

Twenty Years On: The Debate Over Legal Research Instruction

By Robert C. (Bob) Berring Jr.

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In 1989, a time covered in the mists of memory, a time before the Internet, MySpace, e-mail, cell phones, and Google, Kathleen Vanden Heuvel¹ and I engaged in a lively exchange with Chris and Jill Robinson Wren over the best way to teach legal research. The teaching of legal research has generated a steady, annual flow of articles, but this was different. The Wrens were not law librarians nor were they law professors. They claimed to bring a fresh, real-world outlook to the legal research enterprise. Their idea was “process-oriented” research. Their article, “The Teaching of Legal Research,”² set out how legal research training had been handled incorrectly in the past, but proclaimed that now a new path was opening.

According to the Wrens, the process approach used real problems and talked about problem solving. The use of legal information was contextualized, made relevant and digestible for the student. The Wrens contrasted this with the bibliographic approach that they felt most legal research courses employed. The bibliographic approach, which was tied into the role of librarians in the teaching of research, centered itself on the set of books being used. As such it was de-contextualized, abstract, and exceedingly boring. The Wrens’ book, *The*

Legal Research Manual,³ made quite a splash and they summarized their ideas in “The Teaching of Legal Research.”

The article offended Kathleen and me to the extent that we wrote a reply piece, “Legal Research: Should Students Learn It or Wing It.”⁴ That generated a reply to the reply.⁵ We put a

¹ In 1989, Kathleen Vanden Heuvel was a Senior Reference Librarian at the UC Berkeley School of Law Library; she is now Associate Dean for Capital Projects and Director of the UC Berkeley School of Law Library.

² Christopher G. Wren & Jill Robinson Wren, *The Teaching of Legal Research*, 80 Law Libr. J. 7 (1988).

³ Christopher G. Wren & Jill Robinson Wren, *The Legal Research Manual: A Game Plan for Legal Research and Analysis* (1983); Christopher G. Wren & Jill Robinson Wren, *The Legal Research Manual: A Game Plan for Legal Research and Analysis* (2d ed. 1986).

⁴ Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: Should Students Learn It or Wing It?*, 81 Law Libr. J. 431 (1989).

⁵ Christopher G. Wren & Jill Robinson Wren, *Reviving Legal Research: A Reply to Berring and Vanden Heuvel*, 82 Law Libr. J. 463 (1990).

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stopper in the bottle by replying to the reply to the reply with a short end note.⁶ The tone of the articles carried a passion seldom seen in the pages of *Law Library Journal*, the professional journal of the American Association of Law Libraries. Because of that passion and because the Wrens' article appeared to view law librarians as a big part of the problem with the teaching of legal research, this issue sparked a good bit of interest. Remember this all happened before blogs and social networks kept hot issues moving in and out of view. Interest built, and it was strong enough that a debate was scheduled at the AALL Convention that year.⁷ For a few months there was quite a bit of electricity in the air.

Almost 20 years later one might wonder what the fuss was all about. In hindsight the Wrens espoused a more important role for legal research training and they felt that it was best done in an environment where the student was learning how to use the research tools. That is not a very controversial proposition. I doubt that we could find anyone who would advocate the old "roll a book truck into the classroom and just describe each book" school of pedagogy. (That assumes that the modern law student would know what a book truck was.) But the Wrens constructed a straw man that consisted of the worst practices in teaching legal research, and laid this sad product at the feet of law librarians.

What the Wrens did not understand was that many librarians were fighting for better research training. Legal research training was terrible at many law schools, but that was not the fault of the law

librarians; it was often despite the best efforts of the law librarians. (The same is true today.) Librarians who taught legal research felt as if they were set up by the Wrens. Everyone would appreciate more time and a better context for teaching legal research. We would love to see a serious research training program that was taken seriously by the law school, with instructors who had status and power in the law school community. But the governing ethic of legal education does not allow for any of those things. Law school faculty members do not see research training as crucial. Research and writing courses have drifted more and more toward legal writing courses. Attempts at changing the first-year curriculum, like Harvard's much ballyhooed effort last year,⁸ weaken legal research training. To my mind, most meaningful legal research training for first-year law students is done by Westlaw® and LexisNexis® representatives. They teach the students how to do the things that they need to do.

So it appeared to Kathleen Vanden Heuvel and me that the Wrens were depicting law librarians who teach legal research as the cob-webbed purveyors of boring information about bibliographic expertise. Kathleen and I had spend years working on an advanced legal research course for second- and third-year students that stressed not the bibliographic detail of law books, but instead focused on the nature of the information itself: What is a judicial opinion? What is a statute? How are administrative rules and regulations produced? We believed that if a student really understood how a citator worked, then that student could use one in any format. Though we could not foresee the future, we could guess that new formats and new tools were coming. Further, we made the students work on open-ended questions, incorporating the "process" benefits of the Wrens. I think of this as a functional approach to legal information, not a

⁶ Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: A Final Response*, 82 *Law Libr. J.* 495 (1990).

⁷ A Debate on the Methodology of Teaching Legal Research, a program presented at the 83rd Annual Meeting of the American Association of Law Libraries, Minneapolis (June 19, 1990) (speakers were Robert C. Berring and Christopher G. Wren; moderator was Steven M. Barkan). Christopher Wren had spoken at an earlier AALL meeting: Teaching Research Skills: How Successful Are We?, a program presented at the 79th Annual Meeting of the American Association of Law Libraries, Washington, D.C. (July 7, 1986) (audiotape available from Mobiltape Co.) (speakers were Patricia A. Wyatt, Christopher G. Wren, and Lynn Foster). Portions of the Wrens' first article were adapted from this presentation. Wren & Wren, *supra* note 2, at 7 n.*.

⁸ See, e.g., Rethinking Langdell: Historic changes in 1L curriculum set stage for new upper-level programs of study (Dec. 2006), <www.law.harvard.edu/news/today/dec_hlt_langdell.php>; Jonathan D. Glater, *Harvard Law Decides to Steep Students in 21st-Century Issues*, N.Y. Times, Oct. 7, 2006, at A10.

bibliographic one. It seemed that the Wrens had chosen the worst aspects produced by the old system and made them seem to be what we aspired to do. That was unfair.

Time for honesty. My personal fuse was lit by the Wrens when they quoted Frederick Hicks, one of my heroes, out of context. They cited his article, “The Teaching of Legal Bibliography,”⁹ as the progenitor of bibliographic training. To make their point, they took a sentence out of context. Hicks believed in teaching about sets of books but he also believed in teaching research as a process. As chance would have it, I am a huge fan of the late Professor Hicks and have often aspired to emulate his path. His book, *Men and Books Famous in the Law*,¹⁰ remains a favorite of mine. Since at that point most folks had forgotten Professor Hicks, it just lit my candle to have him resurrected for purposes of misquotation in an article that I viewed as poorly argued. If the wording of our reply was a bit harsh, the razor’s edge had been stropped by the cheap shot at Professor Hicks. We may have spoken with too much emotion but, to quote Cool Hand Luke,¹¹ it seemed like a good idea at the time.

The harshness of the reply surprised the Wrens. How could they have known about my fixation with Hicks? I think that led to their reply to the reply, which was pretty snappy. Kathleen and I decided that enough, indeed more than enough, had been said, and we shut it down.

In the end, though, I think that the Wrens and Kathleen and I were on the same pedagogical ground. None of us liked the bad model of teaching legal research; all of us saw the need for working with the materials and understanding them. By the time we all met for a “debate” at the AALL Convention, we had figured that out. There is much about the work of the Wrens that I came to admire.

But I am glad that we wrote the article. It brought Professor Hicks back into vogue. The Academic Law Library SIS even named an award after him. Legal research training might still be fighting for scraps at the law school table, but at least my hero is back in the collective mind.¹²

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⁹ Frederick C. Hicks, *The Teaching of Legal Bibliography*, 11 *Law Libr. J.* 1 (1918).

¹⁰ Frederick C. Hicks, *Men and Books Famous in the Law* (1921).

¹¹ *Cool Hand Luke* (Warner Bros. Pictures 1967).

¹² For a biography of Hicks, see Stacy Etheredge, *Frederick C. Hicks: The Dean of Law Librarians*, 98 *Law Libr. J.* 349 (2006).