

SOME MUSINGS ON TEACHING LEGAL RESEARCH

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“Where is the wisdom we have lost in knowledge?
Where is the knowledge we have lost in information?”
T. S. Eliot, *The Rock*

A scan of both the professional literature and recent new stories about legal education would yield a plethora of articles about the ubiquity of technology in legal practice and our students’ need to learn how to use it; the gradual but inexorable demise of law libraries’ print collections due to the blitzkrieg of technology; and the need for more active learning in the classroom. In tandem with the many changes assaulting the legal academy at present, we have witnessed the legal research courses evolve from basic skills classes that used pedagogical methods of lectures and demonstrations to a more nuanced and experiential course or series of courses.

Students need to acquire legal skills to hit the ground running in their jobs and internships. To master the skill of legal research, students need to appreciate that “the law” can be found in many places and on many platforms. Students also need to grasp that not all research services are equally robust or reliable. For example, although many government websites contain a veritable wealth of information, students should understand both the advantages and limitations of these resources. Although “free” to the user, many government websites may not be as quickly updated as some of the more expensive research services that are commercially published.

Although most law professors are experts and know the foundational statutes, regulations, and seminal cases in their areas,

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students are just beginners. We legal educators can forget that fact because our students are intelligent and eager to do well. Legal research is not an intuitive skill. Yes, one has to have intellectual curiosity to begin with; but it is a skill that requires instruction, practice, and more practice to develop confidence and to do it well. Also, like all novices, students need guidance to figure out the puzzle of a new area of law. They need to learn about how to use secondary sources to lead them to relevant primary law such as statutes, case law, regulatory and administrative materials, and court rules. The electronic and print availability of treatises, practice guides, state-level practice materials, and other practice-based legal materials is truly mind-boggling. Additionally, technology has opened docket-level research—court dockets, pending legislation, and administrative agency dockets—to lawyers sitting at their computer screens. Teaching legal research is not just all about locating appropriate authority, mastering legal research methodology, and remembering to verify primary law citations before applying said law to the facts. It is essential to have the big picture of an area and be aware of changes to the law that might affect a client's situation.

What research services will be available to our students in the “real world” once they leave the halls of academia? It depends, of course on the type of practice they enter and the size of the law office in which they will practice. Thus, it is essential that all law students establish an in-depth and hands-on familiarity with the many options and ways of doing legal research while they are in law school. The legal research class should be simulation-based—not the bibliographic “show and tell” of days gone by. Most importantly, no matter what research platform or technology is being used, legal research instruction must emphasize experiential learning. An ideal legal research class should be a full-bodied experience (that is as close to law practice as possible) that emphasizes a hands-on, problem-based curriculum. Merely lecturing or demonstrating a research source in a class is passé, and, like using mythical jurisdictions to teach legal writing, went out with the dinosaur.

We have to ask: does changing the format of a resource change the process of what we do when we research? Although technology is pushing us to rethink and reform how we teach legal research, we are left with an even thornier and bigger issue than pedagogy. Technology has turned John B. West's great in-

novation of a pre-coordinated legal classification system on its head. The research categorization system and the very way we think about various areas of the law changed with the ability to use a post-coordinated index. Technology has changed both our search for authority and what courts will accept as authority. This is a huge change to the rubric under which many practicing lawyers were educated for the law. The way we conceptualized the law has been undone, and students need to be conversant with the law of sources and foreign jurisdictions that were not necessarily considered relevant before they were discoverable via technology.

The plethora of possible resources in the hunt for legal authority is so broad and so entirely byzantine, that it is a gargantuan task to keep abreast of the various innovations and sources. A competent legal research instructor has to master use of the various legal research options, understand the context within which practitioners use the materials, and then, ultimately, figure out the optimal way to encourage students to learn to use the materials themselves. The teacher in a learning-centered legal research classroom should be a lawyer-librarian whose main focus, whose very career, is legal reference and research.

Is teaching legal research impossible if you are not a law librarian? Couldn't it be tied to a legal writing course? Can't someone who is not a trained lawyer-librarian teach legal research methodology? Each law school is unique, and each law school has a distinct mission and caliber of students. The universal advice that I would offer is three fold:

(1) The legal research classroom should be an active one that offers hands-on learning experiences for the students. This is known as the "flipped" classroom. Read more about active, student-centered learning if you have no idea what this means. (2) Legal research should be the course focus. It is imperative that we teach legal research by concentrating on it. That is, we cannot narrowly view the research process as the handmaiden to legal writing. Legal writing is, of course, an essential key to a successful practice; but nascent lawyers need to concentrate on the research process and learn how to research well. Students must move from novice status to mastery as they become conversant with this important practice skill. We are preparing our students to be life-long learners in legal research methodology. With so many choices available to construct a sensible research path, legal

research needs to be a stand-alone course. And last but not least, (3) the class should be simulation-based and use a problem solving approach. That is, students need to contextualize the research process for practice.

The Langdellian model of instruction is dying if not already dead. Law schools are learning centers, not teaching temples. Thus, assigning more active-learning tasks and encouraging critical thinking and continuous lifetime learning are all very important components of course design for fostering a superlative learning environment for legal research. We do not teach students how to do legal research. Rather, as legal research experts, law librarians encourage student learning by mentoring and coaching. The cliché of the sage on the stage has been relegated to the fossil museum along with other tired teaching techniques.

Collaboration among all instructor and mentor groups in the law school to ensure quality, practice-centered learning is the key for our students to be successful twenty-first century practitioners. Alumni, career services professionals, legal writing teachers, law librarians, clinicians, and other law school professors all need to share knowledge, expertise, and intelligence about best practices for the good of our students.