

Sources and Strategies of Legal Research

Sources and Strategies of Legal Research

Caroline L. Osborne

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This book is for my students—past, present, and future.
It is informed by questions and confusion of the past with
the hope my current and future students will benefit.

This work would not exist but for the help of friends
and colleagues. Barbara, Carol, Jill, Joyce, Nick, Stephanie,
there is no way I can appropriately reflect your contributions
of time and support. I will simply say thank you!

CLO
April 2022

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Author's Note¹

I know how to research and find information. Why do I need a class in legal research? I still recall thinking these thoughts in the fall semester of my first year of law school. Torts, property, civil procedure—this is where I needed to spend my time. That this thought has stayed with me for all of law school, practice, and now teaching indicates just how strongly I felt about legal research. If I knew then what I came to know in the next year of law school, I might have responded differently to my legal research class, perhaps with more diligence.

I was missing an important piece of information. I did not fully comprehend that finding the law, understanding the law, and analyzing the law as it applied to my question is the foundation of the practice of law. I'd researched many topics and written many papers as an undergraduate and I was successful in doing one kind of research. The incomplete part of my thought process, what I skipped over, was that I'd been taught how to do one kind of research, the tools, the sources, and the analysis. Now I needed to learn a different, specialized, type of research—legal research. I needed to learn where to find the law, what the different sources of law were, where to find materials explaining the, often, complex, state of the law and how to use that information to resolve my question.

I also missed another part of the puzzle. The simple questions, the ones that are settled law, are not the questions that require extensive research. As a law librarian at a large New York law firm ('big law') often tells their new associates—"If you can Google the answer your client

1. This book is made possible with the support of the West Virginia College of Law by the support and contribution of an Arthur B. Hodges Summer Research Grant to Caroline L. Osborne.

does not need you.”² It is the novel question, the question that takes the law to a new place, the question that exists in the area where there is no clear statement of the law, these are the questions that lawyers spend time litigating and arguing. In contrast, law school assignments are neatly packaged to focus on the material being taught—rules, cases, statutes. Practice is messy. Legal questions are not neatly packaged. It is rarely as easy as the law school assignment seems. Your supervising attorney will not be impressed if you spend hours figuring out how to research rather than reading, analyzing, and analogizing the law. Finding cases, statutes, regulations, and constitutional provisions is merely the first step in a research quest. The other step is analyzing what you’ve found for relevance to answer your question. Legal analysis, understanding and applying the law, crafting an analogy out of the law that is there, is the missing piece of research. The foundation of legal research is finding, understanding, analyzing, and applying the law.

Finding law in an era of information excess, information overload, is easy. Finding authentic and reliable information that is relevant and addresses the legal problem before your client, is difficult. It might even be argued, successfully, that the vast amount of information at our fingertips makes effective and efficient research more difficult. Consider that this bounty of information makes the need for excellent research skills and efficient and effective research and analysis a critical skill of a successful lawyer.

This text is unique from other legal research texts. The materials are divided into three parts. Part I focuses on the mechanics or basics of law such as the court system, legal authority, precedent, research strategy or planning, legal analysis, and legal citation. Part II focuses on the sources of law including both those that contain the law, the tools that assist one in locating the law, and sources that comment and explain. Part III addresses search strategies—strategies that the researcher employs to effectively and efficiently locate materials to assist in answering the legal question.

CAROLINE OSBORNE

January 2022

2. Anonymous quote from NY Law Librarian at Big Law firm made at AALS Annual Meeting (January 2014).