

## A New Twist on an Old Plot: Legal Research Is a Strategy, Not a Format\*

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*Mr. Potter contends that today's law students are so accustomed to using a computer that it is difficult, if not impossible, to teach them legal research by focusing first on print resources. He argues that instructors must design their curriculum in light of this basic fact, offering several suggestions on how to teach research by emphasizing strategy, not format.*

¶1 One of my first-year legal research students said of her first assignment in using a legal encyclopedia: "I can't make this work to complete my assignment; I'm a computer person." While this attitude may be anathema to the legal research instructor of yesterday,<sup>1</sup> it appears to be a common assertion of today's entering law student. Many of us grew up using the *World Book Encyclopedia* in our homes (often due to the diligence of door-to-door encyclopedia salesmen); kids today, however, use an encyclopedia on CD-ROM, or, more recently, on the Internet.<sup>2</sup> Why should we be surprised when our law students wonder why we don't have *AmJur* or *CJS* on a CD-ROM? The *World Book* of my day had black and white pictures and lengthy, detailed articles. Although the articles in electronic encyclopedias may be short and basic, they often include color reproductions that can be changed in size or can even be animated, while additional windows pop up to provide multiple cross-references at the click of a button. In a time when the World Wide Web has come to dominate the speech of elementary school children, along with (insert the current fad of the day here), one gets a sense that books (and board games) are becoming less and less relevant.

¶2 So, you ask, what does this have to do with the teaching of legal research?

¶3 It's time to punt the paradigm! It's time to re-invent the wheel! It's time to think the unthinkable! We need to begin teaching legal research with computer databases first and teach print resources where they are appropriate. I can hear the reaction already: Horrors! Blasphemy!! Sacrilege!!! . . . *Balderdash*.

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1. This essay was partially inspired by Fritz Snyder, *High-Tech Law Students: When to Train Them on CALR*, 8 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 21 (1999).  
2. See Jenny Strasburg, *The Final Chapter: Venerable Encyclopedia Britannica Bets its Future on Online Version*, S.F. EXAMINER, Oct. 20, 1999, at C1.

### Old Assumptions and What's Wrong with Them

¶14 Old Assumption No. 1: *Students need to know how to use print materials to conduct effective research.* We librarians would certainly like to think this is true; after all, we know how to use print materials more effectively than online sources, and not everything is online. One study shows that only about 13 percent of print sources are actually online.<sup>3</sup> Another figure I have heard<sup>4</sup> indicates that first-year students only need about 20 percent of the available materials. You do the math. OK, I'll do the math. If we accept that only about 7 percent of the sources relevant to first years might be unavailable online, we need to rethink our assumption. Just because we librarians may be more comfortable with print sources doesn't mean our students need to learn them first. Mind you, I'm not suggesting that we abandon the teaching of print sources, but rather we should teach them as a part of an overall strategy of efficient and cost-conscious legal research.

¶15 Librarians are only recent converts to the computer as a primary means of operating in this world. Most of our students, on the other hand, have grown up with this technology and are comfortable with the changes and innovations wrought by computers. Searching databases for information is a part of their world. It may be true that students are inefficient at finding information online, but that is true of students using print materials in legal research as well. We teach them the most efficient methods of using *AmJur* or *ALR*, but we still find them to be confused and otherwise inefficient in their use. It's especially frustrating that even into their upper years in law school, students don't know how to use these basic sources. Can we honestly say that teaching students print *Shepard's* is more efficient than using *Shepard's* online or *KeyCite*? It may be a great history lesson, but when was the last time one of your students cared that Frank Shepard used to send libraries little stickers with subsequent case history to be pasted into the reporter volumes? Conducting efficient legal research requires the researcher to assess the nature of the problem and the time and resources available to conduct the research. Legal research is a strategy, not a format.

¶16 Old Assumption No. 2: *First-year students have no context for using computer databases, so it is better to teach them print sources first.* Context is no excuse today. For some materials, it is just as easy and appropriate to teach students to use the computer to find relevant materials as it is to teach them to use print resources, inasmuch as they have no context for legal research, period. When was the last time you taught someone to use the print version of the *Index to Legal Periodicals & Books*? Seems a bit silly when most libraries have *LegalTrac* or *WILP* (*Wilson Index to Legal Periodicals*) available from the online catalog. "Ah,

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3. Penny A. Hazelton, *How Much of Your Print Collection Is Really on Westlaw or Lexis-Nexis?* LEGAL REFERENCE SERVICES Q., 1999 no. 1, at 3.

4. Overheard at the Bricks, Bytes and Continuous Renovation Conference, Washington, D.C., March 2000.

but you lose browsability,” you say. This is true, but I don’t think that matters very much to first-year students. They will keep sifting through retrieved results, clicking on cross-references until they have what they consider to be a relevant sampling. The prospect of having to look through ten books to cover the same period is enough to make them turn away from conducting a periodical literature search at all. Is it any easier for the student to search for concepts in the legal encyclopedia in print than online? They may have to wade through many irrelevant retrievals online, but that is not unusual for Web surfers. Even with the print version, students may be led (or not!) to cross-references before they find the relevant topic, and then they have to read through the sections to find the most relevant ones, not to mention looking at the pocket part for any updates. At least the computer version is always up-to-date.

¶17 Students expect to be able to use their computers from home to conduct research. Why not take advantage of their enthusiasm and willingness to explore early on in their first year, first semester? Give them guidance in search strategy, connectors, natural language advantages and pitfalls, and let them evaluate their results relative to a solid core of expected results provided by the instructor. Once they have some experience with computer-assisted research, introduce the print counterparts, citing advantages and disadvantages. If students are going to use computers as a default form whenever possible anyway, at least we should acknowledge that fact and find ways to make print resources seem like logical and necessary choices in particular contexts.

¶18 Old Assumption No. 3: *First-year students have a hard enough time keeping print resources straight, let alone finding and using relevant online databases.* The students of today grow up trying to figure their way in and out of various levels of sophisticated computer games, all the while keeping track of time, fuel, food, weapons, ammunition, and enemies. They learn how to follow links and trails. We need to change the way we think about how to present materials, especially since the online materials only take the student so far, and then they have to rely on the print resources. We need to present the computer-assisted legal research (CALR) sources in the proper context from the beginning, providing the appropriate measure of training to fit the research situation. If you begin legal research training at the beginning of the first year, use CALR to show them how cases look online and the various places and methods you can use to find them. Students don’t need the print digest to appreciate the organization the Key Number System™ provides researchers, nor do they need the *ALR Index* to find *ALR* annotations. Students initially might not be particularly efficient at using either of these tools, but the assumption that they can’t appreciate the tools without using the print versions first seems like we’re clinging to the glorious past. Let’s use our expertise to teach them to use the online versions efficiently and introduce the print versions later in the term as advanced techniques.

¶9 Old Assumption No. 4: *Not everyone has access to CALR.* This assumption is in transition. As an absolute, it is true, but the gap is narrowing between the large firms and the smallest firms having affordable, appropriate access to Westlaw and LEXIS, and also to other subscription services or transactional databases. In addition, a tremendous amount of primary legal material is available at no charge on the Internet. As our whole economy turns to transactional pricing for services, so too will access to legal information. It is our responsibility to train our students for that future.

¶10 Old Assumption No. 5: *We can't force students to use sources not found online.* It's too late to keep students from using online sources as their primary tools of choice. However, it isn't too late to teach proper research strategy, emphasizing the use of *appropriate* sources, whether online or in print. I submit that the level of research has gone down, not because of CALR, but because we instructors have insisted on teaching print resources, ignoring the fact that students are relying on the computer, whether we like it or not. We need to teach them the most efficient and effective ways of conducting research online and help them learn to use the appropriate sources. We also need to demand a higher level of sophistication in written work. Instructors could assign points based on the level of sophistication the students use in their analysis. For example, the cases and statutes provide enough information to allow for a certain level of analysis, but adding secondary commentary or policy arguments from other sources takes the analysis to another, more sophisticated level. It's up to us to make the students more conscious of the effort we expect in terms of quality of reasoning and analysis. *We do* care that they use print sources, and we need to continue to teach print materials where it is logical and necessary. However, the focus should not be on format, but on good research strategy.

¶11 Old Assumption No. 6: *Students come to the library to study and conduct research.* I'm sorry to say it, but I think the students of today are less and less inclined to use the library for studying, and CALR allows them to be offsite when conducting research. At a recent conference regarding law school buildings,<sup>5</sup> Theodore J. Marchese said that studies completed within the last few years indicate that undergraduate students are less likely to be full-time students (although they carry full-time loads) because their lives have many facets. Being a student is one, but so is the twenty to twenty-five hours of work they do per week, as well as the twenty-two hours of television they watch, and the time they spend on other personal and professional obligations. Our law students are these students. It isn't difficult to see why law students are less interested in coming to the law library when it isn't convenient to fit into this type of schedule. Factor in the low esteem legal research has in relation to other law school courses and you have a pretty

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5. Bricks, Bytes and Continuous Renovation Conference, Washington, D.C., March 2000.

compelling explanation for why students are not interested in spending a great deal of time in the library.<sup>6</sup>

### The Nature of Learning

¶12 One thing that seems to be true about today's law students is that they are not very patient with the learning process. Maybe this goes back to the advent of the photocopy machine. At one time, students had to come to the library to use the materials of research. They had to write notes in longhand to properly attribute the ideas and words they found in the library materials. It seems to me that this behavior caused students to put more thought into synthesis and analysis. When the photocopier arrived, students could make copies of material that was particularly relevant. Eventually, students began to see photocopying as another cost of law school and as a way to bring the library home to a more comfortable, less formal setting. Unfortunately, the copying also became a substitute for substantive analysis—they just looked up and copied all of the cases that seemed even marginally relevant, and then lugged them home. They still brought a measure of research skills to bear on the process and used some judgment in terms of the amount copied, but not as much as when they had to physically write their notes. Most recently, students have had unlimited printing, courtesy of the CALR vendors. Whatever discerning research skills students had before are lost in the world of unlimited printing. Once students have printed all of the documents with the words of their searches in them, the research process stops. The students continue to cull appropriate analysis from the sources they find, but this is limited to what their inexpert search strategy produces and to what they print. Their papers are written with limited sources and not much sophistication. Even with more limited printing these days,<sup>7</sup> the lack of sophistication is not so much a matter of retrieval, but of a failure to search in and use more sophisticated sources, whether online or in print, including, but certainly not limited to, treatises, loose-leaf services, and interdisciplinary resources. What is the answer?

### New Assumptions and How They Might Work

¶13 What is the biggest obstacle to students' learning research strategy? Inexperience with substantive law. They don't have a context for research because

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6. In conversations with other law librarians, some report dwindling numbers of students in their facilities. However, some schools continue to enjoy high volumes of student users due to the location of the school, special perks like private carrels, notebook computers available for check-out while in the library or twenty-four-hour access to study areas, or particularly comfortable study spaces.

7. See Nancy McMurrer, *Butterflies Are Free—But Should CALR Printing Be?* 8 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 89 (2000).

they don't know enough about the law to conduct research. In my view, that's why we must teach strategy, not format.

¶14 Students use computers for much of what they do on a daily basis. Whether to check scores (baseball, basketball, or whatever is currently in season), write a memo, send a message, chat with friends (or strangers!), shop for clothes, or play the latest music, students are using their computers. Why go to the mall or pick up a newspaper when you can get it online? The same is true of research. They are not going to change, but we must. This is not "eat your vegetables because they are good for you" territory. Many print sources are duplicated online, so why bother them about the format? For those sources that aren't duplicated online, such as certain treatises and loose-leaf services, make sure you teach them when and why they are necessary and appropriate. The main thing is to teach them *why* they are conducting the research in the first place and give them the tools to conduct it well.

¶15 Legal research and legal writing instructors need to change the way they teach to incorporate the students' use of the computer. What is the best research strategy? The lawyer's answer is "It depends." However, I think there are some principles that many, if not most, librarians would agree on. If you know nothing about an area of law, it helps to get an overview. Basic secondary sources provide overviews. Some of these tools are in print and some are online. After one has a feel for the area of law, primary sources seem to be the next most relevant sources. Cases and statutes are available from a variety of sources and formats. Once one has read some cases and relevant statutes, scholarly treatment of the area of law seems appropriate. Some of this material is online, but most is not. In teaching legal research sources today, we should teach the materials, not the format. Here are some simple suggestions on how to do that.

¶16 New Assumption No. 1: *General secondary materials should be taught first.*<sup>8</sup> What tools do the students need to discover enough about the substance of the law to put together cogent analyses? The case method of teaching is one way to teach the doctrines of substantive law, but it is like studying the trees to get a picture of the forest. First-year students can benefit from legal encyclopedias and other general works early in the research process for overviews of the forest, and then the trees (cases and statutes and other primary sources) they retrieve will fit into a larger context when it comes time to analyze and reflect. Here's the rub—do we teach through print or online? I suggest we use their computer experience and enthusiasm to show them efficient ways to find relevant materials online,

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8. The debate about the chicken and the egg in teaching legal research continues. For example, a recent column aptly titled "Brutal Choices in Curricular Design" offered a debate on "What Should Be Taught First: Primary Authority or Secondary Authority?" See Penny A. Hazelton, *Why Don't We Teach Secondary Materials First?* 8 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 8 (1999); Donald J. Dunn, *Why We Should Teach Primary Materials First*, 8 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 11 (1999).

whether through LEXIS and Westlaw or the Internet. It may seem more difficult to us because we are more comfortable with the print format, but the students have other concerns and little or no experience with print encyclopedias. We can point out the difficulties, but we can also show them the online help that is available. “But they don’t know what terms to use,” you say. Trial and error works online just as well as it does with print resources. They will quickly pick up the relevant terms with which to refine their searches.

¶17 New Assumption No. 2: *Case finding and statutory materials should be taught online.* Is the format really critical for these materials? We can still teach searching through the Key Number System on Westlaw, Core Terms and Core Concepts (“more like selected text”) on LEXIS-NEXIS, or simple Boolean searching techniques on these systems and in other online environments. In fact, with many classrooms set up for access to computers and projectors, it may be easier to show students what they can expect to see in the online environment, as compared to trying to show digest volumes or use overheads or computer presentations. I’m sure students will be inefficient at first, just as they will be with the print sources. We can use more and more sophisticated search techniques as the term progresses, and we can introduce print sources along the way. We will be meeting today’s student where he or she is most comfortable, and yet we will be teaching the same material we’ve always taught. Once again, strategy is the key, not the format.

¶18 New Assumption No. 3: *Use a blend of print and online sources to teach more sophisticated secondary sources.* As the term progresses, fewer of the more sophisticated analytical tools are available online. At this point, we have a wonderful opportunity to teach the use of multivolume treatises, comprehensive loose-leaf services, and scholarly monographs. We can then weave in the use of law reviews and the available treatises and other resources available online to show that the most important thing in legal research is the strategy.

¶19 New Assumption No. 4: *Set a high standard for student work products.* Students want to meet instructors’ standards. Set high standards from the beginning and keep them there throughout the term. Use the power of grading to change behaviors. Law students are so driven by grades that they will make every effort to improve. Let’s create assignments that require students to use more sophisticated research strategies and invite them to ponder the results retrieved. Most legal research exercises ask the students to find an answer, rather than asking them to apply what they have found. Legal research is not the end of a process, but rather it is the beginning. We need to make our exercises reflect the purpose of research. The best way to do this is to integrate the legal research process more fully with the legal writing course. Creating exercises that feed into subsequent written assignments would provide the incentive for the students to use their research strategy and results in a meaningful way. The focus should be on what is included in the answers, not how the results were obtained; to focus on strategy and not on format.

¶120 New Assumption No. 5: *Advanced legal research courses are necessary.* Advanced legal research courses are a critical element in the teaching of research strategy. The basic course in legal research seems to most students to be a rite of passage rather than a useful skills course. First, we need to make the basic course more relevant. Second, a follow-up course in advanced legal research provides an opportunity to reinforce principles of research strategy by more fully discussing the most sophisticated sources and critically examining the issue surrounding print versus electronic legal resources. Students may still use the computer more often, but with 80 percent of legal research sources available only in print, it is more difficult for the student to justify ignoring the print sources. The advanced course is also closer to the “time of need” for upper division law students, as they near clerkships in the summer or take positions as attorneys. Even if such courses are not required, they are important for providing much needed skills in research strategy.<sup>9</sup>

### Conclusion

¶121 Have patience. Teachers of legal research need to take time to see what works and what doesn't work in teaching online sources first. The biggest frustration I see coming is that the students' level of sophistication in the research process and in the writing process will not be optimal. (It isn't now, so what are we worried about?) We need to change our teaching methods to reflect their use of computers, while the students must also learn to use the best materials, regardless of the format. Most students are trying to fit all of the work of law school into their busy schedules. Where is the time for reflection? How do we motivate our students to use sources other than the most accessible? How do we convince them that working in groups, in the law library, is a singularly important part of the law school process? These questions play a critical part in our attempts to make legal research strategy relevant.

¶122 The die is cast—the computer is here to stay. Deal with it! As a librarian, I am concerned about the effect that digitizing legal materials will have on our organizations. At the same time, researchers will always need those who can help them with information retrieval. The student consumers have made the transition to computers—so should we. Technology is moving fast. We need to keep up. Let's teach legal research in keeping with our times. Legal research is a strategy, not a format.

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9. At Marquette University, upper-level law students are required to take an advanced legal research course. These courses are typically one credit, seven weeks (at the beginning or the end of the semester), have a subject focus (such as Wisconsin law, criminal law, intellectual property, health law, or sports law), and are taught by Marquette librarians, local law firm librarians, and by other adjunct professors. For more information about Marquette's approach to teaching advanced legal research, see Peter C. Schank, *Mandatory Advanced Legal Research: A Viable Program for Law Schools*, 92 L. LIBR. J. 295, 2000 L. LIBR. J. 26.