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## On Describing Legal Research

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*Supreme Court of the United States*

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# ON DESCRIBING LEGAL RESEARCH

*Steven M. Barkan\**

FUNDAMENTALS OF LEGAL RESEARCH. 2D ED. By *J. Myron Jacobstein* and *Roy M. Mersky*. Mineola, N.Y.: Foundation Press. 1981. Pp. xli, 614. \$18.

*“Research is the systematic indulgence of one’s curiosity . . . and when systematically pursued for the elucidation of events, we call it science.”*

— *Professor Felix Frankfurter*<sup>1</sup>

Over the years, numerous textbooks, authored primarily by law librarians, have attempted to explain legal research<sup>2</sup> to lawyers, law students, law librarians, and other interested persons.<sup>3</sup> These texts can be loosely divided into three categories: (1) comprehensive guides or reference manuals, (2) teaching tools or laboratory manuals, and (3) books that have attempted to serve both functions.<sup>4</sup> Although the texts vary in length and in the emphasis placed on the various aspects of the subject, they have been mainly concerned with identifying legal resources and explaining how to use them.

Authors of books on legal research have always faced two problems. First, according to Professors Jacobstein and Mersky, they have had to reconcile “the desire for completeness with the real-

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1. Address by Felix Frankfurter, Meeting of the Association of American Law Schools, New Orleans, Dec. 27, 1929, *quoted in* Frankfurter, Llewellyn & Sunderland, *The Conditions for and the Aims and Methods of Legal Research*, 6 AM. L. SCH. REV. 663, 664 (1930).

2. Although “legal research” is difficult to define precisely, the authors of *Fundamentals of Legal Research* note: “When engaged in legal research (more properly, legal search) lawyers are seeking to find those authorities in the primary sources of the law that are applicable to a particular legal situation.” P. 6. The process of legal research, then, should be distinguished from the concept of legal bibliography, which is the description and identification of the published sources of the law.

3. In 1957, one law librarian commented: “If any branch of American legal literature has kept pace with the output of legislation and reported decisions, it is the production of textbooks on legal research.” West, Book Review, 3 WAYNE L. REV. 164 (1957). This Review is not intended to be a comprehensive bibliographic essay on the literature of legal research. The textbooks that are discussed were selected because they are the principal publications of the major legal textbook publishers, and hence the most widely used in law schools.

4. See Pollack, *Foreword* to M. PRICE & H. BITNER, *EFFECTIVE LEGAL RESEARCH* at vii (1953).

ization that their work is intended primarily for students beginning the study of law."<sup>5</sup> 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. The other inherent problem in writing a book on legal research is the need to synthesize three relevant conceptual systems. First, the nature of the relationship between the law and its resources requires that some of the substance of the law and the nature of the legal system be grasped before the bibliography of the law can be comprehended. Second, the functional unity of legal bibliography requires that resources be considered in relation to each other.<sup>6</sup> And, third, the interdependency of the analytic, searching, and applications aspects of research suggests that each should be viewed in the context of the others.<sup>7</sup> In short, there is a gestalt to legal research that is difficult to capture.

Jacobstein and Mersky's *Fundamentals of Legal Research*, along with *Effective Legal Research*,<sup>8</sup> by Price, Bitner, and Bysiewicz, *How to Find the Law*,<sup>9</sup> edited by Cohen, *Legal Research in a Nutshell*,<sup>10</sup> by Cohen, *Legal Problem Solving*,<sup>11</sup> by Rombauer, and the abridged version of *Fundamentals of Legal Research*, *Legal Research Illustrated*,<sup>12</sup> are currently the most widely used textbooks on legal bibli-

5. J. JACOBSTEIN & R. MERSKY, POLLACK'S FUNDAMENTALS OF LEGAL RESEARCH at ix (4th ed. 1973).

6. See HOW TO FIND THE LAW at xvi (7th ed. M. Cohen 1976).

7. The traditional process of legal research can be viewed as consisting of several interdependent facets: an analytic function, which includes analyzing facts, hypothesizing legal issues, analogizing and determining the relevance of search results; a searching activity, which includes identifying and using the resources of the law; and an applications phase, which encompasses applying the results of the search to a particular problem and communicating a solution. While severing the process is necessary to its explanation, a realization of the dependent nature of the facets is requisite to its understanding. Attempts to analyze or explain the legal thought process too often assume competence in the use of resources and ignore the searching aspects of research. See, e.g., E. LEVI, AN INTRODUCTION TO LEGAL REASONING 1-2 (1949). While the first and last facets are properly subjects of legal method, case analysis, jurisprudence, legal writing, and advocacy, a search for the law is ineffectual unless the researcher understands both what is sought and how the product is to be used.

8. M. PRICE, H. BITNER & S. BYSEWICZ, EFFECTIVE LEGAL RESEARCH (4th ed. 1979).

9. HOW TO FIND THE LAW, *supra* note 6.

10. M. COHEN, LEGAL RESEARCH IN A NUTSHELL (3d ed. 1978).

11. M. ROMBAUER, LEGAL PROBLEM SOLVING (3d ed. 1978).

12. J. JACOBSTEIN & R. MERSKY, LEGAL RESEARCH ILLUSTRATED (2d ed. 1981). The abridged version is intended to serve as a text for students who attend law schools that do not offer formal courses on legal research and as an introductory text for nonlaw students. The abridged portions include some chapter summaries, material on court rules and procedure, federal tax research, municipal legislation, English and Canadian legal research, and appendices covering abbreviations and legal research in the territories of the United States. The substance of the remaining chapters is identical to that of the full edition. Compare Cohen's concise *Legal Research in a Nutshell*, which is broader in scope, but weaker in methodology. M. COHEN, *supra* note 10.

ography and research in American law schools. None of the books claims to be a comprehensive manual<sup>13</sup> and all are primarily intended to acquaint law students and others with the essentials of legal research. Only Rombauer's *Legal Problem Solving* deals with the entire process of legal research<sup>14</sup> from a functional standpoint.<sup>15</sup> There are important differences of style, method, approach, and content among the books, but the superiority of a volume will depend on its intended use.<sup>16</sup>

*Fundamentals of Legal Research* has been a popular textbook since it was introduced in 1956 by Ervin Pollack.<sup>17</sup> The book has grown and matured, but Jacobstein and Mersky's new edition, actually the book's sixth, has a remarkable conceptual resemblance to Pollack's original work. *Fundamentals of Legal Research* is best understood, and appreciated, when viewed in its historical context.

## I

American law was not hard to find in the late eighteenth and early nineteenth centuries. The few available law books were mainly of English origin, and most lawyers had their own practice-oriented libraries.<sup>18</sup> It was neither necessary nor possible for lawyers to spend a considerable amount of time learning to use law books. Only when the amount of legal literature expanded in the late nineteenth century, did the law become harder "to find."<sup>19</sup>

Law book publishers, rather than the law schools deserve the credit for creating an interest in the formal study of the use of law books.<sup>20</sup> In 1906, the West Publishing Company published the first

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13. An interesting issue, at least for law librarians, is whether the discipline needs a contemporary comprehensive treatise. Price and Bitner's 1953 edition, *see* note 55 *infra*, is comprehensive but out-of-date. That no current comprehensive work exists is most likely a function of the marketplace.

14. Rombauer discusses analysis and legal writing as well as legal bibliography and the use of law books, but the coverage of each is not as full as that found in textbooks that focus on one aspect of the subject. *See* M. ROMBAUER, *supra* note 11.

15. Rather than concentrating on types of resources, Rombauer describes types of problems and refers students to other texts on legal bibliography for more complete explanations. *Id.*

16. For dated, but informative, comparative discussions of the books, *see* Brock, *The Legal Research Problem*, 24 DEPAUL L. REV. 827 (1975); Diefenbach, Book Review, 11 CORNELL INTL. L.J. 155 (1978).

17. E. POLLACK, *FUNDAMENTALS OF LEGAL RESEARCH* (1956).

18. *See* Brock, *Law Libraries and Librarians: A Revisionist History; or More than you ever wanted to know*, 67 LAW LIB. J. 325, 326-29 (1974).

19. *See generally* L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 282-92, 538-48 (1973).

20. *See* Hicks, *The Teaching of Legal Bibliography*, 11 LAW LIB. J. 1, 2 (1918).

text on the subject,<sup>21</sup> *Brief Making and the Use of Law Books*.<sup>22</sup> The book was hailed, by some, as the beginning of a "new epoch in legal education."<sup>23</sup> Others saw it as little more than a mechanical manual.<sup>24</sup> With its second edition in 1909,<sup>25</sup> Roger W. Cooley, a traveling lecturer and West field representative,<sup>26</sup> became the general editor of a work that was a collection of monographs by law professors and publishers' representatives.<sup>27</sup> In a chapter devoted to "a brief résumé . . . in the form of an outline of the procedure which should be followed in an extensive search for authorities in all classes of law books,"<sup>28</sup> Cooley included the preliminary research steps of summarizing essential facts and drawing a provisional hypothesis, but confined the search for authorities to the mechanics of using law books. Separate sections of the book dealt with subjects such as where and how to find the law, the use (analysis and evaluation) of decisions and statutes, the trial brief, and the brief on appeal.

Cooley was a pioneer in the field and *Brief Making and the Use of Law Books*, as the first objective treatise on legal research, encouraged the establishment of law school courses on the subject.<sup>29</sup> Subsequent texts, which were to focus on the description of law books and their mechanical use, rather than on the overall process of legal research, were influenced by many of the methods and techniques introduced in Cooley's work.

In 1923, the Lawyers Co-operative Publishing Company published *Materials and Methods of Legal Research*.<sup>30</sup> The book was

21. Some clarification is necessary. Bishop's *The First Book of the Law; Explaining the Nature, Sources, Books, and Practical Applications of Legal Science, and Methods of Study and Practice*, as its subtitle indicated, was a subjective introductory treatise that included, among other things, a substantial discussion of legal bibliography. Writing before the "information explosion" of the late 19th century, Bishop did not anticipate what was to follow. See J. BISHOP, *THE FIRST BOOK OF THE LAW* (1968). Legal bibliographies did exist before *Brief Making and the Use of Law Books* was published. See, e.g., C. SOULE, *THE LAWYER'S REFERENCE MANUAL OF LAW BOOKS AND CITATIONS* (1883).

22. W. LILE, H. REDFIELD, E. WAMBAUGH, A. MASON & J. WHEELER, *BRIEF MAKING AND THE USE OF LAW BOOKS* (N. Abbott ed. 1906).

23. Hulvey, Book Review, 11 VA. L. REV. 165, 165 (1924).

24. See Book Review, 58 U. PA. L. REV. 189, 190 (1909) ("[T]he really astonishing thing about the book is that it should have found its way to a second edition.")

25. W. LILE, H. REDFIELD, E. WAMBAUGH, E. SUNDERLAND, A. MASON & R. COOLEY, *BRIEF MAKING AND THE USE OF LAW BOOKS* (2d ed. R. Cooley 1909).

26. In 1911 Cooley left the company to become a professor of law at the University of North Dakota. See Hicks, *supra* note 20, at 3.

27. Each publisher provided the descriptions of its own publications.

28. W. LILE, H. REDFIELD, E. WAMBAUGH, E. SUNDERLAND, A. MASON & R. COOLEY, *BRIEF MAKING AND THE USE OF LAW BOOKS* 420 (3d ed. R. Cooley 1914).

29. See Beardsley, Book Review, 1 WASH. L. REV. 79, 79 (1925).

30. F. HICKS, *MATERIALS AND METHODS OF LEGAL RESEARCH* (1923).

written by Frederick C. Hicks, then the Librarian at the Columbia University Law School, and was acclaimed on publication to be the most complete and best-ordered guide to the literature of the common law.<sup>31</sup> Hicks, who was to serve as the Law Librarian at Yale from 1928 to 1945, was a legal scholar,<sup>32</sup> an experienced law librarian, and a leader in the effort to include separate courses in legal research in the law school curriculum.<sup>33</sup> Because it combined literary criticism with the practical functions of a pedagogic manual, *Materials and Methods of Legal Research* was a textbook for law students that discussed the historical development, classification, and use of law books as well as a reference manual for lawyers and law librarians<sup>34</sup> with extensive bibliographies of legal resources.<sup>35</sup> Although the book was criticized for being weak on the mechanics of legal research,<sup>36</sup> it is still considered to be one of the most scholarly works on legal bibliography ever produced. It appeared in three editions and for years was considered to be "a natural monopoly" and "standard equipment" in law libraries.<sup>37</sup>

While Lawyers Co-operative was publishing Hicks's scholarly work, it also produced a more practical volume entitled *Law Books and Their Use*.<sup>38</sup> The book was produced by the publisher's educational department and editorial staff, and was intended to give law students and lawyers an idea of the various kinds of law books, to describe the most common ones as concisely as possible, and to supply enough information to enable readers to use law books intelligently.<sup>39</sup> Although it in no way resembled the scholarly work of Hicks or the massive text of Cooley, it is notable for its concise description of legal literature.<sup>40</sup>

In a paper read at the annual meeting of the Association of

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31. Book Review, 40 LAW Q. REV. 253 (1924).

32. See generally Roalfe, *Frederick C. Hicks: Scholar-Librarian*, 50 LAW LIB. J. 88 (1957).

33. See Book Review, 37 HARV. L. REV. 791 (1924). Hicks believed that brief writing and oral advocacy should be treated as separate courses and did not include chapters on these subjects until the third edition of his book. See F. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 357-426 (3d rev. ed. 1942).

34. See Borchard, Book Review, 33 YALE L.J. 682, 683 (1924).

35. Hicks's extensive bibliographic tables are still used by librarians for historical materials.

36. See Goddard, Book Review, 22 MICH. L. REV. 507 (1924); Price, Book Review, 35 LAW LIB. J. 503 (1942).

37. See Price, *supra* note 36, at 503.

38. LAW BOOKS AND THEIR USE (1923).

39. LAW BOOKS AND THEIR USE at iii (5th ed. 1930).

40. LAW BOOKS AND THEIR USE 133 (6th ed. 1936). Of the more than 670 pages in the sixth, and final edition, only 157 pages dealt with the use of law books. Most of the book concerned brief making, abbreviations, and specimen law book pages.

American Law Schools in 1921, John H. Wigmore, Dean of the Northwestern University School of Law, suggested a "job analysis" approach to teaching legal research.<sup>41</sup> His ideas were based on an instructional method developed by a University of Chicago physicist for the War Department during the First World War:

Mr. Wigmore's idea was that there were and are only a certain number of fundamental situations which confront the lawyer, that an analysis could be made to determine these, and then one could present the tools and how to employ them in each of these situations.<sup>42</sup>

Wigmore's theory was adopted in 1931 by Fred A. Eldean, an editor of the West Publishing Company, in *How to Find the Law*,<sup>43</sup> the successor to Cooley's *Brief Making and the Use of Law Books*. The early editions of *How to Find the Law* had chapters with checklists that were intended to coordinate matters dealt with separately in preceding chapters and to point out parallels in the "unit operations of search in the various publications."<sup>44</sup>

Although Eldean wrote the bibliographical chapters of the book, those dealing with case analysis and brief making were written by law professors, many of whom had contributed similar chapters to Cooley's *Brief Making*. The third edition of the book<sup>45</sup> expanded the practice of including chapters by law librarians on various aspects of legal bibliography, a practice that was to be a distinguishing characteristic of future editions of the book.

The Foundation Press then entered the market in 1937 with Beardsley's *Legal Bibliography and the Use of Law Books*.<sup>46</sup> Arthur S. Beardsley, Professor of Law and Law Librarian at the University of Washington, noted the cumbersome nature of the other texts and tried to write a "treatise on the use of law books which would be helpful to lawyer, student, and teacher, alike."<sup>47</sup> Pedagogically, the book was based on the theory that students learn by doing. It at-

41. Wigmore, *The Job Analysis Method of Teaching the Use of Law Sources*, 16 ILL. L. REV. 499 (1922).

42. F. ELDEAN, *HOW TO FIND THE LAW* at v (1931).

43. *Id.*

44. F. ELDEAN, *supra* note 42, at 413. The first edition commented:

The observant have noted that there are perhaps only three ways of commencing the search in any publication: that is, through the topic method, the fact index avenue, and the words and phrases approach. He has also in mind that when he has a single precedent that there are the mechanical aids: the table of cases, and citation books.

*Id.*

45. H. BRANDT, *HOW TO FIND THE LAW* (3d ed. 1940).

46. A. BEARDSLEY, *LEGAL BIBLIOGRAPHY AND THE USE OF LAW BOOKS* (1937).

47. *Id.* at ix.

tempted to correlate the description of books with their examination and included problems requiring the manual use of books.

Beardsley maintained that the lack of a scientific approach to legal research often resulted in wasted time and the overlooking of strongest authorities.<sup>48</sup> But he cautioned:

No set rule can be promulgated which will establish a short cut to success in the search for the law . . . . Logical analysis of the problem, careful thinking, and patience are the keys to success in legal research. Methods of approach and the mechanical aids are only the agencies through which these mental processes operate.<sup>49</sup>

Although he included four chapters about how to find authorities, Beardsley's methods, unfortunately, were not new and consisted of the table or case method, the topical (table of contents) method, and the fact (descriptive word index) method. The various chapters were detailed, but did not emphasize the interrelationships of resources or develop a sense of routine.<sup>50</sup> Even so, *Legal Bibliography and the Use of Law Books* was more workable as a teaching tool than as a reference manual.<sup>51</sup> The author stated: "No claim is made that this work is free from errors."<sup>52</sup> (Indeed, many of the reviewers of the book found some.)<sup>53</sup> Nevertheless, the book, which was revised by Beardsley and Oscar C. Orman of Washington University (St. Louis) in 1947,<sup>54</sup> was one of the most widely used texts on legal research for over twenty years.

In 1953, Miles O. Price and Harry Bitner, Librarian and Associate Librarian, respectively, of the Columbia University Law Library, produced *Effective Legal Research*,<sup>55</sup> "the most comprehensive analysis yet made of the literature of the common law."<sup>56</sup> The authors, both respected scholars, tried to create a comprehensive reference manual for researchers, a practical guide for the legal profession, and a teaching text for students.<sup>57</sup> Information that was considered

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48. *Id.* at 327.

49. *Id.*

50. See Dwyer, Book Review, 51 HARV. L. REV. 571 (1938).

51. See Drummond, Book Review, 5 U. CHI. L. REV. 540, 541 (1938).

52. A. BEARDSLEY, *supra* note 46, at x.

53. Coen, Book Review, 41 LAW LIB. J. 19, 20 (1948); Drummond, Book Review, 5 U. CHI. L. REV. 540, 541 (1938); Dwyer, Book Review, 51 HARV. L. REV. 571, 572 (1938); Finley, Book Review, 24 IND. L. J. 328, 332 (1949); ROALFE, BOOK REVIEW, 43 ILL. L. REV. 128, 130 (1948).

54. A. BEARDSLEY & O. ORMAN, LEGAL BIBLIOGRAPHY AND THE USE OF LAW BOOKS (2d ed. 1947).

55. M. PRICE & H. BITNER, EFFECTIVE LEGAL RESEARCH (1953).

56. Blaustein & Heimanson, Book Review, 40 A.B.A.J. 983, 983 (1954).

57. See Fiordalisi, Book Review, 54 COLUM. L. REV. 483 (1954). Because they believed that research problems assumed certain patterns, they emphasized the functions, rather than

to be essential was placed in larger type than that used for amplification and notes. No information that would aid the researcher was considered too inconsequential for inclusion.<sup>58</sup>

*Effective Legal Research* was not a book to be read from cover to cover<sup>59</sup> and was too long to be used as a teaching tool.<sup>60</sup> Neither was it clear for whom it was written.<sup>61</sup> As a reference manual, however, Price and Bitner's work is a classic in the field and an invaluable aid for librarians and scholars of legal bibliography.<sup>62</sup>

## II

Although detailed manuals were useful to law librarians and serious scholars, there was still a need for a relatively brief text that would be understandable to new law students.<sup>63</sup> Pollack's 1956 work, *Fundamentals of Legal Research*, was such a volume.<sup>64</sup>

Ervin H. Pollack, Professor of Law and Law Librarian at Ohio State University, worked for Price at Columbia and "was a teacher who was also a librarian as much as he was a librarian who was also teacher."<sup>65</sup> At Ohio State, he taught courses in jurisprudence,<sup>66</sup> legal process, and trade regulation as well as legal research and writing. Pollack's credentials help to explain how his book was significantly different from those that preceded it. As one reviewer commented: "His years as a librarian and teacher had taught him what precisely it is that students and instructors need. . . . His entire outlook is jurisprudential, his approach is scholarly. He is never satisfied with a mere description of mechanics."<sup>67</sup>

*Fundamentals of Legal Research* de-emphasized bibliographic

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the characteristics of legal sources. Their thesis was that "when a problem arises which should be solvable by a law book, that book exists, and . . . it functions along well defined lines." M. PRICE & H. BITNER, *supra* note 55, at ix.

58. See McLaurin, Book Review, 22 GEO. WASH. L. REV. 382 (1954).

59. Wallach, Book Review, 14 LA. L. REV. 494, 500 (1954).

60. One reviewer commented: "The average law student would view this book much like the reviewer of a child's book who wrote, 'This book tells more about penguins than I'm interested in knowing.'" Dahl, Book Review, 33 NEB. L. REV. 520, 520 (1954).

61. "[I]ts 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." Brock, *The Legal Research Problem*, 24 DEPAUL L. REV. 827, 835 (1975).

62. The 1953 edition was reprinted in 1969 by Rothman Reprints, Inc. and Augustus M. Kelly, Publishers.

63. See Bougas, Book Review, 50 LAW LIB. J. 588 (1957).

64. E. POLLACK, *supra* note 17.

65. Mathews, *In Memory of Ervin Harold Pollack*, 66 LAW LIB. J. 112, 112 (1973).

66. See E. POLLACK, JURISPRUDENCE: PRINCIPLES AND APPLICATIONS (1979), a textbook published posthumously by the Ohio State University Press.

67. Mueller, Book Review, 50 LAW LIB. J. 49, 49-50 (1957).

data and attempted to interrelate basic information on legal bibliography with the methodology of legal research. According to Pollack:

The mass of information in Anglo-American law has reached such proportions that the student during his brief sojourn in law school cannot assimilate it in full content. However, this is not an essential prerequisite for a legal education, for the informational content of the law, important as it is, is but grist for the insights and the dialectical and the technical skills which measure legal competency. Essentially, therefore, legal pedagogy provides training in the intelligent use of legal information.

In consonance with these ideas, legal research technique should be so taught that, while providing entry to the informational content of the law, it should also implement the lawyer's skills and deepen his insights. For otherwise, when instruction is directed primarily towards information, geared to the identification of books rather than their effective uses, it can result in a course-pattern which is extensively memory-testing, bearing little significance for the solution of practical lawyer-problems.<sup>68</sup>

Pollack wrote, in other words, a concise<sup>69</sup> and integrated text that proceeded from a macroscopic view of the legal system to microscopic descriptions of individual works. The book read as a lecture rather than a treatise and was "a happy balance between the readability desired in a student text and the depth of coverage needed for adequate instruction in a complex area of legal pedagogy."<sup>70</sup>

Although Pollack's book was not free of shortcomings — it was criticized for being simplistic at times,<sup>71</sup> for providing inadequate authority for legal principles,<sup>72</sup> and for giving too much advice<sup>73</sup> — the effect that it had upon its primary competitors attests to its quality and importance. *How to Find the Law*, which went into its fifth edition in 1957, was reduced from 740 pages to 207 pages and was edited by William R. Roalfe, an academic law librarian, rather than by an employee of the West Publishing Company. Roalfe noted: "Pedagogically, it seems wiser to set a more modest goal to begin with than to weigh the student down with a multiplicity of details he will neither absorb nor remember."<sup>74</sup> The second edition (Student Edition Revised) of Price and Bitner's *Effective Legal Research* was

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68. E. POLLACK, *supra* note 17, at vii.

69. Of its 295 pages, 193 were text. The remaining pages included a guide to citation form, a list of abbreviations, and an index. There were no illustrations and no chapters on brief making.

70. Schmid, Book Review, 8 UTAH L. REV. 160, 161 (1962-1963).

71. See Heimanson, Book Review, 2 N.Y. L.F. 444, 445 (1956).

72. See West, *supra* note 3, at 170.

73. See *id.*

74. HOW TO FIND THE LAW at ix (5th ed. W. Roalfe 1957).

similarly reduced from 633 pages to 496 pages to meet the requests of teachers who wanted a book that would cover the ground of the parent book in a more simplified form.<sup>75</sup>

Pollack emphasized the importance of synthesizing the procedures of legal research and provided a "birds-eye view" of techniques and materials.<sup>76</sup> The first step was the determination and integration of the facts (*i.e.*, parties, subject matter, cause of action or ground of defense, and object or relief sought)<sup>77</sup> and the determination of legal issues. The "four methods of ascertaining the law through the search of legal publications" were identified as the descriptive work or fact (subject index) method, the analytic or topic (table of contents) method, the case (table of cases) method, and the definition (words and phrases) method.<sup>78</sup>

The book illustrated procedures by dividing legal problems into four categories: (1) constitutional law, (2) statutory law, (3) case law, and (4) administrative law (each of which was subdivided into problems of federal, state, and local law). Specific resources for each type of problem were suggested. Noting that all research need not be exhaustive, Pollack stated that many problems could be solved by reading a general work such as a legal encyclopedia or treatise, examining annotated constitutions or statutes, reading and analyzing the cases, and Shepardizing the results.<sup>79</sup>

Pollack's first edition presented materials in a traditional order: constitutions, legislation, court reports, digests, encyclopedias, and citators.<sup>80</sup> In the second edition, however, he changed the order of presentation and placed discussions of secondary materials such as encyclopedias, legal periodicals and indexes, and treatises and re-

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75. The authors removed some historical information, reduced the level of description, omitted bibliographical appendices, and abridged both the manual of citation form and the list of abbreviations. *See* M. PRICE & H. BITNER, *EFFECTIVE LEGAL RESEARCH* at xi (3d ed. 1969). However, even the student edition contained a more detailed treatment of bibliography than any of the other books. *See* Brock, *supra* note 61, at 834. The same can be said of the current edition of the book.

76. *See* E. POLLACK, *supra* note 17, at 13-20.

77. In the second edition, Pollack suggested applying the TARP (Thing, Action, Relief, Parties) method as a mnemonic device to assist in the preliminary analysis of facts. *See* E. POLLACK, *FUNDAMENTALS OF LEGAL RESEARCH* 14-15 (2d ed. 1962). This method is still suggested. Pp. 10-11.

78. E. POLLACK, *supra* note 17, at 14-20.

79. *Id.* at 20.

80. One reviewer suggested that court reports should be presented before statutes because of the great emphasis placed upon them by law schools. *See* Rehberg, *Book Review*, 9 J. LEGAL EDUC. 556, 556-57 (1957). Another felt that encyclopedias, because of their great similarity to familiar undergraduate research tools, should be placed first. *See* West, *supra* note 3, at 170.

statements ahead of chapters on court reports.<sup>81</sup> Constitutions and legislation were presented after the chapters on digests and citators. Pollack offered the following explanation for these changes:

The American lawyer is relying more and more on secondary textual aids for the solutions to legal problems, for the mass of primary sources — cases, statutes and administrative law — is overwhelming and beyond normal assimilation. Since research is initiated frequently through these secondary informational guides, this legal research text has adapted to this development.<sup>82</sup>

The second edition also interspersed descriptive illustrations of resources throughout the text, added a preliminary glossary of terms frequently used in legal research, included a summary section at the end of each chapter, and placed samples of citation form in the text. The third edition<sup>83</sup> made some changes in format and arrangement, but was substantially an updating of the second.<sup>84</sup>

After Pollack's death in 1972, the authorship of *Fundamentals of Legal Research* was taken over by two experienced law librarians, J. Myron Jacobstein<sup>85</sup> and Roy M. Mersky.<sup>86</sup> In Pollack's *Fundamentals of Legal Research*,<sup>87</sup> Jacobstein and Mersky expanded the glossary, placed illustrations in a separate section in each chapter, and created new chapters for federal legislative histories and annotated law reports. The order in which materials were presented was also changed. "As most law students begin the study of law with the reading of court decisions," the editors believed that it was easier for students to begin the study of legal research with case law.<sup>88</sup> Therefore, court reports were presented first, before constitutions and legislation.<sup>89</sup> Secondary sources were placed after discussions of court procedure and administrative practice.

Full responsibility for *Fundamentals of Legal Research* was as-

81. Beginning the study of legal research with "the least authoritative, the least reliable, the most misleading and most overrated of all such materials" was questioned by one reviewer. See Schmid, *supra* note 70, at 162.

82. E. POLLACK, *supra* note 77, at vii.

83. E. POLLACK, *FUNDAMENTALS OF LEGAL RESEARCH* (3d ed. 1967).

84. See Boner, Book Review, 61 *LAW LIB. J.* 54, 54 (1968).

85. Professor of Law and Law Librarian, Stanford University.

86. Director of Research and Professor of Law, University of Texas, Austin.

87. J.M. JACOBSTEIN & R.M. MERSKY, *POLLACK'S FUNDAMENTALS OF LEGAL RESEARCH* (4th ed. 1973).

88. *Id.* at ix.

89. Some legal educators might disagree with this belief that "entering law students need an early introduction to the processes of public law before they become wholly socialized into the prevailing preoccupation with appellate adjudication." H. LINDE, G. BUNN, F. PAFF & W. CHURCH, *LEGISLATIVE AND ADMINISTRATIVE PROCESSES* at xix (2d ed. 1981).

sumed by Jacobstein and Mersky in the 1977 edition.<sup>90</sup> Although much of Pollack remained in text and method, the 1977 edition was a revision, rather than an updating of the book. The authors added chapters on loose-leaf services, Canadian law, and computers and microforms in legal research. Appendices on citation form, selected legal materials, and abbreviations were also included.

### III

Like its predecessors, the newest edition of *Fundamentals of Legal Research* is premised on the belief that instruction in legal research is a crucial component of legal education.<sup>91</sup> That which previous editions of the book have done well, this edition also does well. As one reviewer said of the first edition, "[i]ts great merit lies in its precise, but lucid and easily understandable presentation of material well known to every teacher of legal bibliography, but nevertheless bewildering to the student."<sup>92</sup>

The new edition retains Pollack's pedagogical technique. A subject or resource is introduced and described both bibliographically and functionally (with cross-references to related sections in the text), descriptive illustrations are provided, and sample research problems are presented.<sup>93</sup> Each chapter concludes with a section summarizing the major points. The footnotes supply a multiplicity of references to sources of additional information on subjects discussed in the text.<sup>94</sup>

In scope, arrangement, format, and method, the book is identical to its previous edition. Generally, the text has been updated and further refined,<sup>95</sup> the chapters on Canadian law (ch. 22, pp. 417-39) and computers and microforms in legal research (ch. 23, pp. 440-48) have been rewritten, and a new chapter on federal tax research has been added (ch. 24, pp. 449-503). The new edition has not retained appendices on citation form and selected legal materials, but new

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90. J. JACOBSTEIN & R. MERSKY, *FUNDAMENTALS OF LEGAL RESEARCH* (1977).

91. See J. JACOBSTEIN & R. MERSKY, *INSTRUCTOR'S MANUAL TO ACCOMPANY THE ASSIGNMENTS TO FUNDAMENTALS OF LEGAL RESEARCH ILLUSTRATED* at iii (1980).

92. West, *supra* note 3, at 165.

93. The separate assignment book that is available for use with both *Fundamentals of Legal Research* and *Legal Research Illustrated* "can provide the link between the conceptual framework of legal bibliography and the student's comprehension of its functions." J. JACOBSTEIN & R. MERSKY, *supra* note 91, at iii.

94. While the focus of the book is contemporary, in some cases readers are referred to Pollack's third edition for historical information. See, e.g., pp. 104, 215.

95. Ohio practitioners, however, will mourn the loss of Pollack's famous footnote explaining the unusual Ohio Syllabus Rule. See J. JACOBSTEIN & R. MERSKY, *supra* note 90, at 20 n.6.

appendices include a listing of state guides to legal research (app. B, pp. 594-95) and basic information on legal resources in the United States territories (app. C, pp. 596-604). Among the other features of the book are a selected listing of reporter services by subject (pp. 244-51) and procedural "flow charts" to explain the use of digests (pp. 91-92) and research procedures (p. 507).

From an informational standpoint, *Fundamentals of Legal Research* is complete enough to be used by law students and lawyers as a noncomprehensive guide to the use of legal resources. That discussions are not definitive does not mean they are deficient. A careful reading of the text should enable researchers to locate and use most, but not all, necessary resources. Incomplete indexing, however, does reduce the value of the book as a reference tool. In some cases all references to a subject are not included.<sup>96</sup> Some important resources and subjects are not indexed at all.<sup>97</sup> Because the detailed table of contents does not compensate for this weakness, much of the book's information will be lost to researchers who might not have time to read through an entire chapter on a subject.

For the most part, Jacobstein and Mersky have effectively sacrificed detail for generality. At times, however, they have gone beyond the fine line that can be drawn between the simplified and the simplistic. Their description of "How to Compile a Legislative History" (pp. 167-69), for example, relies far too heavily on the *CIS/Index* and *CIS/Abstracts* volumes as sources of information for post-1970 legislative histories. Readers are led to believe that the *CIS/Index* contains all the information needed to compile a complete legislative history.<sup>98</sup> Without questioning the merit of the CIS publication, for it is an invaluable tool, it is not the definitive source for these compilations.<sup>99</sup> Only a careful reading of the entire chapter reveals that other resources are available. It is puzzling that the description of West's *United States Code Congressional and Administrative News*, another popular source of information and documents, is limited and postponed until the end of the chapter in a discussion of how to obtain access to the documents of a legislative history (p.

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96. For example, the index indicates, p. 613, that the *United States Code Congressional and Administrative News* appears in two places, pp. 138, 227, but it is discussed in at least two other places, pp. 151, 186.

97. There is one entry for the entire subject of federal tax research. P. 609.

98. Curiously, there is no discussion of the relationship of the *CIS/Index* and *CIS/Abstracts* volumes to the CIS microfiche series, although there is an open cross-reference to it in another section of the book. Pp. 514-15.

99. It should be noted, however, that CIS has announced a new legislative history service that will index and reproduce in microfiche and paper the legislative materials for public laws beginning with the 97th Congress.

186). Oversimplification is also evident in the explanation of the methods and problems of using the *Congressional Record* (pp. 165-66, 186).

The chapter on "Federal Tax Research" (ch. 24, pp. 449-503)<sup>100</sup> is more successful. While giving an extensive bibliographic overview of federal tax law, it identifies and discusses the various specialized resources and explains how they compare to those discussed in other chapters. The description is both scholarly and thorough and would be useful supplemental reading for law school classes on taxation, if not for those on legal research. Its value is increased by the fact that none of the other books on legal research have specialized treatments of this complex subject. Editorial refinement, however, would have improved the chapter. The first major section, "Research Technique" (pp. 449-51), is a sample tax-law problem that is confusingly placed at the beginning of the chapter and should logically be moved to the end with another sample problem (pp. 502-03). Similarly, a topic outline is inserted near the end of the chapter (pp. 501-02), but it would be more useful if it were placed near the beginning and expanded to include page references. And, as already noted, poor indexing makes the contents of the chapter difficult to locate.

The treatment of computers in legal research (pp. 440-46) does not meet the standard of excellence in either scope or method displayed in the rest of the volume. The authors note that because both LEXIS and WESTLAW offer extensive training programs, their only purpose is to present simplified explanations of the systems (p. 440). This goal conflicts with the overall objective of the book, which is to provide a text with enough information to enable readers to use legal resources (p. vii).

The previous edition of *Fundamentals of Legal Research* included an organized discussion and sufficient information to enable readers to understand the basic characteristics of automated information retrieval systems.<sup>101</sup> Rather than refining and expanding that discussion, the new section is a complete revision that has been reduced to seven pages (pp. 440-46). The authors have reduced the discussion of "search terms" to what can be said about two sample problems. They have replaced the fifth edition's useful explanations of Boolean logic and Venn diagrams with a picture of a computer terminal (p. 445).

Also significant is the fact that the material on automated legal

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100. Written by Gail Levin Richmond of Nova University.

101. J. JACOBSTEIN & R. MERSKY, *supra* note 90, at 456-76.

research is not adequately integrated into the main text.<sup>102</sup> These systems can add new dimensions to the research process and can serve as locators and citators for cases, statutes, and regulations. By limiting their discussion to seven pages in a separate chapter, Jacobstein and Mersky have treated computer-assisted legal research as a miscellaneous resource<sup>103</sup> and have not accurately reflected research options.

It is understandable that the authors would not want to overemphasize computer-assisted research. The systems are used most effectively when the traditional resources upon which they are based are understood.<sup>104</sup> The systems are expensive and are still not readily available to most researchers. Nevertheless, a growing number of lawyers and law students have access to at least one of the systems, and for those who do, they are important resources.<sup>105</sup> A book like *Fundamentals of Legal Research* can and should be a basic guide to the fundamentals, if not the specifics, of computer-assisted legal research as well as traditional legal research.<sup>106</sup>

Finally, Jacobstein and Mersky have amplified Pollack's general model of legal research in chapter 25, "A General Summary of Research Procedure" (pp. 504-22), and have presented a description of the research process which, at least, presents a coherent set of rules that suggest an organized approach to legal research.<sup>107</sup> In outline form, the model consists of five steps: (1) identifying legally significant facts, (2) framing and arranging legal issues in a logical pattern, (3) identifying relevant sources of the law,<sup>108</sup> (4) "researching" the issues,<sup>109</sup> and (5) communicating the solution to the problem.

While the authors do provide a "first exposure to the mechanics

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102. Exceptions include the new chapters on federal tax research, pp. 449-503, and English legal research, pp. 394-416. Both mention computerized research as options.

103. In fact, a chart on research procedure, pp. 521-22, lists both LEXIS and WESTLAW as "other" resources.

104. See Mills, *Legal Research Instruction in Law Schools, The State of the Art or, Why Law School Graduates Do Not Know How to Find the Law*, 70 LAW LIB. J. 343, 348 (1977).

105. See Ebersole, *The Emergence of Computer Assisted Legal Research as an Established Legal Tool*, in LEGAL AND LEGISLATIVE INFORMATION PROCESSING 129 (B. Eres ed. 1980).

106. It should be noted, in all fairness, that none of the other texts currently available has adequate coverage of the subject. *Effective Legal Research* has a concise chapter on automated research that presents the basic concepts, but the subject is not integrated into the text. M. PRICE, H. BITNER & S. BYSIEWICZ, *supra* note 8, at 459-68. The discussion in *How to Find the Law* is limited and dated. HOW TO FIND THE LAW, *supra* note 6, at 459-64. Rombauer offers an introduction, but defers to other sources. M. ROMBAUER, *supra* note 11, at 221-27.

107. Their basic model first appeared in the previous edition of the book. J. JACOBSTEIN & R. MERSKY, *supra* note 90, at 488-506.

108. Pollack's four general categories (constitutional law, statutory law, case law, and administrative law) are offered. P. 506.

109. Pollack's TARP method, *see* note 77 *supra*, is suggested. P. 505.

of executing a research project from its beginning to its end" (p. 512), they do not, and cannot, claim to cover each of the five aspects of the research process adequately. Accordingly, the following statement should be noted:

The final step of the research process is somewhat outside the scope of this work, being reserved for individualized instruction at the classroom level. Nevertheless, the true test of the capacity to research legal issues is found in the capacity to communicate the results to other persons. [P. 510.]<sup>110</sup>

In actual practice, skills in each of the aspects of the research process are necessary, and the suggestion that some of the most important research skills are beyond the scope of a textbook on the fundamentals of legal research is questionable. But accepting that the capacity to communicate search results is a critical, if not the primary research skill, it is evident that classroom instructors who wish to include legal writing in their courses will have to look beyond the book's brief, three-page description of the nature and purpose of a memorandum of law (pp. 510-12).

*Fundamentals of Legal Research*, in sum, is a textbook for law students on legal bibliography and the use of law books. While these subjects warrant full treatment, the ability to identify and use legal resources does not necessarily produce proficiency in legal research. The confluence of text, problems, and exercises works toward an integration of the facets of the research process, but the book, and the model that it presents, is weak on analysis, legal method,<sup>111</sup> and legal writing.<sup>112</sup> Its strength is that it describes clearly and concisely<sup>113</sup> one aspect of legal research in the context of the others.

### CONCLUSION

No single text could meet the needs of all of the various types of legal research courses taught in American law schools. Surveys reveal that there is little uniformity in how the subject is taught. The backgrounds of instructors vary and courses differ in formality,

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110. Whether communicating a solution is the true test of research ability is open to debate. Some might suggest that abilities in analyzing and analogizing are equally important. See, e.g., H. JONES, J. KERNOCHAN & A. MURPHY, *LEGAL METHOD* 1-2 (1980); W. STASKY & R. WERNET, JR., *CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING* 1-2 (1977).

111. But of the field, only Rombauer's *Legal Problem Solving* is stronger in its description of the entire process.

112. For discussions of legal writing, see *HOW TO FIND THE LAW*, *supra* note 6, at 465-517; M. ROMBAUER, *supra* note 11, at 228-48.

113. Compare the most recent edition of *Effective Legal Research* for greater depth in bibliographic description.

method, length, depth, and content.<sup>114</sup> One commentator has noted:

The striking thing about these programs is how much they are trying to accomplish in a very little bit of time. Not only are they attempting to provide the students with background in legal analysis, research techniques, citation form and the skills of legal writing, but they are also intended to . . . serve as an aide to the law school socialization process.<sup>115</sup>

No course could successfully achieve all of these goals at once.

Clearly, the content, method, and approach of a text on the subject then becomes as important, if not more important, than those for courses that are the objects of greater attention in law schools.<sup>116</sup> Beginning law students cannot realistically be taught all of the mechanics and procedures of legal research, and they do not need to develop the bibliographic skills of law librarians. The proper (and possible) goals of a text on legal research include, first, the teaching of technique and method,<sup>117</sup> and second, the construction of workable models of the research process that will provide an understanding of available resources, their uses, interrelationships, worth, and reliability.<sup>118</sup>

These principles have been reflected in the development throughout this century of textbooks written to describe legal research. Cooley, Hicks, Beardsley, Roalfe, Price, Pollack, and others have joined in a continuing effort to perfect models of the legal research process that will suggest systematic approaches to legal problem solving.

*Fundamentals of Legal Research* has been a respected teaching tool since it appeared in 1956, and perhaps has met its particular goals more effectively than the other books in the field. Jacobstein and Mersky's new edition is the continuation of an important tradition.

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114. See generally Mills, *supra* note 104, at 343-48. Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538 (1973).

115. Mills, *supra* note 104, at 345.

116. Courses on legal research tend to suffer from a lack of prestige and attention. See Panel Discussion, *The Teaching of Legal Writing and Legal Research: Proceedings of the Fifty-Second Annual Meeting of the American Association of Law Libraries*, 52 LAW LIB. J. 350, 358-59 (1959) (remarks of Professor Albert P. Blaustein); Brock, *supra* note 61, at 828.

117. Langdell once stated that "[a]ll a law school can accomplish is to train the student in principles and methods, and teach him how to look up a case." LAW BOOKS AND THEIR USE, *supra* note 40, at ix.

118. See, Nycum, *Legal Research — the Unrecognized Discipline*, in SENSE & SYSTEMS IN AUTOMATED LAW RESEARCH 81, 87 (R. May ed. 1975).