

## From the Editor: Reading Legal Research

- Elias, Stephen. *Legal Research: How to Find and Understand the Law*. 2d ed. Berkeley, Calif.: Nolo Press, 1986.
- Kunz, Christina, et al. *The Process of Legal Research*. Boston: Little, Brown & Co., 1986.
- Roberts, Bonita K., and Linda L. Schlueter. *Legal Research Guide: Patterns and Practice*. Charlottesville, Va.: Michie Co., 1986.
- Statsky, William P. *Legal Research and Writing: Some Starting Points*. 3d ed. St. Paul, Minn.: West Publishing Co., 1986.
- Teply, Larry L. *Programmed Materials on Legal Research and Citation*. 2d ed. St. Paul, Minn.: West Publishing Co., 1986.
- Wren, Christopher G., and Jill Robinson Wren. *The Legal Research Manual: A Game Plan for Legal Research and Analysis*. 2d ed. Madison, Wis.: A-R Editions, 1986.

The novice legal researcher does not lack for alternatives in selecting a textbook on legal bibliography and research procedure. A number of currently available texts—*Fundamentals of Legal Research*,<sup>1</sup> *How to Find the Law*,<sup>2</sup> *Effective Legal Research*,<sup>3</sup> and *Legal Research in a Nutshell*<sup>4</sup>—have become standards in the field and are used regularly by law librarians and others for reference and as course books. Each has been revised and updated several times.

The market for legal research texts remains open, however.<sup>5</sup> In 1986, a number of newer texts were published in initial or revised editions. Several of these titles are listed at the head of this column. The newer works show not only that the writing of legal research texts is something of a growth industry, but also that the intended audience for the texts is broader than the traditional one of law students and librarians. The authors of these works include legal writing instructors, attorneys, and others outside law librarianship; many of the authors proclaim an interest in devising new approaches to legal research training. But, since most of the standard works remain up-

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1. J. JACOBSTEIN & R. MERSKY, *FUNDAMENTALS OF LEGAL RESEARCH* (3d ed. 1985).

2. M. COHEN & R. BERRING, *HOW TO FIND THE LAW* (8th ed. 1983).

3. M. PRICE, H. BITNER & S. BYSIEWICZ, *EFFECTIVE LEGAL RESEARCH* (4th ed. 1979).

4. M. COHEN, *LEGAL RESEARCH IN A NUTSHELL* (4th ed. 1985).

5. West publishes at least four current texts: Cohen & Berring's *How to Find the Law*, Cohen's *Legal Research in a Nutshell*, Statsky's *Legal Research and Writing: Some Starting Points*, and Teply's *Programmed Materials on Legal Research and Citation*.

to-date through regular revisions,<sup>6</sup> how useful are the newer books and approaches? What do they add to the body of works on legal research and can they be adapted for use in the first-year legal research course?

Several years ago, Steve Barkan compiled a short history of the publication of legal research text books from *Brief Making and the Use of Law Books* in 1906 to the second edition of Jacobstein and Mersky's *Fundamentals of Legal Research* in 1981.<sup>7</sup> In his review, Barkan noted the difficulties legal research textbook writers face in determining whether to prepare a comprehensive treatment of the topic, useful as a reference work, or an introductory treatment to be used as a teaching tool. He concluded, "Books that have tried to meet more than one goal or reach more than one audience have seemed either overly complex and incomprehensible to students or too simplistic and incomplete for reference."<sup>8</sup> None of the new books considered here is designed to serve primarily as a reference source. All are for instruction, yet they differ in intended audience and in approach. Although they all may not be appropriate for use in a law school research and writing program, most of the newer books have something to offer to the law librarian and others interested in legal research.

Most of the books under consideration are aimed at the law school market. Elias's *Legal Research: How to Find and Understand the Law* is directed toward a more general audience; parts of Statsky's *Legal Research and Writing: Some Starting Points* seem aimed at law students, parts at paralegals, others at the general public.

The other books are directed at law students, but take differing approaches to the task of instruction. Teply's text, for example, applies a "programmed approach," which emphasizes "reader involvement, self-testing, and repetition" (p. iii), and is designed to be used in individual study. Problems and questions to be answered are integrated with the text. The book's 358 pages are densely packed, however, and it is hard to imagine first-year law students having the time or patience to work through it on their own. Clearly, a student would have to use the book selectively, but the author provides little help in distinguishing between "need to know" and "nice to know" sections. One wonders about the need to devote eight pages early on to English court reporters (pp. 128-36) or to provide problems in cross-referencing the *Century Digest* and the decennials (pp. 153-54). Despite the inclusion of such detailed information, the book has no index, which would greatly enhance its usefulness to students who retain it as a reference source after their initial study.

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6. Last published in 1979, *Effective Legal Research* remains in print, but is becoming outdated in a number of areas.

7. Barkan, *On Describing Legal Research*, 80 MICH. L. REV. 925 (1982).

8. *Id.* at 926.

*The Process of Legal Research*, written by seven faculty members and librarians at the William Mitchell College of Law, also is designed to be worked through individually at the student's own pace using library resources (p. xxix). Yet, despite its self-instructional aspects, it is in many ways the most similar of the new books in format and organization to such standard works as *Fundamentals of Legal Research* and *How to Find the Law*. As in those works, the chapters of this book are organized around types of legal materials; the individual chapters are heavily outlined and use copious illustrations of sample pages from the sources described. Following the example of Ervin Pollack's last two editions of *Fundamentals of Legal Research*,<sup>9</sup> the authors devote their first chapters to certain secondary sources before considering case law, statutes, court rules, legislative history, administrative law, the Restatements, and computer-assisted research. Within the chapters, the book demonstrates features of sources discussed using references to actual volumes and illustrations in the text. Other self-teaching aspects are several examples of the research process and problem sets keyed to the chapters. Yet, despite the claim in the preface that the book "teaches legal research in a new way," *The Process of Legal Research* seems designed to be used within a legal research course and to compete in the course-book market with the standard texts.

A book with a decidedly nontraditional approach to its subject is Wren and Wren's *The Legal Research Manual*. While presenting only bare bones bibliographic information in the text, the authors emphasize research procedure and the need to appreciate where the law in the books comes from before it can be located and applied effectively to resolving a research problem. This book takes a very sensible, down-to-earth approach to the research process. It is sometimes hard for legal research teachers not to bore students with bibliographic detail; Wren and Wren help counter that tendency. One wonders, however, how best to make use of the book in the context of a formal legal research instruction program. At some point in a legal research course it is necessary to provide a greater focus on the sources and finding tools than is given here. Within the first-year course, the book could be used to supplement a traditional text or locally prepared materials. Even if not assigned to students, however, it is essential material for those who teach them how to do research.

Statsky's *Legal Research and Writing: Some Starting Points* has the longest history, having appeared first in 1974 under its current title and in 1982 as *Legal Research, Writing, and Analysis*. In each edition, the space devoted to legal writing occupies only a small portion of the volume. It is not clear at which audience the volume is aimed—law students, paralegals, or the public.

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9. See *id.* at 934-35.

It is perhaps the most unique of the texts, filled with the author's idiosyncrasies and asides, and is fun to read. What other book starts off telling you that you eventually will forget most of the law you learn in school and that if you don't, you should (p. 4), or that one of the four "laws" of legal research is that "[t]he only books that will be missing from a shelf are those that you need to use immediately" (p.6)? Statsky also informs you how to find a law library, tells you to write to law publishers for their catalogs (the best way to ensure that your mailbox will never be empty), and provides an illustrated glossary of law and law books, including actual photographs of the books.<sup>10</sup> Interspersed among these things, however, are several interesting discussions; for example, of the nature of authority (pp. 62-73) and of the issues involving use of legislative history in statutory interpretation (pp. 182-89).

Roberts and Schlueter's *Legal Research Guide: Patterns and Practice* is designed to provide a "simple step-by-step guide" to basic research procedure (p. v.). It is written and organized in a deliberate fashion. The chapters on state constitutional, legislative, and administrative law research mirror those on federal law research. The text is straightforward and accompanied by problem examples (usually from Texas) and checklists. Yet, a reading of the book leaves one unsure as to the authors' mastery of their material, or at least of the standard terminology of the field. On consecutive pages, the chronological publication of new federal laws is referred to as "sessions laws" rather than session laws (pp. 46-47). According to the authors, "sessions laws" are published officially at the end of each session of Congress, but unofficially on a monthly basis in *U.S. Code Congressional and Administrative News*. The authors claim there is no unofficial publication of federal slip laws (p. 47), but are not *USCCAN* and the *United States Code Service Advance Service* better characterized as reprinting slip laws than as publishing session laws? One also might wonder about the priority given to the *Monthly Catalog* for researching legislative history (pp. 58-59), and the discussion of appropriate uses of secondary sources and the hierarchy of secondary authority (pp. 113-45). It also seems odd to find a 1986 legal research text that justifies its failure to cover computer-assisted legal research because "there are still large portions of primary authority as yet unincorporated into the data bases" (p. v).

Elias's *Legal Research: How to Find and Understand the Law*, published by Nolo Press, is aimed at the public, paralegals, and legal secretaries. Subject headings on the replicated catalog card on the cover are: "1. Take the law into your own hands[,] 2. Cut through legal jargon[,] 3. Law library

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10. For example, pages 28-30 show sample volumes from each segment of the national reporter system.

simplified.” The book concentrates on the basic procedures of legal research, focusing on statutory and case law, treating secondary sources briefly (and appropriately for beginning researchers) as “background resources” (ch. 5). As an introduction to basic research techniques, the book is well done. The chapters on statutes are keyed to some of the areas of confusion for all new legal researchers, such as the differences in numbering schemes between codified laws and their original enacted forms (pp. 67-68). Explanation is by example with easy-to-follow illustrations.<sup>11</sup> The treatments of both statutes and case law provide succinct background on the law-making process and the context from which law is developed—useful information for the beginning researcher, whether a law student or not. This is a good basic text. Despite its intended market, it should not be ruled out without examination for use in the law school legal bibliography course.

Some published texts denigrate the classroom approach to teaching legal research, but it is unlikely that even those books would be published without the hope that they will be adopted as required texts in legal writing and research programs. Legal research instructors have the options of adopting one of the published texts, developing their own materials, or combining a text with local materials. This brief review indicates that several of the newer texts have useful and interesting features. Yet, are any of them better choices for the first-year legal research curriculum than the current editions of the standard texts?

Before answering that question, it is necessary to give some thought to the qualities that make for a good legal research text. The following list may be idiosyncratic, but in my experience these characteristics have proven valuable in a course book for first-year students.

1. Illustrations. One of the biggest problems of teaching legal research is getting around the problem of standing in front of a class holding a book and saying, “This is the *U.S. Code*.” Illustrated textbooks with sample pages help by giving the students something to look at and work through while you are explaining the contents of the resources being covered.

2. A black-letter approach. The book should be written with its audience in mind, understanding that the first-year law student, thrust into a new environment of learning and research, needs a ready means to grasp the basics of legal research before having to locate materials for a first writing assignment. Individual chapters should be short, well organized, and easily accessible. Sections within them should be clearly labeled, short, and outlined for quick access.

3. Flexibility. The book’s overall organization should be into chapters that lend themselves to being assigned as preparatory reading for classroom

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11. See, e.g., chapter 7, “How to Find and Interpret a Statute in the Real World.”

sessions. Preferably the chapters should be self-contained and, to the extent possible, assignable out of order should the instructor wish to vary his or her order of classroom presentation from that of the author.

4. Reference features. Although the book's primary purpose is to accompany classroom instruction, it also should be usable as a reference source for students. Thus, it should contain features such as a glossary of legal terms, a good index, and checklists or outlines of research procedure.

Other features could be emphasized as well. Those mentioned above all are present to varying degrees in the standard current texts: *Fundamentals*, *How to Find the Law*, their paperback equivalents,<sup>12</sup> and Morris Cohen's *Nutshell*. Choices can be made among them, yet all remain appropriate for assignment in the first-year course and each has the values of respected authorship and distinguished history. Of the newer works discussed here, Kunz, *et al's* *The Process of Legal Research* is the most similar to those works and is potentially their strongest competitor in the marketplace. As such, it is being reviewed and scrutinized more thoroughly elsewhere than I have done here.<sup>13</sup>

Of the other works, Statsky's and Elias's books will be read with interest by legal research instructors, both for the insights they offer and because portions might be worth assigning to first-year students. Wren and Wren's *Legal Research Manual* is a major contribution to the field, and many of its ideas should be incorporated into the first-year research curriculum.

One thing is certain: both traditional law book publishers and others consider legal research to be a subject for which the textbook market is growing and competitive. This is because publishers see an expanding audience for legal research texts and because prospective authors see the potential for new approaches to teaching and learning legal research. The result should be renewed concern with the process of legal research and how best to teach it, developments from which we all will benefit.

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12. J. JACOBSTEIN & R. MERSKY, *LEGAL RESEARCH ILLUSTRATED* (3d ed. 1985); M. COHEN & R. BERRING, *FINDING THE LAW* (1984).

13. *See, e.g.*, Puckett, Book Review, *SEC. LEGAL WRITING, REASONING & RES. NEWSL.*, October 1986, at 12.