

## Legal Research Readings to Inspire and Inform Students

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*Research Matters ... is a regular feature of Perspectives. It explores the challenges of teaching the process and strategies of legal research as technology continues to shape research expectations and realities. Readers are invited to comment on the opinions expressed in this column and to contribute to future issues. Please submit material to Penny A. Hazelton, University of Washington School of Law, e-mail: pennyh@u.washington.edu.*

**By Shawn G. Nevers**

*Shawn G. Nevers is Reference Librarian at the Howard W. Hunter Law Library at Brigham Young University in Provo, Utah.*

Some time ago a *Utah Bar Journal* article caught my eye. Its title read, “The Strength Is in the Research.” As a legal research instructor, I read with delight as the author, a practicing attorney, extolled the virtues of legal research. “My students have to read this,” I thought as I added it to my introduction to legal research and writing syllabus. While I try my best to help my students understand the importance of legal research, it helps when they hear it from someone in addition to me. As I had hoped, the article was well received by my class and helped spark a good discussion on legal research’s place in the “real world.”

After this experience I began searching for and incorporating other supplemental readings into my syllabus. I have not abandoned my standard legal research text, because it provides important information, but let’s face it—textbooks are boring. Supplemental readings help drive home important points and give students a “real-world” perspective. I find that the most effective articles for my course are informative, interesting, and brief.

As I compiled a list of articles that best met these criteria, I thought it might be of use to other instructors. What follows is a selective annotated bibliography of articles that could be used as supplemental readings in introductory and

advanced legal research courses. As part of each annotation I have included my “two cents” about when and why these articles might be used.

### **Importance of Legal Research**

Mark Cooney, *Get Real About Research and Writing*, 32 *Student Law*, May 2004, at 18–24, available online at <[www.abanet.org/ltd/studentlawyer/may04/get-real.html](http://www.abanet.org/ltd/studentlawyer/may04/get-real.html)>.

Cooney identifies and dispels 10 myths about legal research and writing in law practice. Some of these myths include, “[y]ou can choose a practice area where you won’t need strong research and writing skills” and “[r]esearch and writing doesn’t win cases—oral advocacy does.” *Id.* at 20. With his experience in private practice and in the research and writing classroom, Cooney authoritatively explores these common misperceptions and provides straightforward rebuttals to each.

Students often need a dose of reality when it comes to the importance of research and writing in law practice; Cooney’s article is the answer. Students are likely to relate to some, if not all, of Cooney’s “myths,” making them eager to understand how to correct their misunderstandings. Cooney provides sound advice that will change students’ perception about legal research and writing—a happy thought for most instructors.

Duane L. Ostler, *The Strength Is in the Research*, 20 *Utah B.J.*, May–June 2007, at 42–45.

Ostler, a practicing attorney, illustrates the importance of legal research in the practice of law. After branding legal research as “[o]ne of the least appreciated and most frequently overlooked tools in the attorney’s arsenal,” Ostler powerfully and succinctly demonstrates the utility of this essential tool. *Id.* at 42. The author provides a number of real-world examples that illustrate how good legal research adds a new dimension (often a winning dimension) to a case. These examples accompany

practical pointers to improve legal research such as “put some time into research” and “don’t overlook important sources.” *Id.* at 43–44.

This article can be used to start a semester or anytime students lack the vision of the importance of legal research. Students see firsthand the value a practicing attorney gives to legal research and that legal research does matter in the real world. The examples Ostler shares are great discussion starters and show students legal research in action. This article is a relatively short read that packs a punch.

### Research Process

Marsha L. Baum, *Ten Tips for Moving Beyond the Brick Wall in the Legal Research Process*, 10 *Perspectives: Teaching Legal Res. & Writing* 20–22 (2001).

Baum understands the frustration of legal researchers who fail to find a definitive answer to a research question and are at a loss about how to proceed. In this article, she gives suggestions about what researchers can do when their research hits this “brick wall.” These suggestions include “[r]eread the problem being researched,” “[r]eview the research steps you have already taken,” and “[r]ealize that sometimes there is no answer.” *Id.* at 20, 22.

This article is a great resource for students, especially first-years, who will inevitably confront the research “brick wall.” It teaches students some great ways to get back on the right research path and to evaluate when research is really “done.” This reading could be assigned when a legal research assignment is handed out, or recommended when students hit a brick wall with a particular assignment. It is a great resource for students to review anytime their research stalls.

Barbara Bintliff, *Electronic Resources or Print Resources: Some Observations on Where to Search*, 14 *Perspectives: Teaching Legal Res. & Writing* 23–25 (2005).

Bintliff argues that print and electronic resources should not be used interchangeably. Legal researchers should examine the differences between print and electronic resources and use the format

that is best for the situation. After describing differences between print and electronic resources, Bintliff provides examples of situations in which print resources are preferred as well as those in which electronic resources are preferred.

This article helps students understand that both print and electronic resources are important legal research tools; however, effective researchers make calculated decisions on which format to use depending on the situation. Bintliff’s guidelines give students a good foundation on which to make decisions between print and electronic resources in their own research. Instructors may want to supplement this reading with a discussion of how subject-based electronic tools fit within Bintliff’s guidelines.

Peggy Roebuck Jarrett & Mary Whisner, “*Here There Be Dragons*”: *How to Do Research in an Area You Know Nothing About*, 6 *Perspectives: Teaching Legal Res. & Writing* 74–76 (1998).

The complexity and breadth of the law often leads legal researchers into uncharted waters. Jarrett and Whisner provide legal researchers with sage advice for traversing unfamiliar research areas. Tips given include “use a research guide,” “avoid fishing online,” “look for a looseleaf service,” and “use librarians.” *Id.* at 75–76. In addition to these tips and others, the authors provide helpful examples that demonstrate the benefits of their suggestions. Helpful resources, such as *Specialized Legal Research* and Germain’s *Transnational Law Research*, are also identified.

Unfortunately, there’s simply not enough time to teach students how to conduct legal research in all areas of the law. This article can help fill that gap. Students are exposed to several good ideas to help them deal with unfamiliar areas of the law and are also introduced to useful resources. This article could be used just before students get ready for summer jobs or, perhaps, when discussing the general research process. It could also be used effectively in an advanced legal research class where specialized research is discussed.

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Mary Whisner, *How Do You Know When Research Is Good?* 98 Law Libr. J. 721–725 (2006).

In this “Practicing Reference” column, Whisner examines several ways by which one can measure whether research is good. Does getting the right answer mean good research? How about failing to get in trouble? While these factors and others are part of good research, they do not necessarily equal good research. Whisner focuses on the importance of a good researcher’s ability to follow an effective research process and then to explain that process. Coupling all of these factors, Whisner proposes a formula for knowing when research is good.

While written for law librarians, Whisner’s article can also work well with law students, as it doesn’t get bogged down in law library jargon. This article is great for driving home the point that understanding and following an effective research process is an essential part of becoming a good researcher. Students see that being able to explain their research process will help others (and themselves) evaluate whether they’ve conducted good research, whatever answer they’ve found. This article is interesting and informative, as Whisner’s “Practicing Reference” pieces generally are.

Mary Whisner, *When Judges Scold Lawyers*, 96 Law Libr. J. 557–570 (2004).

Whisner takes her readers on a research journey to find cases in which judges criticize incompetent research and writing. Along the way she illustrates several effective research techniques including keyword searching, updating with Shepard’s® and KeyCite®, and subject-based searching. As her research turns up desired cases, Whisner briefly shares the biting words of judges and the lessons to be learned by legal researchers.

This article kills two birds with one stone in a legal research class. First, it allows students to walk hand in hand with a legal research expert on a research journey. Whisner does a wonderful job of explaining her research thought process. Such an inside glimpse into the research process can be invaluable to students as they develop their research skills. In addition, the article provides real-world

examples of what happens when research and writing are done poorly. Students who lack vision about the importance of legal research and writing will be well-served by reading this article.

Mark E. Wojcik, *Ten Tips for Starting Your Research Right*, 91 Ill. B.J., July 2003, at 359–360.

Wojcik presents 10 legal research tips geared toward new lawyers. The tips cover such topics as time, jurisdiction, and methods. *Id.* at 359. Each tip is accompanied by a series of questions to get new lawyers in the right mind-set to begin a research assignment.

This article is a great piece to get students thinking about everything that goes into the research process before the research even begins. Because students have a tendency to rush into research, this article helps them understand the importance of slowing down and making sure they are well prepared to research. As an added bonus, it accomplishes its objective in little more than a page.

### Electronic Legal Research

Thomas Keefe, *Finding Haystacks: Context in Legal Research*, 93 Ill. B.J., Sept. 2005, at 484–485.

Keefe argues that beginning research with keyword searching makes legal researchers miss the crucial step of creating context for their research question. Legal research is based on concepts, but keyword searches focus on facts. Fact-based researchers look for “the proverbial needle without having found the correct haystack.” *Id.* at 484. Concept-based researchers, on the other hand, first find the right haystack, which leads them more quickly to the needle. The author cites several examples of the importance of context-based research, including the rise of such electronic concept-based tools as Search Advisor on LexisNexis® and KeySearch® on Westlaw®.

This article teaches students the important lesson that keyword searching needs the context provided by concept-based tools to be effective. This lesson increases in importance each year as entering students are more attached to keyword searching. This article gives students examples of print and

electronic concept-based research tools and shows they are relevant even in today's research environment. While there are many articles dealing with the importance of context and concept-based research, Keefe gets his point across quickly and effectively.

Thomas Keefe, *Books in Space—Online Versions of Print Publications*, 93 Ill. B.J., Jan. 2005, at 42–43.

In this article, Keefe examines online searching alternatives to terms and connectors searching. He covers several online searching tools including natural language, digests, indexes, and tables of contents. He argues that many of these alternatives make electronic searching a much more powerful tool, especially for resources such as statutes.

Using this article is a great way to introduce students to a variety of search options on Westlaw and LexisNexis. The section on natural language provides some good suggestions about when to use such a search. While the discussion of the book-derived tools is not extremely detailed, it can provide a good building block for a discussion on search techniques other than terms and connectors. Since students gravitate to keyword searching, a discussion on concept-based tools is important and Keefe's article is a helpful springboard.

Scott P. Stolley, *Shortcomings of Technology: The Corruption of Legal Research*, 46 For the Defense, 39–41, 51 (April 2004).

Stolley, a law firm partner, decries new associates' reliance on computer-assisted legal research. He argues that computer-assisted legal research is inferior to print research because "the computer is ill-suited for finding concepts" and "computers can't think in analogies." *Id.* at 40. The author recounts experiences in which he posed research questions to new associates who would return with no results after researching online. Stolley's subsequent search through a print digest or treatise would return the desired results in minimal time. Stolley argues that the focus on computers is "eroding lawyers' research skills." *Id.* at 41.

Stolley's article is a good shot in the arm for law students who may be oblivious to the weaknesses of electronic legal research. While I do not agree with everything Stolley says, I think he has some important points for students to consider. This article can be a great way to teach about the weaknesses of electronic legal research in finding concepts or analogies. It can also be useful in exposing students to less-than-positive opinions of electronic legal research that may be held by some of their future supervising attorneys.

### Primary Sources

Barbara Bintliff, *Mandatory v. Persuasive Cases*, 9 Perspectives: Teaching Legal Res. & Writing 83–85 (2001).

Bintliff explains the difference between mandatory and persuasive authority and the importance of finding mandatory authority. She also explains what cases are mandatory on which courts in the federal and state systems. Bintliff concludes the article by discussing the degrees of persuasiveness a case can have and how a case achieves its level of persuasiveness.

Bintliff's article is a good review (or perhaps primer) of mandatory and persuasive authority. Most importantly, Bintliff offers a good discussion of the degrees of persuasiveness, as well as the factors that determine a case's level of persuasiveness. Students are taught how they should evaluate persuasive cases and that all persuasive cases are not created equal.

Travis McDade, *Unpublished Cases as Precedent? Location Is Everything*, 36 Student Law., Dec. 2007, at 12–13.

McDade provides an explanation of the ever-changing landscape of citation of unpublished cases. In discussing whether unpublished cases should be cited as precedent, McDade touches on the historical split on this issue in the federal courts and how that changed in 2007 with the rule making unpublished cases citable in all federal courts. He also briefly discusses the split on the issue that still exists among state courts.

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The topic of unpublished cases is a dangerous one to spend little time on in a legal research class because of its tendency to confuse students. However, most of us don't have much class time to devote to it. McDade's article helps students gain an understanding of the issue without dedicating much class time to the topic. It addresses students' common concerns—"Unpublished cases are published?" and "Should I cite them?"—while also explaining the current terrain in federal and state courts.

Travis McDade, *Don't Overlook Regulations as an Important Source of Law*, 34 *Student Law.*, Oct. 2005, at 10–11.

In this article, McDade introduces an often overlooked, but extremely important primary source of law—regulations. He begins with an entertaining real-life application of a regulation, which amazingly enough involves a positive interaction between Howard Stern and the Federal Communications Commission. He then provides a brief explanation of regulations followed by an introduction to the *Code of Federal Regulations* and the *Federal Register*. He ends with a discussion of where these resources can be accessed online, both for a fee and free.

I agree with McDade's observation that "regulations get short shrift from beginning to end," in the law school curriculum. *Id.* at 10. I touch on them in my first-year legal research class, but students don't get the exposure to them like they do with statutes and cases. For this reason, McDade's article is a good piece to familiarize students with the topic.

### Conclusion

Supplemental readings that are informative, interesting, and brief can do wonders in a legal research course. I use these readings to emphasize important points, facilitate interesting discussion, and provide a real-world view of legal research. Students enjoy the change of pace and are generally engaged by the articles—something I can't say about textbooks. In my experience, supplemental readings such as those annotated here enhance the teaching and learning of legal research.

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## Another Perspective

"The concept of 'thinking like a lawyer,' the focus of traditional law school study, takes too narrow a view of how lawyers practice and the range and reach of legal work. Although critical legal thinking is important, it is merely one component of effective lawyering. In addition to learning how to 'think like a lawyer,' law school is the place where students learn the language of the law. As such, law schools should take advantage of the best known and most effective approach to learning a new language—the immersion method. The primary characteristic of the immersion method is teaching language and culture in contextualized combination. By creating an engaging learning environment where law students become fluent in the language and practice of effective and compassionate problem solving, the health and well-being of individual lawyers and the legal profession will improve.

The best way to learn a new language is to go to the place where the language is spoken. Therefore, adopting the approach of Legal Immersion Fluency Education, law schools, like good language immersion and student-exchange programs, will immerse students in the vast community of lawyering. Law students will routinely be living in the law by experiencing it in context, rather than spending time primarily in the classroom. This immersion into the community of lawyering includes, but is not limited to, integrating volunteer work, clinical work, externships, court visits, and shadowing practitioners into and throughout the legal education, breaking down the barriers that currently exist between doctrinal and experiential learning."

—Beth D. Cohen, *Legal Learning for Life: Legal Immersion Fluency Education (LIFE)*, 43 *Harv. C.R.-C.L. L. Rev.* 605 (2008).