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THE LEGAL RESEARCH PROBLEM

Christine A. Brock*

Ms. Brock's analysis of the current problems which are encountered by both law students and law professors in the course of first year classes in legal research, writing and bibliography suggests that part of the solution lies with the choice of teaching materials. The article reviews several publications now in use at schools throughout the United States and recommends that administrators and faculties re-evaluate the emphasis which is now placed upon the mastery of library skills at most law schools.

IN a letter to the *Columbia Law School News*,¹ a first year law student discussed his approach to legal research as it unfolded with his first memorandum assignment—an analysis of *Smith's Falcon v. Avon Lady*. At first, he notes, the case appeared simple, despite a few complications:

[T]he incident started because . . . [the] pet falcon, Jeremy, seized the Avon Lady's only sample of Wanderlust Mascara and then maimed her right index finger with his talons (which attack caused Avon Lady to proceed to bite Mrs. Smith) . . . but these details, I said to myself, can be worked out after a few hours in the law library. . . . That was my job: to walk into the library, and using a simple, easy-to-understand manual, to find the cases we needed for our brief.²

Forty-eight hours, an "Eskimo Baby Gnashed by Crazy Pelican" case, and one visit to the University psychiatrist later, our shaken hero concludes that he is not a well man, ("I have eaten too many of those Compoz pills and still my hands are dripping salt water on library furniture. I think I am corroding this desk top")³ and, that as much as he would like to help Mrs. Smith, the best he can offer is a prayer: "Dear Lord," I will say, "May the Avon Lady's

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1. Krulwich, *Prominski for the Plaintiff: Smith's Falcon v. Avon Lady*, 27 COLUM. L. SCH. NEWS 2 (Feb. 5, 1973).

2. *Id.*

3. *Id.*

lawyer fall off a cliff and may she be forced to do her own legal research, Amen."⁴

Librarians, and other professional observers of the research habits of first year law students, know that the panic and ensuing depression described by the letter writer are not atypical developments in the course of the disease which strikes most of its potential victims. The questions to be asked are: Why are not preventative measures enacted in a more effective manner? Indeed, what is the manner and attitude of those entrusted with prevention of the problem? And what are the merits and demerits of textual materials which may be utilized to instruct the law student in use of the law library in a way which will train him to be a savant with the tools of his trade?

Since 1906, "legal research" or "legal bibliography" in some form has been taught in the law schools of the United States.⁵ Despite this fact, its low profile and the lack of prestige associated with the course have contributed to ignorance about its history and value.⁶ Unlike other first year courses, such as torts and contracts, whose value to the curriculum is rarely questioned, the existence of a legal research course (or the teaching of legal research within a writing course) at each school seems to depend on some kind of annual popularity and resource poll or the whim of the individual faculty instructor. No one disputes that law students need to be able to do effective and efficient legal research, but what is disputed is whether or not they need to be *taught* how to research in law. The opposing theory is that the student, by sitting in the law library studying, along with the aid of one brief writing course and one or two paper writing seminars, gains an osmotic knowledge of how to efficiently and intelligently use the law books around him. Clearly, law

4. *Id.*

5. Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL ED. 538, 539 (1973).

6. In 1959, Dean Warren of Columbia Law School referred to the "great proliferation of new subjects added to the curricula, including legal writing and legal research, atomic energy, etc." Panel discussion, *The Teaching of Legal Writing and Research, Fifty-Second Annual Meeting, American Association of Law Librarians*, 52 LAW LIB. J. 350, 354 (1959). See also Leflar, *Survey of Curricula in Smaller Law Schools*, 9 AM. L. SCH. REV. 255, 258-59 (1939), which shows that by 1939, 23 of the 45 smaller law schools included in the survey required a legal bibliography course in the first year.

students are not expected to incorporate other legal skills without instruction, but somehow the techniques involved in legal research are academically short-changed by the very people who, all too often, do not know how to efficiently use the same legal materials themselves.

Recently, the University of Utah Law Review Editorial Board, recognizing this attitude in their own school's program and being dissatisfied with the preparation of their incoming law review candidates, did a preliminary survey of its own members.⁷ The Board concluded that the short introduction to legal bibliography offered in Legal Writing I was insufficient as a basis for serious legal research. "A further study conducted by way of a survey addressed to the executive or managing editor of all major law reviews indicated that . . . 29 of 50 schools [responding] favored an increased emphasis on research skills at their schools."⁸ The Utah Board concluded that not enough time or guidance was given to the teaching of legal research skills for them to be effectively absorbed in the mind of the first year law student and that the only way to solve the problem was to do more extensive teaching themselves.

Neither Utah's program, nor its results or conclusion are startling. Indeed, at this stage it should not even be interesting except for the fact that the survey was deemed necessary in the first place. For all of the writing wasted on this subject, American law schools still approach the teaching of legal research with a very grudging attitude⁹—perhaps because the typical law school faculty member does not have the expertise to teach the subject and, therefore, prefers not to deal with it. Combined with the attitude that legal writing and legal research are carriage mates, and the assumption that a law professor should teach legal writing, instruction in legal research skills is usually inadequate. This is, in many ways, very ironic. The

7. Lloyd, *A Student View of the Legal Research and Legal Bibliography Course at Utah and Elsewhere—A Proposed System*, 25 J. LEGAL ED. 553 (1973).

8. *Id.* at 553.

9. Sadow and Breede, *Library Instruction in American Law Schools*, 68 LAW LIB. J. 27, 28 (1975). The authors of this article surveyed law schools and found that "in the vast majority of law schools, there is at least a minimum program of library instruction." (A minimum program could be as little as one or two lectures.) They also note that several responses (out of a total of 124) indicate no present program, although there may have been one previously. Can one imagine a minimum program of tort instruction, or a school that may have taught it previously?

Association of American Law Schools, the body most responsible for the promulgation and enforcement of law school standards, has very definite and extensive requirements that force schools to maintain libraries appropriate for graduate instruction. How is it that the Association can insist that its members have large, expensive collections of books, and yet, not take steps to insure that those same members teach their students to use the large, expensive libraries? How is it that law school faculties and deans can support the extravagant upkeep of a law library and not care to assure that their students know how to use the tools that make up the "heart of the law school"?

It would appear that many schools are forced by AALS standards to give lip service to a concept which in reality they do not perceive as critical to their law schools or students. The final proof of a school's commitment to a certain ideal is its willingness to pay for teachers and assign time in the curriculum to support that ideal. This is where many schools draw the line on legal research or legal bibliography. Teaching legal research is a fine concept and idea up to the point where it hurts the law school pocketbook. Then the lip service stops. The law library is tangible and required—teaching intelligent and efficient use of it by law students is not.

So where does this leave the teacher of a legal research course?¹⁰ He or she may have recalcitrant students who are going to get a minimal amount of credit for a course which is going to take a maximum amount of work from both teacher and students. Alternatively, there is a library director with two hours of lecture time allotted within a legal writing course—this, supposed by some, to be an adequate amount of instruction to start the first year student in the library. The student, for obvious reasons, can see that the administration of the law school does not consider the development of research skills of paramount importance to his career. Inevitably, this set of affairs puts a strain on the teacher, or librarian, who also feels that others in the law school do not regard his work as important.¹¹

10. Rombauer's study, *supra* note 2, at 548, shows that only 20% of the legal bibliography courses are taught by regular faculty. The other 80% are taught by librarians, library staff, or occasionally students. That full faculty isn't teaching the course may account for part of the reason why the students do not consider legal bibliography an important course or skills area.

11. Rombauer, *supra* note 2, at 549-50.

Thus, the teacher of legal research is responsible for anything between a few hours in someone else's legal writing class and a full blown legal bibliography course. He or she must decide whether the students are going to have time to do library exercises or if they will have to try the hit or miss method in the library when they venture in for that first memorandum assignment. The hapless instructor may be caught with 20 students or 200 students at one time.

Regardless of the approach of the school or teacher, however, there is a guide to legal research that will fit each philosophy or set of circumstances and should hearten even the most frightened first year law student. The different approaches used by teachers of legal research are symbolized, to a degree, by the different books they choose to use. Rombauer's *Legal Problem Solving* is used by 33 schools, Cohen's *Legal Research in a Nutshell* by 81 schools, Roalfe's *How to Find the Law* by 28 schools, Pollack by 70 schools and the student edition of Price and Bitner's *Effective Legal Research* by 40 schools.¹²

Professor Rombauer would probably object to a review lumping her work in a category with other legal bibliography tools. Certainly *Legal Problem Solving* is not just an explanation of legal bibliography, but is a composite blend of material on legal analysis, research methods, and research sources. The book is illustrative of a hybrid "introduction to law school" approach and is meant to be an escape route from the more usual teaching methods and tools which separate skills that in reality work together. The text is divided into 3 parts: "Interpreting and Predicting the Controlling Law," "Problem Analysis and Research," and "Report and Argument." Her strategy is to first teach the student the principles of analysis through

12. These statistics were ascertained in the course of telephone calls to the publishers of the various books. It should be noted that the figures include institutions where the books are used for library science courses in legal bibliography as well as law school courses in legal research. Obviously, one school with a number of instructors might be using more than one book so that the statistics may contain some overlap.

To choose for oneself the research teacher should see and compare the following: M. ROMBAUER, *LEGAL PROBLEM SOLVING* (2d ed. 1973), with *PROBLEM SUPPLEMENT* (2d ed. 1974); POLLACK'S *FUNDAMENTALS OF LEGAL RESEARCH* (4th ed., J. Jacobstein & R. Mersky ed. 1973), with *1974 SUPPLEMENT AND ASSIGNMENTS*; M. COHEN, *LEGAL RESEARCH IN A NUTSHELL* (1971); M. PRICE & H. BITNER, *EFFECTIVE LEGAL RESEARCH* (3d ed. 1969), with *PROBLEMS FOR EFFECTIVE LEGAL RESEARCH* (4th ed. 1970); *HOW TO FIND THE LAW* (6th ed., W. Roalfe ed. 1965).

a few given cases before she turns him or her loose in the wilds of the library. Nonetheless, a significant portion of the book, in particular, "Part II: Problem Analysis and Research" and the Appendices, present substantially the same material provided in the other research tools to be discussed herein. The difference between this book and the others is that here the student will understand why he is going to look at a particular type of legal material before he gets to the chapter explaining how to use and find it. For instance, a whole chapter on the interpretation of legislation precedes the chapter entitled, "Research on Questions Governed by Statutes or Other Forms of Legislation."

This text is one that might be used by a professor who wished to present his or her students a course including one or two lectures on legal bibliography. The explanation of legal research materials within the book is good, but sketchy, and should be supplemented by other lectures, books, or student exercises. The *Teacher's Problem Supplement* (to be published annually) contains memoranda type problems rather than library exercise problems. Each problem includes a list of authorities or sources on the topic in question for the instructor's convenience. The legal research teacher may then choose which problems he or she wishes to assign thereby bringing students into contact with most of the research tools that would be covered in the course of a legal bibliography program. This kind of approach to research has definite teaching advantages for the instructor who does not have time, or does not wish to give lectures on legal bibliography. The scheme falls in well with Rombauer's format, but does not assure the students' independent understanding of the use of finding aids, tables, and indexes. Other works are more appropriate for the comprehensive legal research course. However, it must be remembered that Rombauer is not trying to fill that particular need. Overall this is an excellent first week of law school required reading piece as well as a good combination textbook.

Cohen's *Legal Research in a Nutshell* explains itself straightaway: "It is intended as an introduction where a fuller course of study, such as might be based on comprehensive texts like Price and Bitner's *Effective Legal Research*, Pollack's *Fundamentals of Legal Research*

or Roalfe's *How to Find the Law* is not offered.¹³ In other words, if a school or instructor decides not to teach legal bibliography or to cover it lightly, Cohen is designed to fill the gap. In his words, the purpose in writing the book was to prevent "that sad by-product of bibliographic ignorance—needless waste of valuable time and effort".¹⁴ In keeping with that goal, as is true of all of the West Nutshell series, his work is concise, simple, and as clear as it is possible to be in a short space. For student use, the book has the advantage of being paperbound and easy to tote around and consult while working with the library tools. The volume starts with primary material, judicial reports in particular, and then proceeds to introduce legal tools to the student in the order in which he is most likely to encounter them in his own education and research. The author makes the point that use of his work will be more effective if followed by library exercises of some kind. This, of course, is true of any guide to legal research, but even more so for users of a condensed legal research guide with few illustrations and sample pages. It is hoped that instructors using the book take his caveat seriously and give their students a handle to work with.

That the sixth edition of *How to Find the Law* is still used by close to thirty schools, despite the fact that it is ten years old, is a tribute to the fine balance of simplicity and clarity achieved by the contributors to the work. It is basically a book on legal bibliography even though it is subtitled "With Special Chapters on Legal Writing." Each chapter was written by prominent librarians and/or teachers of legal research or legal writing. For instance, Henry Weihofen contributed the excellent section on letter and opinion writing; Morris Cohen, the chapter on administrative and executive publications; Marian Gallagher, the chapter on legal encyclopedias; and Julius Marke, the chapter on statutes. The various authors were careful to select pertinent sample pages and yet not flood the student reader with them. A few simple details could be changed—the citation forms for the materials in each chapter are hidden in the text. It would be more convenient for the users if they could be found at the end of each chapter as they are in the Mersky and Jacobstein edition of *Pollack*. The book is arranged

13. M. COHEN, *LEGAL RESEARCH IN A NUTSHELL* v-vi (2d ed. 1971).

14. *Id.* at 8.

so that legal encyclopedias come first, digests second, and then court reports. It would seem that court reports should at least precede digests, and that legal encyclopedias would be better placed later in the book where secondary materials are to be found.

This work would be a fine teaching tool if updated and accompanied by a problem supplement. It goes further into legal research materials than the Cohen *Nutshell*, yet is not as burdened with detail as the *Pollack* or Price and Bitner books.

In the preface to *Pollack's Fundamentals of Legal Research*, the editors comment, "In preparing this new edition, we have consciously kept in mind that the book is not intended to be a definitive source for legal bibliography, but rather an aid to students who are learning to do legal research."¹⁵ In keeping with that goal, the new editors changed the arrangement of the book so that case law, the material most relevant to the first year student, is dealt with first. Each chapter of the book is well arranged, with summaries of the text, a section on citation form, sample pages of the materials discussed, and thoughtful explanations of research techniques. The citations at the end of the book are useful, as are the definitions at the front, although some of these need attention and were not revised from the previous edition.¹⁶ The problem sets and assignments in the *Supplement* that accompanies the work are a godsend to any legal research teacher, although an effort should be made to correct some of the misprints and inaccuracies which occur at various places.¹⁷ All in all, *Pollack* is probably the best tool currently available to the law student and to the instructor looking for a comprehensible and comprehensive introduction to legal bibliography.

Price and Bitner's *Effective Legal Research*, on the other hand, is really the only extensive guide to legal material available to the law librarian and the library science student. Even the student edition of *Effective Legal Research* is a more detailed treatment of its topic than any of the other works. Mr. Bitner could do the profes-

15. POLLACK'S FUNDAMENTALS OF LEGAL RESEARCH ix (J. Jacobstein & R. Mersky ed. 1973).

16. Concerning the 2d edition of POLLACK see Schmid, Book Review, 8 UTAH L. REV. 160, 161 (1963).

17. For instance, in Chapter 6, number 17, makes references to the *Sixth Decennial* when the *Seventh* should have been used. These kinds of errors become significant when there are 200 freshman working on the problem set.

sion of law librarianship a great service by updating and expanding it. The basic weakness of the work is that it is not clear for whom it was written, its authors should have decided whether they wanted it to be a book for students or a comprehensive tool for the professional librarian, and patterned it accordingly. In the words of an earlier reviewer, "Price and Bitner's *Effective Legal Research* was an unhappy compromise between a reference book and a text."¹⁸ The order in which the materials are treated stands as witness to the fact that the work really wasn't designed with law students in mind. What American law student starts his legal education with an introduction to legislation? However, it may be an appropriate starting point for a librarian learning about legal materials. On the other hand, the chapter on legal citation form is an excellent aid for the first year student writing a brief. It is much more comprehensible and useful than *A Uniform System of Citation*. The problem workbook is very extensive, but very outdated. Most of the assignments would have to be completely reworked to be useable.

The usefulness of each legal research guide is dependent upon the approach and emphasis of the instructor or institution. With the tools available, there is no reason why every American law student can't become proficient in legal research, provided that the law school is willing to allot the proper time in the curriculum. It is clear that the first year law student doesn't need to be lost in the library. The question is whether or not he can find a subject heading in the card catalog which will lead him to the legal research tools if his instructor doesn't.

18. French, Book Review, 11 *MIAMI L.Q.* 317 (1956).