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Rethinking Introductory Statutory Research Instruction

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Rethinking Introductory Statutory Research Instruction

As any first-year law student learns, primary law in the United States is found in constitutions, statutes, cases, and regulations. Of course, as experienced legal professionals know, these sources can be quite complex. The challenge in teaching new law students the structure of the law is to give them a foundation that will prepare them for the complexity involved in uncovering the answers to sophisticated legal questions without overwhelming them.

For many students, up until law school, relying on Google searches was often good enough. In law school, the first lesson should be that “good enough” is *not* good enough when comprehensive, accurate, and up-to-date research is required for competent legal representation. Statutory research requires precision.

First-year law students generally learn statutory research by using state codes, the subject-based compilations that we commonly think of as representing statutory law for a given jurisdiction. The problem with this teaching method is that sometimes a statutory code isn’t the complete statutory law of a jurisdiction. Instead, what we call a code may be just a compilation of statutes that is not the law itself, but instead a helpfully organized research tool. A “code” that is officially the law itself can only be designated such by the legislative body of a state, who must affirmatively vote to adopt it. In contrast, a compilation is just *prima facie* evidence of the law, with the law itself being the Acts or session laws as passed and adopted.

Recently, we have explored how complex publication schemes can complicate understanding a state’s statutory law. (Vendors that publish “official” codes pursuant to contractual agreements and later claim copyright over the product only complicate the problem.) Additionally, free online compilations of statutory sources might be easy to locate but could be less reliable than more official accounts. The versions of state codes offered by Lexis and Westlaw may conflict, moreover, leaving students unsure of which one to use.

The research that we are completing explores how frequently this problem arises, as official statutory publication strategies vary from state to state. While we are exploring the details of this problem in a law-review article, we are also working to translate our scholarly research into practical lessons for William & Mary 1Ls learning how to conduct statutory research for the very first time.

What do all legal researchers need to know about researching state statutes? Here are some themes our research has revealed are critical to teach new law students.

Statutory codes make a useful starting point.

In a world of research where Google-like keyword searching predominates, legal research instructors should teach students the pitfalls of doing keyword searching for statutes, particularly given that legislative language might be unfamiliar. We teach 1Ls to use statutory codes as a starting point for research, in part because the topical structure can make it easier for students to locate relevant provisions. For example, we show them the useful browsing features of an index and table of contents, so they can try finding relevant statutes without resorting to keyword searching in unfamiliar areas of law. We also use annotated statutory codes and compilations as a starting point to teach students to browse nearby and related sections for additional information (such as definitions), help them understand the broader context and structure of the law, and show them a way quickly to find cases that interpret and apply particular sections.

For example, we may start with a code section covering dangerous dogs. We point out that there is a definitions section earlier in the same chapter that tells us a person does not have to own a dog to be considered an “owner” for purposes of that section. We also point out that other sections in the same chapter set out punishments and relevant procedure. We then show that the section contains notes that describe court decisions covering specific situations involving dangerous dogs.

Statutory compilations are different from official statutory law.

Statutory codes should be a starting point rather than an endpoint of legal research. That’s because they

may not actually represent the written law of a particular jurisdiction. Here it becomes useful to remind students of the legislative process—that bills become acts that become session laws. More often than not, “codes” are compilations of the law arranged and approved not by legislators themselves but rather by legislative or executive staff charged with organizing isolated items of enacted text into a coherent document. For a compilation or code to take on legal significance, the legislature itself must take action to adopt it as law. Otherwise, a compilation or code at best can only be *prima facie* evidence of the law and not the law itself. Although generally the language in the compilation will mirror the language in the session law, if there is any distinction between the two, students must know that the act or session law is the official version upon which they can rely.

Determine the official statutory law for your jurisdiction.

New law students are taught the sanctity of the Bluebook for purposes of citation. As legal research instructors, we don’t want to challenge information that students will need to succeed in law school. We should, however, point out that sometimes what the Bluebook tells students might not reflect the actual law.

For example, the last paragraph of the session law that enacted the 1950 Code of Virginia published by Michie (now Lexis) designated that code the “official Code of Virginia.” Rule 12.2.1(a) and Table T1 of the Bluebook also recommend citing the 1950 Code of Virginia when referring to a state statute. But in 2012, the Supreme Court of Virginia declared that the Acts of Assembly (Virginia’s collection of session laws), and not the Code of Virginia, are the “complete and accurate statutory law of the Commonwealth.” *Eberhardt v. Fairfax County Employees’ Retirement System Board of Trustees*, 721 S.E.2d 524 (Va. 2012). Indeed, the Virginia Code Commission, which is charged with arranging the Virginia Code, stresses that its work product is not the official law and that the Acts of Assembly are.

Session laws frequently include critical context.

Even in jurisdictions where legislatures undertake action to make a code official statutory law, a code

might only include provisions that are of (what’s often called) a *general and permanent nature*, such that a student should still use the legislative acts and session laws to find the full legal record in that jurisdiction. Thus, as painful as it might be for a new legal researcher, instructors should still teach students that they need to be well versed in finding all these statutory sources.

At the federal level, the website of the Office of the Law Revision Counsel, the entity responsible for producing the U.S. Code, explains the concept of “positive law” (which *Black’s Law Dictionary* describes as “typically consist[ing] of enacted law—the codes, statutes, and regulations that are applied and enforced in the courts”) in relation to that source. But confusing codification practices that have resulted in some titles of the U.S. Code constituting positive law and some not constituting positive law can confound even the most experienced legal researchers. For example, in their article *The Shadow Code: Statutory Notes in the United States Code*, 112 *Law Library Journal* 213 (2020), Shawn Nevers and Julie Graves Krishnaswami do an outstanding job describing the practice of creating federal statutory notes—which, they explain, are “provisions of law placed after the text of a United States Code section” and which can depend on whether the relevant title is positive law or not—and the problems that practice can cause for researchers.

At the state level, it isn’t always clear how statutory text and notes from legislative acts end up included or excluded in compilations of statutory sources by state legislative revision committees and commissions. Sometimes these choices can change the way a researcher should interpret the law.

For example, in Virginia, the Youngkin administration has relied on Virginia Code § 1-240.1 to support greater recognition of parental rights in education policy. The main text of this section reads, “A parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.” However, the session law that created this Code section, 2013 Act of Assembly Chapter 668, includes another line, which was added to the Code as a statutory note (and which is not included in the online Legislative Information System version of the Code): “That it is the expressed intent of the General Assembly that this

act codify the opinion of the Supreme Court of Virginia in *L.F. v. Breit*, issued on January 10, 2013, as it relates to parental rights.”

L.F. v. Breit, 736 S.E.2d 711 (Va. 2013), involved establishing parental rights for a father who conceived a child through in vitro fertilization and who intended to create a parent-child relationship. Is the omission of this second sentence from Virginia Code § 1-240.1 material? If the legal researcher knows that the official version of the law is the act itself, then the legal researcher can make this determination knowing that the second sentence is also part of the law.

Conclusion

Legal research instructors should teach students not only how to find and read statutory codes but also how the legislative process works, which statutory sources are actual law, and why all this complexity matters. At William & Mary Law School, we aim to give students a better understanding of statutory law’s structure and exemplary research techniques from the start so that they are well positioned to solve complex legal problems in their future careers.



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Education Section leaders seek content that will inform Virginia lawyers, educators, and law students and connect section members across the state:

- Topical articles that you have written
- Articles that you have read and think bear reprinting
- Cases that you would like to discuss
- CLE ideas or programs of interest
- Law School happenings



Direct submissions to the newsletter editor, Leslie Haley, at lhaley@oag.state.va.us

SAVE THE DATE



VSBS 2023 Annual Meeting
June 14 – 17, 2023

Your section leadership is hard at work, preparing for the Virginia State Bar’s 2023 Annual Meeting. For the third consecutive year, the Section on the Education of Lawyers will present a CLE program, this time co-sponsoring with the Young Lawyers Conference to bring you an interactive lesson on negotiation:

Butting Heads: Negotiation Tactics and Ethical Boundaries for Lawyers

[Check back for more information](#) in Spring 2023.