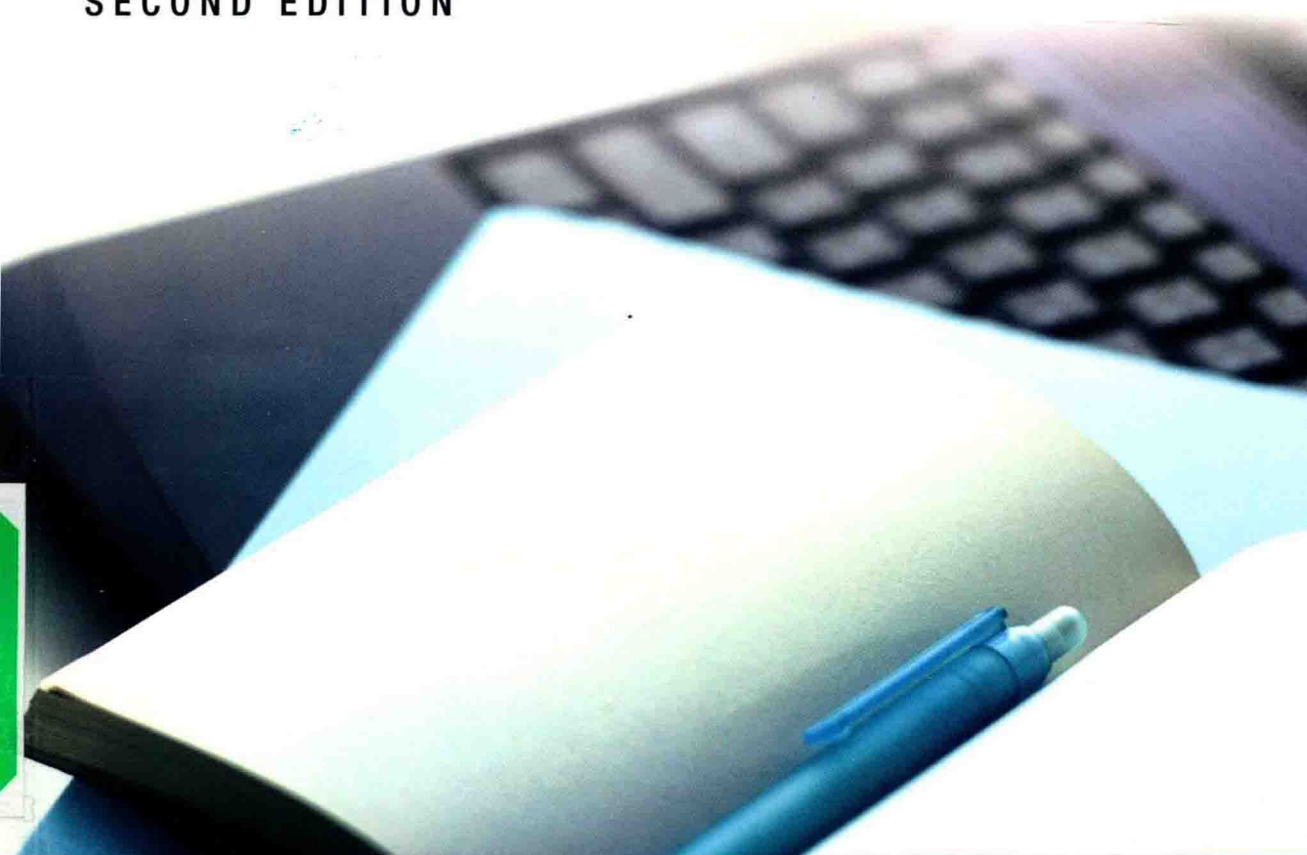


ASPEN COLLEGE SERIES

■ Deborah E. Bouchoux

CONCISE GUIDE TO LEGAL RESEARCH AND WRITING

SECOND EDITION



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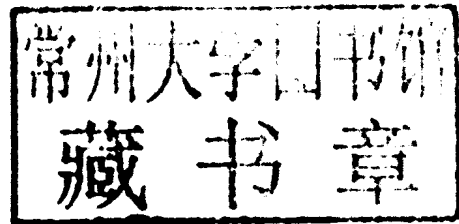
Concise Guide to Legal Research and Writing

Second Edition

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to Legal Research
and Writing

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To the Kenney Clan

Preface

Introduction

Legal research. 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 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 and Westlaw, and the Internet), and they are more difficult for the same reasons. There are so many sources to consult that deciding where to begin and what resources to use 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 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 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.

Legal writing. The legal profession rests on communication and requires its professionals not only to know the law but also to write about it. Legal writing takes many forms. Some documents, such as internal office memoranda, are intended to explain the law to the reader. Other documents, such as court briefs, are intended to persuade the reader. No matter what the form of the document, however, it must be accurate, clearly presented, readable, and concise.

The good news is that good legal writing is simply good writing. It should not differ greatly from other forms of writing. On the other hand, there are some quirks to legal writing that deserve special attention. Legal writing is more formal than other forms of writing. For example, the use of contractions is rare, and the use of the personal pronouns *I*, *we*, and *our* is uncommon (because the focus of most legal documents is on the client’s position, not on the writer’s opinions).

The writing chapters in this text are designed to be a thorough guide that legal writers can use to answer not only the “big” writing questions (such as determining the elements of a court brief) but the many “small” questions that continually occur during the writing process (such as when a comma precedes the words *and* and *but* and when a writer should indent quotations).

Writing is a skill that you can master by repeated practice. If you are inexperienced at writing, keep practicing. Enjoy writing and understand that your writing not only says something about the topic you discuss but also something about you. Make sure your finished project is understood by the reader and reflects well on you.

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. *Concise Guide to Legal Research and Writing* is meant to

bridge this gap by combining a thorough grounding in legal research with a pragmatic approach to the types of legal research and writing assignments you will find in the “real world.”

The text is divided into six 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, 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”; the fifth section provides an overview of the legal research process, discussing how to begin and end research projects; and the sixth section covers legal writing so you can put your research to work.

Each chapter and section builds on the previous one. For example, once you read Chapter 2’s discussion of the federal and state court structure, you will be ready to understand Chapter 3’s discussion on reading cases that interpret statutes, paying special attention to cases from higher courts. Similarly, once you read Chapter 4 and understand the elements of cases and how they are published, you will be ready for the discussion in Chapter 5 about how to locate cases using digests. The chapters on writing begin with the mechanics of writing: grammar, punctuation, and spelling. Once a writer has mastered or reviewed these basics, the writer will be ready to address the characteristics of effective legal writing and how to prepare various legal documents.

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.** Most chapters include one or more pragmatic practice tips, linking the material in the chapter to “real-world” experience.
- **Ethics Alerts.** Most chapters include an ethics note or comment relating to the material discussed in the chapter.
- **Help Lines.** Nearly all chapters include 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 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. Citations comply with *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass’n et al. eds., 19th ed. 2010) and *ALWD & Darby Dickerson, ALWD Citation Manual* (4th ed., Aspen Publishers 2010).

Each chapter also includes charts, graphs, sample forms, and other instructional aids, as needed. For example, Chapter 4 includes a chart showing commonly used abbreviations for legal resources, Chapter 8 includes a chart comparing the terms and connectors used by Lexis and Westlaw, and Chapter 11 includes a Frequently Asked Questions section on Shepardizing.

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

- Chapter 3 (Statutory Law) includes a discussion of new Title 51 (National and Commercial Space Programs) added to the U.S. Code and a discussion of a new website Congress.gov, the successor to THOMAS, used for finding legislative materials.
- Chapter 6 (Secondary Authorities) revamps the discussion of legal periodicals and journals with additional emphasis on the use of electronic finding aids to locate pertinent articles.
- Chapter 7 (Special Research Issues) includes a revised section on conducting legislative history research, with particular emphasis on using public domain websites to construct a legislative history.
- Chapter 8 (The Digital Library) explains the following new features in computer-assisted legal research:

- Lexis's new research platform, Lexis Advance, which mimics the ease of "Google"-like searching.
- Lexis Advance's combined searching of Lexis content and the Internet using Lexis Web.
- Lexis Communities, which provide free access to blogs, podcasts, and more.
- West's new, easy-to-use, and intuitive platform WestlawNext, which allows searching similar to "Google"-type searching and its useful features, including Citation Preferences, for assistance with citation form.
- Information on new entrants into the field of computer-assisted legal research, including Fastcase, Casemaker, and Bloomberg Law.
- Information on new law-related Apps and eBooks.
- Chapter 10 (Citation Form) includes new information on citation form, including the offering of *The Bluebook* as an App and the use of WestlawNext for assistance on citation form.
- Chapter 14 (Effective Writing) provides enhanced information on electronic communications such as e-mailing and text messaging.
- All new Discussion Questions and Internet Legal Research Assignments.

Additionally, new Practice Tips, websites, and sample documents are included as needed, such as a Practice Tip in Chapter 18 on the use of Style Sheets in editing and proofreading. 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 12 (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.

Textbook Resources

Instructor 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, at www.aspenparalegal.com/bouchoux_concise. This text also comes packaged with four months of prepaid access to LoislawConnect's online legal research database at <http://www.loislawschool.com>.

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 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 and writing class, you will have gained thorough mastery of both legal research and writing techniques to ensure you can locate the legal authorities you need and then use them to make your legal writings accurate, clear, readable, and concise.

Deborah E. Bouchoux, Esq.

Fall 2013

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