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# Resurrecting (and Modernizing) the Research Treasure Hunt

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## Resurrecting (and Modernizing) the Research Treasure Hunt\*

Nancy Vettorello\*\*

*This article identifies the weaknesses in the research skills of new attorneys, traces the debates over how to teach research and the recommended solutions, and proposes a return—with modern modifications—to the largely abandoned research treasure hunt.*

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### Introduction

¶1 First-year associates will spend forty-five percent of their time on legal research; second- and third-year associates will spend thirty percent.<sup>1</sup> And unfortunately, employers find their associates' research skills lacking.<sup>2</sup> This is not a new

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\* © Nancy Vettorello, 2017. Thanks first and most importantly to my research assistant, Andrew (AJ) Dixon, J.D. 2014, who inspired the treasure hunt, infused it with humor, and did most of the hard work of creating the interesting and fun problems. Thank you, too, to Charles (CJ) Ramsey, J.D. 2015, who took up the mantle in the second year and continued the hunt with fresh ideas of his own. Thank you also to Howard Bromberg, University of Michigan Legal Practice Professor, for his valuable input and suggestions.

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1. Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 LAW LIBR. J. 297, 301, 2009 LAW LIBR. J. 17, ¶ 9.

2. Patrick Meyer, 2012 Law Firm Legal Research Requirements for New Attorneys (Sept. 26, 2011), <http://ssrn.com/abstract=1953437>.

complaint. Employers have been complaining for more than a hundred years that recent law graduates cannot research well.<sup>3</sup>

¶2 None of this is lost on those who teach legal research, who have long debated the best way to do so. Techniques for teaching research have changed over time, and methods once thought appropriate were sometimes later disfavored. Changes were driven both by pedagogy and by the ever-changing interface of legal research.

¶3 This article explores the types of research skills employers see lacking today; traces the debate over teaching methodology for research instruction and reviews modern proposals; and suggests that those who teach legal research reconsider one of the methods that has been disfavored—the research treasure hunt. Incorporating the treasure hunt as a small part of the curriculum achieves several goals. It exposes students to a greater number of research resources, gives them more opportunity to research, allows students small victories, allows them to customize their experiences, and marries well with the skills and expectations of the millennial law student. It also reflects the type of quick-turnaround research projects that students are asked to do in their summer employment.

### What Type of Research Skills Do Students and Novice Attorneys Lack?

¶4 Legal research involves several different skills. Attorneys must know where to look, they must know how to judge the quality of the resources used,<sup>4</sup> they must be able to utilize resources efficiently, and they must be able to plan and execute a research plan that integrates analysis along the way. Despite the fact that most law students believe themselves to be good researchers,<sup>5</sup> novice attorneys are criticized in all four areas, and that criticism is long-standing.<sup>6</sup>

¶5 First, employers are frustrated that students are not exposed to, or taught to master, a variety of research resources. Knowing how to research case law and statutes is not enough. Employers expect new attorneys to also be competent in researching administrative codes and legislative histories.<sup>7</sup> New attorneys' inability to research federal regulations, the *Federal Register*, and legislative histories was lamented back in the 1990s<sup>8</sup> and continues today,<sup>9</sup> and the ability to perform

3. Paul Douglas Callister, *Beyond Training: Law Librarianship's Quest for the Pedagogy of Legal Research Education*, 95 LAW LIBR. J. 7, 9–11, 2003 LAW LIBR. J. 1, ¶¶ 6–7 (detailing criticism of new attorneys' research skills dating back to 1902).

4. See, e.g., Yasmin Sokkar Harker, "Information Is Cheap, but Meaning Is Expensive": Building Analytical Skill into Legal Research Instruction, 105 LAW LIBR. J. 79, 85, 2013 LAW LIBR. J. 4, ¶ 19 (noting that attorneys need to be able to "assess the credibility and reliability of information in order to use it wisely and ethically"); Sheila F. Miller, Using an Alumni Survey to Assess Whether Skills Teaching Aligns with Alumni Practice (Mar. 19, 2013), <http://ssrn.com/abstract=2235856> (advocating that students be taught the responsible use of Google and Wikipedia).

5. Michelle M. Wu & Leslie A. Lee, *An Empirical Study on the Research and Critical Evaluation Skills of Law Students*, 31 LEGAL REFERENCE SERVS. Q. 205, 220 (2012).

6. Callister, *supra* note 3, at 9–11, ¶¶ 6–7.

7. Meyer, *supra* note 2, at 3.

8. See Donald J. Dunn, *Why Legal Research Skills Declined, or When Two Rights Make a Wrong*, 85 LAW LIBR. J. 49, 58 (1993).

9. See ALL-SIS TASK FORCE ON IDENTIFYING SKILLS AND KNOWLEDGE FOR LEGAL PRACTICE, A STUDY OF ATTORNEYS' LEGAL RESEARCH PRACTICES AND OPINIONS OF NEW ASSOCIATES' RESEARCH SKILLS 83–85 (June 2013), <http://www.aallnet.org/sections/all/storage/committees/practicetf/final-report-07102013.pdf> [<https://perma.cc/M82E-LDTL>] [hereinafter ALL-SIS REPORT] (noting that nearly

administrative law research is even more pressing with the growth of federal regulation.<sup>10</sup> Indeed, a number of law schools have created required legislation and regulation classes as part of the first-year curriculum.<sup>11</sup> “Legal methods” classes, responsible for the instruction of analysis, writing and research, have responded accordingly and have increasingly included administrative research in their courses.<sup>12</sup>

¶6 Despite the focus on litigation in many first-year courses, students may also not know how to find various litigation documents, including pleadings, motions, briefs, schedules, and other information available in court dockets; jury instructions; and jury awards and settlements.<sup>13</sup>

¶7 Research skills related to transactional work are also deficient,<sup>14</sup> despite the fact that such skills are valuable for the many students who will practice transactional law, not litigation, evidenced in part by the sharp increase in clinics devoted to transactional law.<sup>15</sup> And with increased globalization, law schools are exposing students to international and foreign law, some in the first-year curriculum, and research skills should complement this exposure.<sup>16</sup>

¶8 Finally, the noticeable increase in courts’ willingness to cite to nonlegal materials means that students need to be familiar with how to research such materials.<sup>17</sup> These include, as examples, news articles and academic journals from other

thirty percent of those who work with new law graduates believe that the graduates do not research administrative regulations effectively, forty-four percent believe that the graduates do not research administrative decisions effectively, and nearly fifty percent believe that the graduates do not perform legislative histories effectively).

10. Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173, 174 (2010).

11. James J. Brudney, *Legislation and Regulation in the Core Curriculum: A Virtue or a Necessity?*, 65 J. LEGAL EDUC. 3, 4 (2015) (noting that at least twenty-seven law schools require a legislation or combined legislation/regulation course in the first year).

12. For example, in 2014, sixty-four percent of the 178 schools surveyed responded that they taught administrative law research. ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INSTRUCTORS, REPORT OF THE ANNUAL LEGAL WRITING SURVEY 2014, at 12 (2014), <https://staging-mp6ykpkm7cbbg.us.platform.sh/sites/default/files/2014SurveyReportFinal.pdf> [<https://perma.cc/Q2KY-G3HQ>]. Just seven years earlier, only forty-nine percent of the 181 law schools surveyed responded the same. ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INSTRUCTORS, 2007 SURVEY RESULTS 10 (2007), <https://staging-mp6ykpkm7cbbg.us.platform.sh/sites/default/files/surveyresults2007.pdf> [<https://perma.cc/A76C-8465>].

13. ALL-SIS REPORT, *supra* note 9, at 92; *see also* Shawn G. Nevers, *Legal Research: Litigation Practice Materials*, STUDENT LAW, Sept. 2012, at 15, 15–16.

14. Meyer, *supra* note 2, at 2; Preston M. Torbert, *Contract Drafting: A Socratic Manifesto*, 14 SCRIBES J. LEGAL WRITING 93, 95 (2011–2012); *see also* Shawn Nevers, *Transactional Legal Research*, BEFORE THE BAR (Feb. 1, 2013), <http://abaforlawstudents.com/2013/02/01/transactional-law-research/> (noting that “[l]egal research courses have been just as guilty as the general law school curriculum of favoring litigation”).

15. Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J.L. & POL’Y 85, 92–96 (2013).

16. Valentine, *supra* note 10, at 174; Paula A. Franzese, *Law Teaching for the Conceptual Age*, 44 SETON HALL L. REV. 967, 970 n.15 (2014) (noting that in 2009, Harvard announced that it would include more exposure to international law in its first-year curriculum). Franzese also suggests that “with enhanced employment opportunities abroad and the increasingly international implications even of domestic legal practice, we add value to our students’ educational experience by preparing them for transnational work.” *Id.* at 973–74.

17. Ellie Margolis, *Surfin’ Safari—Why Competent Lawyers Should Research on the Web*, 10 YALE J.L. & TECH. 82, 115 & n.196 (2007).

disciplines.<sup>18</sup> Employers report that recent law graduates are deficient in finding nonlegal information such as statistics and economic data.<sup>19</sup>

¶9 Second, in addition to finding the correct resources to use, novice attorneys must be able to judge the validity of their sources, a skill that some employers and many in academia believe is lacking.<sup>20</sup> “Avoiding ‘information obesity’ in a world saturated with data may be one of the greatest challenges facing lawyers today.”<sup>21</sup> Employers want their attorneys to be more discerning about the provenance of the data they use and to strive for the best answer, not just an adequate one.<sup>22</sup>

¶10 Third, employers complain that novice attorneys do not conduct cost-effective research,<sup>23</sup> with one survey suggesting that partners may write off up to one-half of the research costs of newer attorneys.<sup>24</sup> Relatedly, novice attorneys are expected to make judicious use of secondary materials, but fail to do so.<sup>25</sup>

¶11 Lastly, employers lament the inability of novice attorneys to create a research plan and to understand how legal resources are organized. For example, new attorneys lack the ability to work with legal concepts, relying instead on key words,<sup>26</sup> and do not use Boolean searches or citators effectively.<sup>27</sup> Also, in one poll, law firm librarians observed that more than eighty percent of summer associates did not know how to “attack” a legal research problem.<sup>28</sup> Attorneys who work with recent law graduates were more generous, although still almost twenty percent believe that recent law school graduates could not develop an effective research plan.<sup>29</sup>

### The Ever-Evolving Debate on How to Teach Legal Research

¶12 Just as criticism of legal research skills has been long-standing, so too has the debate over how to best teach legal research. Legal methods classes began in

18. *Id.* at 115.

19. ALL-SIS REPORT, *supra* note 9, at 94 (finding that more than forty percent of those who work with new graduates think that the graduates cannot effectively find economic data and statistics).

20. Ian Gallacher, *Who Are These Guys? The Results of a Survey Studying the Information Literacy of Incoming Law Students*, 44 CAL. W. L. REV. 151 (2007); Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 120 (2012); Gene Koo, *New Skills, New Learning: Legal Education and the Promise of Technology* 6 (Berkman Ctr. for Internet & Soc’y, Harv. Law Sch., Research Pub. No. 2007-4, 2007), <http://ssrn.com/abstract=976646>; AALL *Law Student Research Competencies and Information Literacy Principles*, AALL (June 2012), <http://www.aallnet.org/Archived/Leadership-Governance/policies/PublicPolicies/policy-lawstu.html> [<https://perma.cc/7V74-KQRU>] (noting that law students need to be able to evaluate the credibility of the sources they use).

21. Koo, *supra* note 20, at 3.

22. *Id.* at 6.

23. ALL-SIS REPORT, *supra* note 9, at 88; Carolyn R. Young & Barbara A. Blanco, *What Students Don’t Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 CLINICAL L. REV. 105, 122 (2007).

24. Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM. & RHETORIC: JAWLD 153, 159–60 (2011).

25. ALL-SIS REPORT, *supra* note 9, at 78; Meyer, *supra* note 2, at 2.

26. Sokkar Harker, *supra* note 4, at 86, ¶ 21.

27. Young & Blanco, *supra* note 23, at 117.

28. Joan S. Howland & Nancy J. Lewis, *Effectiveness of Law School Legal Research Training Programs*, 40 J. LEGAL EDUC. 381, 383 (1990).

29. ALL-SIS REPORT, *supra* note 9, at 77.

earnest in the 1950s, with intermittent flurries of review and criticisms of the programs starting as early as the 1970s.<sup>30</sup>

¶13 Some of the early criticisms of research instruction suggested that the relative unimportance placed on the class by both law school administration and students—as evidenced by the few credits earned by the course, the pass/fail nature of most of the courses, and the low status of those teaching the course—was at least in part to blame for students' poor research skills.<sup>31</sup> Distressingly, that worry remains nearly thirty years later.<sup>32</sup> Others suggested that the myriad different skills that were required to be taught in so few credit hours in part explained students' poor research skills.<sup>33</sup> Again, the concern that there is limited room for research instruction and practice amid the ever-expanding curriculum remains today.<sup>34</sup> Some commentators, believing the bar itself was responsible because it discounted the importance of research skills, suggested adding research-related questions to the bar examination.<sup>35</sup> Model programs experimented with who taught the class, whether the class was offered over one or two terms or over a more intensive period, whether research instruction should stand alone or be combined with instruction in analysis, and whether tests or oral examinations should be administered to test student retention of research skills.<sup>36</sup>

¶14 The focus of the debate changed over the years as those who taught legal instruction began to focus more on teaching methodology itself and less on considerations of staffing and the type of class in which research instruction was offered.<sup>37</sup> This is likely due to the fact that programs became more uniform, and hiring full-time professors to teach legal methods classes also became more popular.<sup>38</sup>

30. Robin K. 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 LIBR. J. 343, 344 (1977).

31. Thomas A. Woxland, *Why Can't Johnny Research? or It All Started with Christopher Columbus Langdell*, 81 LAW LIBR. J. 451, 454–55 (1989) (noting that research skills are left to “atrophy” after the first-year curriculum).

32. See, e.g., Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 160, 167–70 (noting that while research skills are purported to be highly valued, reformers still view them as mechanical and continue to ignore them in reform suggestions); Timothy W. Floyd et al., *Beyond Chalk and Talk: The Law School Classroom of the Future*, 38 OHIO N.U. L. REV. 257 (2011) (suggesting that we rethink the traditional classroom by incorporating more skills activities into doctrinal courses, but not listing research as a skill to be added to such courses).

33. Dunn, *supra* note 8, at 52 (suggesting that the increased focus on writing has worsened research skills); Mills, *supra* note 30, at 345, 346.

34. Fines, *supra* note 32, at 183–84.

35. I. Trotter Hardy, *Why Legal Research Training Is So Bad: A Response to Howland and Lewis*, 41 J. LEGAL EDUC. 221, 224–25 (1991). This proposal has been renewed more recently. See Steven M. Barkan, *Should Legal Research Be Included on the Bar Exam? An Exploration of the Question*, 99 LAW LIBR. J. 403, 412, 2007 LAW LIBR. J. 23, ¶¶ 33–34.

36. Joyce Manna Janto & Lucinda D. Harrison-Cox, *Teaching Legal Research: Past and Present*, 84 LAW LIBR. J. 281, 284–89 (1992) (providing an excellent summary of the criticisms and model programs of the 1970s).

37. This is not to say that such discussions are not ongoing. In fact, ¶¶ 23–25 of this article include some proposals that question when research should be taught and by whom.

38. Susan P. Liemer & Jan M. Levine, *Legal Research and Writing: What Schools Are Doing, and Who Is Doing the Teaching (Three Years Later)*, 9 SCRIBES J. LEGAL WRITING 113, 121 (2003–2004) (describing the trend toward hiring full-time professionals to teach legal writing).



¶15 What follows is a highlight and summary of some of the debates and proposals that have been offered over the years. Those who teach legal research continue to consider new options for teaching as they adjust to the changing resources available to their students, but no one method of teaching research has been universally acknowledged as the best.

### The Original Debate: Bibliographic vs. Process-Based Research

¶16 The first major debate in teaching methodology began with the debate between bibliographic instruction and a more process-based approach to legal research. Bibliographic research, also called research treasure hunts,<sup>39</sup> focuses on individual research resources. Students are taught what a resource is and how to use it. They are then tasked with using that resource, typically in a small, discrete research task that involves limited analysis and no written component. For example, a professor might explain the purpose, function, and organization of *American Jurisprudence* and then have students complete a worksheet to show that they understood the lecture and perhaps solve a mini-research question by using the resource. In process-based research, by contrast, students' research is focused on solving a larger problem. Students are required to research and use various legal sources to solve the problem, and the solution is written as a formal analysis, typically a legal memorandum.<sup>40</sup>

¶17 Bibliographic instruction was roundly criticized in an article by Christopher and Jill Wren in 1988, who suggested that the more context-oriented approach provided by process-based research was superior.<sup>41</sup> The Wrens suggested that bibliographic instruction was artificial and failed to provide the necessary instruction in research as a larger process.<sup>42</sup> Helene Shapo and Christina Kunz continued the criticism in 1996, although their criticism included an additional component—not only should the bibliographic research no longer be the primary method of teaching legal research, but instruction in legal research should not be taught as a stand-alone topic.<sup>43</sup> These views were validated by the important and influential American Bar Association McCrate Report, which specifically suggested that research training include more process-based training.<sup>44</sup>

¶18 In my own experience, I abandoned the research treasure-hunt-type problems years ago because I saw several weaknesses in the method. First, because the research tasks were unattached to analysis and a larger assignment—such as a

39. Helene S. Shapo & Christina Kunz, *Teaching Research as Part of an Integrated LR&W Course*, 4 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 78, 79 (1996) (referring “unaffectionately” to the short research exercises conducted by students being taught by the bibliographic method as “treasure hunts”).

40. *Id.*

41. Christopher G. Wren & Jill Robinson Wren, *The Teaching of Legal Research*, 80 LAW LIBR. J. 7, 41 (1988).

42. *Id.* at 32.

43. Shapo & Kunz, *supra* note 39, at 78. In fact, this might be the earliest debate in how to teach research—the debate between doing so as a stand-alone class, almost always taught by librarians, or incorporated into a legal research and writing class, typically not taught by librarians. *Id.*

44. AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 160–63 (1992).

memorandum, a brief, or an oral report—they were perceived as busy work, and I suspected that my students forgot how to use the research tool the minute the mini-research project was done. Second, because the students had used the resource in isolation, they failed to see how it would fit into a larger research project. They did not necessarily know when in the research process to use the resource and how the resource could lead to other resources. Even if this information was provided, it is probable that it was not retained because the students did not need to put that information to immediate use.<sup>45</sup> My criticisms correlate to those of Judith Rosenbaum, who rejected the idea of testing students on individual resources because, among other reasons, the exams could not capture the “trial-and-error aspects of research” and did not reference the “decision points” necessary in real research.<sup>46</sup> As a result, the process-based research approach became popular at many law schools, and bibliographic instruction less so.<sup>47</sup>

### The Recent Debate: How to Incorporate Computer-Aided Legal Research—Should Process Still Be the Focus?

¶19 The bibliographic vs. process-based instruction debate became “largely overshadowed” by more pressing concerns—how best to incorporate computer-aided legal research (CALR) into the curriculum and whether to continue to teach students how to use print-based research resources.<sup>48</sup> This debate recognizes the ever-changing world of legal research.

¶20 For example, one commentator advocates abandoning the old method of teaching print-based resources first and then introducing CALR; she instead encourages professors to introduce the two resources at the same time to better emphasize which is more efficient for the task at hand.<sup>49</sup> Another commentator advocates teaching online legal research first and then showing students how and when to take advantage of traditional print-based legal resources.<sup>50</sup>

¶21 A third option is more radical—abandon instruction in print-based sources altogether.<sup>51</sup> Here, the theory is that research instruction should not be driven by instruction in research process, but instead by the goal of information literacy,

45. Shapo & Kunz, *supra* note 39, at 80 (suggesting that student “retention of legal research information and methodology is better . . . because . . . they are learning these research skills in the context of writing skills and assignments”).

46. Judith Rosenbaum, *Why I Don't Give a Research Exam*, 11 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 1, 5 (2002).

47. I am not suggesting that bibliographic research instruction has been abandoned altogether, but I believe that it has been largely replaced as the *primary* focus of research training. See Michael J. Lynch, *An Impossible Task but Everybody Has to Do It—Teaching Legal Research in Law Schools*, 89 LAW LIBR. J. 415, 432 (1997); Margolis & Murray, *supra* note 20, at 123.

48. Callister, *supra* note 3, at 20–22, ¶¶ 31–33.

49. Carrie W. Teitcher, *Rebooting the Approach to Teaching Research: Embracing the Computer Age*, 99 LAW LIBR. J. 555, 564, 2007 LAW LIBR. J. 32, ¶ 22; see also Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 202 (2006) (agreeing that students should be taught print-based and CALR research simultaneously since students of the “Google Generation” will too readily reject print-based research taught in isolation).

50. Thomas Keefe, *Teaching Legal Research from the Inside Out*, 97 LAW LIBR. J. 117, 119, 2005 LAW LIBR. J. 6, ¶ 9.

51. Margolis & Murray, *supra* note 20, at 119–20.



which incorporates research process as just one of five steps necessary to become information literate.<sup>52</sup> Accordingly, students would be taught five skills: (1) the ability to recognize the nature and extent of information necessary; (2) the ability to access that information efficiently; (3) the ability to evaluate the sources used critically; (4) the ability to use the information to solve the problem at hand; and (5) the ability to use the information ethically and legally.<sup>53</sup> In this paradigm, professors would not provide information about particular resources or how to start or go about the research, but would instead present a brief problem and see what the students find.<sup>54</sup> At that point, the discussion would turn to an evaluation of the different sources used by the students and a review of their research techniques.<sup>55</sup>

¶22 The emphasis on helping students make sense of the myriad choices before them is common to the suggestion that professors focus on analytical skill and “meta-cognition” when teaching legal research.<sup>56</sup> Instead of simply teaching students where to find legal information and how to conduct basic legal research, professors should focus on helping students “make sense of the information” they have found and choose the right information from so many choices available.<sup>57</sup>

### Curriculum-Based Solutions

¶23 Solutions to the dilemma of how best to teach research expand beyond suggestions about improving the first-year legal methods class.

¶24 For example, several recent suggestions involve moving research out of a single class and instead integrating research opportunities and instruction across the curriculum.<sup>58</sup> Another suggestion is to provide research help when the students are working on real cases, and thus to embed librarians within law school clinics to provide students with one-on-one research guidance as the students face the more complex legal research that the real world presents.<sup>59</sup>

¶25 A third approach is to take research instruction largely out of the 1L curriculum, where the process of teaching legal research is being taught to the “wrong people,” that is, to students who lack the background necessary to integrate the lessons.<sup>60</sup>

### The Modern Research Treasure Hunt

¶26 While many of the above solutions for the 1L legal methods course and beyond are sound, and I have integrated several of them into my course, they all

52. *Id.* at 120.

53. *Id.* at 127–28.

54. *Id.* at 154–55.

55. *Id.* at 155.

56. Sokkar Harker, *supra* note 4, at 92–93, ¶ 45.

57. *Id.* at 92, ¶ 42.

58. Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue Beyond the First Year*, 61 OKLA. L. REV. 503, 549–55 (2008); Kaplan & Darvil, *supra* note 24, at 156; Valentine, *supra* note 10, at 214–16. Notably, this suggestion is not a new one. See Woxland, *supra* note 31, at 455.

59. Vicenç Feliú & Helen Frazer, *Embedded Librarians: Teaching Legal Research as a Lawyering Skill*, 61 J. LEGAL EDUC. 540, 551, 553–56 (2012).

60. Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: Should Students Learn It or Wing It?*, 81 LAW LIBR. J. 431, 441 (1989).

lack, or at least do not directly address, one of my primary concerns: the lack of exposure to a *wide variety* of research sources. Because I have long preferred a project-based research approach, the types of resources I can work into a single project are limited.<sup>61</sup> My switch from teaching bibliographic research to a more process-oriented approach meant that my students learned a few research tasks well—mainly case law, statutory research, and prominent secondary sources—but did not get any exposure to or practice in other research tasks.<sup>62</sup> This was true whether I instructed students in the use of print-based material or not. I was particularly concerned that although I exposed students to the *Code of Federal Regulations*, they were not learning enough research skills related to administrative law, let alone transactional work, a concern echoed by law firms. All of this was exacerbated by the fact that the topics and skills that I needed to address in the course ballooned.<sup>63</sup> And while changes to the curriculum as a whole are highly appealing—particularly to increase the opportunities students have to research throughout their years in law school—they are beyond my ability to change. Second, many of the solutions did not solve a second concern: the inability to work in more research *practice*.<sup>64</sup>

¶27 Thus, I looked for another solution, and with prompting and a great deal of help from an incredibly inventive research assistant, AJ Dixon, we together resurrected the research treasure hunt.

¶28 I had several goals: (1) to increase students' exposure to different types of research databases, especially government databases, and to help them see the richness of the research world beyond Westlaw, LexisNexis, and Bloomberg Law; (2) to get students to research more often; (3) to force students to evaluate the sources they were using; and, (4) to pique and further students' interests in both research and different areas of the law. An overriding concern was to make the treasure hunt fun and interesting and to escape the banality of earlier bibliographic instruction.<sup>65</sup> I was guided in part by some of the good research habits espoused in Matthew Cordon's discussion of research "task mastery," including encouraging students to practice more; be curious, confident, creative, and competitive; and cover the details.<sup>66</sup>

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61. See Nancy P. Johnson, *Best Practices: What First-Year Law Students Should Learn in a Legal Research Class*, 28 LEGAL REFERENCE SERVS. Q. 77 (2009) (recognizing that space has not been found in legal research analysis and writing classes for some research resources, such as administrative materials).

62. See Lynch, *supra* note 47, at 432 (agreeing that process-based research projects "are rarely designed to require a researcher to use multiple aspects of a research tool").

63. As noted previously, commentators already believed back in 1977 that research instruction suffered because so much was packed into the course, including an introduction to the legal system and common law, and instruction in analysis, writing, research, and citation. Mills, *supra* note 30, at 345, 346. Today, the course covers so much more, including ethics, drafting, client communication, negotiation, cost-effectiveness, and more. And with the recent push for more experiential education, my course now incorporates live-client work.

64. See Rachel Arnow-Richman, *Teaching Transactional Skills in Upper-Level Doctrinal Courses: Three Exemplars*, 2009 TRANSACTIONS: TENN. J. BUS. L. 367, 381 (Special Report) (noting that when teaching skills, "[r]epetition is essential").

65. See Perry M. Goldberg & Marci Rothman Goldberg, *Putting Legal Research into Context: A Nontraditional Approach to Teaching Legal Research*, 86 LAW LIBR. J. 823, 825 (1994) (recognizing the importance of providing interesting questions and making research mastery enjoyable).

66. Matthew C. Cordon, *Task Mastery in Legal Research Instruction*, 103 LAW LIBR. J. 395, 397, 399–400, 2011 LAW LIBR. J. 25, ¶¶ 4, 11–14.

## The Design of the Modern Research Treasure Hunt

¶29 The treasure hunt took place throughout the year, although most problems were assigned in the second semester. The problems were assigned when students were less busy (relatively)—in other words, when they were not deeply involved in another research project or in writing. Weeks where I was individually conferencing with students after a draft was due were ideal, for example.

¶30 In the first year of reintroducing the research treasure hunt, students received five problems spaced throughout the second semester. Encouraged by the solid participation rate of students in the first year, discussed in the following section, we improved the program. In the second year, students received ten problems throughout the two semesters. The problems were provided on five occasions, with a choice of two problems each time. Students received the schedule of problems and topics ahead of time, allowing them to plan. Students chose how many research exercises to undertake (with a minimum requirement of two), and more important, chose which ones they completed. We offered a variety of subject matter to meet individual interests. Topics included international law, prison regulations, sentencing guidelines, SEC filings, legislative history, administrative rulemaking, patent filings, and legal ethics. The remaining two problems corresponded to what the students were studying in two other 1L courses at the time the assignment was given. Two sample problems are provided in the appendix.

¶31 The hunt involved quick turn-around problems<sup>67</sup> whose answers were not always found in Westlaw/LexisNexis/Bloomberg Law. For example, in the first year of the project, students used the USPTO trademark database, EDGAR, a state prison website, Thomas, the *Federal Register*, HeinOnline, and ProQuest Congressional to answer the treasure hunt questions.

¶32 Most important, we modernized the research treasure hunt by not providing instruction in how to use the research resources that would be required to answer the questions, and often we did not tell them *which* resources to use. They were told instead to use any resource available except one another. Students were encouraged to use Google, their research books, handouts from my course and other law schools, librarians, and anything else they could think of.

¶33 We modernized the hunt in a second way. Instead of worksheets that the students completed to show that they had found the correct answer and had used the resource, answers were required in the form of an e-mail. Students were asked to provide professional, polished answers and to detail the resource used. This latter piece of information allowed us to address those who, in the beginning of the project, used unreliable resources.

¶34 The projects themselves came from several sources, and one of the keys to being able to incorporate some hunts into the curriculum is to have ready access to interesting and realistic hunts. Thus, the best source for hunt material is the summer positions of former students. Students appreciated being able to do research problems borrowed directly from practice. Legal clinics are another valuable source of problems, and several problems were fashioned directly from recent legal news.

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67. Students had twenty-four hours to provide an answer.

¶35 Students did not receive individual feedback on their e-mails. Instead, an answer key was provided. Because the questions themselves were usually not complex, the answer key focused mostly on the research process and the validity of the resources used, and less on the substantive answer to the hunt. For example, some answers listed the various research sources students used to answer the same question, showing students that there were multiple ways to find the same information and that some were superior to others. The answer pointed out when a less reliable research source was used and how that source might have led the student to a more reliable source. (For example, the key might point out that treaty language replicated on a trade association website is not “good enough,” but that the information provided there could lead the student to a more reliable source, such as a government-run website.) Other answers detailed common mistakes in the research process and included advice on efficiency and shortcuts.

### The Results of Incorporating the Hunt into Class

¶36 First, students participated. Even when I made the exercises completely voluntary in year one and offered no grade advantage for completing them, a stunning sixty-eight percent of my class completed at least one hunt, while twenty-three percent did all five of them. When I required students to complete two of the ten problems assigned in year two, twenty-three percent completed five, and all completed the two required. Some students reported being motivated by the need to have good research skills before summer employment.<sup>68</sup> Others liked the game-like nature of the hunt and the fact that they could research in any area of interest.

¶37 Surprisingly and happily, students used sources that few students in my years of teaching had used before. They made phone calls to government agencies. They consulted librarians. They investigated secondary sources to dig for answers. When left with little guidance, they experimented.

¶38 Will they be better researchers in the long run? I cannot make that prediction, but my hope is that they will have more confidence in their summer employment and will understand that research need not be a task conducted in isolation. I also hope that they start to develop a sense of how fun research can be.

### Advantages of the Modern Treasure Hunt

¶39 Incorporating research treasure hunts into the curriculum is relatively painless and has some nice payoffs for student and professor alike.

¶40 First, the flexible approach and varied topics allow students to control the projects they undertake. In my experience, students increasingly enter law school with an idea of the type of law they might pursue, and the feedback I received is that students greatly appreciate working on a small research project that meets their interests. If they know who their employer will be for the summer, they may be able

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68. This is consistent with the desire of new associates to receive more legal research training. Steven A. Lastres, *Rebooting Legal Research in a Digital Age*, LLRX (Aug. 10, 2013), <http://www.llrx.com/2013/08/rebooting-legal-research-in-a-digital-age/> [<https://perma.cc/KK32-LUJH>] (reporting results of the New Attorney Research Methods Survey conducted by the Research Intelligence Group in 2012).

to choose a research project that would be useful for the summer experience. For that reason, most of the research projects were assigned in the second term. They appreciated that their varied interests were recognized.

¶41 Second, the research treasure hunts allow students to practice research more often, a critical component in achieving research mastery,<sup>69</sup> without adding too much of a burden to their already bloated schedules and to their professors' workload. It is also useful that the projects can be a small way to connect to a doctrinal course.<sup>70</sup>

¶42 Third, while students do not become experts in the research resources used, they do become aware of their existence. They gain exposure to just how large the research world is beyond statutes and cases, and beyond the large, paid research services. Laura Justiss suggests that online legal research materials fall into six categories: (1) primary source materials; (2) court docket information; (3) secondary sources; (4) financial/business news; (5) public records; and (6) "other," including both legal and nonlegal information about science, technology, patents, trademarks, medicine, and others.<sup>71</sup> Yet students may have limited exposure to four of the six in their first years—court docket information, financial/business news, public records, and nonlegal information. The varied tasks also help to foster curiosity, another quality that benefits researchers.<sup>72</sup>

¶43 Fourth, the projects allowed me to discuss the reliability of the resources used, in context. For example, when looking for the text of a treaty, students relied on various websites for that information. The answer key to the problem addressed the reliability of the various sources used and how to use a questionable source to find a more reliable one. The variety of resources used allowed us to evaluate specific sources rather than warn about reliability in a vacuum. For me, this was a critical advantage of the project as those who teach legal research continue to recognize the need to teach students how to judge the reliability of the sources used.<sup>73</sup>

¶44 Fifth, while I do not advocate abandoning detailed instruction in process-based research, allowing students to do some research without prior guidance may be an appropriate way to meet the millennial student on his or her own terms. For example, millennials may respond better to an approach in which the student is the focus.<sup>74</sup> They highly prefer "active learning" to lecture,<sup>75</sup> and the modernized treasure hunt allows them to skip the lecture. They also highly prefer self-directed learning opportunities,<sup>76</sup> and the research treasure hunt allows them to do that for at least some of the coursework. They want assignments that hold personal mean-

69. Bowman, *supra* note 58, at 551; Cordon, *supra* note 66, at 399–400, ¶ 11.

70. See Valentine, *supra* note 10, at 225 (suggesting that a legal research class that references issues being discussed in other courses better supports student learning).

71. Laura K. Justiss, *A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms*, 103 LAW LIBR. J. 71, 72, 2011 LAW LIBR. J. 4, ¶ 6. Justiss's survey also provides an excellent source of ideas for treasure hunt problems as she lists the various databases and services used in practice.

72. Cordon, *supra* note 66, at 400, ¶ 12.

73. See Koo, *supra* note 20, at 3; Margolis & Murray, *supra* note 20, at 141.

74. Kaplan & Darvil, *supra* note 24, at 155.

75. Valerie S. Thaler, *Teaching Historical Research Skills to Generation Y: One Instructor's Approach*, 46 HIST. TEACHER 267, 270 (2013).

76. Leah Taylor & Jim Parsons, *Improving Student Engagement*, 14 CURRENT ISSUES EDUC. 1, 23 (2011).

ing, so the more choices provided, the better.<sup>77</sup> While I am not advocating that preferences of students dictate teaching methodology, it is realistic to take into consideration the experiences and preferences of the students being taught when possible.<sup>78</sup>

¶45 Sixth, the projects allow students to practice e-mail communication, an increasingly important skill for all practicing attorneys.<sup>79</sup> Before the hunts began, I spent some class time discussing the appropriate format of an e-mail response and provided various readings to help students think about the form and function of the e-mail response.

¶46 Finally, resurrecting the research treasure hunt need not be limited to 1L legal methods courses. It works well with any course and is a solution that need not wait for curriculum change or committee action.

### Important Limitations and Caveats

¶47 The research treasure hunt deserves a small space in the curriculum. The research projects are discrete, however, and thus lack several important qualities. First, the projects do not provide an explanation of the research source used in the larger context of the research world. They therefore do not contribute to illustrating the research “system behind the madness,” that is, they do not teach students the existence and advantage of hierarchically organized legal subjects and legal taxonomies.<sup>80</sup> These lessons can be covered in larger problem-based research problems, however.

¶48 Second, the projects require little legal analysis. Most legal research is complex and requires complex analysis. Nevertheless, treasure hunts can and do include real-world problems,<sup>81</sup> so while much research in practice is more complex, not all is. I am confident in that assessment given that several of the problems assigned were variations on assignments former students had been given in their summer employment.

¶49 Third, the hunt does not provide a way to give individual feedback to students on their research trials and errors, at least not without increasing the professors’ time expenditure in the program substantially. Nor do students receive guidance during the process itself, a desirable attribute in teaching complex skills.<sup>82</sup> Answers are provided, and typical research qualms can be addressed both in written answers

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77. *Id.*

78. Lynch, *supra* note 47, at 436 (“Any proposal to teach law students must take into account the preferences of the students for how much attention and time they will devote to the enterprise.”).

79. See, e.g., Kristen Konrad Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. LEGAL EDUC. 32, 33 (2008) (advocating that teaching substantive e-mail communication be favored over teaching the traditional legal memorandum); Ellie Margolis, *Incorporating Electronic Communication into the LRW Classroom*, 19 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 121, 121 (2011) (noting that teaching e-mail communication better meets the need of the attorney who prefers reading electronically); Gerald Lebovits, *Legal Writing in the Practice-Ready School*, N.Y. ST. B.J., Sept. 2013, at 72, 67 (noting that first-year programs must be broad enough to incorporate e-mail communication, and not just the traditional memo).

80. See Keefe, *supra* note 50, at 127, ¶ 41.

81. See Lynch, *supra* note 47, at 434 (noting that treasure hunts can be realistic).

82. James B. Levy, *Better Research Instruction Through “Point of Need” Library Exercises*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 87, 87 (2001).



and brief classroom discussions, but students may not learn very well from guidance that is too general.

¶50 Finally, students may have found the correct answer by using poor research methods and may not have utilized the resource efficiently in finding the answer. This can be addressed in part by including in the answer an explanation of how best to use the resource and by highlighting common mistakes that decreased efficiency. Further, to the extent that our primary goal was simply to make the students aware that certain research resources existed, that goal was met even if the students used that resource less than efficiently.

### Conclusion

¶51 As a profession, we continue to think deeply about how to teach research, as we well should. As a professor, I have incorporated many of the proposed solutions to the dilemma of teaching legal research noted above, but have also found room for the modernized treasure hunt.

¶52 I do not advocate the return to teaching bibliographic research. The primary focus of research instruction should remain the research process, and the results of that research should be put to work in complex projects requiring analysis and communication. However, the research treasure hunt should occupy a small space in the curriculum, as it is an ideal way to increase students' exposure to research resources that are not often used in the 1L curriculum. It is also a good vehicle to enhance students' information literacy, to question where they found their information, and to teach them how to use potentially unreliable research resources to "back into" more credible resources. Indeed, judging the credibility of sources may well be the primary research dilemma of the future.<sup>83</sup> Finally, our experiment suggests that as professors, we should continue our focus on teaching the "what, why, and when" of legal resources—what is the source, what is its reliability, why use it, and when—and ease off teaching the "how" of those resources, as students seem to be able to handle the how well on their own.

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83. See Margolis & Murray, *supra* note 20, at 131–32 (describing information literacy, which includes the need to critically evaluate sources of information, as the "new frontier"); Sokkar Harker, *supra* note 4, at 85, ¶ 19 (noting importance of assessing the credibility of information so that it can be used "wisely and ethically"), 92–93, ¶ 45 (noting that more attention should be focused on examining and evaluating sources); Kristen Purcell et al., *How Teens Do Research in the Digital World*, PEW RESEARCH CENTER (Nov. 1, 2012), <http://www.pewinternet.org/2012/11/01/how-teens-do-research-in-the-digital-world/> [<https://perma.cc/K3G2-XH8J>] (reporting that "the vast majority of [ ] teachers say a top priority in today's classrooms should be teaching students how to 'judge the quality of online information'").

## Appendix

### Research Problem Example—SEC Filings

We've just been retained by a nutritional-supplement manufacturer named Herbalife Ltd. (stock ticker HLF). Herbalife sort of stepped in it: they've been accused of engaging in fraudulent business practices. Well, to be more specific, the entirety of their corporate model has been called a massive pyramid scheme. A few weeks ago, the FTC announced it had opened an investigation into Herbalife's business—[http://dealbook.nytimes.com/2014/03/12/herbalife-discloses-f-t-c-inquiry/?\\_php=true&\\_type=blogs&\\_php=true&\\_type=blogs&\\_r=1](http://dealbook.nytimes.com/2014/03/12/herbalife-discloses-f-t-c-inquiry/?_php=true&_type=blogs&_php=true&_type=blogs&_r=1).

Wisely, they've dumped their old counsel and hired us.

It's not clear yet whether Herbalife knew of the FTC's investigation during the last fiscal year. If it did, it probably should have disclosed that information to investors in its last 10-K—[http://en.wikipedia.org/wiki/Form\\_10-K](http://en.wikipedia.org/wiki/Form_10-K). Or, at the very least, it should have included it in a subsequent 8-K Report—[http://en.wikipedia.org/wiki/Form\\_8-K](http://en.wikipedia.org/wiki/Form_8-K). As you know, under the Securities Act, publicly traded companies need to disclose material information (like an FTC investigation) to shareholders.

So, here's what I want you to do. Jump onto the SEC's filing database, find Herbalife's last filed 10-K, and quickly see if the company disclosed anything about the FTC's current investigation. If not, look to see if it made the disclosure in a subsequent 8-K.

I'd also like to know when the last 10-K was filed, what Herbalife reported its net income as for the 2013 fiscal year, who its independent auditor is, and in what jurisdiction it is incorporated.

E-mail answers to me with the subject line "Research Answers #7," and, so I know for future reference, include a description of how you found out each piece of information.

Thanks,

Prime Minister

Blackheart, Sharkscream, Dixon & The Devil, LLP

### Research Problem Example—Legal Ethics

It is not often that legal ethics questions come up here at Blackheart, Sharkscream, Dixon & The Devil, LLP. I can only assume that's because of our honesty. We've got a puzzler now, though, and I need you to look into it.

One of our (now former) clients, Granger Thinkers, recently retained us to represent her in a dispute with the clothing store Forever 21 for leading her to believe, falsely it seems, that its clothing could indefinitely halt the aging process. Because Ms. Thinkers has little to no assets of her own, her mother, the wealthy baroness Basley Thinkers, covered the cost of our considerable retainer fee. Unfortunately, and much to our surprise, it quickly became clear that Granger had some unrealistic expectations about her case. For one thing, she was insistent that we "bring capital murder charges" against the store and, despite our repeated

explanations that “murder charges” require both a murder and a prosecutor, she grew frustrated at our reluctance. Ultimately, we were forced to withdraw.

But here’s the problem: normally, upon withdrawal from representation, we return any unused portion of our retainer fee. Here, though, it isn’t clear to me to whom that fee should be returned. Granger Thinkers insists we give it to her, while her mother, Basley Thinkers, argues that since she paid us the fee, she’s entitled to the return of the unused portion. I don’t really care who we give it to; I’d just like to be done with the whole mess.

We need to get some authority to cover ourselves on this. Find me any applicable provisions of the Model Rules of Professional Conduct, as well as any applicable ethics decisions and rules in Maryland, California, and Washington (we want to cover all of the states in which we have offices for future reference).

E-mail me what you find with the subject line “Research Answers #9,” and, so I know for future reference, include a description of how you found out each piece of information.

Best,

Space King

Blackheart, Shawkscream, Dixon & The Devil, LLP