

# Chapter 1

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## INTRODUCTION

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This introductory chapter gives an overview of legal research and provides general descriptions of the sources one should consult. Detailed descriptions of California and federal law may be found in Chapters 5 and 7, respectively. In addition, see Chapter 6 for a bibliography of California legal materials.

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### *Categories of Legal Research Sources*

The goal of most legal research is to identify the answer to one's legal question. *Were my rights violated? How do I probate a will? Can I adopt my stepchild?* Finding the answer or solution requires research into the applicable legal basis or *authority*. In other words, which laws apply to my legal issue?

In order to identify applicable laws, one must first have a basic understanding of the U.S. legal system. In the United States, there is a federal government as well as fifty state

governments. Each of these governments has executive, legislative, and judicial branches, and have the power to promulgate laws. These state and federal governments share authority over some legal matters but have distinct authority over others. Hence, one of the first questions a legal researcher must address is whether state law or federal law applies to a legal problem.

Second, one must distinguish between three different types of sources—primary, secondary, and finding tools (or aids). Primary sources of law are the official pronouncements of the government’s lawmakers: court decisions, statutes, and regulations. They are the legal rules that govern our society. Secondary sources of law describe the law, discuss a legal problem, or set out a model piece of legislation. Secondary sources of law include law review articles, treatises,<sup>1</sup> restatements,<sup>2</sup> hornbooks,<sup>3</sup> and practice manuals. Finding tools facilitate access to primary and secondary sources of law and include indexes, digests,<sup>4</sup> and citators.<sup>5</sup>

Each type of source described above has a distinctive place in the hierarchy of *legal authority*. Authority may be (1) primary or secondary and (2) mandatory or persuasive. Indeed, while courts and other decision makers are often open to guidance from a wide range of sources, only primary authority can be mandatory in application (which means that the court decision, statute, or regulation must be followed). For example, a decision from a state’s highest court is mandatory authority in its jurisdiction and must be followed by the lower state courts. Similarly, a state statute must be followed within the state. However, some primary authority is only persuasive. Persuasive authority is that which the court or other decision maker may consider it but is not obligated to follow. For example, California state courts may find other state court cases persuasive, but are not bound to follow court opinions from any of the other forty-nine states. Moreover,

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<sup>1</sup> Treatises are books written by experts that provide extensive coverage of legal topics. A treatise can be one volume or many volumes.

<sup>2</sup> Restatements of the Law (often referred to as the Restatements) are prepared by the American Law Institute and literally “restate” (or summarize) general case law principles in specific areas of law.

<sup>3</sup> Hornbooks are one-volume books on a legal topic often used by law students.

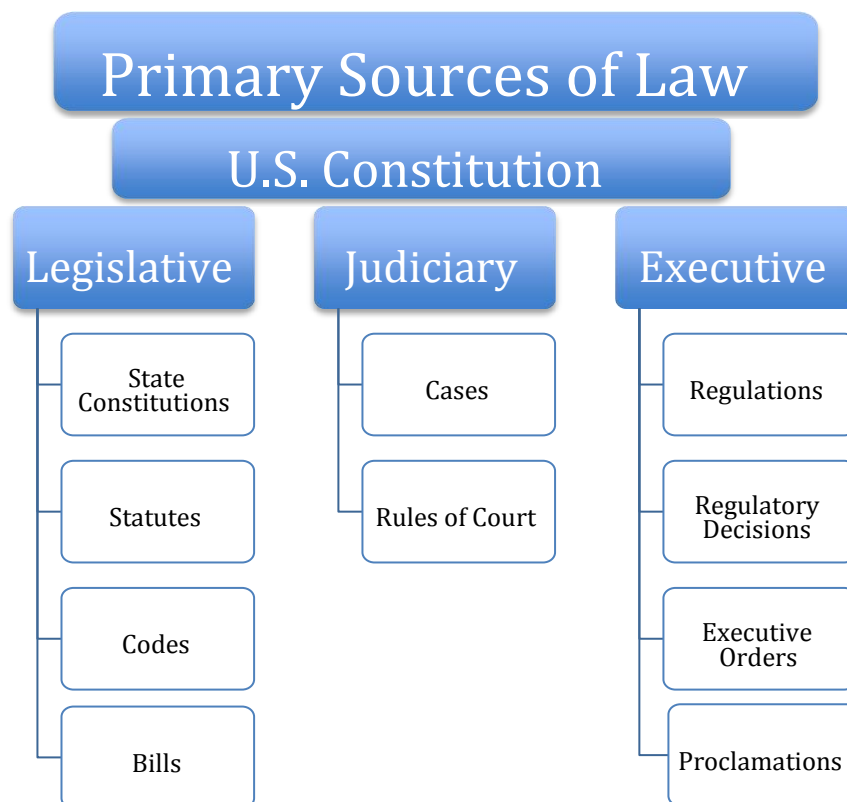
<sup>4</sup> Digests are subject indexes to case law.

<sup>5</sup> Citators are commonly described as tools used to check whether a case, etc. is “still good law.” But citators serve two functions: they update (indicate whether a source of law is still valid) and they lead the researcher to additional sources of law.

there are varying degrees of persuasiveness. A well-respected treatise, albeit a secondary source of law, may have more persuasive force than decisions from courts in other states.<sup>6</sup>

### *Primary Sources of Law*

The primary sources of federal law are the U.S. Constitution, the enactments of the U.S. Congress, the decisions of the U.S. Supreme Court and of the lower federal courts (i.e., Courts of Appeals and District Courts), the regulations and rulings of the federal administrative agencies, and the executive orders and proclamations of the President of the United States. The primary sources of law for each state are the state constitution, the enactments of the state legislature, the decisions of the state courts, the regulations and rulings of the state administrative agencies, and the orders of the states' governors. Within each state, municipalities may have their own charter, ordinances and administrative regulations.



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<sup>6</sup> See Amy E. Sloan, "Types and Weight of Authority," in *Basic Legal Research: Tools and Strategies*, 7th ed. (Wolters Kluwer, 2018) at 4-10; Richard K. Neumann and Kristen Konrad Tiscione, sections 8.3 – 8.8 regarding authority, in *Legal Reasoning and Legal Writing: Structure, Strategy, and Style*, 7th ed. (Aspen Publishers, 2013).

Other sources of primary law include tribal laws passed by Indian sovereign nations and international laws (usually expressed in the form of treaties between two or more nations).

Hence, it is important for researchers to determine at the beginning of their research whether federal or state law is implicated and which type of primary law applies to their legal problem.

### *Secondary Sources*

Law librarians often suggest starting legal research with a secondary source. This advice is especially relevant to those who are new to legal research or new to a specific subject area of legal research. Secondary sources, such as practice guides, legal encyclopedias, and treatises summarize a subject area of law, describing (and providing the citations to) the applicable statutes, court opinions, and regulations. Not only does using secondary sources save the researcher time in identifying the relevant primary law, but it also provides the background information needed to frame intelligent questions, determine the best research paths, and learn the key terms used in the area of law. Moreover, scholarly commentaries (in law reviews or legal treatises) can have persuasive influence on the law-making process by drawing attention to the flaws in current legal doctrine and suggesting alternative methods.

Although many public libraries will not add legal treatises, hornbooks, practice guides, and law reviews to their physical collections, they will likely have legal self-help books,<sup>7</sup> which will provide an excellent starting point for most researchers. It is worth noting that legal secondary sources are generally not available for free on the Internet. In any case, for those unfamiliar with these sources, it is recommended that they use secondary sources in print, in order to take advantages of the indexes, tables, and other finding aids included therein. Secondary source references appear throughout these chapters, with the idea that librarians will be able to locate the best local library to serve the needs of their users.

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<sup>7</sup> See Chapter 9: Assisting the Self-Represented Litigant in California and Chapter 10: Bibliography of California Self-Help Resources.

### *Finding Tools*

The third and final type of legal research material is the finding tool. These research aids should not be cited in a court brief, law review article, or legal memorandum, but are, nonetheless, critical to anyone updating or searching for primary and secondary sources. *West's California Digest* is an example of a finding and indexing tool for California case law. Shepard's citation titles such as *Shepard's United States Citations* or *Shepard's California Citations* are examples of updating tools. The process of updating cases and other legal materials is colloquially called *Shepardizing*, whether or not one is using a *Shepard's* tool. Online updating is widely available in public law libraries— either through LexisNexis, which owns *Shepard's*, or through Thomson Reuters Westlaw (hereinafter Westlaw), which has its own updating service called KeyCite. Chapter 8 covers citators in more detail.

### *Constitutional Law*

The highest law of the land is the U.S. Constitution. As a grant of power to the federal government to rule in the name of the people, the Constitution defines the basic rights of U.S. citizens. It cannot be changed except by amendments proposed by two-thirds of both houses of Congress and ratified by three-fourths of the states, or by a constitutional convention. The U.S. Supreme Court is the final authority on interpreting the U.S. Constitution. No law, whether state or federal, is valid unless made in accordance with the U.S. Constitution and with the interpretations of the U.S. Supreme Court. All state constitutions, state statutes, and county and municipal charters and ordinances are subordinate to the U.S. Constitution.

A state's constitution is analogous to the U.S. Constitution in that it is the supreme law within the boundaries of that state, and all state statutes must be in accordance with it. However, a state constitution is inferior to the U.S. Constitution, as well as to all valid federal statutes.

In California, the state constitution can be amended by the legislature and by the voters. Amendment by voters is accomplished by the initiative and referendum processes. Initiatives and referendum appear on the ballot as propositions. If passed, they are incorporated into the Constitution.

### *Statutory Law*

In basic terms, a statute is an enactment by a legislative body. Statutes are the acts, or laws, written and passed by the United States Congress or by the state legislatures (and signed (or not vetoed) by the chief executive). Bills are proposed statutes which become laws if they proceed successfully through the legislative process.

Statutes are published in chronological order (i.e., in the order in which they are signed into law). To provide a more logical (and accessible) arrangement of these laws, most statutes are collected and systematically arranged, usually by subject, into a separately published set called a *code*. The federal laws are codified into the *United States Code*, which is subdivided into 53 *titles*. Each title covers a certain subject. For example, Title 15 deals with commerce and trade. California's codes are identified by name instead of numbered titles. For example, the laws dealing with taxes are in the Revenue and Taxation Code. In addition to federal and state statutes, there are municipal and county ordinances, which are enactments of bodies such as county boards and city councils.

Statutes and codes are published in both official and unofficial versions. Official versions are published by the government itself or by a commercial publisher under contract with the government while unofficial versions can be offered by several commercial publishers. The text of the law is identical in both official and unofficial publications. The difference is that the official versions are usually not annotated, while unofficial publications generally are annotated. The annotations in the unofficial publications include helpful information such as references to court opinions interpreting the code sections, citations to law review articles and other secondary sources which address the sections, summaries of legislative histories, and a list of related administrative regulations, if there are any. Another difference between official and unofficial versions is that the commercial publisher may be able to publish and update the unofficial version more frequently.

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<i>TYPES</i>	<i>DEFINITION</i>	<i>NOTES</i>
<b>Bill</b>	A proposed law, introduced before the legislature	Current and more recent bills may be viewed on the legislature's official Web site. For older bills, especially those that did not become law, users may need to refer to print or microform sources.
<b>Statute</b>	A bill that is passed by the legislature (and usually signed by the executive). A statute may add, revise, or repeal an existing law.	Numbered chronologically as they are approved by the legislature. Refer to subject indexes and cross-reference tables.
<b>Code</b>	A subject arrangement of statutes	Commercially published codes tend to be updated much more frequently than official publications. In either case, one must always consult the cumulative supplements (pocket parts), which show any changes that have been made to the law since the print volume was published.

### *Case Law*

The United States is a *common law* country. This means that, in addition to statutes passed by legislative bodies, the collected history of cases decided by judges in various courts is also part of our law. The underlying principle of such a system is that similar cases should be treated in a similar way. This principle is referred to as precedent, or, in Latin, *stare decisis*.

The written opinion of a judge or of a panel of judges is also referred to as a case or decision. A case usually includes a brief description of the factual background of the

situation and a short history of the legal procedures that brought the dispute before the present court followed by the court's reasoning in reaching its decision.

Judicial decisions are published, or *reported*, only if they change or clarify a rule of law. Generally, trial level state court decisions are not published. Only some appellate decisions are reported. All cases from the U.S. Supreme Court and from state supreme courts are published.

Like statutory law, judicial law or cases are published in both official and unofficial versions. The difference between the official and unofficial version lies in the publisher and in the editorial enhancements. The text of an opinion is the same in both versions. Editors for the unofficial publishers often add a summary of the case and identify individual points of law discussed in the case with special topic headings and numbers called headnotes. These headings can then be used to find similar cases in the case-finding tools called digests.

<i>COURT</i>	<i>NAME</i>	<i>PUBLISHED?</i>	<i>PRINT PUBLICATION</i>	<i>FREE INTERNET ACCESS?</i>
<i>Supreme Court</i>	U.S. Supreme Court	Yes, all cases are published.	<i>United States Reports</i> <i>Supreme Court Reporter</i> <i>U.S. Supreme Court Reports, Lawyers' Edition</i> <i>U.S. Law Week</i>	Yes, all cases are available from Web sites such as <a href="#">Supreme Court of the United States</a> , <a href="#">Public Library of Law</a> , and <a href="#">Justia</a> .
	California Supreme Court	Yes, all cases are published.	<i>California Reports</i> <i>California Reporter</i> <i>Pacific Reporter</i>	Yes, all cases from 1850 forward are available through the <a href="#">California Courts</a> Web site and <a href="#">SCOCAL</a> .

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<i>Appellate Courts</i>	U.S. Courts of Appeals	Some cases are published.	<i>Federal Reporter Federal Appendix</i>	Yes, published cases generally from 1950 forward are available on <a href="#">Public Library of Law</a> and from the mid-1920s forward on <a href="#">Justia</a> .
	California Courts of Appeal	Some cases are published.	<i>California Reporter Pacific Reporter California Appellate Reports</i>	Yes, all published cases from 1850 forward are available through the <a href="#">California Courts</a> Web site.
<i>Trial Courts</i>	U.S. District Courts	Some cases are published.	<i>Federal Supplement Federal Rules Decisions</i>	Yes, some published cases are available on <a href="#">Justia</a> .
	California Superior Courts	No.	n/a	No, not for free. Some <a href="#">superior courts</a> may allow online access to some court documents such as dockets, but there is usually a charge for other documents.

### *Administrative Law*

#### *Agency Regulations & Decisions*

Administrative law is created when a state or federal agency issues regulations, or when an administrative official decides a dispute in the subject area for which the agency is responsible. Examples of [federal regulatory agencies](#) are the Federal Communications Commission, the Environmental Protection Agency, and the Federal Trade Commission. [California state regulatory bodies](#) include agencies such as the Public Utilities

Commission, the Public Employment Relations Board, and the Department of Fair Employment and Housing.

These agencies are authorized by the federal or state legislative bodies to promulgate rules, or regulations, governing the area of the agencies' special knowledge. Such agencies also have their own procedural rules to follow when settling disputes. They may also have their own administrative law judges, who hear cases and reach decisions involving the interpretation of the agencies' regulations.

Administrative decisions, or cases, are usually published in special loose-leaf services<sup>8</sup> whose coverage is limited to a particular subject, such as antitrust or labor law. Looseleaf publications are generally issued by commercial publishers. Most publishers offer these services as online subscriptions as well. However, many federal and state agencies are now putting their current decisions, procedures, and rules on their Web sites. Federal and California regulations are available on the Internet. See Chapter 6: Bibliography of California Law Resources, or access agencies' Web sites through these lists of [California](#) and [federal agencies](#).

### *Executive Orders & Proclamations*

The major legal documents issued by the President of the United States are executive orders and proclamations, which are described in detail in Chapter 7: Federal Law. California makes available recent [Executive Orders](#) (as well as older executive orders under "Archives") on the [Governor's Web site](#).

### *How It All Fits Together*

There are fifty-one separate legal systems in operation in the United States—the federal system and each of the state systems. In any one instance, federal law alone may apply, state law only may be relevant, or there may be a mixture of state and federal issues. In general, the federal courts are responsible for applying and interpreting federal statutes and the U.S. Constitution, and the state courts for applying and interpreting the state's constitution and state statutes. Bear in mind that there may also be relevant county and

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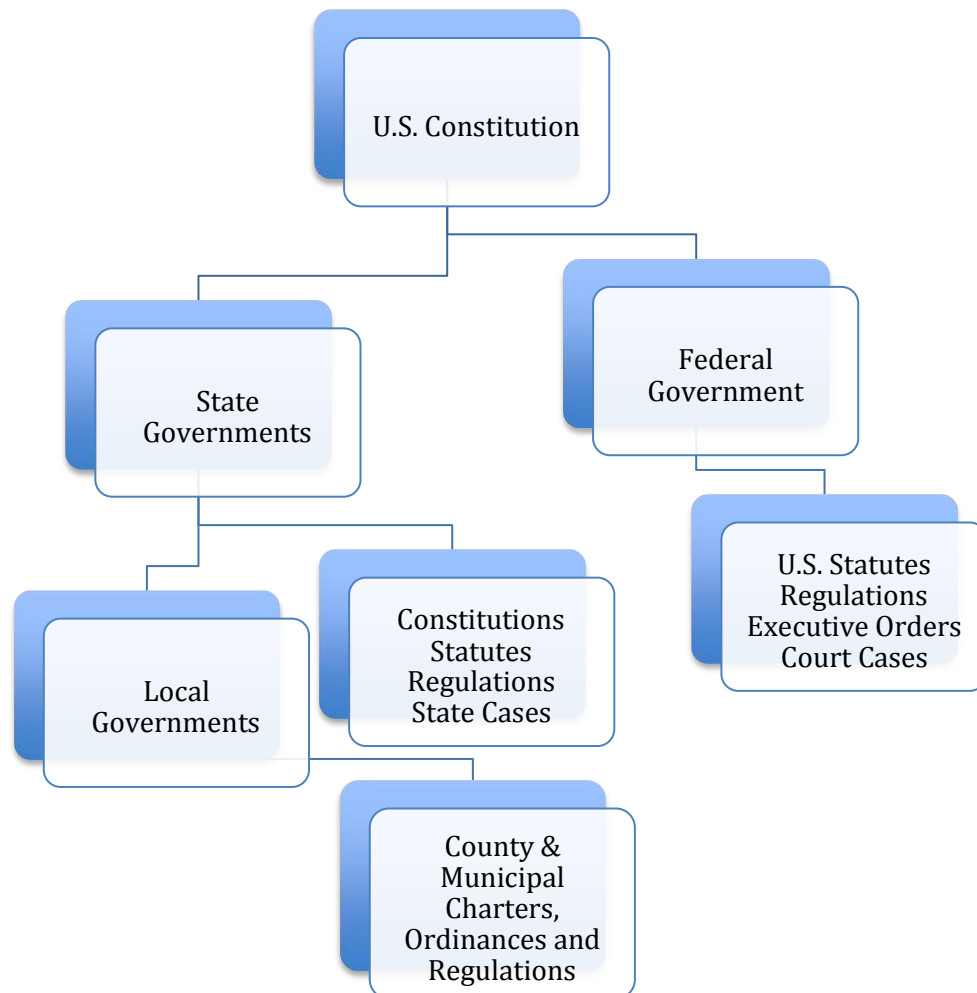
<sup>8</sup> Loose-leaf services are binders where pages with new information are inserted to replace the pages with outdated information. Loose-leaf services are updated at varying intervals, depending on the volatility of the area of law they cover.

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municipal ordinances as well as state and federal administrative regulations and rulings, which may apply to a legal issue.

How do all these different systems fit together? Because a full answer to that question would require far more space than is available here, a brief explanation must suffice. First, the powers of the federal government are defined in the Constitution. Conflicts between state and federal laws are governed by the Supremacy Clause of the Constitution (Article VI, paragraph 2), which establishes the Constitution, federal statutes, and U.S. treaties as “the supreme law of the land.”<sup>9</sup> Thus, federal laws have legal superiority over state constitutions and laws. Second, no laws may contradict any of the Constitution’s principles. Briefly outlined, the hierarchy of our legal system is as follows:



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<sup>9</sup> For full-text (as well as links to annotations) of this Article, see Cornell Law School’s Legal Information Institute, at <http://www.law.cornell.edu/constitution/articlevi>.

### *Basic Tips for Locating the Law*

#### *Tip 1: Use finding aids*

Most legal publications are well organized. Look for indexes, cross-reference tables, tables of cases and other special features.

#### *Tip 2: Parallel citations lead you to the same official text*

Primary sources of law, especially statutory or case law, may be published by more than one publisher. The *text* of the law itself will be the same, no matter which case reporter or which version of the code you decide to use.

#### *Tip 3: Cases can be published and unpublished*

Remember that the vast majority of court cases are *unpublished*, in the sense that they are not available online or printed in case reporters. This is especially true of trial court cases. The patron who wants to read the decision of a highly publicized trial needs to understand that, although the trial may be reported in the news, there is no published *decision*, as such. There may be a brief court order or memoranda in the case file. A trial transcript may or may not be included in the case file. One must contact the court clerk directly to find out whether they provide copying services to the public. Sometimes one is required to contact the court reporter directly for trial court transcripts, which can be costly (depending on the length of the trial).

#### *Tip 4: Update your research*

*The law is constantly changing.* To determine the status of the law, check the currency of the information:

- Is there a pocket part?
- A paperback supplement?
- If loose-leaf, when was the last update filed?
- Is there a Web site available that is reliable, current, and free or low-cost?

***Tip 5: Not all legal Internet sources are created equal***

Using Google can be extremely helpful in finding useful information. However, in legal research, one must be extremely careful in evaluating the results gathered from a general Internet search. To increase the likelihood of finding reliable information when using a search engine, use the Advanced Search option and limit to the domains *.edu*, *.gov*, and *.org*. Another option is to use Internet search engines that refine your results, such as [Cornell Law Library's Wex](#) or [FindLaw's Law Crawler Search](#).

Below you will find a short list of reputable Web sites as well as three legal research guides in print. Note that throughout the sixth edition of *Locating the Law*, you will find numerous links to Internet sources that law librarians use on a daily basis. Print resources are, for the most part, reserved for the bibliographies. Nevertheless, since print sources continue to be used in legal research, selected titles are highlighted in the explanatory chapters as well.



### ***Selected Bibliography***

***Basic Legal Research Guides:***

- In print:
  - *Fundamentals of Legal Research*, 10th ed. Steven M. Barkan, Barbara A. Bintliff, & Mary Whisner. St. Paul, MN: Foundation Press, 2015.
  - *Legal Research: How to Find & Understand the Law*, 17th ed. Stephen Elias. Berkeley, CA: Nolo Press, 2015.
  - *Legal Research in a Nutshell*, 12th ed. Morris L. Cohen & Kent C. Olson. St. Paul, MN: West Academic Publishing, 2016.
- On the Internet:
  - *Public Law Library's Basic Legal Research — A Mini Research Class*:  
<http://www.publiclawlibrary.org/self-help/mini-research-class/>
  - *Law Library of Congress Guide to Law Online*: (federal and state legal research guides)  
<http://www.loc.gov/law/help/guide/federal.php>
- In-person classes and events:
  - LA Law Library:  
<http://www.lalawlibrary.org/index.php/classes-events.html>

*Other Internet Sources:*

- FindLaw's Introduction to the U.S. Legal System: <http://tinyurl.com/ychk924v>
- Cornell Law School's Legal Information Institute (LII): <http://www.law.cornell.edu>
- U.S. Government Publishing Office's govinfo: <https://www.govinfo.gov>
- Judicial Council's California Courts: <http://www.courts.ca.gov/>
- California Legislative Information: <http://leginfo.legislature.ca.gov/>  
(The previous version of the Web site is called Official California Legislative Information and is still accessible at <http://www.leginfo.ca.gov/>. Updates to the prior version ceased as of November 30, 2016, but the older Web site remains online as an archive of information from 1993 - November 2016.)