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TEN TIPS FOR MOVING BEYOND THE BRICK WALL IN THE LEGAL RESEARCH PROCESS

BY MARSHA L. BAUM

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Teachable Moments for Students ... is a regular feature of Perspectives designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a “teachable moment,” a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the Teachable Moments for Teachers column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own “teachable moments for students” to the editor of the column: Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.

Legal researchers, especially first-year law students trying to complete a research project, sometimes are frustrated at not finding an answer and feel at a loss as to how to proceed. They feel as if they have hit a “brick wall” in the research process and see no other avenue to take. They may have found a great variety of material but not a direct answer, so they feel that they are missing something. They may have gotten started on their research but not been able to find a source that seems to be pointing in the right direction, and every search term they try hits a dead end. They may actually have finished their research and not realized it. What steps might frustrated researchers take to try to get past the brick wall standing in their research paths?

1. Reread the problem being researched. Be sure that you understand the issues and have all the facts you need. To be successful in researching, you must comprehend the issues and be able to stay focused on the problem. A carefully planned research strategy and a strong grasp of the issues are critical in maintaining that focus.

If you are a novice at the research process, it is easy to get sidetracked by tangentially related topics and become confused by what you are finding. By identifying the goals of the research at the outset and referring to your problem regularly to stay focused, you can avoid getting lost in the vast array of information.

In reviewing the problem, you may discover an overlooked issue or factual element that affects your research. Your research may have helped you to recognize an issue that you had previously overlooked. As a result, you may find that your research path is opened for you again. In any event, rereading the problem will help to clarify the goal of the research and may provide additional terms to search.

2. Review the research steps you have already taken. Look at the research strategy you followed to get to this point. Be sure that you formulated a clear search strategy before you started. If you did not have a research strategy, develop one now and begin your research anew.

In developing your research strategy, you should have considered all of the research sources available to you, determined your level of understanding of the subject matter, and moved into the most appropriate research tools. Before you start, you need to have a good understanding of the legal research tools, their contents, and the various ways to use them. If you are not familiar with legal research resources, refer to item 8.

If you started with the primary sources (i.e., statutes, regulations, and cases) but found yourself floundering and unable to locate documents with the search terms you selected, you probably need to step back into secondary sources to gain perspective and a listing of search terms related to your issue. If you knew nothing about the subject, you should have started with a secondary source to gain a basic understanding of the area of law before you attempted to search the indexes and finding

aids for the primary resources. The benefit of this approach is that the secondary sources will also provide you with citations to primary materials to get you restarted on your research.

3. Update and expand the materials you have already located. You may be able to use the documents you have already located to move beyond your current stage of research, to get through your brick wall. By using the citations within the cases you have found or by checking the cases or statutes you have located in Shepard's® or KeyCite®, you can expand your research results. You may find materials that more directly address your problem or that are from a more relevant jurisdiction.

Be sure that you have updated your research, particularly if you are working on a research problem assigned by an instructor for class (as opposed to research from an employer). Since instructors do not generally assign exercises with no answers, if you are not finding an answer in the source that seems most appropriate, be sure that you have checked the pocket parts and other supplementing materials. The answer may be in the most current materials.

4. Determine whether you are “done” with your research. If you are feeling as if you have reached a dead end and cannot determine the next step to take in your research process, you should consider the possibility that you have simply reached the end of the research trail. If you are locating the same citations over and over from a variety of sources, your research is very likely complete.

First, confirm that you are not caught in a loop resulting from using only one publisher's materials. Consider the variety of resources you have used and determine that you have not relied solely on the editorial work of one publisher or system. If you have researched in a variety of resources and are finding the same references in multiple sources, you very likely have successfully completed your research.

Remember that you do not have to find every item published on a particular topic to have completed your research. Over-researching will not provide any better result than efficiently locating

the most important and relevant resources for addressing your issues.

5. Use new sources to find search terms. Even when you are familiar with the subject matter, you can hit a brick wall in researching. Perhaps you have tried every term you can think of in a particular source (e.g., an index to a set of statutes) but find no relevant entries. This does not necessarily mean that there is no law on your subject. In fact, you may know that there is primary authority on the topic, but your search has not located the primary documents.

Think creatively about the research process. You can try another research approach to help reframe the issue and identify terms to use in your research that you had not previously considered. A quick search for your terms on the Internet or quick perusal of an encyclopedia can help you turn away from the brick wall and get you back on track. You can do some research in a treatise or locate a law review article on your subject. In the most favorable situation, these secondary sources would provide citations to the relevant primary materials. However, even without direct references to primary documents, the search in a new type of resource or a resource from a different publisher may help the research process along. By browsing indexes of previously untried sources, you may serendipitously locate new terms or concepts. Scanning the text may offer new insights into your research problem.

You generally do not need to spend a large amount of time on this secondary route before you recognize a new approach or identify references to primary sources that will get you started again. Do not add to your frustration level by struggling with multiple secondary sources or spending long periods of time reading detailed information on your topic. Take five minutes in a new research tool to try to break through the brick wall. If you do not find it helpful, move to another resource.

6. Consult an expert. If your project does not forbid consultation, consider asking for assistance from someone who can provide advice on research strategy or who can provide suggestions for search terms. Consider talking with a reference librarian, another attorney, or a faculty member. Using a

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lifeline such as this can save much time and energy and get you back on track quickly.

Keep in mind that the telephone is one of your best research tools. Contacting someone at a government agency or other entity can be the quickest way to locate information and move your research forward.

7. Start over with a secondary source. If you find that your research in primary sources has been fruitless, you may want to start the research process again with secondary sources. A new start in the secondary sources will provide the opportunity to locate background information about the topic and develop an understanding of the area of law. It will also provide references to primary sources that will start you on your way with your research. Using these resources, you can let a publisher do the research work for you.

8. Learn about the many alternative research tools and how to use them. Perhaps the problem you are having in locating relevant materials relates to unfamiliarity with the various research tools available to you. If this is the case, refresh your memory on the methods for researching and the finding tools that will help you research more efficiently and effectively. You can turn to one of the legal research guides for detailed discussion of the steps in performing research in primary and secondary resources, or you can consult an expert.

9. Analogize using the materials you have found. A researcher wants to find *the* answer. Unfortunately for legal researchers, there may not be an answer directly on point. Although you may hope to find a case that exactly matches your fact pattern and your issues, the probability of that happening is extremely low, if not nonexistent. You will need to use the primary sources that you have found to develop and support your argument and conclusion.

Do not consider your research unsuccessful if you did not find *the* answer. If you have found materials that you can use to frame your argument, your research efforts have been successful. You will now need to use your legal analysis skills to develop the analogies between the law you have found and the problem you are researching.

10. Realize that sometimes there is no answer.

As a corollary to item 9, you should understand that there is not always an answer to a research problem. Perhaps the courts and the legislatures have not acted on a particular issue. Perhaps your jurisdiction has no law related to your research problem. If this is a problem for class, there is likely an answer somewhere, but, in the real world, the answer may be that no answer exists.¹ You should not immediately jump to the conclusion that there is no answer after a few hours of frustrating research, but if you have tried all of the research steps you can try, including the above suggestions, realize that there may be no answer.

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¹ If you are working on a class exercise and are not finding an answer, you will want to use the suggestions above to move you forward in your research. Very rarely would an instructor assign a research exercise with no answer, although the exercise may be one that has no direct answer but instead requires analogization.