Winter 2000

# Beyond "Bingo!"-- Educating Legal Researchers as Problem Solvers

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# BEYOND "BINGO!": EDUCATING LEGAL RESEARCHERS AS PROBLEM SOLVERS

## Terry Jean Seligmann†

## I. INTRODUCTION

Remember that first research assignment? Going to the designated volume and finding exactly the answer the professor was looking for, whether it was the federal penalty for shooting a golden eagle[1] or the key number for claims relating to the mishandling of dead bodies?[2] Thinking to yourself, "Bingo!" "Voilà!" or "Eureka!" and having your spirits raised? Research seemed easy; finding the law was a wonderfully structured adventure. Some time later, an encounter of another kind undoubtedly occurred. A client had a problem without a matching doctrine or key number. The issues slopped across the neat divisions of the first-year courses. Perhaps no court or legislature addressed the critical legal point specifically. The thesis of this article is that this inevitable point should come during legal research training, not afterward. By the end of legal research training, confronting the unknown research subject should not leave a new attorney lost and shivering in an icy wilderness, but equipped to blaze trails toward an answer.

Mastering the ability to tackle complex legal research problems means more than merely moving beyond the kind of assignments that produce the "Bingo!" response with its accompanying expectation of clear and easy results. The professor helps students develop needed skills by implementing a problem-based context for assignments, providing enough legal research experience, se-

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    1.  *See* 16 U.S.C. § 668 (a-b) (1994) (listing a civil penalty of $5,000 and a criminal penalty of up to $5,000 or up to one year imprisonment or both).

    2.  *See* West Topic Dead Bodies, key number 9.

quencing assignments to offer increasing challenges while support-
ing success, and encouraging reflection on and planning of legal
research.

Debate has arisen over who should teach legal research and
the proper method for teaching.[3] Yet professional legal research
educators now find themselves more in agreement about desired
outcomes and the importance of understanding research as a pro-
cess.[4]

Legal research professors face difficult tasks in planning and
choosing a curriculum of research assignments to accomplish de-
sired outcomes. The difficulty is compounded when worthy goals
of the first-year legal research and writing (LRW) curriculum com-
pete for student and professor time and attention. Professors of le-
gal research *and* legal writing face multiple challenges, one of
which is giving sufficient attention to both. Most LRW courses de-
mand student time and effort well in excess of that which students
give to other courses for similar credit hours. Indeed, a familiar
lament by students, and sometimes faculty colleagues, is the enor-
mous time and effort required to successfully complete an LRW
course. Compounding the time constraints, many schools give
fewer credit hours for LRW courses than other first-year courses in
the curriculum.[5] Yet both researching and writing are critical skills

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3. *See, e.g.*, Helene S. Shapo & Christina L. Kunz, *Brutal Choices in Curricular
Design . . . Teaching Research as Part of an Integrated LR & W Course*, 4 PERSP. 78
(1996) (concluding that legal research and writing should be taught as an inte-
grated course); Robert C. Berring, *A Sort of Response: Brutal Non-Choices*, 4 PERSP. 81
(1996) (defending his earlier proposition that most first-year law students do not
receive adequate research training).

4. *See* Christopher G. Wren & Jill R. Wren, *The Teaching of Legal Research*, 80
L. LIBR. J. 7, 33-49 (1988) (advocating a three-step, process-oriented framework for
teaching legal research); *see also* CHRISTINA L. KUNZ ET AL., THE PROCESS OF LEGAL
RESEARCH (4th ed. 1996) (implementing the process-oriented approach to legal
research by charting research steps such as identifying research terms, formulating
issues and assessing media options, then organizing lessons about specific sources
around performance of these steps); CHRISTOPHER G. WREN & JILL R. WREN, THE
LEGAL RESEARCH MANUAL 52-59 (2d ed. 1986) (developing the process-oriented ap-
proach to legal research by implementing the use of flowcharts).

5. *See, e.g.*, RALPH L. BRILL, ET AL., ABA SECTION OF LEGAL EDUCATION AND
ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS 56 (1997) (rec-
ommending five or six credit hours for first year LRW courses); Davalene Cooper,
*Adopting the "Stepchild" into the Legal Academic Community: Creating a Program for
Learning Legal Research Skills*, in EXPERT VIEWS ON IMPROVING THE QUALITY OF LEGAL
RESEARCH EDUCATION IN THE UNITED STATES 11, 12-13 (1991) (detailing why stu-
dents may believe that legal research course has low priority).

At some schools, research and writing also compete for time with other

for new lawyers to master.[6]

Proficiency in bibliographic tasks may appear to be an obvious goal in a research curriculum. Students may view learning to use a digest, WESTLAW or CD-ROM indices as primary features of a legal research education. However, research professors now recognize that the bibliographic approach to research, once prevalent in law schools, should be tempered by an emphasis on researching and writing as parts of an analytical process for solving problems.[7]

To better identify goals for a research curriculum, examine the characteristics of an educated researcher. The goals, in turn, may suggest strategies for achieving them. These strategies provide a theory for successfully teaching legal research, thus giving students the best opportunity to master research skills.[8] This article proposes four concepts—integration, practice, progression and planning—to guide design of research assignments. The article also provides examples which apply these concepts to actual assignments. The examples not only illustrate the principles, they provide ideas to draw on in constructing research assignments and a curriculum appropriate for students at each law school.

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lawyering skills, such as interviewing, fact investigation, and negotiation. Some courses even include a focus on professional responsibility as part of the students' studies.

The trend toward multi-skill legal courses is not necessarily a reason to retreat from integrated curricula. Indeed, as discussed below, the benefits of teaching research as part of an integrated research and writing curriculum are substantial and symbiotic in teaching students to think and write as lawyers.

6.   See Report on the Task Force on Law Schools and the Profession: Narrowing the Gap, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, 157-63 (1992) (commonly called the MacCrate Report after Robert MacCrate, Chairperson of the Task Force on Law Schools and the Profession: Narrowing the Gap) (identifying the ability to perform legal research as a core skill); see also Anne Stein, Job Hunting? Exude Confidence, A.B.A. J., Nov. 1993, at 40 (reporting that in an American Bar Association survey of hiring partners at major Chicago law firms, 92% of the respondents stated that they expected new associates to have the ability to perform library legal research before beginning work).

7.   See supra note 4.

8.   See generally ROBERT J. KIBLER, ET AL., OBJECTIVES FOR INSTRUCTION AND EVALUATION (2d ed. 1981); Madeline Hunter, Knowing, Teaching and Supervising, in USING WHAT WE KNOW ABOUT TEACHING 169, 175-77 (Philip L. Hosford ed., 1984); Lee S. Shulman, Knowledge and Teaching: Foundations of the New Reform, 57 HARV. EDUC. REV. 1, 7-8 (1987) (recognizing the identification of goals and the strategies for them as a long-standing principle of curriculum development). See also Andrew J. Pirie, Objectives in Legal Education: The Case for Systematic Instructional Design, 37 J. LEGAL EDUC. 576, 590-97 (1987) (recognizing the relevance of systematic approaches to constructing a legal education curriculum).

## II. QUALITIES OF AN INDEPENDENT RESEARCHER

Qualities characterizing an accomplished legal researcher might include competence, accuracy, judgment, thoroughness, efficiency, confidence and knowledge. Legal employers are most concerned with accuracy and reliability of the research. Judgment helps the researcher recognize legal issues and read authorities critically. The thorough researcher will check current law, whether case law or statutes. Efficient researchers meet short deadlines. They also benefit clients with limited resources who cannot fund an attorney's learning curve in a new area or support doctorate-level research.

The first research assignment for a law clerk or new attorney can generate terror: the new lawyer takes responsibility for the client's outcome and knows the effect that the quality of the job may have on the attorney's future career. If the new clerk or attorney also fears the process of legal research or feels unprepared to attack a problem in a new area of law, the terror could be paralyzing.[9] The confident researcher uses existing skills and knowledge about legal resources and applies them to the unknown area. The courageous researcher asks questions of supervisors, clients, librarians and other attorneys, taking advantage of their expertise.

For a new attorney, knowledge of substantive law and bibliographic information are less critical than knowledge of the research process. The ability to find and use research resources are key skills that provide the attorney with substantive law.[10] When researching a Title VII claim, the attorney examines federal statutes, legislative history, administrative regulations and informal published guides. By project's end, the attorney will have used a looseleaf service and should know how to access hardcopy, electronic database and web versions of relevant material. The same attorney then has learned a process to competently tackle such complicated problems as a Superfund issue or Telecommunications Act issue.

Of course, the attorney who gains in-depth knowledge of an area of law will attract clients who seek particular competence and efficiency in that area. However, a new attorney who is an accom-

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9. This feeling is similar to "tharning," the behavior of rabbits caught in the headlights of an oncoming car. *See* RICHARD ADAMS, WATERSHIP DOWN 428 (Scribner Classics 1996). Adam's lapine glossary defines "tharn" as "[s]tupefied, distraught, hypnotized with fear." *Id.*

10. *See Stein, supra* note 6, at 40 (stating that only 30% of Chicago law firm hiring partners expect new attorneys to arrive with knowledge of substantive law).

plished researcher will be accurate, efficient, thoughtful, thorough and confident, and will become increasingly knowledgeable. How does a professor develop such library Boy and Girl Scouts? The next section elaborates on four principles underlying research assignments that advance these goals for students.

## III. CORE VALUES[11] FOR CREATING AND SEQUENCING RESEARCH ASSIGNMENTS

Having identified the qualities of accomplished researchers, professors then must develop a curriculum designed to instill these qualities in their students.[12] Much of students' real learning and skills acquisition takes place outside the classroom when students work on research assignments.[13] Thus, the number, nature and order of research assignments has a significant impact on students' development as researchers. This article suggests four guidelines for creating a research assignment curriculum:

A) *Integration*—combine research assignments with analytical/writing assignments;

B) *Practice*—vary the type of research, with multiple opportunities for research training;

C) *Progression*—sequence assignments to help students progress toward independence;

D) *Planning*—allow students to plan and reflect on the research process.

Each of these concepts has advantages and disadvantages. Each, if followed to the exclusion of the others, could have negative effects on the overall curriculum. Used in concert, they offer opportunities for students to become competent and independent re-

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11. Core values are a list of goals or ideals as a mission statement, which may be further reduced to an acronym such as "REAL" (Respect; Equality; Academic Excellence; Lifelong Learning). While this set of suggestions is distilled from the author's experiences in developing effective research assignments, it is not intended as a prescription. This article offers general conclusions from specific experiences in teaching LRW.

12. *See supra* note 8 and accompanying text.

13. Research training within the traditional classroom tends to be informational and source-oriented. Technology, and the creativity of teachers who use classroom time for hands-on training, offer more opportunities for active learning approaches. Every two years, at the Legal Writing Institute Conference, LRW teachers share suggestions for interactive teaching techniques. *See generally Index to Perspectives: Teaching Legal Research and Writing,* 6 PERSP. 40 (1997) (listing articles covering legal research and writing by title, author and subject); THE SECOND DRAFT (Bulletin of the Legal Writing Institute).

searchers. The following pages present a comprehensive description of each concept and methods to reflect those concepts in the research curriculum.[14]

## A. *Integration: Combining Research Assignments With Analytical/Writing Assignments*

Authorities recognize that introducing students to research sources and techniques within the setting of an analytical writing assignment is an excellent way to teach legal research.[15] It provides students with an opportunity to learn legal research in the context of solving a realistic problem for a hypothetical client. Students pay more attention to research assignments that are integrated with writing assignments because they know that locating proper legal authority is critical for a successful memorandum. As a result, the professor can link research strategy to the emerging analysis of the problem; a sequence of separate research exercises does not permit this linking.

An LRW curriculum comprised entirely of integrated research and writing assignments does have limitations. The time needed for students to research, submit drafts, receive feedback and rewrite memoranda limits the number of assignments that can be completed in a single course.

In addition, students' first research experience necessarily must be more directed. This particularly is true for the first writing assignment. If the assignment includes research, that research may be directed through instructions for which sources to consult, which sequence of research steps to follow or how many authorities students should expect to find. If students are not consciously directed, the professor may select a more basic problem with a manageable number of authorities. The analytical and writing goals of the first assignment may be deliberately simple, limited to a few, relatively clear authorities and issues. As a result, few opportunities exist to develop independent research skills in an early, directed assignment.

LRW courses also may begin with a closed memorandum, one which uses a packaged set of statutes and/or cases as authorities. If

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14. *See infra* Part III.A–D.

15. *See generally* JAN LEVINE & KATHRYN SAMPSON, ANALYTICAL ASSIGNMENTS FOR INTEGRATING LEGAL RESEARCH AND WRITING (1995 ed.)(published on disk); Shapo & Kunz, *supra* note 3.

the LRW course begins with a closed memorandum assignment, the limitations on research curriculum time are compounded. However, the line between a "closed memo" and an integrated research assignment is not impenetrable. Professors may "open" the closed assignment.

Another disadvantage of integrated assignments is that students might have significant time before the assignment is due. This time is needed for students to obtain instruction in legal reasoning and writing necessary to complete the assignment. With so much time available for research, students may not use it properly to learn and practice their research skills.[16]

Another approach, described below, involves dividing the first research and writing assignment into several research assignments. These assignments remain integrated with the writing memorandum but use the time available to give students practice and reinforce the research curriculum.

### 1.   Integrating Research With a Closed Memorandum

Many writing programs begin with a closed memorandum, which can be a sound curriculum decision. Focusing on a discrete number of materials and concepts in the first written memorandum avoids overwhelming students and permits deeper analysis of the selected authorities. Professors and students concentrate on providing full written explanations of the law, detailed analogies and distinctions between the authorities and the hypothetical facts. However, choosing to use a packaged set of authorities might defer research training and experience until the memo is completed, thereby losing precious weeks of the semester to accomplish research-oriented teaching.

Here are some ways to begin research training using a closed memorandum assignment:

- Use the reported version or (if using a statute) annotated version of the authority as a basis for class analysis. Introduce the reporter system through a case using the citation, topics and key numbers.

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16. If not forced to begin sooner, some students will wait until the last moment to begin. If the research and memorandum are due at the same time, then both will be done hurriedly. If the research is due first, this situation will be avoided.

- Once students have a basic understanding of reporters or codes and the location of those sources in the library, assign students to find one of the authorities from the citation.

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- After discussing the topic and key number system and the basics of the digest system, assign students to find one of the authorities via a particular topic and key number. Include identifying information so students select appropriate authority from case summaries (e.g., "Find a 1997 court of appeals case that held . . . ."). Preferably, use the topic and key number from a case the class has already discussed. This technique teaches students to move from a known case to other cases on that topic.[17]

### 2. Integrating Research and Writing Assignments With Stepped Research Units

Students are interested in a research assignment that leads to a written document, such as a memorandum or brief. Adding research assignments over several weeks sustains this interest. These assignments introduce new sources and techniques each week and link them to the written document. The professor teaches new research skills in class and the computer lab in the context of a previous problem or a new problem. Students then locate authority for the memo, beginning with an exercise that directs their research. The professor discusses this exercise in class, giving an answer key to students or individual feedback if the exercises indicate that particular students need individual attention.

Students—professors hope—research throughout the period they work on the writing assignment, not just a few days before it is due. They practice particular skills and use resources immediately

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17. For an example of how to "convert" a closed memo into a research training vehicle, consider the following hypothetical analyzing the issue of intentional infliction of emotional distress using four Florida decisions.

1. The professor provides the first "main" case to the students and uses it during orientation week to teach case briefing.
2. The professor hands out the next two cases and analyzes them with the class.
3. The students obtain the fourth case using its citation.
4. Students use the digest, topic and key numbers to find a case from another jurisdiction. The other jurisdiction can be the law school's home state, giving students an opportunity to discuss that jurisdiction's treatment of the issue.

after hearing about them in the classroom, utilizing them in context with their ongoing writing assignment. This practice avoids a lapse in time or topic between teaching and learning.[18]

Even with these techniques, integrated research and writing assignments still offer only a limited number of legal issues and sources over the course of the year. The next guideline and set of examples reflect the need to offer students sufficient opportunities to practice their research skills and to use different resources.

### B. Practice: Variety in Research and Multiple Opportunities for Research Training

Each new research topic introduces new resources that produce the best results and provides new uses for old resources. The element-based state law problem will not prepare or even expose the student to resources needed to research a bankruptcy issue in federal court. If research for an appellate brief is based on current, electronically-retrievable cases and policy-based law review articles, students may not think to look for a treatise on a commercial law topic under the Uniform Commercial Code. Unless professors encourage or require research using particular resources, students may rely on the first resources learned or on what they have decided is the most efficient resource based on a prior assignment. Thus, students may never develop familiarity with the range of resources available to them.

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18. An example of this connection between classroom, research and writing assignment is a set of four case research exercises for a state common-law problem involving a bystander's cause of action of negligent infliction of emotional distress. These exercises lead to the students' first research memorandum. All four are tied to the memorandum assignment and designed to produce the case authorities for the memorandum.

The first assignment focuses on print digests and asks students to identify the proper set of digests, their location in the library and the latest series. Students then generate search terms for the Descriptive Word Index and provide a list of topic and key numbers found using the Index. The final part of the assignment asks which topic and key numbers provide the most relevant cases, which were false leads and why. It also asks for identification of one case answering the question posed in the assignment.

The second assignment sends students back to the digests to find other relevant cases and asks them to explain why they are selecting and discarding certain cases or groups of cases on the basis of the summaries, full-text reading or skimming.

Two subsequent assignments lead students through updating and using KEYCITE® or *Shepard's Citations,* first on three significant cases and then on other cases listed on the students' preliminary citation list.

Even within the same type of legal research, the nature of the claim may demand use of different resources to obtain the best authority. The Restatement may be critical to one state law claim, while a scattering of persuasive state court decisions in other jurisdictions, or a seminal law review article, may be the primary basis for analysis of another claim. Even if the typical LRW course assigns an element-based tort problem in a state jurisdiction, followed by a federal statutory problem, with perhaps a constitutional law issue for a moot court problem, a student could complete the course without using a loose-leaf reporter.

Using both source-specific and open-ended, or non-directed assignments, to supplement integrated assignments addresses some of these issues. Depending upon the curriculum, these assignments begin as students first learn about the resources or may be inserted as discrete units later in the curriculum.

### 1. Integration "Plus"—Adding Problem-Based Research Assignments

The more research students conduct to solve clients' problems, the more practice in strategic and analytical skills they obtain. Placing research into the context of a client-based problem provides a practical focus and brings welcomed realism to the students' task.[19] These benefits of problem-based assignments do not require a formal written product. Supplementing integrated research and writing assignments by adding discrete, problem-based, non-writing research assignments offers students variety in types of research and assures that they see and use sources beyond those they will use in their writing assignments. In the first semester, following classroom introduction of a particular research technique, a professor can schedule "homework" assignments. Although not intended to lead to a written memorandum, students use research to solve the problem in short answer form. This task provides practice in research as well as analysis and communication in concise form. During the next class, students discuss their research results, the strength of the client's claim or defense and their process for finding relevant material.[20]

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19. *See* Jay M. Feinman, *Simulations: An Introduction*, 45 J. LEGAL EDUC. 469, 471-72 (1995) (discussing the value of a context for legal learning).

20. Another benefit of these exercises is identifying gaps in the students' understanding or the professor's teaching. These gaps can be filled before the students tackle a larger project.

These problem-based assignments are commercially available. For example, *The Process of Legal Research*[21] offers a series of problem-based exercises, some of which can be set in multiple jurisdictions to reduce the demand on particular library resources. Professors can create others to suit the curriculum.[22] Problems encompassing more than one resource require students to form a strategy and plan, as well as locate each authority. These problems offer the chance to practice research and explore topics beyond those treated by students' longer writing assignments.

### 2. Treasure Hunt Assignments and Their Place in a Research Curriculum

Short, problem-based exercises are similar to research assignments requiring that students conduct a "treasure hunt," or "search-and-find" mission.[23] The typical treasure hunt assignment

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21. *See generally* KUNZ ET AL., *supra* note 4.

22. Here is an example of a problem-based assignment given to reinforce statutory research instruction (on file with the University of Arkansas School of Law):

> Your client, Bob Crachit, spends $2 per week of his meager salary on Massachusetts lottery tickets. Last week, he made his regular purchase of two tickets from Marla, the daytime cashier at the Golden Gopher convenience store in Groton. As he crossed the parking lot to visit the video store in the same mall, the tickets slipped from his hands. He spent some time searching unsuccessfully for the tickets in the video store with the help of the clerk and also checked the parking lot and the convenience store. The tickets were picked up by eight-year-old Shirley Sue Meehan. One of them turned out to be a $10,000 winner. When Crachit politely contacted Shirley and her parents, their response was "finders, keepers." Crachit has asked you for help and is willing to share the proceeds with you, if they are recovered, in lieu of an hourly fee.
>
> 1. Find and cite a Massachusetts statute that deals with the obligations, if any, of a finder of lost property.
>
> 2. Do you think the statute will help Bob Crachit in this case? Why or why not (in two sentences)?
>
> 3. See if the Massachusetts Lottery Commission has issued any regulations that help resolve this problem. Cite any regulation that applies, and give your assessment of Crachit's situation (in one or two sentences).
>
> 4. Based on your research so far, would you take Crachit's case on a contingency fee basis? Why or why not?

23. *See* Jan M. Levine et al., *Words from the Podium: The Myths of Legal Writing,*

does not ask the student to think through a client-based problem but directs the student through a set of steps using a particular resource.[24] Such mechanical assignments introduce students to the organization and use of each resource. Both criticisms[25] and defenses[26] of treasure hunt type research exercises arise in LRW circles.

The disadvantages of treasure hunt assignments include the "Bingo!" response. Finding a clear "right answer" in this exercise does not typically resemble the research process of a new practitioner. Other disadvantages include the likelihood that time-pressed students will focus exclusively on getting the answer and pay no attention to the process of locating it. In the worst case, students may depend on collaborating classmates and not find the answer on their own.

The advantages of treasure hunt assignments—clear answers, short completion time, easy correction and focused inquiries—appeal to time-pressed professors. Most advantages of discrete research assignments are found in problem-based supplemental assignments discussed above.[27] Problem-based assignments engage students intellectually with an analytical problem and the process of researching it.

Some research training, though, lends itself to a step-by-step guided exercise. For example, University of Arkansas School of Law Professor Frank Bozzo developed an exercise to guide students through on-line citator services.[28] The lengthy exercise takes forty-five minutes to complete but provides a fully guided tour that each

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THE SCRIVENER, Spring 1999, at 3, 4 (calling these exercises "Easter Egg" hunts).

24. A typical "treasure hunt" assignment might read, "use the U.S. Code Annotated and provide the citation of a statute that regulates endangered species." *See generally* J. MYRON JACOBSTEIN ET. AL., ASSIGNMENTS TO LEGAL RESEARCH ILLUSTRATED (6th ed. 1994).

25. *See* Helene S. Shapo, *The Frontiers of Legal Writing: Challenges for Teaching Research*, 78 L. LIBR. J. 719, 725-26 (1986) (noting that "treasure hunt" exercises are mere simulations, produce only short answers, are unrelated to more extensive projects and fail to use skills in a meaningful way).

26. *See* Michael J. Lynch, *An Impossible Task but Everybody Has To Do It: Teaching Legal Research in Law Schools*, 89 L. LIBR. J. 415, 434-35 (1997) (noting that such exercises yield self-validating answers, provide experience in using important components of research sources, limit extraneous intrusions on the exercise and are simple and quick for the student to complete and the professor to correct).

27. *See supra* Part III.B.1.

28. *See infra* note 29 (showing a portion of the assignment, which includes *Shepard's Citations*, INSTA-CITE® and KEYCITE®; reprinted with the author's permission).

student must finish individually. Thus, it prevents short-cuts in treasure hunt assignments and is equivalent to an individual guided tour of the services.[29]

### 3. Placement of Problem-Based Assignments

Timing the assignment of problem-based projects depends upon when the professors introduce research training into the curriculum. Professors who begin with a closed memorandum assignment and then focus on one integrated writing assignment to introduce research skills may assign a single topic for an entire semester. If the same research is the basis for objective and persuasive writing, the work on this topic could extend beyond one semester. In addition, a student's research likely will be very directed as it is the first foray into that source. Professors could present two types of problem-based assignments following the closed memorandum.

In the first type, the professor gives students a problem requiring independent and unguided research using the same sources used in the closed memorandum.[30] In the second type, students receive a problem based on classroom instruction for specified new

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29. The tutorial aspects of this type of assignment are shown in the excerpt below:

The case you "KEYCITED®" appears in bold type in the list. What is the citation for the other case that appears there?

Notice that KEYCITE® may list decisions of both higher and lower courts relevant to the history of your case. Is the other decision listed that of a higher or a lower court? How do you know?

Using the window button on the tool bar, return to the decision in *A v. B.* According to KEYCITE®, does this case have additional history? How do you know?

Click on the "H." Scrolling through this list, you will see that what is listed here are all the other decisions in the history of the case. Notice, however, that the decisions by another circuit that were listed in the *Shepard's Citations* for this decision do not appear here. This is because the holdings of those cases have no effect on the validity of this circuit's decision; thus, they are not part of the case's "history."

Frank Bozzo, *KEYCITE® Exercise* (on file with the University of Arkansas School of Law).

30. For example, an assignment stipulates that WESTLAW and LEXIS are "down" and the associate determined no statute exists on whether a blood bank operating in a given year should have implemented procedures to exclude potentially HIV-infected donors. The students must find and identify all relevant cases in the jurisdiction in no more than three hours and describe the research process in detail.

sources such as loose-leaf services, practice materials and LEXIS and/or WESTLAW.

In a curriculum introducing more research sources and techniques during the first semester of LRW, the natural placement for problem-based assignments is at the beginning. A two-problem exercise could include one freestanding question and one coordinated with the writing assignment.

When deciding the number of discrete or non-integrated assignments, professors should consider the philosophy of the curriculum to determine how much direction to give students for integrated assignments. A curriculum that uses highly-directed integrated research and writing assignments does not require as many early, source-confined, and discrete supplemental assignments. If students make more decisions about the direction of their research and the sources they use for their research on written assignments, they need more directed, reinforcing assignments early in the curriculum. The creation of assignments that move from more to less directed research is the subject of the next section.

## C.  Progression:  Sequencing Assignments to Help Students Reach Independence

When students receive their first assignments as summer clerks, interns, law clerks or junior associates, they will be expected to negotiate the research process alone. Therefore, LRW professors need to prepare students to deal with this challenge. On the other hand, no one learns to swim by being tossed into the pool.[31] The art of teaching research is creating a planned, sequenced curriculum of assignments that offer students with varying abilities and self-discipline habits enough guidance so they enjoy success and avoid frustration at each stage. At the same time, assignments must provide enough responsibility to make students competent and confident.[32]

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31.  There actually may be a philosophy of swimming instruction somewhere that espouses "sink or swim" as its methodology. Red Cross programs, however, do not expect campers to survive in the deep end before they learn to float, breathe and kick.

32.  *See* STEVEN SONDHEIM, INTO THE WOODS (1989) (illustrating with fairy tale characters that a trip into the woods does not always end happily, although it sometimes leaves one wiser).

One might compare reaching these goals of competence and confidence

Significant structure and guidance helps students in the beginning. Structured and directed assignments ensure that students have a solid foundation in individual research sources and techniques. Directed assignments also show students how to use sources and techniques to efficiently locate relevant authority. However, assignments must force students to become more independent, take chances, determine what they understand and become aware of the myriad ways to research a legal problem. This result is achieved through less directed research assignments.

### 1. Directed Research Assignments

A directed research assignment may be constructed so that students follow specific steps in identified sources to generate relevant and desired authority.[33] Students learn basic methods of using sources and techniques, then follow the professor's model to assemble the methods for a sound research process. The directed research assignment prevents students from feeling frustrated or helpless, creating a tendency to see books and computers as a friend rather than an enemy. It also helps students avoid the bad habit of starting with computer research without considering whether it is the best place to begin their research.

Directed research assignments are an excellent introduction to sources and techniques. However, without more guidance, students are uncertain about using these sources and techniques to execute their own research processes. Some students may just "fill in the blanks," especially if they are allowed to research together.

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to achieving a transcendental state of being: goals to work toward but perhaps never attain.

A typical beginning professor might teach students how to use the digests, reporters, secondary sources, *American Law Reports* and citators, give treasure-hunt exercises, then assign a research memorandum with instructions to turn in a list of cases after two weeks. The professor assumes that students will go into the library, use techniques they discussed and, after a few false starts, find the relevant material for the assignment. Instead this approach may yield a few satisfied, self-confident students and a larger number of overwhelmed and frustrated ones who became lost in the forest or followed branches to their twiggy ends instead of staying with the main trunks.

In contrast, a professor could create a directed research trail leading the students through an appropriate research sequence and identifying when they have finished. Although students may be happy with the results, the professor may not be convinced that students are using adequate judgment. The professor's challenge is to find the right balance and sequence between a guided and wild experience.

33.   *See supra* note 17 (examples of directed research assignments).

They could fail to truly understand how to competently use individual sources and techniques or how to construct a research strategy.

### 2. Techniques for Creating Less-Directed but Limited Research Assignments

Research assignments that do not define a research sequence or source require that students take ownership of their research. Taking ownership includes choosing sources, learning the organization and indexing of sources, recognizing relevant material and focusing on important authorities. Tackling an assignment that does not define a research sequence or source enforces the message that research can begin from any of several points, using several resources. Students experience recursive aspects of research—the need to move back and forth between cases, secondary authorities and citators, rather than in a straight line.[34]

Moving away from directed research also carries risks for students. One danger is that some research topics encompass an overwhelming amount of research material unless the professor limits the topics. An employment discrimination claim under Title VII[35] is one example. A more sophisticated researcher quickly hones in on the specified claim, using knowledge about the levels of court and jurisdiction to focus on the most relevant law. A less secure researcher may feel compelled to review everything.

The students' use of research time also must be considered once the assignment moves away from a specific set of steps in a confined time period. Many students are natural procrastinators; if given two weeks to conduct research, a substantial number may begin their research just a few days before it is due.[36] One could argue that this approach eventually will teach its own lessons. However, designing a research project to force staged research within a less-directed setting models a more planned process for students.

The techniques below offer ways to limit undirected assignments to avoid their hazards but reap their benefits in teaching research planning and strategy.

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34. *See, e.g.,* Shapo & Kunz, *supra* note 3, at 79 (stating that the recursive character of research is well recognized in the literature, but not always absorbed by students who are searching for a prescription for the process).

35. *See* 42 U.S.C. § 1981 (1994).

36. *See supra* note 16.

### a.   Limitations on Authority

For an assignment involving abundant authority—personal jurisdiction under a state long-arm statute for example—a professor might give students a list of five U.S. Supreme Court cases. Limiting lower court research to state and federal cases within a given jurisdiction helps students avoid researching thousands of other personal jurisdiction cases. To ensure that students find and use persuasive authority, professors could direct students to use one or more persuasive authorities that students found with a discrete source, such as an ALR annotation or law review article.[37]

As another example, a research assignment involving a hostile work environment claim allows the student to limit research to U.S. Supreme Court cases (of which there are only a few) and cases from within the applicable circuit (of which there are many). Some legitimately may criticize these limitations as non-real world, but these limitations offer a way-station from the closed memo to the wide-open assignment. The educational strategy justifies way-stations as long as the professor's curriculum progresses toward a wide-open research process.

### b.   Requiring a Range of Research Sources

To complete a research assignment that does not prescribe particular sources or sequences, students must consult a variety of resources during their research. The professor can require students to report on what they found using a particular resource, such as a law review article, treatise, loose-leaf reporter, ALR, etc.[38]

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37. See Joseph W. Glannon et al., *Coordinating Civil Procedure with Legal Research and Writing: A Field Experiment*, 47 J. LEGAL EDUC. 246, 247-51 (1997) (using a limited-authority assignment as part of a coordinated curriculum between LRW and Civil Procedure).

38. An example of an assignment with a research reporting requirement might ask:

- List the Topics and Key Numbers used by the West Digest system for the points of law in this problem. Remember that you can enter the digest system via the Descriptive Word index, the Topical index, or by using a topic and key number from a relevant case you have obtained from another source.
- Find and cite an ALR annotation on this issue.
- Find and cite a law review article on this issue.
- If you used any other secondary source in researching this problem, for example, a Restatement or a treatise, cite it.
- Identify what you view as the leading case on this issue in the relevant jurisdiction.

This requirement also serves as a checklist and reminder of available resources to consider.

### c.  Research Debriefing Class

A professor can schedule a debriefing class when students finish their basic research for an integrated assignment (usually the date the research trail is due or about ten days before the drafts are completed). The debriefing class serves several purposes:

### 1.  Time Management

The debriefing class helps students develop time-management skills. Students are forced into the library to complete at least as much of the research as is needed to hand in the research trail well in advance of the due date.

### 2.  Reinforcement/Wake-Up Call

One danger of an unstructured research assignment is that students have no signposts to let them know when they are on the right trail. Students often initially believe the research myth that a case or statute will cover a factual situation identical to a client's facts. Believing this myth, students are tempted to continue the quest for more authority not yet uncovered, to find the "right stuff."

At the debriefing class, some students will have found relevant material but still may be looking for more. Other students will be off-course analytically. Reviewing research results allows both types of students to determine how much more to do or how far they have advanced.

### 3.  Refinement of the Issues

During debriefing class, the professor may ask students to name relevant cases and list them on the board. The professor then asks which cases *must* appear in their memoranda and why. This exercise allows the class to determine which cases are leading and which cases add authority on a sub-point. The exercise also shows students where they still lack authoritative sources. The good student will go back to the library to look for the missing

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- Update it and give the citation of the most recent case from the jurisdiction to have cited it.

links. The poorer or procrastinating student may find the "important" cases and read them before the draft is due.

### 4. Citation Form

Perfecting the student's skill in proper citation form is not a research professor's goal. However, a professor may identify students' common errors or citation difficulties by requiring students to submit sources in Bluebook[39] form. Students produce far better citation form in their drafts if the professor corrects citations and devotes some class time to addressing difficult or ambiguous citations.

### 3. Non-Directed Assignments

Students must practice their research skills, including planning and executing their strategy. After practicing research skills in a directed manner, students work more independently in a later problem-based writing assignment or an exercise not tied to a writing assignment. Assignment of non-directed problems makes it easier for students to set needed practice goals at a given point in the curriculum. Professors then give detailed feedback about strengths or weaknesses of particular techniques for using sources.

Non-directed assignments are inappropriate immediately after students are introduced to case-finding, digest and citator skills. Such assignments require a great deal of time and could elicit off-base responses. After directed assignments, students are better prepared to put their skills together and determine whether they understand how to use them. Professors can review successes and mistakes in class and distribute a memo describing an appropriate plan and research process.[40] This exercise might precede a final, non-directed set of assignments such as the research examination described below.[41]

### 4. The Research Take-Home Examination

A research take-home examination tests whether students have obtained a basic foundation in sources and techniques and

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39. The Bluebook: A Uniform System of Citation (16th ed. 1996).

40. See KUNZ ET. AL., supra note 4, at 388-406 (illustrating that there can be more than one appropriate plan or path to relevant authority by listing sets of alternative research plans and processes for the same research assignment).

41. Giving a research examination without this experience is less successful.

whether they can research independently—goals of the research curriculum. Feedback from such an exam is another chance for students to learn. If the curriculum leading to the exam has been well-structured, students will feel confident and competent in their research foundations.

To be successful, professors must structure both the curriculum and exam carefully. If students are not properly prepared, or if the exam does not fairly test what students have learned, it is a frustrating exercise.[42] If progression of the curriculum has not moved students from dependence to independence before the exam, students will make mistakes on the exam. If, instead, the exam requires skills already learned and used, students perform well and end the year feeling prepared for their summer jobs and future course work.

### D.   Planning: Assignments Which Allow Students to Plan and Reflect on Their Research Process

The educational philosophy of LRW has shifted from product-oriented to process-oriented writing and research.[43] To be good researchers, students must be able to plan their research strategies to suit the issue rather than adopt a single, "one-size-fits all" approach. They must know the limitations of hardcopy and electronic databases. They must feel free to work recursively and recognize relevant material from reviewing many authorities, making sound choices about which issues to research and which authorities to pursue. They also must know when to stop researching.[44] Helping students absorb this message is not easy. Many students bring a bottom-line or straight-line attitude to their learning.[45]

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42.  A prototype examination asks students to research six questions, each with a time limit ranging from half an hour to three hours. Longer questions limit research to print sources and involve a state statutory and common-law problem. Shorter questions involve electronic updating and locating a case on-line by title. For each question, students give the answer and describe their research process and any limitations they encounter.

43.  *See supra* note 4 (discussing shift in research). *See also* LINDA HOLDEMAN EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS AND ORGANIZATION (1996) for a discussion on process-oriented legal writing; J.A. Durako et al., *From Product to Process: Evolution of a Legal Writing Program,* 58 U. PITT. L. REV. 719, 719 (1997).

44.  *See* Christina L. Kunz, *Terminating Research,* 2 PERSP. 2, 2-3 (1993).

45.  For example, toward the end of the first year, a professor received the following e-mail from a first year student: "I have been developing a general research strategy to use for most legal questions." The e-mail goes on to outline a straight line process from digests to reporters to *Shepard's Citations.*

The following techniques and assignments foster student awareness of an effective research process:

### 1.   Pre-research: Brainstorming Classes, Strategy Assignments

Many LRW professors devote some class time to discussing a new research assignment and use a mantra like "TARP" or "PPADR"[46] to generate words to use with indices. Research assignments that ask students to plan or brainstorm before researching enhance productivity, focus and interactivity of the class. In one such assignment, a professor asks students, before they come to class, to determine which primary authority most likely governs the assignment and why. The second assignment is used for an appellate brief problem. The professor asks students, prior to class, to identify the most significant facts for each side and use them to generate arguments which ultimately become the legal issues they research.

Research planning and strategy also is a natural subject for a classroom game.[47] An example would be an in-class *Jeopardy* game at the start of a research project to review research knowledge in light of a new assignment.[48]

### 2.   Recording and Evaluating the Process

Students must focus on their research process. In particular, they should focus on research strategies: their choices, what they

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46.   *See* J. MYRON JACOBSTEIN ET AL., LEGAL RESEARCH ILLUSTRATED 16 (6th ed. 1994) (stating that "TARP" signifies "Things, Action, Relief, and Parties"); SAMPLE PAGES vii-viii (West 1986) (explaining the WEST version as "PPADR" —"Parties, Places and Things, Basis of Action, Defense, Relief")

47.   *See generally* Jennifer L. Rosato, *All I Ever Needed to Know About Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques into the Law School Classroom,* 45 J. LEGAL EDUC. 568, 568 (1995) (noting that the usefulness of games as a learning process is not confined to primary education and suggesting techniques for creating law school classroom learning games).

48.   An example would look like this:
    For 100 points:
    1) What is the general area of law involved?
    2) What is the governing law (state or federal, which state)?
    3) What is the binding authority for the court in question?
    For 400 points:
    1) What are three ways to find a law review article?
    2) What are three ways to update a case?
    3) What are some useful restrictions for an electronic database search on the topic?

are doing and why. Assignments should incorporate instructions and questions designed to elicit explicit information about the choices and steps students make as they research. Then students become more aware of the research process.

Awareness of this process is critical even in a directed research assignment. For example, when students research in a digest, they must make decisions based on research knowledge and analysis about which cases to read and which to discard. Those choices raise critical questions about the research process and emerging analysis of the legal problem. Raising questions in the directed exercise and discussing it in class is an eye-opener for many students. Students suddenly realize that decisions about these cases are not just "research" decisions, but analytical decisions that require them to stop and think about what they have found and how it fits with their client's specific fact situation.

Another method asks students to reflect on and be critical of their choice of sources. They do this by recording the route of their research and the relative effectiveness of that route toward their goal of locating the relevant authority.[49] Unless it is structured well, the recording assignment generates paper without much more. There may be wide variation in how well students document their time and how deeply they evaluate their choices. Combining a log-keeping assignment with explicit evaluation of a number of stipulated sources produces more reflective responses and ensures that students at least consider a variety of sources' applicability to the problem.[50]

## IV. THE MYTH OF THE ONE BEST WAY TO TEACH RESEARCH

This set of theories to guide a planned research curriculum

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49.    *See* Lynch, *supra* note 26, at 433-34 (describing a method for tracking).
50.    A research log instruction might read:

For each day that you research this problem, write the date, each source used in the order you used it, whether you used a hardcopy or electronic version of the source, what you did with the source and what you found (or did not find), and how long you researched with that source.

An evaluative instruction might read:

Evaluate the value and ease of use of each of the following sources if you used it for this assignment. Record whether you used the source in hardcopy, an electronic version or both. Include in your evaluation which version you found superior and why. List sources.

does not suggest that any *one* sequence or set of assignments is *the* way to effectively help students learn legal research. Many research and writing sequences can be devised using these principles.

In one first-year course, for example, students at the end of their first week of classes in August completed a directed research assignment on a claim of intentional infliction of emotional distress. They used digests and citators to obtain cases for drafting an office memorandum. Subsequently, they added secondary sources for the same memorandum via assignments using the Restatement, treatises and periodicals. In September, students completed an open research memorandum on promissory estoppel with less-directed assignments that included both statutory and case research. After limited training on WESTLAW, they located documents electronically and used citations gathered during earlier assignments. They also completed a discrete exercise using these skills. Another research assignment, generated by new facts added to this problem in October, required researching an additional issue under the statute of frauds and incorporating this into their final memorandum, completed in November.

A spring semester appellate advocacy assignment involved new research on contract and constitutional issues stemming from a dispute over the disposition of frozen embryos. This assignment involved a full range of legal and non-legal materials, print and electronic resources.[51]

In another scenario, students spent the first month writing a memorandum based on a packaged, or "closed," set of authorities. Then they received research training on electronic databases and print sources for cases and for updating cases at the same time. They completed step-by-step assignments that produced material for another memorandum. Secondary authorities and more sophisticated database searches were added as students turned their second memorandum into a persuasive brief. Discrete, independently researched problems were scheduled to reinforce the step-by-step experience. A take-home research examination finished this scenario.

Both plans considered and applied the guidelines discussed here, although they used different sequences for assignments. Students deserve a curriculum that reflects planning based on goals

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51. These two paragraphs summarize the author's 1997-98 research assignments for Legal Research and Writing I and II at the University of Arkansas School of Law.

for their learning. If a particular research curriculum evolved through unexamined practices or historical traditions rather than from a comprehensive review, these ideas provide a perspective to evaluate and improve the way we teach our students to learn research skills.

## V. CONCLUSION

Employers place high priority on research skills for new attorneys.[52] Employers want researchers who know basic print and online sources, know the techniques of legal research and can independently use these tools and learn to use new tools.[53] Training to be an independent, competent researcher is not easy. An LRW curriculum that plans assignments to provide integration, practice, progression and planning gives students a good start.

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52.   *See supra* note 10 and accompanying text.

53.   *See supra* note 6 and accompanying text. No first-year curriculum can make students competent in *all* legal research sources and techniques.